

HOW TO LEGISLATE WITH WISDOM AND ELOQUENCE

THE ART OF LEGISLATION
RECONSTRUCTED FROM THE RHETORICAL TRADITION

LUIS ALBERTO MARCHILI

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Luis Alberto Marchili

**Author's Edition
2016**

Marchili, Luis Alberto

How to Legislate with Wisdom and Eloquence. The Art of Legislation Reconstructed from the Rhetorical Tradition.

1st edition, spanish, Editorial Dunken, Buenos Aires, 2009, 498 p. 16x23 cm.

ISBN 978-987-02-4047-1.

Author's English translation, Author's Edition, ebook (pdf), 333 pp. Buenos Aires, 2016.

Philosophy of Law. Rhetoric. Art of legislation. Legislative Drafting.

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"[...] the orator that we look for, and who we want to make the chief of the State council, [will be] the author of the resolutions to be taken by the government, and either in the senate or in the assemblies, will always make his opinions prevail by the force of wisdom and eloquence."

Cicero (106-43 B.C.)¹

¹ "Entre celles-ci, la secte qui combat pour la volupté, quand même ses principes auraient quelque apparence de vérité, ne peut convenir en rien à l'orateur que nous cherchons, et dont nous voulons faire le chef du conseil de l'État, l'auteur des résolutions à prendre pour le gouvernement, et celui qui, dans le sénat comme dans les assemblées, fera toujours prévaloir ses avis à force de sagesse et d'éloquence."

"Ex illis autem, quae remanent, ea philosophia, quae suscepit patrocinium voluptatis, etsi cui vera videatur, procul abest tamen ab eo viro quem quaerimus, et quem auctorem publici consilii, et regendae civitatis ducem, et sententiae atque eloquentiae principem in senatu, in populo, in causis publicis esse volumus."

Cicero, *De Oratore*, III, XVII

Cicéron, *De l'Orateur*, III, XVII; dans *Oeuvres Complètes de Cicéron*, Traduction de S. Andrieux, Revue avec le Plus Grand Soin par M. Charpentier, Garnier Frères, Libraires Éditeurs, Tome Troisième, Paris, 1906, p. 346.

In memory of Alfredo Colmo, Argentine jurist of international fame
(1876-1934)²

² Born on August 21st 1876, he was baptized “Juan Alfredo Colmo“, but did not use his first name.

"[...] law does have compulsive power, and it is reason proceeding from a kind of practical wisdom and intellect."

Aristotle (384-322 B.C.)³

"Besides, though ruler and master of all things, it exercises its authority without the use of arms and force –on the contrary, law itself does away with force; nay, it rules by persuasion and governs willing subjects. For it is because it first persuades men and secures their approval that law comes into being and acquires its own power."

Dio Chrysostom (c 40 – c 120)⁴

‘VI.5 FORMULA OF APPOINTMENT TO THE QUAESTORSHIP. [...]

3. [...] Think of the honour and responsibility you have in equal measure. If I am in any doubt, I ask the Quaestor, who is a treasure of public reputation, a store-room of the laws, ever ready for the unexpected; and as Tully [Cicero], the master of eloquence puts it, nothing "seems more remarkable than the ability, by speech, to hold men's minds, to attract their inclinations, to drive them whither, or to lead them whence he wills" [De Oratore I.30]. For, if it is the proper part of the orator to speak with gravity and style that he may move the minds of the judges, how much more eloquent must be who is known to admonish the people with their prince's mouth that they should love the right, hate the wrong, praise good men without ceasing, and zealously denounce the evil. So, punishment may be given holiday where the power of eloquence prevails. He must imitate the ancients with intelligence; he must correct the morals of others, and preserve his own with due integrity.’

Magnus Aurelius Cassiodorus Senator (c 490-583)⁵

³ Aristotle, Nicomachean Ethics, Book X, 9, 1180a20.

Aristotle, Nicomachean Ethics, Book X, 9, 1180a, Translated and Edited by Roger Crisp, Cambridge University Press, First published in printed format, 2000, ebook (net library), 2004, p. 201, text reproduced above.

Aristotle, Nicomachean Ethics, Book X, 9, 1180a20, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Princeton University Press, Second Printing 1985, Volume II, p. 1865.

The text of two versions is accompanied also, one in English and the other in Spanish:

"[...] law does have the power to compel, and law is reasoned speech that proceeds from prudence and intellect of some sort."

Aristotle, Nicomachean Ethics, 10.9, 1180a20, The Politics of Aristotle, Translated with Introduction Analysis and Notes by Peter L. Phillips Simpson, The University of North Carolina Press, Chapel Hill and London, 1997, p. 3.

“[...] la ley tiene fuerza obligatoria, y es la expresión de cierta prudencia o inteligencia.”

Aristóteles, Ética a Nicómaco, Libro X, 9, 1180a20, Edición Bilingüe y Traducción por María Araujo y Julián Marías, Centro de Estudios Constitucionales, Madrid, 1981, p. 171.

⁴ Dio Chrysostom, The Seventy-fifth Discourse: On Law, 4; in Dio Chrysostom, with an English Translation by H. Lamar Crosby, in Five Volumes, Harvard University Press, Cambridge, Massachusetts, William Heinemann Ltd, London, 1985, Volume V, pp. 242-245.

⁵ The Quaestor (*Quaestor*) had then two functions: to write laws and to answer petitions.

The *Variae* of Magnus Aurelius Cassiodorus Senator, Book VI. 5, 3. The Right Honourable and Illustrious Ex-Quaestor of the Palace, Ex-Ordinary Consul, Ex-Master of the Offices, Praetorian Prefect and Patrician, Being Documents of the Kingdom of the Ostrogoths in Italy, Chosen to Illustrate the Life of the Author and the History of his Family and Translated with Notes and Introduction by S.J.B. Barnish, Liverpool University Press, 1992, p. 96.

The text is accompanied also in the original language:

"FORMULA QUA[E]STURA V [...]

Considerate quid ponderis habeatis pariter & decoris.

Quaestore Si quid dubitamus, a Quaestore requerimus: qui est officium. thesaurus famae publicae, armarium legum, paratus semper ad subitum, & (ut ait Tullius magister

"Which must be the art of making laws

We must provide healthy help for making laws, prepare us to make good works, as the ancient did, and we want to teach in what way to make statutes, and in what way he who makes laws must have learned the art of making laws."

Fuero Juzgo (649 ó 653)⁶

orator. eloquentiae) Nihil praestabilius videtur, quam posse dicendo tenere hominum mentes, allicere voluntates, impellere quo velit, unde autem velit deducere. Nam si oratoris est proprium, grauitur & ornare dicere, ut possit animos iudicu commouere: quanto facundior debet esse, qui ore principis populos noscitur admonere? ut recta diligant, peruersa contemnant, bonus sine fine laudent pessimos vehementer accuset. Ut pene feriata sit distinctio, vbi praeualet eloquentiae fortitudo. Sit imitator prudentissimus Antiquorum, mores alienos corrigat, & suos debita integritate custodiat."

Magni Aurelii Cassiodori Senatoris V.C., Variarum libri XII, Apud Sebastianum Niuellium, sub Ciconis, via Iacobae, Parisiis, 1589, pp. 129-130.

⁶ "Qual deve ser el arte de fazer las leyes

Nos que devemos dar ajuda de salud por el fazemiento de las leyes, apareiamos nos de fazer buena huevra, cuemo fizieron los antigos, é queremos ensennar en qual manera se deve fazer la ley, y en qual manera el qui la faze deve aver ensennamiento ó arte de la fazer."

Fuero Juzgo, Libro Primero, Título I, Del Facedor de la Ley; Los Códigos Españoles Concordados y Anotados, Imprenta de la Publicidad, a cargo de M. Rivadeneyra, Tomo Primero, Madrid, 1847, p. 105.

Ayuda de salud: auxilio, ayuda saludable. Apareiar: disponerse, preparar; aparejarse, prepararse. Huevra: obra.

Víctor Fernández Llera, Gramática y Vocabulario del Fuero Juzgo, Real Academia Española, Madrid, 1929, pp. 118, 107 y 201.

Warnings to the reader

A great number of notes with quotes has been introduced to invite the reader to drink from the best fountains, far from any pedantic style. Thus, there is not always a complete identity between the opinion sustained by the author of this work and those of the authors quoted in every note,⁷ not even between the opinion sustained by the said authors and the cites of their works here. Those works, more than testimonies of arcane and infallible oracles, may be read as store-rooms of tradition, since sometimes the opinions of others exposed or quoted by the authors to criticize them, are, perhaps, more important than the own ones, since they may generate different and valuable opinions and concerns. Plato was opposed to rhetoric in his Gorgias dialogue,⁸ but then he accepted a philosophical rhetoric in his Phaedrus,⁹ to educate or govern the souls by means of speech (psychagogy¹⁰). The opinions opposite to his, which he

⁷ As becomes clear from the beginning of the Notice of the Civil Code of Chile, written by the eminent grammarian, legislator and humanist Andrés Bello, author of the project:

"It must be warned that there is not always a complete identity between a provision of the Code and the statute or doctrine quoted; since these are sometimes adapted with some enlargement, restriction or explanation, or alleged by way of resemblance or of analogy." ("Debe advertirse que no siempre hai una completa identidad entre la disposición del Código i la lei o doctrina que se cita; adaptándose a veces éstas con alguna ampliación, restricción o esplicación, o alegándose por vía de semejanza o de analogía"). Código Civil de la República de Chile, Edición autorizada por el Supremo Gobierno, Imprenta Chilena, Santiago de Chile, julio de 1858, p. 359.

⁸ Diogenes Laertius, *Life, Doctrines and Judgments of Illustrious Philosophers*, Book III, Plato.

Diogenes Laertius quotes the work as "*Gorgias or of the Rhetoric*", and qualifies it as a refutation type of dialogue.

Diogène Laërce, *Vie, Doctrines et Sentences des Philosophes Illustres*, Traduction, Notice et Notes par Robert Genaille, Garnier-Flammarion, Tome I, Livre III, Platon, Paris, 1965, p. 181 and n. 303.

Plato, Gorgias, 464d-465a.

Plato denied that the rhetoric was an art, because it cannot account for the nature of things and indicate the cause of each one, and reduced it to an empiricism, like a species of flattery, which tries to achieve the pleasant without worrying for the good.

Plato, Gorgias, 464d-465a, Translated with Notes by Terence Irwin, Clarendon Press, Oxford, 1979, p. 33.

Platón, Gorgias, 464d-465a, Traducción, Introducción y Notas de Ángel Cappelletti, Eudeba, Buenos Aires, 1967, p. 143.

Platon, Gorgias, 464d-465a, Texte Établi par Alfred Croiset avec the Collaboration of Louis Bodin, dans Platon, Oeuvres Complètes (sic), Tome III, 2e Partie, Gorgias-Ménon, Société d'Édition "Les Belles Lettres", Paris, 1923, pp. 133-134.

Platon, Gorgias, 464d-465a; dans Oeuvres Complètes of Platon, Traduction Nouvelle et Notes par Léon Robin, Librairie Gallimard, Tome I, Paris, 1950, p. 400.

Platone, Gorgia, XIX, 464d-465a, a Cura di N. Sabbatucci, Editore Laterza, Bari, 1956, pp. 60.

⁹ Plato, Phaedrus, 277b.

Philosophical rhetoric needs: a) the knowledge of the truth about the things on which one speaks or writes; b) the definition and division of the things up to the indivisible species; c) the definition and division of the soul up to the indivisible species; d) the discovery of the species of speech that adapts itself to each soul species.

Platón, Fedro, 277b, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, pp. 79-80.

Platon, Phédre, 277b, Texte Traduit par Léon Robin; dans Platon, Oeuvres Complètes, Tomo IV, 3e Partie, Phédre, Société d'Édition "Les Belles Lettres", Paris, 1933, p. 92.

Platon, Phédre, 277b; dans Oeuvres Complètes of Platon, Traduction Nouvelle et Notes par Léon Robin avec the Collaboration of M. J. Moreau, Éditions de la Nouvelle Revue Française, Takes II, Paris, 1942, p. 63.

Platone, Fedro, 277b, Testo Critico, Introduzione e Commento di Giuseppe Ammendola, Casa Editrice Carlo Signorelli S.p.a., Milan, pp. 261-262.

¹⁰ Plato, Phaedrus, 261a.

expressed or quoted with the view to criticize them, far from disappearing, were perpetuated, since their texts were turned into essential documents to reconstruct the history of Greek rhetoric, and have inspired, inspire and will inspire many people, including those who have assumed, assume and will assume positions different from the ones held by the outstanding Greek philosopher.

Unless otherwise indicated, all English translations in the text and notes are by the author of this book.

Platón, Fedro, 261a, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, p. 54.

Platon, Phédre, 261a, Texte Traduit par Léon Robin; dans Platon, Oeuvres Complètes, Tomes IV, 3e Partie, Phédre, Société d'Édition "Les Belles Lettres", Paris, 1933, p. 63.

Platon, Phédre, 261a; dans Oeuvres Complètes of Platon, Traduction Nouvelle et Notes par Léon Robin avec the Collaboration of M. J. Moreau, Éditions de la Nouvelle Revue Française, Tome II, Paris, 1942, p. 55.

Platone, Fedro, 261a, Testo Critico Introduzione e Commento di Giuseppe Ammendola, Casa Editrice Carlo Signorelli S.p.a., Milan, pp. 185-186.

Prologue

Busy reader: any human activity of certain social importance is the object of a specific art, founded on a determined method, which provide a system of observations, principles, rules and examples designed for its well performance. Nevertheless, the legislative activity, despite its importance, has not been provided with a model explaining it with the dignity of a genuine source of law,¹¹ and has remained freed at random or subjected to the empiricism of mere practice, since the art of legislation does not exist today as a true doctrine body, because it has not been incorporated into a fundamental system, into an acknowledged methodical base on which a well assembled construction may be erected.¹²

The legislative activity presents a multiplicity that chance exaggerates, a routine practice that falsifies the unit, or a mixture of both, without a specific art having managed to reduce it to a true unit, by means of a theory making its problems more understandable and its solutions more understandable and realizable.¹³

The true art of legislation, that had been lost, is reconstructed here from classical tradition, which conceives laws as wise and eloquent civic speeches and rhetoric, the art of persuading with wise and eloquent civic speeches, as its methodical base recognized for almost two thousand and five hundred years. The above mentioned theoretical hypothesis and its respective methodical base enrich the art to speak well (*ars bene dicere*) and found the art to legislate well (*ars bene legislandi*), as it will be proved in this book, in such a way, that the return to ancient rhetoric will be a progress for the art of legislation.¹⁴

The art of legislation reconstructed as a system of observations, principles, rules¹⁵ and examples,¹⁶ founded on rhetoric, makes it possible to overcome the stages of mere

¹¹ Jeremy Waldron, *The Dignity of Legislation*, Cambridge University Press, Cambridge, 1999, p. 1.

¹² Robert Walter, "Die Lehre von der Gesetztechnik", *Österreichische Juristen-Zeitung*, 18 Jahrgang, Heft Nr. 4, 26 Februar 1963, II, p. 84.

¹³ On the realization of the law, see:

R. Von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur la 3e. Édition avec l'Autorisation de l'Auteur par O. de Meulenaere, A. Maresq Ainé, Éditeur, Tome III, Paris, 1877, p. 15.

¹⁴ Giuseppe Verdi, Letter from Genoa, of 1/5/1871, to Francesco Florimo, librarian of the R. Collegio Di Musica of Naples, whom they had offered him the Direction of the above mentioned School; there he recommends him, about the art of education of young pupils: "Return to the ancient and it will be a progress."

"Tornate all'antico e sarà un progresso", Giuseppe Fumagalli, *Chi l'Ha Detto?*, Tesoro di Citazioni, Ulrico Hoepli, Editore-Libraio della Real Casa, Milano, 1934, Ristampa Anastatica, 1951, pp. 117-118.

¹⁵ Rules on the art of legislation are also included on these two works:

Jérémie Bentham, *Vue Générale d'un Corps Complet de Législation*, dans *Oeuvres de Jérémie Bentham*, par Ét. Dumont, Société Belge de Librairie, Troisième Édition, Tome Premier, Bruxelles, 1840, p. 341.

Jeremy Bentham, *Nomography or the Art of Inditing Laws*; in *The Works of Jeremy Bentham*, Published under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., Volume III, London, 1848, pp. 230-295.

It makes interesting comments about the Bentham's *Nomography*:

Courtenay Ilbert, *The Mechanics of Law Making*, Columbia University Press, New York, 1914, pp. 91-122

¹⁶ For numerous rules and examples, see:

G. C. Thornton, *Legislative Drafting*, Butterworths, First Edition, London, 1970; Second Edition, 1979; Third Edition, 1987; Fourth Edition, 1996; Fourth Edition Reprinted by Tottel Publishing Ltd., West Sussex, 2005, Reprinted 2006 (Twice), 2008 (Twice).

practices without giving reasons and of isolated answers about a heap of problems. It may be applied both in Common Law and Civil Law systems, and also in any other positive law, historical, current or future, previous adaptation of the legislation to the multiplicity of languages and juridical systems, which knowledge is presupposed, as it happens with rhetoric. It may also be learned without teachers' help, as it will be proved in the development of this book and by those who follow the same model, as it has been proved by the large number of publications that have kept the rhetorical tradition alive.

This book will be of immediate utility for the readers who, on account of their legal education or in their capacity as specialists in other disciplines, when asked to give their opinions or designated to collaborate in legislative tasks, will be able to grasp in just a short time, such knowledge as the author was able to acquire only after more than thirty years of study and seven of experience as legislative adviser. It will likewise be of immediate utility for the State, because the improved quality of the laws will diminish the complexity and number of the judicial cases and administrative proceedings, since it will encourage the spontaneous compliance of the law, which is the normal conduct, since compulsory execution is a therapy to cure non-performance, which is a pathological conduct.

The author cannot conclude this prologue without confessing that had he chosen a subject-matter proportioned to his strengths, pondered the burden that his shoulders would carry,¹⁷ he would not have even attempted to write this book. But, since he chose an elevated topic and flew off with it,¹⁸ after a long time and much effort, he managed to capture it. Now, frightened, he publishes it with the hope that, if it will be read with recurrent fervour and loyalty,¹⁹ it will be a light for the soul²⁰ against chance and

¹⁷ Horace, *Ars Poetica*, 38.

Horace, *Ars Poetica*, 38; *Satires, Epistles and Ars Poetica*, with an English Translation by H. Rushton Fairclough, The Loeb Classical Library, Harvard University-William Heinemann Ltd., Cambridge, Massachusetts, London, 1961, pp. 452-453.

Quinto Horacio Flaco, *Arte Poética*, 38, *Introducción, versión rítmica y notas de Tarsicio Herrera Zapién*, *Bibliotheca Scriptorum Graecorum et Romanorum Mexicana*, Universidad Autónoma de México, México, 1970, p. 2.

Horace, *Art Poétique*, 38; Traduit et Annoté par E. Taillefert, Librairie Hachette, Paris, 1920, p. 6.

¹⁸ Montesquieu, *Pensées*, pensée 1450; *Pensées [et] Le Spicilège*, Édition Établie par Louis Desgraves, Ed. Robert Laffont, Paris, 1991, p. 477.

¹⁹ Jorge Luis Borges, *Sobre los Clásicos, Otras Inquisiciones, Obras Completas, Tomo I, Volumen II*, 1952-1972, Emecé Editores, 20 edición, Buenos Aires, 1994, p. 151.

²⁰ “[...] que no me dexa tiempo para hazer alguna recompensa, leyendo otros que sean luz del alma.”

Miguel de Cervantes Saavedra, *El Ingenioso Hidalgo Don Quijote de la Mancha*, Parte Segunda, Cap. LXXIV, *Obras Completas de Miguel de Cervantes Saavedra*, Edición Publicada por Rodolfo Schevill y Adolfo Bonilla, Gráficas Reunidas S.A., Tomo IV, Madrid, 1941, p. 398, líneas 7-9.

“[...] que no me deja tiempo para hacer alguna recompensa, leyendo otros que sean luz del alma.”

Miguel de Cervantes Saavedra, *El Ingenioso Hidalgo Don Quijote de la Mancha*, Parte Segunda, Cap. LXXIV, *Nueva Edición Crítica por Francisco Rodríguez Marín*, Ediciones Atlas, Tomo VIII, Madrid, 1948, p. 253, líneas 4-6.

“[...] que no me deja tiempo para hacer alguna recompensa leyendo otros que sean luz del alma.”

Miguel de Cervantes, *Don Quijote de la Mancha*, Segunda Parte, Cap. LXXVIII, , Edición del Instituto Cervantes, 1605-2005, Dirigida por Francisco Rico, con la Colaboración de Joaquín Forradellas, *Galaxia Gutenberg, Círculo de Lectores, Centro para la Edición de los Clásicos Españoles*, Navarra, 2004, p. 1330, líneas 10-12

The source of the preceding quote from *Don Quixote*, in different editions, was the book:

[“Luz del alma cristiana contra la ceguedad é ignorancia”, por Fr. Felipe de Meneses, dominico, Catedrático de Alcalá, y Rector del Colegio de S. Gregorio de Valladolid, Salamanca, 1556, Medina del Campo 1567, y otras tres ediciones, la última en Valencia 1594.]’

empiricism, for those who may be looking for initiation or improvement in the secrets of the true art of legislation.

Luis Alberto Marchili

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Chapter I Introduction

This Chapter deals with several notions previous to the development of the art of legislation: object, method, denominations, definition and expository plan.

1. Object

Every art requires, at least, to prove what its object is and through what method we can make it ours.²¹

The law is a "decree of prudent men" (*decretum vero prudentiam hominum*), according to Justinian's Digest (I.3.2), the source of which is Martian, who took the formula from Demosthenes's First Speech Against Aristogiton.²² The above mentioned precedents allow to see other of the speeches of the "Counsellor of the People", as the great orator was usually called, to better understand the meaning of "prudent men": those capable of "giving better counsels than the others in the deliberations"²³.

²¹ Longino, On the Sublime, I.1.

Dyonisius or Longinus, On the Sublime, I.1, With an English Translation by W. Hamilton Fyfe; in Aristotle, The Poetics, "Longinus", On the Sublime, [and] Demetrius, On Style, The Loeb Classical Library, First Published 1927, Revised and Reprinted 1932, Reprinted 1939, William Heinemann Ltd., London, [and] Harvard University Press, Cambridge, Massachusetts, 1939, pp. 122-123.

"Longino", Sobre lo Sublime, 1, Introducción, Traducción y Notas de José García López; en Demetrio, Sobre el Estilo [y] "Longino", Sobre lo Sublime, Editorial Gredos, Madrid, 1979, pp. 147-148.

[Anonyme] Du Sublime, I.1, Texte Établi et Traduit par Henri Lebègue, Société d'Édition "Les Belles Lettres", Paris, 1939, p. 2.

Pseudo-Longino, Del Sublime, I.1, Traduzione, Introduzione e Note a Cura di Giuseppe Martano, Casa Editrice Gius. Laterza & Figli, Bari, 1965, p. 1.

²² Digesta, I.3.2.

Digesta, I.3.2, in Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum, Institutiones, Recognovit Paulus Krueger, [et] Digesta, Recognovit Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, n. 19, p. 5.

El Digesto del Emperador Justiniano, I.3.2, Traducido y Publicado por el Licenciado Don Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Madrid, 1872, Tomo I, p. 41.

Demosthenes, Against Aristogiton, I.16.

Demosthenes, Against Aristogiton, I.16, "[...] every law is an invention and gift of the gods, a tenet of wise men [...]", in Demosthenes, With an English Translation by J. H. Vince, The Loeb Classical Library, William Heineman Ltd., London, [and] Harvard University Press, Cambridge, Massachusetts, 1935, p. 525. Vince believes that this speech is false, p. 515.

Demóstenes, Contra Aristogitón, I.1.6., "[...] toda ley es una invención y regalo de los dioses, una decisión de hombres sabios [...]"; en Demóstenes, Discursos Políticos, Introducción, Traducción y Notas de A. López Eire, Editorial Gredos, Tomo III, Madrid, 1985, p. 232. The First Speech Against Aristogiton, unlike the Second, considered false, is generally regarded authentic. López Eire supports its authenticity and remembers that they doubted neither Pseudo Longino, Plutarch, Hermógenes nor Libanio, pp. 221-222.

²³ Demosthenes, Navyboards, 8.

"dar mejores consejos que los demás en las deliberaciones", Acerca de Las Agrupaciones, 8, en Manuel Fernández Galiano, Nueva Versión Directa, Demóstenes, Editorial Labor S.A., Barcelona, 1947, p. 46.

From here comes my English translation between inverted commas in the main text.

Demosthenes, Navyboards, 8, in Demosthenes, Minor Public Speeches, With an English Translation by J. H. Vince, Loeb Classical Library, William Heinemann, London, [and] G. Putnam Sons, New York, 1930, pp. 386-87.

In Athens, the previous opinion of the Council (*Boulé*) was required on any matter, even for legislation, before the debate in the Assembly of the People.²⁴ In Rome, during the Republic, the Senate was usually consulted before the presentation of any bill before the people gathered in assemblies (*Comitia centuriata*, *Comitia tributa* and, after the law *Hortensia*, *Concilia Plebis*), but the romanists argue about whether or not was a legal obligation.²⁵

The law is the solution recommended in the consultation, the answer given by "prudent men" to the problems that usually happen in certain circumstances to its multiple recipients. The emphasis placed on the political decision of those who exercise power upon the approval of such answers –since it is the most important act of government in peace times–²⁶ has darkened the wise and eloquent counsel instrumented by legislation.

The consuls of the Roman Republic received this denomination because they were "those that take consultation".²⁷ The *senatusconsultum* was the result of a process of advisory nature, as its own name reveals in a transparent way. The consul who had requested a meeting of the High Body, in the respective session asked: "What is the convenient decision to take on this matter?", or required to directly vote on it. In the latter case the senators could demand that counsel be asked from each of them by using the formula: "Consul, consults" (*Consul, consule*). The text of the *senatusconsultum* was written after the voting, in the language proper of a consultation, not in an imperative form, since it was not a command.²⁸ The *senatusconsultum*, during the Republic, did not have in theory any binding force, but in practice enjoyed such an authority that, except when vetoed, they were always complied with, thus acquiring legal force. In times of

Demóstenes, Sobre Las Sinmorías, 8, en Demóstenes, Discursos Políticos, Introducción, Traducción y Notas de A. López Eire, Madrid, Tomo I, Gredos, 1980, p. 306.

²⁴ Aristotle, Constitution of Athens, 45.4.

Aristotle, Constitution of Athens, 45.4; in Aristotle's Constitution of Athens and Related Texts, Translated with an Introduction and Notes by Kurt von Fritz and Ernst Kapp, Hafner Publishing Company, New York, 1950, p. 119.

Aristóteles, La Constitución de Atenas, 45.4, Edición, Traducción y Notas, con un Estudio Preliminar por Antonio Tovar, Instituto de Estudios Políticos, Madrid, 1948, pp. 160-161.

Aristote, Constitution d'Athènes, XLV.4, Texte Traduit par Georges Mathieu et Bernard Haussoullier, Société d'Édition "Les Belles Lettres", Paris, 1922, p. 48.

²⁵ He supports that it was not a legal obligation and, in the note 4, quotes Mommsen and Lange for it, and Peter, Marquardt and Schwegler against it, P. Willems, Le Droit Public Romain, depuis l'Origine de Rome jusqu'à Constantin Le Grand, ou Les Antiquités Romaines Envisagées au Point de vue des Institutions Politiques, Seconde Édition, Louvain, 1872, p. 179.

²⁶ Bacon, History of King Henry VII; in The Works of Francis Bacon, Popular Edition, Based on the Complete Edition of Spedding, Ellis and Heath, [Tome] II, Literary and Religious Works, Houghton, Mifflin, and Company, The University Press, Cambridge, Boston, s.d., pp. 147-148.

Bacon, History of the Reign of Henry VII; in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. VI, Literary and Professional Works, Vol. I, Longmans & Co. [etc.], London, 1861, p. 97, The Works of Francis Bacon, Faksimile-Neudruck, Der Ausgabe von Spedding, Ellis, und Heath, London, 1857-1874; in Vierzehn Bänden, Sechster Band, Friedrich Fromman, Verlag Günther Holzbooc, Stuttgart-Bad Constanz, 1963.

²⁷ H. Stuart Jones, "Administration"; in The Legacy of Rome, Edited by Cyril Bailey, Oxford University Press, Oxford, 1923, reprinted 1936, p. 96.

²⁸ J. B. Mispoulet, La Vie Parlementaire à Rome sous la République, Essai de Reconstruction des Séances Historiques du Sénat Romain, Albert Fontemoig, Éditeur, Paris, 1899; Chapitre II (De la Forme des Délibérations), Chapitre III (La Rédaction des Sénatus-Consultes), pp. 67-68; p. 88.

the Empire they become binding on account of their inclusion in a clause of the pretor's edict; after Adriano, certain *senatusconsultum* were given immediate legal force.²⁹

Laws usually comprise two discourses: one that persuades to take the reasonable decision and other that prescribes the reasonable conduct.³⁰ Sometimes a consideration of the persuasive discourse is omitted, since not all laws are published with explanatory preambles, previous arguments and such other precedents as may have led to take the adopted decisions. The prescriptive discourse, which consists only of the instrumentation of the counsel, without being accompanied by the persuasive discourse, has perhaps facilitated the positivist conception of the law as a mere set of imperatives or coercive norms, leaving aside the eloquence that persuades to behave with wisdom, forgetting that, in Cicero's words, the laws are "the rational criterion of a prudent man".³¹

One of the secrets of politics, perhaps the most occult mystery of the State for the inexpert, consists in knowing that to rule means to make one obeyed, not just to give commands; that power is persuasion, not force. Pericles, the greatest Athenian politician, held that all that men force others to do without persuasion, whether or not by means of a law, is not law, but force.³² This must not be interpreted as an attack against democracy, which would be a blasphemy against one of its illustrious founders, author of one of its most beautiful praises,³³ but rather as statement fostering that reasonableness should be preserved against the arbitrary exercise of power.

²⁹ Arnaldo Momigliano, Tim J. Cornell, *senatus consultum*; The Oxford Classical Dictionary, Third Edition, Edited by Simon Hornblower and Antony Spawforth, Oxford University Press, Oxford, New York, 1996, p. 1388.

³⁰ Plato, The Laws, 723c-d.

Plato, The Laws, 723, Translated with an Introduction by Trevor J. Saunders, Penguin Books, First Published in this Translation 1970, Reprinted 1972, London, 1972, p. 186.

Platón, Leyes, 723c-d, en Platón, Diálogos VIII, Leyes (Libros I-VI), Introducción, Traducción y Notas de Francisco Lisi, Editorial Gredos S.A. Madrid, 1999, p. 390.

Platón, Las Leyes, 723c-d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Miguel Pabón y Manuel Fernández Galiano, Instituto de Estudios Políticos, Tomo I, Madrid, 1960, p. 157..

Platon, Les Lois, 723c-d; dans Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin avec la Collaboration de M. J. Moreau, [Tome] II, Bibliothèque de la Pléiade, Paris, 1942, p. 774.

Platone, Le Leggi, 723c-d, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 123.

Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, printed 1780, published 1789 and 1823; in The Collected Works of Jeremy Bentham, Edited by J.H. Burns and H.L.A. Hart, With a New Introduction by F. Rosen, Clarendon Press, Oxford, 1996; Preface by Bentham, p. 9.

³¹ Cicero, The Laws, I.6.19.

Cicerón, Las Leyes, I.6 19, "el criterio racional del hombre prudente", Marco Tulio Cicerón, Las Leyes, Edición Bilingüe, Traducción, Introducción y Notas por Álvaro d'Ors, Instituto de Estudios Políticos, Madrid, 1970, pp. 66-67. From here comes my English translation between inverted commas in the main text.

Cicero, De Legibus, I.vi.19, "...it is the mind and reason of the intelligent man...", Cicero, De Legibus, With an English Translation by Clinton Walker Reyes; in Cicero, De Re Publica [and] De Legibus, William Heinemann Ltd., London, [and] Harvard University Press, Cambridge, Massachusetts, first published 1928, reprinted 1943, 1948, 1952, 1959, 1961, 1966, pp. 318-319.

³² Xenophon, Memorabilia, I.ii.45.

Xenophon, Memorabilia, I.ii.45, With an English Translation by E. C. Marchant; in Xenophon, Memorabilia and Oeconomics, Loeb, William Heinemann Ltd., London, [and] G.P. Putnam's Sons, New York, 1923, p. 35.

Xenophon, Entretiens Mémorables de Socrate, I.ii, Expliqués Littéralement, Traduits en Français et Anotés par E. Sommer, Librairie Hachette, Onzième Édition, Paris, s.d., p. 57.

³³ Donald Kagan, Pericles of Athens and the Birth of Democracy, The Free Press, a Division of Macmillan, Inc., New York, Collier Macmillan Canada, Toronto, Maxwell Macmillan Canada, New York, Oxford, Singapore, Sydney, 1991, pp. 46-64.

The true complex nature of laws is best comprehended, when they are not studied as pure acts of power, since they are also wise and eloquent civic speeches. This must not be interpreted as a merely lyric or principle-based position, but as a deeply political and practical viewpoint, since otherwise laws could not last, being that experience shows the validity of a control of natural reasonableness: the custom opposite to the law (*desuetudo*), the existence of which, even if some positive laws insist on not to recognize it, is an invisible potency by means of which, without any agitation or stir, peoples do justice to themselves against bad laws, as Portalis said.³⁴

PRINCIPLE: The true nature of the laws is complex, since they are acts of government (politics) as well as wise and eloquent civic speeches (rhetoric).

Few rulers can legislate for themselves. Many understand those who counsel and discounsel them. But, regrettably, there are also rulers who do not understand those who counsel and discounsel them, and there are counsellors who do not know how to counsel or discounsel rulers. In the determination of the object of the art of legislation both the activities to counsel and discounsel are included, so that the rulers may understand their counsellors and the counsellors may know how to counsel and discounsel rulers.

In the Common Law system, the composition of the laws is not a task merely inherent to lawyers, but rather to officers expert in legislative writing (*legislative drafting*). In the Civil Law system, it is believed that knowledge of the law and of the national language is enough, and the lawyers specialized in each branch of law –constitutionalists, criminal lawyers, experts in private law, etc.–, limit themselves to criticizing the legislative work, in the production of which, in general, they have not been directly involved.³⁵ The activities of composition and criticism are also

Thucydides, *The Peloponnesian War*, II.37.

“We have a form of government which does not emulate the practice of our neighbours: we are more an example to others than an imitation of them. Our constitution is called a democracy because we govern in the interest of the majority, nor just for the few. Our laws give equal rights to all in private disputes, but public preferment depend on individual distinction and is determined largely by merit rather than rotation: and poverty is no barrier for office, if a man despite his humble condition has the ability to do some good to the city. We are open and free in the conduct of our public affairs and in the uncensorious way we observe the habits of each other’s daily lives: we are not angry with our neighbour if he indulges his own pleasure, nor do we put on the disapproving look which falls short of punishment but can still hurt. We are tolerant in our private dealings with one another, but in all public matters we abide by the law: it is fair above all which keeps us obedient to the authorities of the day and to the laws, especially those laws established for the protection of the injured and those unwritten laws whose contravention brings acknowledged disgrace.”

Partial transcription of the famous funeral prayer of year 431 b.C. to war fallens, attributed to Pericles by Thucydides. English translation from:

Thucydides, *The Peloponnesian War*, Translated by Martin Hammond, With an Introduction and Notes by P.J. Rhodes, Oxford World’s Classics, OUP, New York, 2009, p. 91.

Tucidides, *Historia de la Guerra del Peloponeso*, Traducción de Francisco Rodríguez Adrados, Libro II.37, Editorial Hernando, Madrid, reimpresión 1984, Tomo I, pp. 255-256.

³⁴ Portalis, *Discours Préliminaire, Code Civil; La Legislation Civile, Commerciale et Criminelle de la France ou Commentaire et Complément des Codes Français*, par Le Baron Locré, Treutel et Wurtz Libraires, Strasbourg et Londres, Tome I, Paris, 1827, pp. 269-70.

³⁵ Legislative criticism allows lawyers to take part sometimes in the composition of legislation. The above mentioned criticism will shift from passive to active, from negative to positive, from indirect to direct, when taken into consideration by the new law. It is not ephemeral, then, on having joined the system of positive law, although the name of the lawyer who formulated it may not be revealed, he may reach immortality, like the writer whose use of the language happens to be a part of common speech.

contemplated in the determination of the object of the art of legislation, to include not only the active position but also the passive one.³⁶

When the enactment of a law is under debate, two types of legislation are discussed: the current one and the projected one. In the Athenian procedure, five official defenders of the current legislation were appointed, the accusation was in charge of those who fostered the projected law, and a special jury (*nomothetes*) had to decide on the matter.³⁷ In Rome, the vote against the proposed legislation was cast with a slat marked with an "A" (from the initial *antiquare*: "ancient" or "current"), whereas the vote supporting the enactment of the bill was cast with a slat with a "U" (from *uti rogas*: "as you ask").³⁸

The one who proposes a bill counsels that the one that he has composed must be enacted and discourages and criticizes the current legislation or other bills. The one who discourages the proposed bill criticizes it, and counsels the current legislation or another bill -already composed or to be composed- be enacted.

In the present work "legislation" means all juridical norms of any of the Powers of the State, provided always that they are general, that is to say, prescribed to classes of acts, activities or persons.

The object of the art of legislation having been determined, let us now deal with the method through which we can make it ours.

2. Method

One might object that the method of legislation does not exist; if it exists, it is impossible to find; if it is possible to find, it is impossible to know; if it is possible to know, it is impossible to teach; and, finally, if it is taught, it is impossible to apply. To raise the achievement of any human activity to the category of an art, the above mentioned affirmations must be previously refuted.

The activity that consists of composing and criticizing, counselling and discouraging the enactment of general juridical norms, is of a clear existence. The argument is subtler: it affirms that hardly it is reduced to the formulae and rules of an art.³⁹ Some legislate occasionally, at random; others, on the merits of a capacity acquired through experience. The former, if right, do it by chance; the latter, as a matter of habit, but they can neither give reasons nor teach others except with the example.

³⁶ Kelsen is an exception, since he criticizes every text and composes the texts proposes by him. See: Hans Kelsen, *Legal Technique in International Law*, Geneva Studies, A Textual Critique of the League, Geneva Studies, Volume X, No. 6, Dec. 1939, 178 pp.

Another exception is:

Gustave Rousset, *Science Nouvelle des Lois*, Tome Second, Troisième Partie, Analyse critique et Rédaction Nouvelle des 228 Premiers Articles du Code Civil, Durand & Pédone, Marchal & Cie., Paris, 1871, 365 pp.

³⁷ Demosthenes, *Against Timócrates*, 23.

Demosthenes, *Against Timocrates*, 23; in Demosthenes, *With an English Translation* by J. H. Vince, Loeb, William Heineman, Ltd, London, [and] G. Putnam Sons, New York, 1935, p. 387.

Demóstenes, *Contra Timócrates*, 23; en Demóstenes, *Discursos Políticos*, Introducción, Traducción y Notas de A. López Eire, Editorial Gredos, Madrid, Tomo III, 1985, p. 131.

³⁸ Cicero, *The Laws*, 3.38.

Marco Tulio Cicerón, *Las Leyes*, 3.38 y nota 851, Edición Bilingüe, Traducción, Introducción y Notas por Álvaro d'Ors, Instituto de Estudios Políticos, Madrid, 1970, p. 233.

³⁹ It refers in general to the art, the juridical skills, the legislative skills and, especially, to the art of formulating a law:

Filippo Vassali, *La Missione del Giurista nella Elaborazione delle Leggi*; in *Scritti Giuridici in Onore di Francesco Carnelutti*, Volume Primo, Filosofia e Teoria Generale del Diritto, Cedam, Padova, 1950, p. 496.

Since it turns out to be feasible to observe the causes for which those who legislate occasionally as well as those who do it for habit only sometimes are successful, nobody can deny that it is possible to follow a method and to establish a teachable system of observations, principles, rules and examples, born out of experience and founded on reason, as Aristotle did with his Rhetoric for civic speech in general.⁴⁰ The art of legislation does exist.

Where may the art of legislation be found? It is not in the books of moral, politics, history, law, etc., i.e., of humanities, although all of them provide materials for the observations that make possible to reconstruct it. The idea of *logos* or speech, which includes reason (*ratio*) and speech (*oratio*), differentiates men from animals, since, as it has allowed us to persuade one another, has made it possible for human beings to live in society, found cities and make laws on just and unjust things,⁴¹ civic speeches that perpetuate the wisdom and eloquence of rulers and counsellors.

The word "rhetoric", from the Greek *rhetoriké*, means the art of a rhetorical person or *rhétor*. The latter term, in its origin, designated such politician as was capable of formulating a bill or *rhétra*, in the ancient Dorian-speaking Hellenic peoples, like the famous Great Retra of Lycurgus. *Rhetér*, in Ionian language, designated the orator, but the Dorian term *rhétor*, together with the lessons taught by Corax and Tisias –authors of the first Western rhetorical art–, both from Syracuse, a Dorian- speaking city, spread out all over Greece.⁴² When Syracuse was democratized, in 467 B.C., Corax, who was still

⁴⁰ Aristotle, Rhetoric, I.1,1354a.

Aristotle on Rhetoric, I.1,1354a, Newly Translated, With Introduction, Notes, and Appendices by George Kennedy, Oxford University Press, New York, 1991, p. 29.

Aristotle, Rhetoric, I.1,1354a; in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, 1984, Second Printing 1985, p. 2152.

Aristóteles, Retórica, I.1,1354a, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 162.

Aristote Rhétorique, I.1,1354a, Texte Établie et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Premier, Paris, 1932, p. 70.

Aristotele, Reticica. I.I, 1354a, a cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 1.

⁴¹ Isocrates, Nicocles, 5-7; and Antidosis, 253-55.

Isocrates, Nicocles, 5-7; and Antidosis, 253-55; in Isocrates, With an English Translation by George Norlin, in Three Volumes, Loeb, William Heinemann Ltd, London, [and] G.P. Putnam's Sons, Vol. I, New York, 1928, pp. 78-80; Vol.II, New York, 1929, pp. 326-27.

Isócrates, Nicocles, 5-7; y Sobre El Cambio de Fortunas (Antidosis), 253-55; en Isócrates, Discursos, Traducción, Introducciones y Notas de Juan Manuel Guzmán Hermida, Editorial Gredos, Madrid, 1980, Tomo I, pp. 286-87; Tomo II, pp. 139-40.

Isocrate, Nicocles, 5-7; et Sur l'Échange, 253-255; dans Isocrate Discours, Texte Établi et Traduit par Georges Mathieu et Émile Brémond, Cinquième Tirage Revu et Corrigé, Société d'Édition "Les Belles Lettres", Tome II, Paris, 1967, p. 121; Tome III, Paris, 1942, p. 165.

Aristotle, Politics I.2, 1253a15.

Aristotle, Politics, I.2, 1253a15; in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, 1984, Second Printing 1985, p. 1988.

Aristotle, The Politics of Aristotle, I.2, 1253a15, Translated with Introduction, Analysis and Notes, by Peter L. Phillips Simpson, The University of North Carolina Press, Chapel Hill and London, 1997, p. 11.

Aristóteles, Política, I.2, 1253a15, Edición Bilingüe y Traducción por Julián Marías y María Araujo, Instituto de Estudios Políticos, Madrid, 1970, p. 4.

⁴² Antonio López Eire, "La Etimología de [...] y los Orígenes de la Retórica", Faventia, 20/2, 1998, pp. 61-69. " [...]" they substitute the Greek characters of the original title that allude to *rhétor*.

Antonio López Eire, Javier de Santiago Guervós, Retórica y Comunicación Política, Ediciones Cátedra S.A., Madrid, 2000, pp. 25-26.

active, developed the tripartite systematics of deliberative speech (*prologue, agon* -that included *narration-* and *epilogue*), to help the citizens who had to speak out in the Assembly meetings;⁴³ and Tisias, his disciple, taught rhetoric and wrote judicial speeches for others (logographer). The origin of the aforesaid first art of rhetoric usually links it with the judicial genre, since it appeared after the fall of the tyranny in Sicily, when the controversies between individuals, after a long interval, were submitted once again to the authority of the courts.⁴⁴ Since people had to sue and defend themselves on their own behalf, they all needed to learn how to speak in public, either reciting speeches bought from a logographer or composing and delivering their own. But it is not less true that, once the tyranny was eliminated and democracy established or reestablished, the preparation and the debate of bills shifted from the restricted circle of the tyrant to that of the Council, formed by a group of elected citizens, and then to the crowded Assembly, where any citizen could have a say and a vote. Democracy generated a demand for education in political oratory, whether for legislative matters or not, in addition to the judicial oratory, a situation that should be remembered when we study the origin of Western rhetoric.⁴⁵

Laws are literary works.⁴⁶ "Making laws" is said *leges scribere* in Latin; a

Antonio López Eire, *Retórica y Política*; en *Retórica, Política e Ideología desde la Antigüedad hasta Nuestros Días*, Actas del II Congreso Internacional, Salamanca, Noviembre 1997, Volumen I, *Retórica Clásica y Edad Media*, Prólogo, Logo: Asociación Española de Estudios sobre Lengua, Pensamiento y Cultura Clásica, 1a. Edición, Salamanca, 1998, p. 9; y Volumen III, *Ponencias*, 1a. Edición, Salamanca, 2000, p. 107.

⁴³ George Kennedy, *The Art of Persuasion in Greece*, Princeton University Press, Princeton, New Jersey, First Edition 1963, Sixth Printing 1974, p. 59.

Antonio López Eire, *Retórica y Política*; en *Retórica, Política e Ideología desde la Antigüedad hasta Nuestros Días*, Actas del II Congreso Internacional, Salamanca, Noviembre 1997, Logo: Asociación Española de Estudios sobre Lengua, Pensamiento y Cultura Clásica, Volumen III, *Ponencias*, 1a. Edición, Salamanca, 2000, p. 110.

⁴⁴ Cicero, *Brutus*, XII.

On its historical attribution to Aristotle, see:

Cicerón, *Brutus XII*; *Cicéron Brutus et de la Perfection Oratoire*, Texte Établi, Traduit et Annoté par François Richard, Librairie Garnier Frères, Paris, p. 35.

⁴⁵ On the deliberative and not judicial origin of the rhetoric, see:

Stanley Wilcox, *Corax and the Prolegomena*, *American Journal of Philology*, Vol. 64, No. 1. (1943), pp. 1-23; p. 23.

⁴⁶ Plato, *The Laws*, 858c.

“AT.– In the cities, it seems to me, there are literary works and speeches in treatises of many writers. But also the works of the legislator are writings and speeches 44.

44. The passage is based on the important double meaning of the word *grámmata* that means 'written' and in its wider sense, 'written law'.” Translation from Spanish to English by the author of this book.

(“AT.– En las ciudades, me parece, hay obras literarias y discursos en tratados de muchos escritores. Pero también las obras del legislador son escritos y discursos 44.

44. El pasaje está basado sobre el doble significado de la palabra *grámmata* que significa tanto 'escrito' como, por extensión, 'ley escrita'.”)

Platón, *Leyes*, 858c., en Platón, *Diálogos IX, Leyes (Libros VII-XII)*, Introducción, Traducción y Notas de Francisco Lisi, Editorial Gredos S.A. Madrid, 1999, p. 137, source of the text reproduced and translated.

Plato, *The Laws*, 858, Translated with an Introduction by Trevor J. Saunders, Penguin Books, First Published in this Translation 1970, Reprinted 1972, London, 1972, p. 364.

Platón, *Las Leyes*, 858c, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Miguel Pabón y Manuel Fernández Galiano, Instituto de Estudios Políticos, Tomo II, Madrid, 1960, pp. 107-108.

Platon, *Les Lois*, 858c; dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin avec la Collaboration de M. J. Moreau, [Tome] II, Bibliothèque de la Pléiade, Paris, 1942, p. 962.

Platone, *Le Leggi*, 858c, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 275.

“legislator” –not the one who proposes a law, but the author of the bill- communicates with the following expressions: *qui leges scribit, legum scriptor or legum inventor*,⁴⁷ a terminology proper of rhetoric. Laws includes two speeches: the prescriptive speech, which obliges, prohibits, permits, rewards and punishes conducts; and the persuasive speech which explains the prescriptive one, justifies and tries that it is approved, interpreted and applied, in accordance with the pursued purpose. Being literary and political works, both speeches are subject to rhetoric, the art of persuading with wise and eloquent civic speeches. As all speeches subject to rhetoric, laws should also teach (*docere*), please (*delectare*) and motivate (*movere*) the audience.⁴⁸ The prescriptive speech should teach what wise conduct models to follow and to avoid, pleasing and motivating with eloquence so that such models are spontaneously fulfilled in order to obtain rewards and avoid punishment. The persuasive speech should teach with wise explanations the content and justification of the prescriptive speech, and please and motivate with eloquence so that it is approved, interpreted and applied in accordance with the pursued purpose. The art of legislation is found in the books on rhetoric.

According to Aristotle's rhetoric, there are three speeches genres: deliberative, judicial and demonstrative.⁴⁹ A speech is demonstrative, when an orator, in a ceremony, speaking in present tense, praises or vituperates, and the audience, as mere spectator, limits itself to evaluate the orator's skills. A speech is judicial, when an orator, before a court, speaking in past tense, accuses or defends, and the audience must absolve or

“[...] laws fall down below of what letters and lawyers are.” (“[...] las leyes caen debaxo de lo que son leyes y letrados.”):

Miguel De Cervantes Saavedra, *Don Quijote de la Mancha*; en *Obras Completas de Miguel De Cervantes Saavedra*, Edición Publicada por Rodolfo Schevill y Adolfo Bonilla, Primera Parte, Capítulo XXXVIII, líneas 5-6, Gráficas Reunidas, Madrid, 1931, p. 198.

“[...] las leyes caen debajo de lo que son letras y letrados.”:

Miguel De Cervantes Saavedra, *El Ingenioso Hidalgo Don Quijote de la Mancha*, Nueva Edición Crítica con el Comento Refundido y más de Mil Notas Nuevas Dispuesta por Francisco Rodríguez Marín, Parte Primera, Capítulo XXXVIII, Que Trata sobre el Curioso Discurso que Hizo Don Quijote de las Armas y las Letras, Ediciones Atlas, Tomo III, Madrid, 1948, p. 158, líneas 13-14.

"[...] las leyes caen debajo de lo que son letras y letrados.":

Miguel De Cervantes Saavedra, *El Ingenioso Hidalgo Don Quijote de la Mancha*, Primera Parte, Capítulo XXXVIII, Que trata del curioso discurso que hizo don Quijote de las armas y las letras, Miguel de Cervantes, *Don Quijote de la Mancha*, Edición del Instituto Cervantes 1605-2005, Dirigida por Francisco Rico, con la colaboración de Joaquín Forradas, Estudio Preliminar de Fernando Lázaro Carreter, Galaxia Gutenberg-Círculo de Lectores, Centro de Edición de los Clásicos Españoles, Barcelona, Volumen I, p. 489.

⁴⁷ C. Meissner, *Latin Phrase-Book*, Translated from the Sixth German Edition, With the Addition of Supplementary Phrases and References, by H. W. Auden, Macmillan, London, Melbourne, Toronto, St. Martin Press, New York, 1966, p. 219.

⁴⁸ Cicero, *De Oratore*, II, XIX, 80.

Cicéron, *De l'Orateur (De Oratore)*, II, XIX, 80, Texte Établi et Traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres", Livre Deuxième, Paris, 1927, p. 39.

Cicero, *Brutus*, LXXX.

Cicéron, *Brutus*, LXXX; dans *Brutus et de la Perfection Oratoire*, Texte Établi, Traduit et Annoté par François Richard, Librairie Garnier Frères, s.d, Paris, pp. 182-183.

⁴⁹ Aristotle, *Rhetoric*, I.3, 1358a37-1359a6.

Aristotle, *Rhetoric*, I.3, 1358a36-1359a25; *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing 1985, pp. 2159-2161.

Aristóteles, *Retórica*, I.3, 1358a37-1359a6, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, pp. 193-196.

Aristote, *Rhétorique*, I.3, 1358a 36-1359b5, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome I, Paris, 1932, pp. 83-85.

Aristotele, *Retorica*. I.III, 1358a-1359a, a cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 14-17.

condemn. A speech is deliberative, when an orator, before the Council or the Assembly of the People, speaking in future tense, counsels or discourages, and the audience must accept or reject the political measure under debate. Legislation was one out of the five most important topics of deliberations; the other four were: the acquisition of resources, war and peace, defense of the territory and imports and exports.⁵⁰ "To persuade [so that laws are approved]" is said *legum suadere* in Latin ; "to dissuade [the approval] of laws", *legum dissuadere*,⁵¹ a terminology that also belongs to rhetoric. The art of legislation may be known by considering laws as a species of the deliberative genre of rhetoric.

It has been said that the art of legislation is difficult to teach,⁵² and only learned by practice.⁵³ Practice is one of the essential requisites to learn not only the art of legislation, but also rhetoric and any other art. The practical exercise of the respective art, if constant, allows that the maker acquires such a habit as will facilitate the application of the knowledge previously acquired by him and reach excellence:

“[...] since what we need to learn before doing, we learn by doing, for example we become builders by building and lyre-players by playing the lyre; [...]”.⁵⁴

Rhetoric has been the teaching and learning model followed by Western education for almost two thousand and five hundred years, with some interruptions.⁵⁵ It is possible to teach and learn the art of legislation by considering laws as a species of the deliberative genre of rhetoric.

⁵⁰ Aristotle, Rhetoric, I.4., 1359b20-24.

Aristotle, Rhetoric, I.4, 1359b19-21; in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing 1985, p. 2161.

Aristóteles, Retórica, I.4, 1359b20-24, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 200.

Aristote, Rhétorique, I.4, 1359b19-23, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome I, Paris, 1932, p. 87.

Aristotele, Rhetorica. I.IV, 1359b, a cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 18.

⁵¹ C. Meissner, Latin Phrase-Book, Translated From the Sixth German Edition, With the Addition of Supplementary Phrases and References, by H. W. Auden, Macmillan, London, Melbourne, Toronto, St. Martin Press, New York, 1966, p. 217.

⁵² Filippo Vassalli, La Missione del Giurista nella Elaborazione delle Leggi; in *Scritti Giuridici in Onore di Francesco Carnelutti*, Volume Primo, Filosofia e Teoria Generale del Diritto, Cedam, Padova, 1950, p. 496.

⁵³ Elmer A. Driedger, *The Composition of Legislation*, Second Edition, Revised, Published by The Department of Justice, Ottawa, 1976, p. vii.

⁵⁴ Aristotle, Ethics, II.1, 1103a30.

Aristotle, Ethics, Book II.1, 1103a, Translated and Edited by Roger Crisp, Cambridge University Press, First published in printed format, 2000, ebook (net library), 2004, p. 23, text reproduced above.

Aristotle, Ethics, II.1, 1103a30; in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing 1985, p. 1743.

Aristotle, Nichomachean Ethics, II.1, 1103a30; in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing 1985, p. 1743.

Aristóteles, Ética a Nicómaco, II.1, 1103a30, Edición Bilingüe y Traducción por María Araujo y Julián Marías, Centro de Estudios Constitucionales, Madrid, 1981, p. 19.

⁵⁵ Marrou points out that, in this sense, Isocrates wins over Plato, another teacher of classical tradition, Henri-Irénée Marrou, *Histoire de l'Éducation dans l'Antiquité*, Éditions du Seuil, Paris, 1948, p. 122.

To the last objection of the impossibility to apply the art of legislation, the answer is: the art of legislation may be applied to any positive law, historical, current or future, previous adaptation to the multiplicity of languages and juridical systems, the knowledge of which is presupposed, as in rhetoric. The art of legislation may be applied in universal form, by considering laws as a species of the deliberative genre of rhetoric.

The art of legislation reencounters its method in rhetoric, but this does not mean to put new wine in old wineskins or to follow a temporary fashion, merely speaking in the "rhetorical way". It allows that knowledge of a millennial art is used to reconstruct other knowledge that had been lost. The rhetorical art will be enriched with all the possibilities that the legislative species offers within the deliberative genre. The art of legislation will recover a knowledge system –rhetoric–, which will substitute the personal remarks that, with more or less talent and fortune, have been formulated by those who tackled the problems before the author of the present work, forgetting the historical precedents of legislative activity.

In the future, if the rhetorical model of the art of legislation is adopted, the quality of the laws will not depend on occasionally inspired individuals, but on common effort, because it will be possible to rely on a reasonable knowledge, born out of experience, which, transmitted from generation to generation, will allow for the methodical continuity of the struggle to govern and be governed in civilized form, by means of wise and eloquent laws.

The lost art of legislation will be reconstructed as such, identifying the applicable parts of the rhetorical tradition, developing the insufficient and creating others. Since this art has received numerous denominations, here follows the most widely known and the justification for the choice of the selected one.

3. Denominations

In Common Law countries, the following denominations have been used: *mechanics of law making, nomography or the art of inditing laws, practical legislation, legislative technic, legal writing style, legal drafting, legislative drafting, bill drafting, composition of legislation, art of the statute, art of legislation.*⁵⁶

⁵⁶ Arthur Symonds, *The Mechanics of Law Making, Intended for the Use of Legislators, and all Other Persons Concerned in the Making and Understanding of English Law*, Schulze and Co., London, 1835. Jeremy Bentham, *Nomography or the Art of Inditing Laws*, in *The Works of Jeremy Bentham*, Publishing under the Superintendence of his Executor, John Bowring, 11, Vols., William Tait, Edinburgh, Simpkin, Marshall, & Co., London, 1838-1843; Vol. III, 1843, p. 231.

Lord Thring, *Practical Legislation, The Composition and Language of Acts of Parliament and Business Documents*, John Murray, London, 1902.

Ernst Freund, *Legislative Technic*, Modern Legal Philosophy Series, Vol. IX, Science of Legal Method, Selected Essays by Various Authors, The Boston Book Company, Boston, 1917, p. 558.

Henry Weihofen, *Legal Writing Style*, West Publishing Co., St. Paul, Minn., 1961.

Reed Dickerson, *The Fundamentals of Legal Drafting*, Published for The American Bar Association by Little, Brown and Company, Boston-Toronto, 1965.

Reed Dickerson, *Legislative Drafting*, Originally Published in 1954 by Little, Brown and Company, Boston, Reprinted in 1977 by Greenwood Press Inc. in 1977.

Elmer A. Driedger, *The Composition of Legislation*, Second Edition, Revised, Published by The Department of Justice, Ottawa, 1976.

Jack Stark, *The Art of the Statute*, Rothman & Co., Littleton, 1996.

On the use of *art of legislation* as denomination, see:

Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, printed 1780, published 1789 and 1823; in *The Collected Works of Jeremy Bentham*, Edited by J. H. Burns and H. L. A. Hart, With a New Introduction by F. Rosen, Clarendon Press, Oxford, 1996, Preface by Jeremy Bentham, p. 9.

On the use of *bill drafting as denomination*, see:

In Civil Law countries, the following denominations have been used: *pratica legislativa* (legislative practice), *science nouvelle des lois* (new science of the laws), *nomotécnica*, *nomothesia*, *técnica legislativa* (in Spanish, Portuguese and Italian), *technique législative* (legislative technic), *gesetzgebungstechnik* (technic of legislation), *tecnica delle leggi* (technic of the laws), *legislative technik* (legislative technic), *rechtstechnik* (technique of law), *légistique* (legistics), *légistique formelle* (formal legistic), *légistique matérielle* (material legistic), *la forma de las leyes* (*form of the laws*), *el estilo de las leyes* (style of the laws), *rédaction des lois* (drafting of the laws), *composition des lois* (composition of the laws), *método legislativo* (legislative method), *art de faire les lois* (art of law making), *art législatif* (legislative art), *kunst der gesetzgebung* (art of legislation), *legisprudence* (legisprudence)⁵⁷

Catalog of the Library of the Congress of the United States of America.

⁵⁷ Francesco Carrara, *Lineamenti di Pratica Legislativa Penale*, Fratelli Bocca, Roma, Torino, Firenze, 1874.

Gustave Rousset, *Science Nouvelle des Lois*, Durand & Pédone, Marchal & Cie., Paris, 1871.

François Geny, *La Technique Législative dans la Codification Civile Moderne, A Propos du Centenaire du Code Civil; dans Le Code Civil 1804-1904 Livre du Centenaire, Publiée par la Société d'Études Législatives, Tome Second, Le Code Civil à l'Étranger, La Question de la Revision, Documents*, Arthur Rousseau, Editeur, Paris, 1904, pp. 986-1038.

Alexandre C. Angelesco, *La Technique Législative en Matière de Codification Civile, Thèse pour le Doctorat, Université de Paris, Faculté de Droit, E. de Boccard, Éditeur, Paris, 1930*, p. 30.

Marcelino Menéndez Pelayo, *Historia de las Ideas Estéticas en España, en su resumen y comentario del Gorgias de Platón, Edición Nacional de las Obras Completas de Menéndez Pelayo, por Enrique Sánchez Reyes, Aldus S.A. de Artes Gráficas, Tomo I, Santander, 1946*, p. 24 (*nomotécnica*).

Joachim Hopper, *Seduardus, sive de Vera Iurisprudentia, ad Regem Libri XII. Nempe: Nomothesia, sive de Iuris & Legum Condendarum Scientia, Libri IIII. Rerum Divinarum et Humanorum, sive de Iure Publico, Libri IIII, Ad Pandectas, sive de Iure Civili Privato, Libri IIII, Adiectus est eiusdem Auctoris De Institutione Principis Liber Singularis, Antuerpia, in Officina Plantiniana, Apud Viduam, et Ioanem Moretum, 1590*.

Alfredo Colmo, *La Técnica Legislativa del Código Civil Argentino, Segunda Edición, Librería Bartolomé Mitre de Hall y Acevedo, Casa Editora, Buenos Aires, 1927*, p. 24.

Jorge Tapia Valdés, *La Técnica Legislativa, Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile, Seminario de Derecho Público, No. 4, Editorial Jurídica de Chile, Santiago de Chile, 1960*, p. 64.

Hésio Fernandes Pinheiro, *Técnica Legislativa, Constituições e Atos Constitucionais do Brasil, Livraria Freitas Bastos S.A., Rio de Janeiro, 2a. Edição, Sao Paulo, 1962*.

It is named "arte de componer leyes", en Carlos Sánchez Del Río y Peguero, "Notas para un Ensayo sobre la Forma de las Leyes", *Revista General de Legislación y Jurisprudencia*, Año XCII, No. 3, Marzo 1947, Segunda Época, Tomo XIII, 181 de la colección, p. 285.

Nicolás Pérez Serrano, *El Estilo de las Leyes, Conferencia Pronunciada el 30/1/47, Ministerio de Trabajo, Escuela Social de Madrid, Madrid, 1947*, 36 pp. e índice.

Dr. Robert Walter, "Die Lehre Von Der Gesetzestechnik", *Osterreichische Juristen-Zeitung*, 18. Jahrgang, Heft Nr. 4, 26 Februar 1963, II, p. 84, n. 4.

Louis Phillippe Pigeon, *Rédaction et Interpretation des Lois, Cours Donné en 1965 aux Conseillers Juridiques du Gouvernement du Québec, Québec, 1965*, 56 pp.

Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Livre XIX, De la manière de composer les loix; dans Oeuvres Complètes de Montesquieu, Société Les Belles Lettres, Paris, 1961, Tome IV*, p. 125.

Ruini mentions "art", "method" and "skill"; but he chooses "legislative technic":

Meuccio Ruini, *La Funzione Legislativa (Tecnica delle Leggi e Lavori Parlamentari)*, Dott. A. Giuffrè Editore, Milano, 1953, p. 17.

For the denomination "l'art de légiférer", see:

Georges Ripert, *Les Forces Créatrices du Droit, Librairie Générale de Droit et Jurisprudence, Paris, 1955*, p. 346.

Dominique Rémy, *Légistique, L'Art de Faire les Lois, Éditions Romillat, Paris, 1994*, pp. 351.

Légistique Formelle et Matérielle, Sous la Direction de Charles Albert Morand, Presses Universitaires d'Aix-Marseille, Aix-En-Provence, 1999, 334 pp.

The word "technique", of Greek origin, was translated into Latin as *ars* and from there it was transferred to English as "art", which means, objectively: the method to do some thing, the manual in which it is taught, the work produced according to its rules; and, subjectively, the skills of the artist who possesses the art. It will not be difficult, according to the context, to identify what the pertinent meaning is; in the present work "legislation" was added, to refer to the activity to which it is applied, as well as the medicine is the art of health, rhetoric the art of persuasion, etc. This follows the meaning of "legislation" as "the process of making or enacting laws"⁵⁸ and the conceptual line of an ancient Hispanic precedent –Fuero Juzgo–, which reads in its Book I, Title I, "What must be the art of statute law making".⁵⁹

4. Definition

After having determined the object, the method and the denomination of the art of legislation, now this art will be defined with a formula that synthesizes the preceding exposition.

The art of legislation is a teachable system of observations, principles, rules and examples, to compose and criticize, to counsel and discounsel general juridical norms, founded on the rhetorical tradition.

5. Expository plan

The expository plan consists of seven chapters. Chapter 1, Introduction, includes several notions previous to the development of the art of legislation: Purpose, Object, Method, Denominations, Definition and Expository plan. The rest of the book is divided in two parts: History and System.

Part I History: Chapter II, Ancient and Medieval History; and Chapter III Modern and Contemporary History.

Part II System: Chapter IV, Legislative Genres, establishes the basic types of general juridical norms to compose and criticize, to counsel and discounsel. The last three: Chapter V, Investigation (what to say); Chapter VI, Systematics (where to say it); and Chapter VII, Style (how to say it), develop the algorithm that, after completion of the successive rhetorical operations, will result in obtain a work produced in accordance with the rules of the art: a law.

The following Part I: History, includes Chapter IV Ancient and Medieval History and Chapter V Modern and Contemporary History.

Wintgens, Luc J., editor, *Legisprudence, A New Theoretical Approach to Legislation*, Hart Publishing, Oxford, 2002, viii, 150 pp.

⁵⁸ Oxford Dictionary On Line, "legislation", "the process of making or enacting laws" (<http://oxforddictionaries.com/definition/legislation?q=legislation>), downloaded 05/24/2012.

⁵⁹ "Qual debe ser el arte de fazer las leyes."

Los Códigos Españoles Concordados y Anotados, Tomo Primero, Madrid, 1847, p. 105.

Part I: History

Chapter II Ancient and Medieval History

It would have proved of great utility to have a history of the lost art of legislation, from Ancient times to our days, to continue the efforts made by the predecessors of the rhetorical model that is reconstructed in this work. Despite an extensive research which turned out fruitless, the author had to feel satisfied with the following outline, which point out moments, places, authors and works that could serve as precedents, and will say something new about old things and will prove how certain old things taken for modern are.

The precedents obtained will only be mentioned in this part of the book. They will be used further on upon developing each topic, for the purposes of avoiding useless repetitions.

Furthermore, it would be very satisfactory if others could be led to carry out a search of the forgotten texts of the lost art of legislation, as Renaissance humanists did back then with Greek and Latin classic texts.⁶⁰

This Chapter addresses the art of legislation in ancient and medieval history.

1. Ancient history

According to a traditional division, ancient history includes Orient, Greece and Rome.

a. Orient

Mesopotamian codes

The Code of Ur-Nammu,⁶¹ the first king of the third dynasty of Ur (Sumer), who ruled c 2112-2095 B.C.,⁶² seems to be the oldest organic legal text,⁶³ the authorship of which is also attributed to his son Shulgi (2093-2046 B.C.).⁶⁴ Since there are more than five hundred thousand documents collected, between tablets and stones, waiting to be studied by experts in cuneiform law, other even older organic legal texts could be found in so numerous set of documents. Following the Code of Ur-Nammu, there appeared, in chronological order: the Laws of Eshnunna⁶⁵ (according to some authors c 1950 B.C.,

⁶⁰ R. Sabbadini, *Le Scoperte dei Codici Latini e Greci ne' Secoli XIV e XV*, G.C. Sansoni Editore, Firenze, 1905, ix + 233 pp.

⁶¹ Código de Shulgi, in *Los primeros Códigos de la Humanidad, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado y Federico Lara González*, Edit. Tecnos, Madrid, 1994, pp. 53-71.

⁶² Código de Shulgi, in *Los Primeros Códigos de la Humanidad, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado y Federico Lara González*, Edit. Tecnos, Madrid, 1994, p. 53, n. 2.

⁶³ Samuel Noah Kramer, *History Begins at Sumer*, Originally Published by The Falcon's Wing Press in 1956, Doubleday & Company, Inc, Garden City, New York, 1959, p. 51.

⁶⁴ Código de Hammurabi, *Estudio Preliminar, Traducción y Notas de Federico Lara Peinado*, Edit. Tecnos, 2a. edición, Madrid, 1992, p. xix.

⁶⁵ *Les Lois d'Eshnunna, Transcription, Traduction et Commentaire* [par] Émile Szlechter, Publication de l'Institut de Droit Romain de l'Université de Paris, Recueil Sirey, Paris, 1954. For typographical reasons "Eshnunna" has been written and has been added the letter "h" next of the letter "s", for failing to have the pertinent diacritical sign.

and according to others c 1840 B.C. or 1790 B.C.);⁶⁶ the Code of Lipit-Ishtar,⁶⁷ who ruled Sumeria (c 1934-1924 B.C.); and the Code of Hamurabi, Hammurabi or Hammurapi,⁶⁸ who reigned over Babylonia (c 1798-1750 B.C.).

Their complete texts comprised three parts: the prologue (preamble), the main body (law sections) and the epilogue; that is to say, a complete discourse from the rhetorical point of view. In them, the persuasion (prologue and epilogue) and the prescription (law sections) coexisted, without intermingling or hindering themselves, because they had been assigned a respective place in the systematic adopted method. The epilogue, now outdated in modern legislation, was curiously addressed to the succeeding legislators, exhorting them to keep the codes unchanged, and blessing or cursing them depending on their compliance or non compliance with such wish.

The Code of Lipit-Ishtar reads as follows:

- "(4) When I established the Law in Sumer and in Akkad, I erected this stele.
(5) May the man who neither commits any degradation with regard to her, destroys my work, deletes my inscription, nor writes his name on top of it, be granted a long life, be raised very high in the Ekur; may the brilliant forehead of Enlil turns towards him from the sky.
(6) May the man who commits a degradation with regard to her, destroys my work, enters the sanctuary (and) changes (the stele's) pedestal, erases my inscription and writes [his name] above it, and makes another comit (this bad action) because of these curses, be a king], be [a in] -, [...], tear up (and, even), if [in his house] (a child) is born, may be deprived of a hereditary successor.
(7) May Ashnan (and) Sumuqan, masters of abundance, take away [...], which he may have obtained by way of gift, may he suppress.
(8) May god Utu, judge of heavens and earth [...] tear up [...] his foundation [...]. May he turns his villages into ruins; may he turn unstable the foundations of his country, not be a king."⁶⁹

The Code of Hammurabi reads as follows:

"If this man has kept under custody the decrees that I have written on my stele, (if) he has not departed from my legislation, (if) he has not revoked my decrees, (if) he has not destroyed my writings, this man will be like me, a king of justice. May Shamash lengthen his reign, may he guide his people in equity. (But) if this man has not kept under custody the decrees that I have written on my stele, and (if) he has despised my curses, and (if) he has repealed the law that I have promulgated, (if) he has revoked my decrees, (if) he has destroyed my writings, (if) he has deleted my written name in order to write his own (or if) because of these curses, he has commissioned other man to do so, may the great Anum, father of the gods that my government has proclaimed, take away this man, whether a king, a lord, a ruler (or any other person) who is called by a name, the splendor of royalty, break his scepter (and) curses his destiny."⁷⁰

⁶⁶ Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Edit. Tecnos, 2a. edición, Madrid, 1992, p. xxvii.

⁶⁷ Código de Lipit-Ishtar, Los Primeros Códigos de la Humanidad, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado y Federico Lara González, Código de Lipit-Ishtar, Edit. Tecnos, Madrid, 1994, pp. 83-107.

⁶⁸ Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Edit. Tecnos, 2a. edición, Madrid, 1992, cxxxix + 230 pp.

⁶⁹ Los Primeros Códigos de la Humanidad, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado y Federico Lara González, Código de Lipit-Ishtar, Edit. Tecnos, Madrid, 1994, pp. 103-104.

Hammurabi also adds the people as the addressee of his discourse, when he says:

“May the oppressed man who is involved in a legal proceeding come before my statue as "King of Justice" and may my written stele be read to him so that he may listen to my beautiful words. May my stele show him his proceedings, may my stele show him his case, may his heart calm down (and proclaims): "Hammurabi is a lord, he is like a real father to his people".”⁷¹

He introduces himself as a wise man, when he says:

“I (am) a very wise ruler, the one who has reached the source of wisdom; the one who has saved the people of Malgum from catastrophe; the one who has solidly placed his people in abundance; [...].”⁷²

It might be the first time that, in a legislative work, the union of wisdom and eloquence with the ideal of the reputation of the legislator is expressed, as he says:

“I am Hammurabi, king of justice, to whom Shamash has conferred the truth. My words are the most selected, my works are like no others. It is only for the foolish for whom they are vain; for the prudent, they are destined to glory.”⁷³

Those laws, like so many other already discovered and others yet to be discovered, were not made by amateurs, but by professionals, known as “scribes”, who enjoyed the protection of gods: Nabû in the Mesopotamia, son of Ea, god of wisdom; and Thoth in Egypt, god of writing and wisdom, who composed the sacred books of the law. To the Mesopotamian, Syrian or Egyptian scribes dominating the written language was technically very difficult, since in the Mesopotamia there were three different languages (Sumerian, Acadian and, later, Aramaic) and, in Egypt, three different writing systems (hieroglyphic, hieratic and, later, demotic).⁷⁴ The oriental scribe, the official who put his writing to the service of the administration, composed and criticized, counselled and discounselled Laws.

⁷⁰ Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Edit. Tecnos, 2a. edición, Madrid, 1992, XXVI to 50. For typographic reasons “Shamash” has been written and one has added the letter “h” next of the letter “s” for not being provided with the pertinent diacritical sign.

⁷¹ Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Edit. Tecnos, 2a. edición, Madrid, 1992, XXV to 20, p. 43.

⁷² Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Edit. Tecnos, 2a. edición, Madrid, 1992, Prólogo, ANV., IV up to 20, p. 5.

⁷³ Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Edit. Tecnos, 2a. edición, Epílogo, XXV from 90 up to XXVI incipit, Madrid, 1992, p. 44. For typographic reasons Shamash has been written and one has added the letter “h” next of the letter “s” for not being provided with the pertinent diacritical sign.

⁷⁴ Henri Irénée Marrou, *Histoire de l'Education dans l'Antiquité*, Éditions du Seuil, Paris, 1948, pp. 20-21.

On the scribe in general, see:

Dom Hilaire Duesberg, O.S.B., *Les Scribes Inspirés, Introduction aux Livres Sapientiaux de La Bible, Le Livre des Proverbes*, Desclée de Brouwer, Paris, 1938, 592 pp.

Ptahhotep and Merikare

In Egypt, at the beginning, the Pharaoh prepared the general juridical norms together with his chiefs of secrets or secretaries (*heri sesheta*) of each department. Later on, with he did so with the help of specialized officials: the secretaries of the royal commands (*heri sesheta n audj medou*). During the V dynasty (2750-2625 B.C.), the Pharaoh was assisted by a true legislative council formed by the chiefs of secrets of all the royal decrees (*heri sesheta n oudj medou neb n nisout*), however through this historical evolution, he never stopped consulting with the chiefs of each department, according to their respective specific competence.⁷⁵

The technical ability of writing, reading and filing documents was not enough for the scribes to serve as effective and efficient officers who, to climb to a higher positions in the bureaucratic hierarchy and live between the powerful and the humble, tried to avoid the anger of their superiors, the envy of their peers and the malice of their subordinates. Therefore, it was necessary to acquire a higher education based on the union of wisdom and eloquence transmitted by the spoken and written word, by rules and examples, from parents to children, from teachers to disciples, from superiors to subordinates, from authors to readers.

Ptahhotep, an old Egyptian Vizier for King Issi or Assa, belonged to a family of officers, and was the author of The Instructions (or Maxims) that took his name (c 2877, or 2675, or c 2400 B.C.). It is, perhaps, the most ancient book of the world, the first code of ethics for scribes and an example proposed for literary imitation, which still moves readers for its wisdom and eloquence. It is based on the practice of certain virtues: self-control, moderation, kindness, generosity, justice and veracity moderated by discretion, which had to be practised equally before all the people. The military virtues are not mentioned, since the ideal was a peaceful man, not a warrior.⁷⁶ It consists of a prologue, thirty seven maxims and an epilogue, in such a way that it also constitutes a complete discourse from the rhetorical point of view. The paragraph preceding the enunciation of the maxims, which sums up the content and the purpose of the work in full, is perhaps the most remote precedent of an exhortation to the scribes from them to pursue the ideal of the union of wisdom and eloquence. It reads as follows:

"Beginning of the formulations of the excellent discourse spoken by the Prince, Count, God's Father, God's beloved, Eldest Son of the King, of his body, Mayor of the city and Vizier, Ptahhotep, in instructing the ignorant in knowledge and in the standard of excellent discourse, as profit for him who will hear, (50) as woe to him who would neglect them."⁷⁷

⁷⁵ Jacques Pirenne, *Histoire des Institutions et du Droit Privé de l'Ancienne Égypte*, Tome II, La V Dynastie (2750-2625), Fondation Égyptologique Reine Élisabeth, Bruxelles, 1934, p. 104.

⁷⁶ The Instructions of Ptahhotep, in Miriam Lichtheim's, *Ancient Egyptian Literature*, Vol. I: The Old and Middle Kingdoms, University of California Press, Berkeley, Los Angeles, London, 1973, p. 62
Other versions:

Les Maximes de Ptahhotep, Eugène Revillout, *Revue d'Égyptologie*, 10, 1902, pp. 101-145; Les deux Préfaces du Papyrus Prisse, *Revue d'Égyptologie*, 7, 1896, pp. 188-198.

The Instruction of Ptahhotep, in Adolf Erman, *The Literature of the Ancient Egyptians* (Die Literatur der Aegypter, Leipzig, 1923) Translated by Aylward M. Blackman, first published 1927, reissued 1971 by Benjamin Blom, Inc., reprint edition by Arno Press, Inc., New York, 1977, pp. 54-66.

⁷⁷ The Instruction of Ptahhotep, in Miriam Lichtheim's, *Ancient Egyptian Literature*, Vol. I: The Old and Middle Kingdoms, University of California Press, Berkeley, Los Angeles, London, 1973, p. 63.

The prologue, a concrete example of wisdom and eloquence, in accordance with human nature, describes the effects of old age, introduces the wisdom literature in the form of counsels of a wise father to his son,⁷⁸ and shows how an aged officer prepares his retirement upon requesting that his son be appointed to succeed him:

“O king, my lord!
Age is here, old age arrived,
Feebleness came, weakness grows,
[Childlike] one sleeps all day,
Eyes are dim, ears deaf,
Strength is waning through weariness,
The mouth, silenced, speaks not,
The heart, void, recalls not the past,
The bones ache throughout.
Good has become evil, all taste is gone,
(20 =5, 2) What age does to people is evil in everything.
The nose, clogged, breathes not,
[Painful] are standing and sitting.

May this servant be ordered to make a staff of old age,
(30) So as to tell him the words of those who heard,
The ways of the ancestors,
Who have listened to the gods.
May such be made for you,
So that strife may be banned from the people,
And the Two Shores may serve you!
Said his majesty of this god:
Instruct him then in the sayings of the past,
May he become a model for the children of the great,
(40) May obedience enter him,
And the devotion of him who speaks to him,
No one is born wise.”⁷⁹

Ptahhotep’s grave is still kept in Saqqarah,⁸⁰ a city that today represents a great tourist attraction.

The Instructions to Merikare deal with a Pharaoh who receives wisdom and eloquence from his father, another Pharaoh, one of the many rulers that took the name of Khety (*Akhtoi*), of the ninth or tenth dynasty, whose identity could not be determined with certainty. It is a royal testament, the oldest of the texts that have come to us,⁸¹ although it was not the first one of the above mentioned literary genre (*speculum regum*), since another one from a predecessor is known by reference. A fragment thereof, evidencing the value given to wisdom and eloquence, is transcribed below:

⁷⁸ The Instruction of Ptahhotep, in Adolf Erman, *The Literature of the Ancient Egyptians* (Die Literatur der Aegypter, Leipzig, 1923) Translated by Aylward M. Blackman, first published 1927, reissued 1971 by Benjamin Blom, Inc., reprint edition by Arno Press, Inc., New York, 1977, p. 54.

⁷⁹ The Instruction of Ptahhotep, in Miriam Lichtheim’s, *Ancient Egyptian Literature, Vol. I: The Old and Middle Kingdoms*, University of California Press, Berkeley, Los Angeles, London, 1973, pp. 62-63. In note 3 of her translation, Lichtheim textually says: “Staff of old age” is a metaphor for “son” or “successor”.

⁸⁰ Giulio Farina, "EGITTO", *Enciclopedia Italiana*, Istituto Giovanni Treccani, Roma, 1932, Vol. XIII, p. 559, col. 1.

⁸¹ Miriam Lichtheim’s, *Ancient Egyptian Literature, Vol. I: The Old and Middle Kingdoms*, University of California Press, Berkeley, Los Angeles, London, p. 97.

"[THE VALUE OF SPEAKING WELL AND OF WISDOM]

Be a craftsman in speech, so that thou mayest prevail, for the power of (a man) is the tongue, and speech is mightier than any fighting.---He that is *clever*, him the learned attack not, if he is learned, and no (harm) happened where he is. Truth cometh to him fully kneaded, after the manner of that which the forefathers spoke.

Copy thy fathers, them that have gone before thee----. Behold, their words endure in writing. Open (the book) and read and copy the knowledge, so that the craftsman too may become a wise man (?)."⁸²

If we leave Egypt and go to China, the doctrines of Confucius and those of the school of legists must be taken into consideration.

Confucius

Confucius (551-479 B.C.), an aristocrat of a long-established ancestry and scarce fortune, after having two menial public jobs, keeper of the grain and of pastures, and upon realizing that the rulers' purpose was to govern for their own benefit, at the age of twenty-two opened a private school in which he only admitted students based on the intellectual and moral merit of each one, to educate perfect officers who could provide the people with happiness from their high-ranking positions in the administration. He persuaded rulers from different administrations to appoint his graduates and, on reaching full maturity, he traveled with his disciples for thirteen years; however, he could not get that any leader to entrusted him with the highest positions for enough time to make lasting changes. Nevertheless, some centuries later his lessons became the Chinese official thought as regards government affairs, during the Han dynasty (206 BC.-220 A.D.) and, since then, such lessons remain the foundation of the culture of Chinese officers.⁸³ The rigorous examination system open to all candidates and their selection in accordance with the merit of each one of them was applied from 622 to 1905, without interruption. The synthesis and comments of the outstanding figures of the Chu Hsi Confucianism have been since the year 1200 his basic bibliography, later on known as *The Four Books*.⁸⁴

Confucius affirmed that he was not innovating, that he was limiting himself to the study of classical figures. Although it is true that he relied more on custom (*li*) than on law (*fa*), he deserves to be remembered here for the high level to which he raised the morals of civil servants. *Li Ki*, the book of "Memories on the Uses for Respecting and

⁸² The Instruction for King Merikere, in Adolf Erman, *The Literature of The Ancient Egyptians* (Die Literatur der Aegypter, Leipzig, 1923), trad. Aylward M. Blackman, 1a. ed. 1927, reissued 1971 Benjamin Bloom, Inc., Reprint Edition Arno Press, Inc., New York 1977, pp. 75-76, text reproduced above.

Another edition:

The Instruction Addressed to King Merikare, in Miriam Lichtheim's, *Ancient Egyptian Literature, Vol. I: The Old and Middle Kingdoms*, University of California Press, Berkeley, Los Angeles, London, 1973, p. 99.

⁸³ Carmelo Elorduy, *El Humanismo Político Oriental*, edit. Biblioteca de Autores Cristianos, Madrid, 1976, pp. 207-246.

⁸⁴ E. A. Kracke Jr., *Family vs. Merit in the Examination System*, in *The Chinese Civil Service: Career Open to Talent?*, edited by Johanna M. Menzel, D.C. Heath and Company, Boston, 1963, p. 1; R. Huang, *1587 a Year of No Significance: The Ming Dynasty in Decline*, Yale University Press, New Haven and London, 1981, p. 203. Both cites have been taken from:

Mr. J. D. Tucker, *Administrative History, Lecture Notes & Readings*, University of Queensland Library, internet edition, 4.8. y 4.10, respectively.

[Http://www.library.uq.edu.au/eres/](http://www.library.uq.edu.au/eres/), downloaded 6/6/98.

the Ceremonies", composed by his seventy-two disciples, after the death of the Master, got lost until hundreds of years later it was found in the demolition of his house. The current text dates back to the II century A.D. and, in Chapter XXVIII, *Jou Hing* ("The Conduct of the Learned"), in a dialogue between the old Master and *Ngai*, Prince of *Lou*, the ethical code of the Learned Chinese, disciple of wisdom, is formulated along nineteen eloquent paragraphs. The end reflects the persuasion obtained by Confucius:

"This Prince, after listening to the explanations of the philosopher, gives to the word *learned* its true meaning and recognizes that the conduct of a true learned is irreproachable. "Never, during the rest of my life [he says], I will let myself to apply the learned's title by derision"."

The School of the Legists

Due to the preponderant importance they gave to the law as an instrument to rule, a group of four Chinese authors, known as "the school of the legists or legalists" may come to our minds: The Master of Shang, Shen Buhai, Shen Dao and Han Fei Tzu, all of them from the Warring States Period (403-221 B.C.).⁸⁵ Han Fei Tzu should be given special consideration since, among other things, he taught about the dangers of the discourse and rhetorical persuasion⁸⁶ and also established rules concerning the relationship between counsellors and politicians, which still today proves to be useful.

If we leave Confucius and the school of the legists, but continue along the lines of wisdom and eloquence in ancient India, we find the Laws of Manu, the Arthashastra or Kautiliya's Arthashastra and the Edicts of King Asoka.

Manu, Kautiliya and Asoka

The 2685 verses that compose the Laws of Manu continue the tradition of wisdom and eloquence. They are called like that because the name of his author, "Manu", means "he who is wise", but it also designates the king who was the mythological ancestor of the human race, the Indian "Adam". It is a sharp denomination, which refers to the one who is wise and belongs to the human race.⁸⁷ With regard to eloquence, it possesses unquestionable literary values, which have contributed to its preservation and universal transcendence, in addition to the historical and religious ones, among others.

Kautiliya or Kautalaya, also known as Canakya or Visnugupta (c 321 B.C.), who according to the tradition was an adviser to Candragupta or Chandragupta, whom he helped to defeat the Nandas and found the Empire of the Mauryan dynasty, is the author of a manual on the art of politics which, considered from the practical point of view of ruling, is the most complete and oldest known to date. This work, which takes its title after the name of the genre to which it belongs, Artashastra, had been lost for centuries, and was published in 1909 by R. Shama Sastry. It systematically organizes the works of

⁸⁵ León Vanderméersch, *La Formation du Légisme, Recherche sur la Constitution d'une Philosophie Politique Caractéristique de la Chine Ancienne*, École Française d'Extrême-Orient, Paris, 1965, XI + 299 pp.

⁸⁶ Han-Fei-tse ou Le Tao du Prince, Présenté et Traduit du Chinois par Jean Levi, Chapitre III Dangers du Discourse, Chapitre XII Les Écueils de la Rhétorique, Éditions du Seuil, Paris, 1999, pp. 83-85; pp. 139-143.

Han Fei Tzu, *Basic Writings*, Translated by Burton Watson, Columbia University Press, *The Difficulties of Persuasion* (Section 12), New York, pp. 73-79.

⁸⁷ *The Laws of Manu, with an Introduction and Notes*, Translated by Wendy Doniger with Brian K. Smith, Penguin Books, London, England, 1999, p. xviii.

previous authors which went missing, as it usually happens after a masterly synthesis. Book 2 (The Activity of the Heads of Departments), Chapter Ten, Section 28 ("The Topic of Edicts"), contains sixty three rules on the art of legislation.⁸⁸

The ambitious and cruel king Asoka (c. 274 -250 B.C.), Chandragupta's grandson, took power by force and by committing fratricide. After a painful battle, sickened by the brutality of war, he decided to rule with persuasion, proclaiming righteous conduct Edicts published through inscriptions all over his kingdom, in which he adopted and spread Buddhism, which Third Council he sponsored.⁸⁹

b. Greece

In this section the contributions made by Onomacritus, the Seven Wise Men, foreign Legislators, Orators and sophists, Protagoras, Isocrates, Plato, Aristotle and Callimachus will be considered.

Onomacritus

If we leave the East and move to Occident, to ancient Greece, we find Onomacritus. It has been said that he was the first expert in legislation, a specialty that he practised in Crete, although he was from Locri.⁹⁰ So far there are no precisions about his legislative work or his aptitude to justify in writing his rational skill to make laws, since we have not come across any laws or art of legislation produced by him, not even in fragments or titles that may let us infer they have existed.

Seven Wise Men

In accordance with an established Greek practice, when a new city was founded, an old one was re-founded or serious crises took place, a new complete constitution and the

⁸⁸ Kautiliya, Arthasastra, 2.10.1-62, The Kautiliya Arthasastra, R. P. Kange, 2.10.1-62, Second Edition, Bombay University, 1972, Reprint: Delhi, 1986, 1988, 1992, Motilal Barnasidass Publishers Private Limited, Delhi, 1992, T. II, Chapter Ten, Section 28 The Topic of Edicts, pp. 92-96, text in English; T. I, text in Sanskrit; T. III, Study, pp. 83-91.

He translates the index of the whole work, and he titles the chapter "XXVIII Cancellaria degli editti":

G. B. Bottazzi, Precursori di Niccoló Machiavelli in India e in Grecia Kautilya e Tucidide, Stab. Tip. Succ. FF. Nistri, Pisa, 1914, Estratto dagli Annali Della R. Scuola Normale Superiore di Pisa, Vol. XXVI, p. 39.

⁸⁹ For the text and the translation of the edicts, see:

E. Hultzsch, Inscriptions of Asoka, Oxford, 1925; R. Mookerijti's, Asoka, London, 1928; D. R. Bandarkar's, Asoka, Calcutta, 1925, cited by Edward Thomas, The History of Buddhist Thought, Routledge & Kegan Paul Ltd., First edition 1933, Second edition 1951, Reprinted 1953, London, n. 1, p. 153.

⁹⁰ Aristotle, Politics, 1274a25.

Aristotle, Politics, 1274a25, The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Princeton University Press, Princeton, New Jersey, Volume Two, Second Printing, 1985, p. 2022.

The Politics of Aristotle, 1274a22, Translated, with introduction, analysis, and notes, by Peter L. Phillips Simpson, The University of North Carolina Press, Chapel Hill and London, 1997, p. 72.

Aristóteles, Política, 1274a25, Edición Bilingüe, traducción de Julián Marías y María Araujo, Instituto de Estudios Políticos, Madrid, 1970, p. 64.

Aristote, Politique, Traduction Thurot, revue par H. Bastian, Garnier, Paris, p. 87.

In general, see:

Michael Gagarin, Writing Greek Law, Cambridge University Press, 2008, xi + 282 pp.

most important laws had to be passed. If the common procedure was not suitable due to the circumstances, an eminent citizen would then draft the bills and, should a local citizen not be available, a foreigner –also eminent– would be summoned to such end.

As for the citizen legislators, it is worth remembering the Seven Wise Men of Greece.⁹¹ They were neither always the same individuals nor the same number, since in the oldest enumeration Plato included Myson instead of the usual Periander; some authors would add three or four individuals (Myson, Pherecydes, Epimenides and even Pisystratus) and some lists included twenty-three names. Nevertheless, an agreement was reached on at least four of them: Thales, Bias, Pittacus and Solon. Thales and Bias had a political activity; Pittacus legislated on drunkenness as an aggravating circumstance of crimes, which doubled the punishment. Solon (c. 630-560 B.C.) was the most famous Athenian legislator and his name still remains in Occident's memory as the legislator's paradigm. He personifies the virtue of moderation, since, when he had to legislate in a divided society, he did not want to be a dictator and drafted the laws without fully admitting that any of the conflicting parties was right, and immediately travelled abroad for ten years so that he would avoid interpreting them personally and, thus, he let the norms be imposed by wisdom and eloquence. Curiously, in order to defend them, he used poetry, since he was skillful both in prose and verse.

We should not forget to mention Pythagoras, who was a legislator and opened a school for legislators,⁹² and his oral lessons, from which his followers formed the *Biblion*, a "Book of Moral and Political Laws."⁹³

Foreign legislators

From the school of Pythagoras, and also from the Academy of Plato, many disciples exited to act as legislators in different Greek cities, of which they were not natives.

In relation to the foreigners summoned to legislate, it is also worth remembering the case of Pericles who, upon founding the Athenian Thurii colony, (444 B.C.), entrusted the drafting of its legislation to his friend, the sophist Protagoras of Abdera⁹⁴ (c 485-411 B.C.), a wise and eloquent man, a figure of importance for the art of legislation, as we will study next.

Orators and sophists

In normal times, and in accordance with the procedure established by Solon, bills had to be submitted in writing to the Council (*Boulé*) and be set out in public places for the citizens' consideration, before being discussed by the Council and by the Assembly. In theory, any Athenian citizen who had not been subject to a judicial condemnation could speak at the Assembly; but, in practice, out of the regular five thousand attendants, on average on the important occasions, of a whole of twenty, thirty or forty thousand citizens of classic Athens, thirty or, at most, fifty of them, had the habit of

⁹¹ Kathleen Freeman, *The Pre-socratic Philosophers*, First Published 1946, Second Edition 1959, Reprinted 1953, Reprinted 1959, Basil Blackwell, Oxford, 1959, pp. 44-45.

⁹² *Voyages de Pythagore*, red. par Sylvain Maréchal, Chez Deterville, Libraire, An Septième, T. I., pp. iii-iv.

⁹³ *Le Biblion de Pythagore. Livre des Lois Morales et Politiques*, Première Traduction Complète par Albert Slosman, Éditions Robert Laffont, Paris, 1980, p. 18.

⁹⁴ Mario Untersteiner, *I Sofisti*, Einaudi, Torino, 1949, p. 11.

speaking from the tribune.⁹⁵ The most eloquent ones, who would always play the leading roles and would catch everyone's attention, were never more than ten. Each orator was accustomed to taking certain matters: one, foreign policy, other, finance, etc.; they acted like our current Ministers or Secretaries of State, each one with his own specific portfolio. Those interested in composing and criticizing, counselling and discouraging general juridical norms had to contact them.

It is widely known that there were no lawyers in Athens. Each one had to defend or accuse in court on his own behalf, therefore the logographers come into existence who, confidentially or not, wrote speeches so that others could deliver them in the courts. The orators would also take part in bills, since the interested parties used to make sure to have for themselves the most eloquent voices speak for them; which gave rise to the spreading of rumours on the moral and political integrity of Demosthenes and others famous orators of those times.⁹⁶ A legal action was available against the authors of bills passed in violation of the procedure or when the opposite laws had not been previously repealed. In those cases, in addition to the respective penal condemnations, another legal action was available to render the illegal norm ineffective, as did Demosthenes in his speech Against the Law of Leptines, in which he criticized it in detail and advised the enactment of another bill to replace it, which he promised to promote.⁹⁷

The wisdom and eloquence of the orators were judged by their fellow citizens who, due to their natural admiration for words and thoughts, educated their taste on the frequent occasions when they could listen to the good speeches, that civic life was providing them, delivered in Courts, at the Assembly or the Council, and in funerals and holidays. The habit of appreciating speeches was widely spread, and the demand levels were so high that even Demosthenes could not make himself be heard during his first attempt before the Assembly, because of the mockery and the noise provoked by his style and pronunciation, despite his reputation as recognized judicial orator by then.⁹⁸

The first great Greek political orators were educated by the example and the exercise of the affairs of the State. Pericles, who represents a period of transition, received Damon's teachings, the wisest man of the time as regards music, which include the culture of the soul, even poetry, in contrast with that of the body, which was dealt by gymnastics. He also received the teachings of Anaxagoras, the philosopher, from whom he learned to remain calm while delivering his speeches, imperturbable before the fury of the crowd.⁹⁹ After Pericles, nobody could reach success without a rigorous rhetorical

⁹⁵ Georges Perrot, *L'Éloquence Politique et Judiciaire a Athènes*, édit. Librairie Hachette et Cie., Paris, 1873, p. 22.

⁹⁶ Démosthène, *Harangues*, Texte Traduit par Maurice Croiset, Société d'Édition "Les Belles Lettres", Paris, 1924, Tome I, p. XII.

⁹⁷ Demosthenes is presumed to be the author of the bill:

Démosthène, *Discours Contre la Loi de Leptine*, expliqué littéralement, traduit en français et annoté par Stièvenart, Librairie Hachette et Cie., Paris, 1880, pp. 118-119; n. 1, p. 229.

Apsephion is presumed to be the author of the bill:

Demosthenes, *Speech Agaist Leptines*, 95-97, J. H. Vince, The Loeb Classical Library, William Heineman Ltd.-G. P. Putnam's Sons London-New York, 1930, pp. 554-556; n. a, p. 556.

Demóstenes, *Acerca de la exención de cargas. Contra leptines*, 95-97, en Demóstenes, *Discursos Políticos*, trad. A. López Eire, ed. Gredos, Madrid, 1985, Tomo II, pp. 220-221; n. 108 p. 221.

⁹⁸ Plutarque, *Vie de Démosthène*, Expliqué Littéralement, Annoté et Revu pour la Traduction Française, par E. Sommer, VI, Librairie Hachette et Cie., Paris, 1890, pp. 24-27.

Plutarque, *Vies, Démosthène-Cicéron*, Texte Établi et Traduit par Robert Flacelière et Émile Chambry, Démosthène 6.3, Société d'Édition "Les Belles Lettres", Paris, 1976, p. 21.

⁹⁹ Georges Perrot, *L'Éloquence Politique et Judiciaire a Athènes*, Librairie Hachette et Cie., Paris, 1873, 26.

education –the art of wise and eloquent civic speeches–, in addition to the necessary familiarity with the affairs of the State.

Since Homer¹⁰⁰ there existed the ideal of a man skillful in words and actions, an orator and a warrior. The education of young people was provided by certain men, mature and experienced in the struggles of speeches and weapons, not by professional teachers: it was for honour, not for money. This aristocratic education turned out insufficient upon the rise of democracy, in the context of which the votes of the people had to be obtained by means of speeches.¹⁰¹ Then there appeared the sophists, itinerant teachers of wisdom and eloquence, educators who, looking for a remuneration in money, travelled in search of disciples through different Greek cities, delivering public speeches and private talks, satisfying the pedagogic demands of those who, being wealthy enough, had political aspirations.¹⁰²

Protagoras

Protagoras of Abdera (c. 485 B.C.), nicknamed *Logos*, was one of the most famous sophists. Democritus, known as “Wisdom”, was his teacher. Protagoras developed in his disciples the faculty of a good advice or *eubolia*:

"[...] capacity to give a good advise to onself as regards family property, for the purpose of administering their own home in the best way, and as regards the business of the city, for the purpose of being more effective in deeds and words [...]."¹⁰³

He had legislative experience, since he was commissioned by Pericles to write the Constitution of the new colony Thurii, and he also had a theoretical knowledge which he included in a work that went lost, *Antilogic*, which in its third section, had several chapters concerning the laws and the polis,¹⁰⁴ where, perhaps, an art of legislation was included, but which today is missing.

Isocrates, Plato and Aristotle

Isocrates (436-338 B.C.),¹⁰⁵ was the first to establish, as a teacher, a fixed and permanent school, perhaps earlier in Quios, certainly in Athens (c. 390 B.C.), which

¹⁰⁰ Iliad, IX, 440.

Homer, *The Iliad*, by A. T. Murray, The Loeb Classical Library, William Heineman Ltd.-G. P. Putnam's Sons London-New York, first printed 1924, reprinted 1965, T. I., pp. 414-415.

Iliada, IX, 440, *La Ilíada de Homero, traslado de Alfonso Reyes, Primera Parte, Aquiles Agraviado*, Fondo de Cultura Económica, México-Buenos Aires, 1951, p. 194.

Homère, *Iliade*, 420-460, *Introduction et Notes de Robert Flacelière*, Bibliothèque de la Pléiade, Librairie Gallimard, Paris, 1955, p. 244.

¹⁰¹ Henri Irénée Marrou, *Histoire de l'Éducation dans l'Antiquité*, Éditions du Seuil, Paris 1948, p. 83.

¹⁰² They taught how to speak in public and areté, or effectiveness in civic life.

George A. Kennedy, *Sophist and Physicians of the Greek Enlightenment*, in *The Cambridge History of Classical Literature*, P.E. Easterling y B.M.W. Knox, Cambridge, 1985, p. 72.

¹⁰³ Plato, *Protagoras* 317B

“Questa scienza consiste in una capacità di ben consigliarsi torno al bene famigliari, allo scopo di amministrare nel modo migliore la propria casa, e intorno agli affari della città, allo scopo di essere assai efficace nell'azione e nella parola...”

Sofisti, Testimonianze e Frammenti, Mario Untersteiner, La Nuova Italia, T. I, Firenze, 1967, p. 31, 140, textual cite of Plato, *Protagoras* 317B.

¹⁰⁴ Mario Untersteiner, *I Sofisti*, Einaudi, Torino, 1949, p. 20.

¹⁰⁵ In general, see:

was next to the gymnasium named "Lyceum". He was paid significant sums of money to train efficient citizens, wise and eloquent men. He criticized both the sophists and the philosophers, and placed rhetoric as the dominant, architectural discipline, under the denomination of "philosophy", the culmination of the education provided by him.

Plato (c. 427-348 B.C.), later on, competed against Isocrates and set up another school, the "Academy" (c. 385 B.C.), also near a Athenian gymnasium, named "Academy" in memory of the hero *Academus* or *Hecademus*, but located in the opposite side of the city. Education was not available for everyone and no fees were paid, since the Academy was sort of a non-profit association, where both democracy and the education by the sophists, especially rhetoric, were criticized, raising philosophy, with its dialectical method, to the architectural category, as a superior discipline to which the others had to subordinate.

Isocrates did not devote himself directly to the political activity, because he had a weak voice and was extremely shy.¹⁰⁶ Plato felt disappointed in regard to politics, on account of his juvenile collaboration with the aristocratic government of the Dictatorship of the Thirties, formed by relatives and friends of the philosopher, and on account of his later character of governed during the restoration of the Athenian democracy, during which Socrates was condemned to death and, above all, on account of the outcome of his first visit to Syracuse, in his capacity as adviser, invited by the tyrant Dionysius I, whom he failed to instill his ideal of the king - philosopher.¹⁰⁷ In their respective Athenian establishments, Isocrates and Plato coincided, in fact, to educate the politicians of the whole Greece. The shock was inevitable.¹⁰⁸

George Kennedy, *The Art of Persuasion in Greece*, Princeton University Press, sixth Printing, New Jersey, 1963, pp. 174-203.

Thomas Conley, *Rhetoric in The European Tradition*, University of Illinois-Champaign, Longman, New York-London, 1990, pp. 17-20.

Georges Perrot, *L'Éloquence Politique et Judiciaire a Athènes*, ed. Librairie Hachette et Cie., Paris, 1873, pp. 286-352.

Octave Navarre, *Essai sur la Rhétorique Grecque Avant Aristote*, Librairie Hachette et Cie., Paris, 1900, pp. 177-207.

Alfred Croisset et Maurice Croisset, *Histoire de la Littérature Grecque*, Tome. IV, Periode Attique, Eloquence, Histoire, Philosophie, par Alfred Croisset, Troisième Édition Revue et corrigée, E. de Boccard, Éditeur, Paris, 1921, pp. 477-519.

Georges Mathieu, *Les Idées Politiques d'Isocrate*, Société d'Édition "Les Belles Lettres", Paris, 1925, 228 pp.

Paul Cloché, *Isocrate et son Temps*, Annales Littéraires de l'Université de Besançon, Vol No. 54, Société d'Édition "Les Belles Lettres", Paris, 1978, xiv + 140 pp.

¹⁰⁶ Pseudo-Plutarch, *Life of the Ten Orators*, 4.

[Plutarco] *Vida de los Diez Oradores*, 4, en *Isócrates, Discursos*, trad. de Juan Manuel Guzmán Hermida, ed. Gredos, Madrid, 1979, p. 48.

[Plutarque] *Vies des Dix Orateurs*, 4, dans *Isocrate, Discours I*, Société d'Édition "Les Belles Lettres", Paris, 1928, pp. XXVII-XXVII.

¹⁰⁷ Plato, *Letter VII*, 324-326.

Platón, *Carta VII*, 324-326, *Cartas de Platón*, Edición Bilingüe y Prólogo, Margarita Toranzo, Revisado por José Manuel Pabón y Suárez de Urbina, Instituto de Estudios Políticos, Madrid, 1970, pp. 60-64.

Platon, *Lettre VII*, 324-326, dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Leon Robin avec la Collaboration de M. J. Moreau, Bibliothèque de La Pleiade, NRF, Paris, 1942, T. II, pp. 1185-1189.

Giovanni Reale, *Storia della Filosofia Greca e Romana*, Volume Terzo, Platone e l'Academia Antica, Tascabile Bompiani, Milano, 2004, p. 10, n. 1.

¹⁰⁸ Werner Jaeger, *Paideia: The Ideals of Greek Culture*, Translated from the German Manuscript by Gilbert Highet, Volume II, *In Search of the Divine Centre*, Oxford University Press, New York, 1943, pp. 77 immediately following; Volume III, *The Conflict of Cultural Ideals in the Age of Plato*, Oxford University Press, New York, 1944, pp. 182-262 (Plato); pp. 46-155 (Isocrates).

Although Plato was Socrates' undeniable disciple, Isocrates also introduces himself as one, to such an extent that rumour has it that the day after the death of the Master, he went in mourning throughout Athens.¹⁰⁹ Isocrates did not consider appropriate that the education offered by Plato, which neither helped the discourse nor the action, was named "philosophy", for which reason he considered it to be an intellectual gymnastics and a propaedeutics of philosophy.¹¹⁰ He used to say that, since it is not in a man's nature to reach a science with which we could know what we should do or say, he called a "wise man" to the one whom, because of his powers to surmise, was capable of generally arriving at the best decision, and a "philosopher" to the one whom deal with studies by which this capacity could be faster obtainable. He called "philosophy"¹¹¹ to the higher education that he provided: a study on the wise and eloquent speech to reach social preeminence,¹¹² aimed at having his disciples learn to behave in practical life, and to rule in their own house as well as the public affairs of the city, as Protagoras had earlier taught.¹¹³ Isocrates was different from the sophists of those times since he taught

Werner Jaseger, *Paideia: los Ideales de la Cultura Griega*, traducción al español de Joaquín Xirau (Libros I y II) y Wenceslao Roces (Libros III y IV), Primera Edición en un sólo volumen, 1962, Segunda reimpresión, 1967, Libro III En Busca del Cetro Divino, pp. 373 y sgtes.; Libro IV, El Conflicto de los Ideales de la Cultura en el Siglo IV, pp. 982-998 (Platón), 830-856 (Isócrates), Fondo de Cultura Económica, México, 1967.

He blamed Jaeger for having sacrificed Isocrates before Plato and gives his own vision of the opposition: Henri Ireneé Marrou, *Histoire de l'Éducation dans l'Antiquité*, Éditions du Seuil, Paris, 1948, p. 490, n. 2; pp. 99-120; pp. 121-136.

¹⁰⁹ Pseudo-Plutarch, *Life of the Ten Orators*, 35.

[Plutarco] *Vida de los Diez Oradores*, 35, en *Isócrates, Discursos*, trad. Juan Manuel Guzmán Hermida, Edit. Gredos, Madrid, 1979, T. I, p. 52.

[Plutarque] *Vie des Dix Orateurs* 35, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris, 1928, T. I., p. XXXI.

Doubt:

George Norlin, in *Isocrates, The Loeb Classical Library*, William Heineman Ltd.-G. P. Putnam's Sons London-New York, 1928, T. I. p. XVII, n. b.

¹¹⁰ *Isocrates, Antidosis*, 266.

Isocrates, Antidosis, 266, in *Isocrates, George Norlin, The Loeb Classical Library*, William Heineman Ltd.-G. P. Putnam's Sons, London-New York, 1929, T. II., pp. 332-333.

Isócrates, Antidosis, 266, en *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, Madrid 1980, T. II, p. 142.

Isocrate, Sur l'Echange 266, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, p. 168.

¹¹¹ *Isocrates, Antidosis*, 270.

Isocrates, Antidosis, 270, in *Isocrates, George Norlin, The Loeb Classical Library*, T. William Heineman Ltd.-G.P. Putnam's Sons, London-New York, 1929, T. II, p. 335.

Isócrates, Antidosis, 270, en *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, Madrid 1980, T. II, pp. 143-144.

Isocrate, Sur l'Echange, 270, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, pp. 168-169.

¹¹² *Isocrates, Antidosis*, 308.

Isocrates, Antidosis 308, in *Isocrates, George Norlin, The Loeb Classical Library*, T. William Heineman Ltd.-G.P. Putnam's Sons, London-New York, 1929, T. II, p. 355; p. 357.

Isócrates, Antidosis, 308, en *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, Madrid 1980, T. II, p. 152.

Isocrate, Sur l'Echange, 308, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, pp. 177-178.

¹¹³ *Isocrates, Antidosis*, 285.

Isocrates, Antidosis, 285, in *Isocrates, George Norlin, The Loeb Classical Library*, T. William Heineman Ltd.-G.P. Putnam's Sons, London-New York, 1929, T. II, p. 343.

at a fixed place, and lived with a few disciples for years, to transmit them a general culture and the art of speech as a harmonic whole. The method consisted of having students receive theoretical explanations and carry out practical composition exercises and criticism of speeches of the Master, their class mates, those made by themselves, and also present analysis and reports on the visits made to courts, hearings and public acts.¹¹⁴ They had to study the "Hellenic and political" speeches of the Master, as he called them, that taught "good things" to think, to speak and to act well. These "good thoughts and words", that served to them as examples, were so familiar to them that, through imitation, they were led to behave well. Moreover, in order to persuade by means of speech, they had to appear themselves like "good men".¹¹⁵

Plato considered that "philosophy" was the application of his dialectical method, that is to say, the use of definition, division and classification of concepts, which culminated in the study of mathematics, through dialogues which refuted or proved theses on matters of great interest and importance such as good, beauty, truth, justice, etc. In the Gorgias dialogue he stated that the health of the soul had to be taken care by politics, which comprised two real arts: legislation and justice; and that the health of the body, which lacked a proper denomination, comprised other two real arts: gymnastics and medicine. The false arts did not look for the best but for the most pleasant thing and consisted of a species of flatteries that were not founded on the nature of things, so they could not give reasons and explain causes, and they pretended take the place of real arts. Thus, in the soul sophistics replaced legislation and rhetoric replaced justice, whereas in the body, cosmetics replaced gymnastics and cooking replaced medicine.¹¹⁶ Those who

Isócrates, *Antidosis*, 285, en *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. II, Madrid 1980, p. 147.

Isocrate, *Sur l'Echange*, 285, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, p. 172.

¹¹⁴ Alfonso Reyes, *La Crítica en la Edad Ateniense*, ed. El Colegio de México, Fondo de Cultura Económica, Méjico 1941, p. 197.

¹¹⁵ *Isocrates, Antidosis*, 280.

Isocrates, Antidosis, 280, in *Isocrates*, George Norlin, The Loeb Classical Library, T. William Heineman Ltd-G.P. Putnam's Sons, London-New York, 1929, T. II, p. 337.

Isócrates, *Antidosis*, 280, en *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. II, Madrid 1980, p. 146.

Isocrate, *Sur l'Échange*, 280, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, p. 171.

¹¹⁶ Plato, *Gorgias*, 463e-466a.

Plato *Gorgias* Translated with Notes, Terence Irwin, Cornell University, Clarendon Press, Oxford, 1979, pp. 32-34 (text); p. 226-236 (notes).

Plato *Gorgias*, A Revised Text with Introduction and Commentary, E.R. Dodds, At The Clarendon Press, Oxford 1959, pp. 226-227 (commentary).

Platón, *Gorgias*, 463e-466a, Platón, *Gorgias*, Introducción, Traducción y Notas de Angel J. Cappelletti, Eudeba, Buenos Aires, 1967, pp. 141-142.

Platon, *Gorgias*, 463e-466a, dans *Oeuvres Complètes de Platon*, Tome III, 2e. Partie, *Gorgias-Menon*, Texte Établi et Traduit par Alfred Croiset avec la Collaboration de Louis Bodin, Société d'Édition "Les Belles Lettres", Paris, 1923, pp. 131-135.

"Rhetoric, is, here, the corruption of the art of the judiciary; sophistics, the corruption of the art of legislation"

("Retorica, e, qui, la corruzione del arte giudiziaria; sofistica, la corruzione dell'arte legislativa ")

Platone, *Gorgia*, A Cura di N. Sabbatucci, Editore Laterza, Bari, 1956, n. 1, pp. 60-61. Translation from Italian into English by the autor of this book.

In a defence of rhetoric upon Plato's attack, see:

Brian Vickers, *In Defence of Rhetoric*, Chap. 2, *Plato's Attack on Rhetoric*, Clarendon Press, Oxford, First published 1988, First issued as paperback with corrections and additions 1989, reprinted 1990 (twice), New York, 1990, pp. 83-147.

keep this position, should be reminded that rhetoric includes, in addition to the judicial and epideictic genres, the deliberative genre, one of whose model cases consists of counselling and discouraging, composing and criticizing laws (general juridical norms in the material sense). When rhetoric is conceived as the union of wisdom and eloquence –as Protagoras, Isocrates, Cicero and their successors of this conception–, there is no reason to be afraid of the criticism formulated in the *Gorgias*, which considers it to be a false art, a species of flattery, an exclusive patrimony of the sophists since, as it has been demonstrated in Chapter I hereof, rhetoric constitutes the foundation of the art of legislation.

Before ending their careers, both Teachers had moderated their respective points of view. Isocrates, in his *Antidosis* speech, asserted that, as well as in gymnastics, which is a part of physical education, professors teach the positions invented for physical competitions, philosophy professors teach all forms of speech through which the mind expresses itself. Knowledge cannot include all the circumstances that may arise, but the most attentive disciples capable of observing what usually happens will face them correctly, in most cases.¹¹⁷ Perhaps an echo of that wisdom still resounds in Justinian's *Digest*, where it is affirmed that the law in general deals with the things that often or usually happen and that, as regards things that may happen by chance, no laws are established.¹¹⁸ Isocrates admits philosophy, although "rhetorized", as a useful knowledge for practical life. Plato, in his *Phaedrus* dialogue, admits the possibility of including in his system a "philosophical" rhetoric based on the knowledge of passions and systematically explained in accordance with his dialectical method of definitions, divisions and classifications, like a genuine art for education and leading of the souls or *psichagogia*, founded on the knowledge of the truth of speech and not on its verisimilitude.¹¹⁹

Aristotle, at Plato's request, taught rhetoric at the Academy. Afterwards, when he opened his own school, at the same gymnasium that Isocrates had used before, named it "Lyceum" as that gymnasium was known. He fulfilled Plato's project regarding a

¹¹⁷ Isocrates, *Antidosis*, 183-184.

Isocrates, *Antidosis*, 183-184, in Isocrates, George Norlin, The Loeb Classical Library, T. William Heineman Ltd-G.P. Putnam's Sons, London-New York, 1929, T. II, pp. 289; 291.

Isócrates, *Antidosis*, 183-184, en Isócrates, *Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. II, Madrid 1980, pp. 123-124.

Isocrate, *Sur l'Échange*, 183-184, *Antidosis*, dans Isocrate, *Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, pp. 148-149.

¹¹⁸ *Digesta*, I.3.3. y I.3.4.

Corpus Iuris Civilis, *Digesta*, I.3.3.; I.3.4., Editio Stereotipa Octava, Volumen Primum, *Digesta*, *Recognovit*, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 5.

El Digesto del Emperador Justiniano, I.3.3 y I.3.4, Traducido y Publicado por el Licenciado Don Agustín Rodríguez De Fonseca. Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Madrid, 1872, Tomo I, p. 41.

¹¹⁹ Platón, *Fedro*, 269d-274d.

Platón, *Fedro*, 269d-274d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, pp. 67-75.

Platon, *Phèdre*, 269d-274d, dans *Oeuvres Complètes de Platon*, T. IV, 3a. Partie, Texte Traduit par Leon Robin, Société d'Édition "Les Belles Lettres", Paris, 1933, pp. 79-87, with a significant preliminary research, Notice, VI, *Rhétorique et Dialectique*, pp. CXLII-CLXXV.

Platon, *Phèdre*, 269d-274d, dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Leon Robin avec la Collaboration de M. J. Moreau, Bibliothèque de La Pleiade, NRF, Paris, 1942, T. II, pp. 67-75.

Platone, *Fedro*, 269d-274a-d, *Testo Critico*, Introduzione e Commento di Giuseppe Ammendola, pp. 227-250.

philosophical rhetoric and, although he quoted Isocrates, both expressly and implicitly, he was in fact his competitor. Cicero recalls that Aristotle, who witnessed Isocrates' success, suddenly changed the type of education that he offered and began to recite a poem from *Philoctetes* (the tragedy of Sophocles), modifying it; where the hero expressed he was embarrassed for keeping silence and letting barbarians speak, he would replace "barbarians" for "Isocrates". He combined the theoretical study of things and the practice of eloquence, a merit which was noticed by Philip of Macedon, who entrusted him with Alexander's education, in order that the prince might learn to act well and speak well at the same time,¹²⁰ in accordance with the Homeric ideal. Isocrates' efforts to make his disciples Theopompus or Isocrates of Apollonia teach Alexander, although fruitless, have left a beautiful testimony in Letter V addressed to Alexander, in which he praises the future emperor because, without underestimating the utility of eristics in private discussions, he prefers:

"[...] the training which rhetoric gives, which is of use in the practical affairs of everyday life and aids us when we deliberate concerning public affairs. By means of this study you will come to know how at the present time to form reasonable opinions about the future, how not ineptly to instruct your subject peoples what each should do, how to form correct judgements about the right and the just and their opposites and, besides, to reward and chastise each class as it deserves"¹²¹

Isocrates, in his praises to the *logos*, creator of civilization, had mentioned the establishment of laws as one of its examples.¹²² Later, driven perhaps by his desire to polemicize, since Plato was writing his dialogue "The Laws",¹²³ he admitted the importance of the laws for the well-being of human life, but he asserted that it was necessary to estimate more the creators of speeches like his, which are rare, difficult, and demand a greater intellectual dedication, and serve to govern Greece as a whole fairly and usefully for Athens, since those who must propose laws find help among the great number of existing ones and do not need to find new ones, given the fact that they must only compile those praised elsewhere, this being an easy task for anyone, while the orators are in the opposite situation, since most of the topics have been discussed and, if they were to repeat what has already been said, they would be regarded as shameless

¹²⁰ Cicerón, *De Oratore*, III, XXX, 141.

De l'Orateur, Cicéron, Texte Établi par Henri Bornecque et traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres", Paris, 1930, III, XXXV, 141, p. 55.

¹²¹ Isócrates, Letter V to Alexander, 4.

Isocrates, Letter 5 To Alexander, 4, Isocrates, Larue Van Hook, The Loeb Classical Library, T. William Heineman Ltd-G.P. Putnam's Sons, London-New York, 1961, T. III, p. 429.

Isócrates, Carta V, A Alejandro, 4, en Isócrates, Discursos, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. II, Madrid 1980, p. 304.

Isocrate, Lettre V A Alexandre, 4, dans Isocrate, Discours, Texte Établi et Traduit par Georges Mathieu et par Émile Brémond, Société d'Édition "Les Belles Lettres", Deuxième(sic) Tirage, Paris, 1972, IV, Lettre V A Alexandre, 4, p. 215.

¹²² Isocrates, *Nicocles* III, 6.

Isocrates, *Nicocles* III, 6, Isocrates, George Norlin, I, The Loeb Classical Library, London: William Heinemann Ltd., New York: G. O. Putnam's Sons, 1928, p. 79, text reproduced above.

Isócrates, *Nicocles*, 6, en Isócrates, Discursos, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. I, Madrid 1979, p. 287.

Isocrates, *Nicocles* III, 6, dans Isocrate, Discours, Georges Mathieu et Émile Brémond, Société d'Édition "Les Belles Lettres", Paris 1967, T. II, p. 121.

¹²³ Isocrate, *Sur l'Echange*, dans Isocrate, Discours, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, p. 123, n. 1.

babblers and, if they were to look for new topics, these would be difficult to find.¹²⁴ Aristotle replied to him, without mentioning his name, and criticizing the sophists, when he affirmed that it was not easy to legislate by just assembling the laws which had acquired the best reputation, as if that selection did not require intelligence and good judgement was not the most difficult skill to achieve by the inexpert.¹²⁵ The author of this work considers opportune to point out that Aristotle could also have refuted Isocrates using the arguments that the latter had supported in the Panegyric of Athens, when he wrote that rhetoric and the other arts would progress enormously if no honour was done or admiration expressed to those who started each one of them instead of doing so to those who exercised them the best; or to those who thought to speak about things on which none had ever spoken before rather than to those who could say them as anyone else could.¹²⁶ He could also have refuted Isocrates by alleging that the laws are not appreciated by their novelty, because there are like wines: the older they are the better. If they have remained in force for a long time, they have already proven their wisdom and eloquence to this experimental laboratory of society known as "history".

Isocrates was the author of the Constitution of Quios and in his capacity as teacher, a disciple of his is known: Lacritus, who was an Athenian nomothetes.¹²⁷ It is said that Plato was asked to legislate in Megalopolis, but declined the offer and perhaps his visits to Syracuse gave rise to the composition of bills that he then used in his dialogue "The Laws". The Academy was a place for consultation for those who needed experts in

¹²⁴ Isocrates, *Antidosis*, 79-83.

Isocrates, *Antidosis*, 79-83, Isocrates, George Norlin, The Loeb Classical Library, T. William Heineman Ltd.-G. P. Putnam's Sons, London- New York, 1929, T. II, pp. 229-231.

Isócrates, *Antidosis*, 79-83, en *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. II, Madrid 1980, pp. 98-99.

Isocrate, *Sur l'Echange*, 79-83, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris 1942, T. III, pp. 123-125.

¹²⁵ Aristotle, *Nicomachean Ethics*, 1181a15-20.

Aristotle, *Nicomachean Ethics*, 1181a15-20, in *The Complete Works of Aristotle*, Edited by Jonathan Barnes, Princeton University Press, Princeton, New Jersey, Second Printing, 1985, Volume Two, p. 1866.

Aristóteles, *Ética a Nicómaco*, 1181a15-20, Edición Bilingüe y Traducción por María Araujo y Julián Marías, Introducción y Notas de Julián Marías, Centro de Estudios Constitucionales, Madrid, 1981, p. 173.

Isocrates, *Against the Sophists*, 16-17.

Isocrates, *Against the Sophists*, 16-17, Isocrates, George Nolin, The Loeb Classical Library, T. William Heinem Ltd.-G.P. Putnam's Sons, London-New York, T. II, 1929, pp.172-173.

Isócrates, *Contra los Sofistas*, 16-17, en *Isócrates, Discursos*, Traducción, Introducción y Notas de Juan Manuel Guzmán Hermida, Edit. Gredos, Madrid, 1979, pp. 162-163.

Isocrate, *Contre les Sophistes*, 16-17, dans *Isocrate, Discours*, Georges Mathieu, Société d'Édition "Les Belles Lettres", Paris, 1928, T.I, pp.148-149.

¹²⁶ Isocrates, *Panegyricus*, 10.

Isocrates, *Panegyricus*, 10, in Isocrates, George Norlin, The Loeb Classical Library, T. William Heineman Ltd.-G.P. Putnam's Sons, London-New York, 1928, T I, p. 125.

Isócrates, *Panegórico*, 10, in *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. I, Madrid 1979, p. 202.

Isocrate, *Panegyrique d'Athenes*, Expliquè Litteralment et Annoté par E. Sommer, Librairie Hachette et Cie., Paris, 1897, pp. 11-13.

Isocrate, *Panegyrique*, 10, dans *Isocrate, Discours*, Georges Mathieu et Emile Brémond, Société d'Édition "Les Belles Lettres", T. II, Paris, 1967, pp. 16-17.

¹²⁷ [Plutarch] *Lives of the Ten Orators*, 8, 11.

Vida de los Diez Oradores, 8, 11, in *Isócrates, Discursos*, traducción, introducción y notas de Juan Manuel Guzmán Hermida, Edit. Gredos, T. I, Madrid 1979, pp. 48-49.

[Plutarque] *Vie des Dix Orateurs*, dans *Isocrate, Discours*, Georges Mathieu et Emile Brémond, Société d'Édition "Les Belles Lettres", Paris 1928, T. I, p. XXVIII.

legislation,¹²⁸ as it arises from Letter V, in which he recommends his disciple Eufreus to Perdicas.¹²⁹ It is known that several of his disciples were sent to different cities to legislate, at the request of the respective governments, such as Aristonymus to Arcadia, Phormus to Elis, Menedemus to Pyrra and Eudoxus to Cnidos.¹³⁰ Aristotle wrote the Constitution of Stagirus, his hometown, an honour granted to him by Alexander The Great, his former student.¹³¹

Callimachus

Callimachus (born c 310 B.C.) divided the entire Greek literature kept at the Library in Alexandria in eight categories in his lost work: "Table of Illustrious Writers and their Works",¹³² known as *Pinakes* (Tables or Pictures). The above mentioned categories were: drama; epic and lyric poetry; legislation; philosophy; history; oratory; rhetoric; and miscellanea. They were contained in separated books, one hundred and twenty in total, in which the authors were listed alphabetically or chronologically,¹³³ maybe both, together with a biographical note. There, judgement was made on the authenticity of each work, on their respective attribution, and the first words of each one were indicated (*incipit*). It was the first comprehensive and systematic history of Greek literature and was used as a catalogue of the famous Library.¹³⁴ The laws thus obtained their philological establishment as literary works and legislation as a literary genre on its own and, some legislators, perhaps, as writers worthy of study and imitation, established their reputation by means of criticism founded on reason; but regrettably no material of this sort has come to us in a systematic way.

¹²⁸ G.C. Field, *The Philosophy of Plato*, Second Edition with an Appendix by R. Cross, Oxford University Press, London-Oxford-New York, 1969, pp. 2-3.

¹²⁹ Plato, Letter V.

Platón, Carta V, *Cartas de Platón*, Edición Bilingüe y Prólogo, Margarita Toranzo, Catedrático de Griego., Revisado por José Manuel Pabón y Suarez de Urbina, Catedrático de la Universidad de Madrid, Instituto de Estudios Políticos, Madrid, 1970, pp. 55-56.

Platon, Lettre V, dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Leon Robin avec la Collaboration de M. J. Moreau, Bibliothèque de La Pleiade, NRF, Paris, 1942, T. II, pp. 1180-1181.

¹³⁰ Plutarch, *Against Colotes*, 32.

A.E. Taylor, *Plato The Man and his Work*, Meridian Books Inc., reprinted by arrangement with The Humanities Press Inc, from the sixth edition, reprinted 1952, New York, sixth printing, April 1960, p. 464. Plutarque, *Contre Colotés*, 32, dans *Oeuvres Complètes de Plutarque*, *Oeuvres Morales et Oeuvres Diverses*, Traduites en Français, Victor Bétolaud, Librairie Hachette et Cie., T. IV, Paris, 1870, pp. 638-639.

¹³¹ Plutarch, *Against Colotes*, 32.

A.E. Taylor, *Plato The Man and his Work*, Meridian Books Inc., reprinted by arrangement with The Humanities Press Inc, from the sixth edition, reprinted 1952, New York, sixth printing, April 1960, p. 464. Plutarque, *Contre Colotés*, 32, dans *Oeuvres Complètes de Plutarque*, *Oeuvres Morales et Oeuvres Diverses*, Traduites en Français, Victor Bétolaud, Librairie Hachette et Cie., T. IV, Paris, 1870, p. 639.

¹³² "*Tableaux des écrivains illustres de leurs oeuvres*"

Translation from French into English by the author of this book.

Alfred Croiset, *Histoire de la Littérature Grecque*, T. V, *Période Alexandrine*, Ancienne Librairie Thorin et Fils, Albert Fontemoing, Editeur, Paris, 1901, pp. 132-133.

¹³³ The Late Sir John Sandys, *History of Scholarship*, A companion to Greek Studies, Edited by Leonard Whibley, M.A., Fourth Edition, Revised, Cambridge University Press, VIII.6, Cambridge, 1931, p. 744.

¹³⁴ L.S. Schmitz, Callimachus, in *Dictionary of Greek and Roman Biography and Mythology*, Edited by William Smith, Vol. I, London 1844, p. 572.

A. W. Bulloch, *Hellenistic Poetry*, *The Cambridge History of Classical Literature*, I, Greek Literature, P.E. Easterling, B.M.W. Knox, Cambridge University Press, Cambridge, 1985, p. 550.

c. Rome

This section will deal with the Law of XII Tables, the orators, sophists and bureaucrats, and with Cicero.

Law of the XII Tables

The first Roman laws enacted during the monarchy (*leges regiae*), which are of doubtful existence and content, might have been compiled by *Sexti Papirii*, for which reason they are known as *ius Papirianum*. The Law of the XII Tables (c. 451 B.C.) has also generated historical doubts. According to the tradition, three Romans patricians were sent to Athens to bring a copy of Solon's laws and to report about Greek law. Then, a legislative commission composed of ten members (*decemviri*), drafted the norms, which were engraved on ten Tables. Subsequently, a similar commission added more precepts, which gave rise to other two Tables, which were added to make up the Twelve Tables.¹³⁵

Orators, sophists and bureaucrats

As regards the subsequent legislative procedure, bills had to be proposed in writing, with the prior advice of the Senate, before their debate in the Assemblies, as it was done in Athens. The *Senatus Consultum* and the laws show such a degree of uniformity of scheme and style that they reveal the use of forms to produce them, which were improved by the clerks of both the Senate and the magistrates with legislative initiative. Following the great republican debates held in the Senate and in the Assemblies, the laws of the Empire were first generated in the Council of the Prince (*Consilium Principis*) and, after the accentuation of the monopolistic tendency, in the Imperial Counsel (*Consistorium*) or in the Central Imperial Chancellery. The legislative task always demanded certain professional skill.¹³⁶ The bureaucrat jurists who integrated these bodies were the real authors of the imperial juridical norms, the composers and inspirers of the great codifications, like the first two (private) collections of constitutions by Gregorius and Hermogenianus, and the (official) *Codex Theodosianus* and, finally, Justinian's *Corpus Iuris Iuris Civilis*, where Tribonianus, who had already

¹³⁵ *Digesta justinianus*, I.2.2.2.

Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum, *Digesta I.2.2.2*, *Recognovit*, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 2.

El *Digesto del Emperador Justiniano*, I.2.2.2. Traducido y Publicado por el Licenciado don Agustín Rodríguez de Fonseca. Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Madrid, 1872, Tomo I, p. 34.

For the reconstruction of the legislative texts, see:

Textes de Droit Romain, Publiés et Annotés par Paul Frederic Girard, Quatrième Édition Revue et Augmentée, Paris, 1912, *Leges Regiae*, pp. 3-5 (notices), pp. 5-9 (texts in Latin); *Law of XII Tables*, pp. 9-11 (notices) and pp. 12-23 (text in Latin).

¹³⁶ Fritz Schultz, *History of Roman Legal Science*, First Published 1946, Reprinted from Corrected Sheets of the First Edition with New Addenda, Oxford 1963, p. 12; p. 87.

John Crook, *Consilium Principis. Imperial Councils and Counsellors From Augustus to Diocletian*, Cambridge, at The University Press, 1951, reprinted Arnold Press, New York, 1975, p. 113.

been in charge of the highest offices of the State, played a key role.¹³⁷ Therefore, the Roman law from an organic legislative source began with the Law of the XII Tables; it developed for centuries thanks to the forms silently and anonymously elaborated by clerks who attended the Senate and by the magistrates with initiative to promote legislation; it then grew in the Council of the Prince, the Imperial Council and the Imperial Chancellery; and became known through the legislative, prudential and doctrinal work of the great bureaucrat jurists which culminated with Tribonianus, the soul of Justinian's great codification, with which the cycle is closed.

The traditional Roman education system started within the family and continued in the house of some eminent citizen who, only for the sake of honour, and with his own example, both through actions and words, in the Forum, in the Assemblies, in the Senate, or in the battlefield, revealed the secrets of the Roman civil and military virtues to young people.

The Greek rhetoricians, who offered in exchange for money an education based on the wise and eloquent word to form efficient citizens, were expelled from Rome by a *senatus consultum* in 161 B.C., due to the pressure exerted by traditionalists.¹³⁸ In order to attract them back, a century later, *Julius Caesar* (c. 100-44 B.C.), granted them the Roman citizenship. The process was completed by Emperor *Titus Flavius Vespasianus* (9-79 A.D.) who, in addition to granting tax exemptions to them, established in Rome two official rhetoric chairs, one Greek and the other one Latin, with a fixed annual remuneration paid by the imperial Treasury, and also surrounded himself with a new type of jurists, used to working in public offices during most of their lives, because of the honour that fulfilling such positions entailed and also, because of the salary. This change of attitude in educational politics was caused by the Roman imperial government's need to have both a military service and a civil service. Roman bureaucrats were recruited in rhetoric schools.¹³⁹

Cicero

Marcus Tullius Cicero (106 B.C.-43 A.D.), a continuator of the ideas of Isocrates about the union of wisdom and eloquence, considered that knowledge without eloquence was seldom useful to the cities, and that eloquence without wisdom was always harmful, never useful.¹⁴⁰

¹³⁷ Fritz Schultz, *History of Roman Legal Science*, First Published 1946, Reprinted from Corrected Sheets of The First Edition with New Addenda, Oxford 1963, p. 267.

¹³⁸ The text is in Aulus Gellius, in his *Attic Nights*, XV. Also see: M. Victor Cuheval, *Histoire de l'Éloquence Latine Depuis l'Origine de Rome Jusqu'à Cicéron*, d'Après des Notes de M. Adolphe Berger, Ancien Professeur à la Faculté des Lettres de Paris, Ovrage Couronné par l'Académie Française, Deuxième Édition, T. II, Appendice, Librairie Hachette et Cie., Paris 1881, p. 341.

¹³⁹ Henri-Irinée Marrou, *Histoire de l'Éducation dans l'Antiquité*, Éditions du Seuil, Paris 1948, p. 385; p. 412.

For a study on the concrete influence of rhetoric on the law in general, on the republican edicts and especially on those of the early empire, see:

Margaretta Benner, *The Emperor Says*, *Studies in the Rhetorical Style in Edicts of the Early Empire*, *Studia Graeca et Latina Gothoburgensia XXXIII*, Acta Universitatis Gothoburgensis, Goteborg, Sweden, 1975, xi + 202 pp.

¹⁴⁰ Cicero, *De Inventione*, I.I.1.

Cicéron, *De la Invention Retórica*, en *Obras Completas de Cicerón traducidas del Latín por Marcelino Menéndez y Pelayo*, Biblioteca Clásica, Madrid, 1879, Tomo XIV, Tomo I, p. 1.

Cicéron, *De l'Invention*, I.I.1, Texte Revue et Traduit avec Introduction et Notes par Henri Bornecque, Garnier, Paris, p. 1.

He asserted that, as soon as the cities were established, eloquent men were needed to persuade through their speeches what they had found by means of their wisdom, so that the almighty, thanks to their physical force, might abide by the rule of law without violence, and admit as equals those whom they could dominate in fact, thus relinquishing a custom which favoured them.¹⁴¹

Quintilian criticizes Cicero for having attributed the origin of eloquence to the founders of cities and to legislators, since there exist nomadic peoples, without cities or laws, in charge of legations, which accuse and defend, and also believe that some of them speak better than others.¹⁴² It could be replied to Quintilian that both legislative and customary norms require a speech to be created, applied, modified or repealed, since they are all founded, at least, on the opinion that they are necessary for the city (*opinio cive necessitatis*), an opinion without which the laws cannot exist, since they may only be created and kept by means of wise and eloquent speeches, whose method is taught by rhetoric.

2. Medieval history

This section will deal with *Boethius*, *Cassiodorus*, *Isidorus Hispalensis*, *Alcuinus*, the *ars dictaminis*, the *ars arengandi*, the education of the *Podestá*, and humanists *Salutati*, *Bruni* and *Valla*.

The *Corpus Iuris Civilis* by Emperor Justinian, has already been mentioned as the culminating work of the Roman bureaucrats jurists.

a. Boethius and Cassiodorus

The first renaissance of the classical culture took place in the Italic peninsula under the Ostrogothic king Theoderic the Great (454-526) who, as a hostage, was first held physically captive in Rome, and then held intellectually captive, since he had become a great admirer, keeper and spreader of the Roman civilization. Once he reached power, he preserved everything that survived and restored everything that had declined, both as regards institutions and buildings, which he had ordered to repair with his own money, something that had not happened since the time of the caesars who had built and maintained them.¹⁴³ Boethius and Cassiodorus, together with Theodoric, at whose service they were, are the three protagonists of this renaissance.

¹⁴¹ Cicero, *De Inventione*, I.II.3.

Cicéron, *De la Invención Retórica*, en *Obras Completas de Cicerón* traducidas del Latín por Marcelino Menéndez y Pelayo, Biblioteca Clásica, Madrid, 1879, Tomo XIV, Tomo I., pp. 2-3.

Cicéron, *De l'Invention*, Texte Revue et Traduit avec Introduction et Notes par Henri Bornecque, Garnier, I.II.3, Paris, p. 5.

¹⁴² Quintilian, *Institutio Oratoria*, III.2.4.

Quintilian, *Institutio Oratoria*, III.2.4, *The Institutio Oratoria of Quintilian with an English Translation* by H.E. Butler, William Heinemann, London, G. P. Putnam's Sons, New York, 1921, p. 383.

Quintilien, *Institution Oratoire*, III.ii.4, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome II, Livres II Et III, Paris, 1976, p. 147.

¹⁴³ Maurice Rey, *Théodoric Le Grand*, dans *Hommes d'Etat*, Desclée de Brouwer, T. I., Paris, 1936, pp. 421-511.

Paul Renucci, *L'Aventure de l'Humanisme Européen au Moyen-Age (IV-XIV Siècle)*, Société d'Édition "Les Belles Lettres", La "Renaissance" de Théodoric et l'élaboration du Moyen'Age, Paris, 1951, pp. 18-22.

Anicius Manlius Severinus Boethius (c. 480-c 524), a Roman nobleman appointed by Theoderic to the charges of *Consul* and *Magister Officiorum*, transmitted the classical heritage to the Middle Age. He is remembered in this work for his two books about the *topica*, *In Ciceronis Topica*¹⁴⁴ and *De Topicis Diferentiis*,¹⁴⁵ both very important in the stage of invention or investigation of a bill, as will be explained in Chapter V.

Flavius Magnus Aurelius Cassiodorus, *Senator* (c. 490-c 585), was appointed *Quaestor* by Theoderic, as a reward for the speech of praise that he had pronounced in his honour. One of his tasks was to draft norms.¹⁴⁶ Cassiodorus preserved from forgetfulness the formula for the appointment of the *Quaestores*, in which the tradition of the art of legislation is continued. There, in addition to quoting textually a praise for eloquence taken from Cicero, expressly mentioning him, although without quoting the place from which it was taken (*locus*), he explains that *Quaestores* were appointed because of their reputation of wise and eloquent men, that norms should be rhetorically effective and juridically valid so that nobody could criticize them, and that punishment turned in something almost superfluous whenever the power eloquence prevailed,¹⁴⁷ since then the law was spontaneously fulfilled, without the need to resort to the use of force. Out of the copious production of his vast bureaucratic experience, he selected and assembled a collection entitled *Variae*, which served as a form and model of the art of writing official documents, which, fortunately, is available to us.¹⁴⁸

¹⁴⁴ Boethius's *In Ciceronis Topica*, Translated, with Notes and an Introduction by Eleonore Stump, Cornell University Press, Ithaca and London, 1988, xi + 277 pp.

¹⁴⁵ Boethius's *De Topicis Diferentiis*, Translated with Notes and Essays on the Text, by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, 287 pp.

¹⁴⁶ James J. O'Donnel, *Cassiodorus*, University of California Press, 1979; Hypertext Version Posprint 1995, Chapter 3: The *Variae*, text and note 3, with a quote from *Notitia Dignitatum*, Occ. 10.3-5. <http://ccat.s.o.s.upenn.edu/jod/texts/cassbook/toc.htm>, downloaded on 5/19/98.

New address, 10/25/2011:

<http://faculty.georgetown.edu/jod/texts/cassbook/toc.htm>

It holds that the Ostrogoths did not legislate and that the *quaestores* were not legislative drafters, although they applied the forms of edicts to the existing law:

Barnish, *Cassiodorus: Variae*, Translated with notes and Introduction, Liverpool University Press, Liverpool, 1992, p. xli.

They affirm that the *quaestors* were writing laws for the Imperial Consistory:

Erns Badian, Tony Honoré, *quaestor*, *The Oxford Classical Dictionary*, Third edition, Oxford University Press, Oxford, New York, 1996, p. 1287, column 2.

¹⁴⁷ James J. O'Donnel, *Cassiodorus*, University of California Press, 1979; Hypertext Version Posprint 1995, Chapter 3: The *Variae*, cite *Variae* 6.5., without mentioning Cicero: <http://ccat.s.o.s.upenn.edu/jod/texts/cassbook/toc.htm>, bajado el 19/5/98.

New address, on 10/25/2011:

<http://www9.georgetown.edu/faculty/jod/texts/cassbook/toc.htm>

For the full text translated into English of the formula of appointment as *Quaestor*, see:

Cassiodorus: *Variae*, Translated with notes and Introduction by S.J.B. Barnish, Liverpool University Press, Liverpool, 1992, pp. 96-97, who explain that the Cicero's *locus citatus* belongs to *De Oratore*, I.30. A pertinent fragment, *Variae*, VI.5.3., is reproduced in Latin and translated into English among the epigraphs of this book.

¹⁴⁸ S.J.B. Barnish, *Cassiodorus: Variae*, Translated with notes and Introduction, Liverpool University Press, Liverpool, 1992.

Ake J:son Fridth, *Terminologie et Formules dans les Variae de Cassiodore*, *Etudes Sur le Développement du Style Administratif aux Derniers Siècles de l'Antiquité*, *Studia Graeca et Latina Gothoburgensia* II, Almqvist & Wiksell, Stockholm, 1956.

Gunhild Viden, *The Roman Chancery Tradition. Studies In the Language of Codex Theodosianus and Cassiodoro Variae*, *Studia Graeca et Latina Gothoburgensia* XLVI, *Acta Universitatis Gothoburgensis*, Goteborg, Sweden, 1984.

Cassiodorus is an archetypal example, since as an oriental scribe, he had it in his blood. Both his grandfather and his father had been officers and, the latter, who became Theoderic's Prefect of the Praetorium, initiated his son in the bureaucratic career as his *Consiliarius*. Boethius, Theoderic's *Magister Officiorum*, was executed by him on the grounds of conspiracy. On the other hand, Cassiodorus, who replaced Boethius as Theoderic's *Magister Officiorum*, became Prefect of the Praetorium during the regency of Queen Amalasantha and, after a successful and long bureaucratic career, with some intervals, under the reigns of kings Athalaric, Theodate and Vitiges, he went on a retreat in good terms with the latter. When he returned from exile, he came back to his country house in *Squillace* and founded the monastery of *Vivarium*, where he installed a magnificent library, taught the monks the rudiments of Greco-Roman culture in a work named "Institutions" (*Institutiones*), he ordered the translation and copy of manuscripts and, at the age of ninety-three, provided them with a compilation of orthographic rules.¹⁴⁹ He was a man who got the reputation of being wise and eloquent, as it was required in the *Variae* to be appointed *quaestor*:

“And therefore, prompted by the fame of your wisdom and eloquence, for this indiction, I allot you, by God favour, the Quaestorship, the glory of letters [...]”¹⁵⁰

He made barbarian monarches think, feel and speak like civilized Romans and bequeathed to posterity examples of the art of writing official documents (*Variae*) and a compendium of rhetoric and classic culture (*Institutiones*), on which the above mentioned art is based. Likewise, numerous translations, copies of manuscripts and the mentioned compilation of orthographic rules are also a part of his legacy.

Cassiodorus, in addition to the remembered family backgrounds, belonged to the imperial bureaucratic tradition. Before him, Antiochus Chuzon and Tribonian had held the position of *Quaestor*. Antiochus Chuzon, a bureaucratic jurist, presided over the commission in charge of the writing of the *Codex Theodosianus* (438). Tribonian, was the soul of Justinian's *Corpus Iuris Civilis*, given the fact he was a member of the commission in charge of writing the *Codex* (528-529) and the manager of the *Digest* (530-533) and of the second edition of the *Codex* (534) and, after re-assuming the position, he kept on writing the *Novellae*, until he died.

b. Isidore of Seville

Isidorus Hispalensis, bishop of Seville (c. 560-636), the next protagonist in the process of transmission of the classic culture, in his work *Etymologiae*, medieval encyclopedia, enunciated the following PRINCIPLE:

“**xxi What sort of law should be made (Qualis debet fieri lex)** A law should be honourable, just, feasible, in agreement with nature, in agreement with the custom of the country, appropriate to the place and time, necessary, useful, and also clear, lest in its obscurity it contain something deceitful, and it should be writing not for private convenience, but for the common benefit of the citizens.”¹⁵¹

¹⁴⁹ Cassiodorus, *De Orthographia*, H Keil, *Grammatici Latini* 7, 1880.

¹⁵⁰ Cassiodorus: *Variae*, Translated with notes and introduction by S.J.B. Barnish, Liverpool University Press, Liverpool, 1992, VI.5, pp. 96-97.

¹⁵¹ The *Etymologies* of Isidore of Seville, Translated, with Introduction and Notes, by Stephen A. Barney, W.J. Lewis, J.A. Beach, Oliver Berghof, with the collaboration of Muriel Hall, Cambridge University Press, First Published 2006, Third Printing 2007, V, xxi, p. 119.

c. Alcuin

Emperor Charlemagne (c. 748-814) and Alcuin of York (c 735-804), the master who was at his service, were the protagonists in the second renaissance. Charlemagne wanted to restore the ancient Roman Empire and, for that purpose, in addition to the diplomatic, military and political conquests, he needed that the Greco-Roman tradition be restored. Provided with a splendid library and a magnificent group of teachers, he was able to create a school of classical culture in his palace to educate the court and form its officers and, as a leader, he set the example, and became one of Alcuin's students.

Alcuin, who had been entrusted with the task of restoring classical education, wrote a work in which he taught rhetoric to give an answer to the needs of the new administration, and entitled it *Disputatio de Rhetorica et de Virtutibus Sapientissimi Regis Karli et Albini Magistri*¹⁵² (The Dialogue of the most Wise King Charles and Master Alcuin Concerning Rhetoric and the Virtues). It consists of a dialogue between the Emperor and his palatine teacher, in which Charlemagne recalls, among other remarks, that it is necessary to study rhetoric because it deals with *civil quaestiones*, an ancient significant formula that he re-interpreted with the meaning of the occupations of the prince and the palace, in the following words:

“1. CHARLEMAGNE. [...] I remember you once said that the strength of this art lay wholly in dealing with public questions. As you very well know, in the course of the duties of government and the cares of State, we are constantly wont to be busy with questions of this kind; and it seems absurd not to know the rules of an art when the necessity of using it confront us daily.”¹⁵³

The *Disputatio de Rhetorica* was not only a mere compendium of the rhetorical tradition for students in schools, since the virtues about which it dealt with belonged to the ideal king, Charlemagne, who would appear to his subjects to be admired as the portrait of the model leader, and therefore, that would implicitly mean it was also a work of political nature, a mirror of princes (*speculum principis*).

Alcuin, until his death and far from having been a humble school teacher, was a shrewd and energetic officer at the service of Charlemagne, who was in the centre of the events of the court.¹⁵⁴

¹⁵² M. Roger, *L'Enseignement des Lettres Classiques d'Ausone a Alcuin, Introduction a l'Histoire des Écoles Carolingiennes*, Alphonse Picard et Fils, Éditeurs, Paris, 1905, pp. 396-397.

¹⁵³ "1. [...] te olim memini dixisse, totam eius artis vim in civilibus versari quaestionibus. Sed ut optime nosti propter occupationes regni et curas palatii in huiusmodi quaestionibus assidue nos versari solere, et ridiculum videtur eius artis nescisse praecepta, cuius cotidie occupatione involvi necesse est."

The Rhetoric of Alcuin & Charlemagne, A Translation, with an Introduction, the Latin Text, and Notes, by Wilbur Samuel Howell, *The Dialogue of the Most Wise King Charles and the Master Alcuin Concerning Rhetoric and the Virtues*, Princeton University Press, Princeton, New Jersey; Humphrey Milford, London, Oxford University Press, 1941, pp. 66-67.

¹⁵⁴ Thomas Conley, *Rhetoric in The European Tradition*, University of Illinois-Champaign, Longman, New York-London, 1990, pp. 83-84

d. *Ars dictaminis*

In the third renaissance, which begun to be insinuated in Italy by the XI century, the need to form more and better drafters of public and private, secular and ecclesiastic documents emerged. The examples of official documents contained in the *Variae* by Cassiodorus and in the existing forms, among which *Liber Diurnus Romanorum Pontificum* stood out,¹⁵⁵ from within the papal chancellery, turned out to be insufficient upon the variety and intensity of the economic, political and social activities caused by the flowering of independent cities with their respective local governments, due to the relations that they kept with each other, with the feudal lords, with the Empire and on account of the struggle between these two in order to get control over all the rest.

In the course of the XI and XII centuries there were a rhetorical education and a rhetorical tradition, the *ars dictandi* or *ars dictaminis*, to form the expert scribes who wrote, in the chancelleries, epistles and legal texts for princes, prelates and other high ranking dignataries of the State.¹⁵⁶

The Benedictine monasteries that traditionally provided the Bishop's Curia and the Roman Chancellery with notaries and chancellors, used to teach the rules to write epistles in their schools of liberal arts as a new genre of rhetoric. The classical authors of the *ars dictaminis* would not write their manuals, but rather dictate them to their secretaries; for this reason they had imposed the meaning of composing to the Latin verb *dictare* and, thus, *dictamen* turned out to be a synonymous term for elaborated or artistic prose¹⁵⁷ and, as the intellectual editor (*dictator*) was distinguished from the secretary (*scriptor*), the art of writing epistles became known *ars dictaminis* or *ars dictandi*.¹⁵⁸

¹⁵⁵ A. Giry, *Manuel de Diplomatique*, Nouvelle Édition, Librairie Felix Alcan, Paris, p. 487, quotes the following editions:

E. Rozière, *Liber diurnus ou recueil des formules usitées par la chancellerie pontificale du Ve. au Xe. siècle* publ. d'après les ms. des Archives du Vatican avec les notes et dissert. du P. Garnier et le commentaire inédit de Baluza, Paris, 1869, in 8.

Th.-E. v. Sickel, *Liber diurnus romanorum pontificum ex unico codice Vaticano*, Vienne, 1889, in 8.

¹⁵⁶ Hastings Rashdall, *The Universities of Europe in the Middle Ages*, A new Edition in Three Volumes, Edited by F. M. Powicke And A. B. Emden, Volume I, Salerno-Bologna-Paris, At The Clarendon Press, Oxford, 1936, p. 110, n. 3.

It was the *Business Course* of the universities in the Middle Age, in which professionals got their education, from humble scribes up to Secretaries of the State.

Louis John Paetow, *The Arts Course at Medieval Universities with Special Reference to Grammar and Rhetoric*, University of Illinois, University Press, *The University Studies* Vol. III No. 7, January 1910, Urbana-Champaign, pp. 67-91.

Pedro Martín Baños, *El Arte Epistolar en el Renacimiento Europeo, 1400-1600*, Universidad Deusto, Bilbao, 2005, 736 pp., p. 115.

Alfredo Galletti, *Storia dei Generi Letterari Italiani. L' Eloquenza (Dall'Origine al XVI Secolo)* Casa Editrice Francesco Vallardi, Milano, 1904-1938, p. 449.

¹⁵⁷ "Prose dictamen is extended speech according to the speakers pleasure (ad'lib') and not bound by the laws of meter. Or prose dictamen is an art, namely a collection of precepts. But it should not be called an art, rather the mother or (sic) all arts, because all writing originates from prose. For rhythms and meters are beggarly suffrage, which originate from prose.", Francesco di Capua, *Ars Dictaminum*, da *Enciclopedia Italiana*, Istituto Giovanni Treccani, Roma, 1929, Vol. IV, p. 674.

Opera omnia Boncompagni (1194-1243), 4., Palma Boncompagni-Translation, 6, Steven M. Wight, Internet Edition:

<http://www.loop.com~swight/palman.htm>, Los Angeles, 1998, download 6/15/98.

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<http://scrineum.unipv.it/wight/palman.htm>

¹⁵⁸ From the point of view of the rhetoric, see:

In an anonymous *ars dictaminis*, the *Aurea Gemma <Gallica>*, we find a lost link between the medieval scribes and their predecessors and between wisdom and eloquence. There it is affirmed that letters and testaments were invented in the Egyptian city of Memphis, to protect the memory of industrious human actions, against floods and famine, so that the progeny might view the actions of their ancestors as in a mirror and understand that the need had imposed on them the virtues of probity and love glory, so that the memory of past actions might raise their minds until they found virtue.¹⁵⁹

In this stage of the Middle Ages, the liberal arts schools, either monastic or not, upon addressing the judicial genre of rhetoric, provided their students with the only juridical knowledge that was taught,¹⁶⁰ to such an extent that Anselm of Besate, in his work *Rhetorimachia* (1046-1048),¹⁶¹ could affirm that rhetoric and law go together, like two faces of the same science.¹⁶² Law was a branch of rhetoric, and its education as independent subject could not break its intimate connection with the writing of official documents, since the *ars dictaminis*, which was a key aid for the writing of legal instruments, received in the XII century a strong stimulus, due to the renaissance of literature and knowledge in general, to the cultivation of Latin letters and to the study of the law in particular.¹⁶³ The liberal arts schools in Bologna, historical precedents of the famous School of Law, gave birth to the famous University. When he was a student, Irnerio, learned the *trivium* (grammar, dialectics and rhetoric), the most common elements of the law and the essentially practical part of the administration. Both in those schools, as well as in the University of Bologna, officials from the bureaucratic offices belonging to the communes, to the great feudal lords and to the ecclesiastic institutions were recruited.¹⁶⁴ According to documents which date back to 1118, Irnerio, the famous

Charles Sears Baldwin, *Medieval Rhetoric and Poetic (to 1400) Interpreted from Representative Works*, New York, The Macmillan Company, 1928, Republished 1976, Scholarly Press, Inc., Michigan, pp. 206-227.

James J Murphy *Rhetoric in the Middle Ages, A History of Rhetorical Theory from St. Augustine to the Renaissance*, University of California Press, Berkeley, 1974, University of California Press, Berkeley, 1974, First Paperback Printing, 1981, pp. 194-268.

James Murphy, *La Retórica en La Edad Media, Historia Teoría de la Retórica desde San Agustín hasta el Renacimiento*, Traducción de Guillermo Hirata Vaquera, Fondo de Cultura Económica, México, 1986, pp. 202-274.

Alfredo Galletti, *Storia dei Generi Letterari Italiani. l'Eloquenza (Dall' Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, pp. 449-451.

¹⁵⁹ 3. *Aurea Gemma <Gallica>*, 2.3-2.3.5, *Medieval Diplomatic and the Ars Dictandi*, Steven M. Wight, Internet Edition:

<http://www.loop.com~swight/2gn3-/.htm>, Los Angeles, 1998, downloaded on 05/31/98.

On 10/25/2011, new address:

<http://scrineum.unipv.it/wight/index.htm>

¹⁶⁰ Hastings Rashdall, *The Universities of Europe in The Middle Ages*, To new Edition in Three Volumes, Edited by F. M. Powicke and A. B. Emden, Volume I, Salerno-Bologna-Paris, at The Clarendon Press, Oxford, 1936, n. 3, pp. 101-102.

¹⁶¹ George A. Kennedy, *Classical Rhetoric and its Christian and secular Tradition from Ancient to Modern Times*, The University of North Carolina Press, Chapel Hill, 1980, p. 1

¹⁶² R. R. Bolgar, *The Classical Heritage and its Beneficiaries*, Cambridge University Press, First Published 1954, Reprinted 1958, 1963, 1973, 1977, London-New York - Melbourne, p. 143; p. 410.

¹⁶³ Ch. H. Haskins, *Studies In Mediaeval Culture*, Chapter IX, *The Early Arts Dictandi In Italy*, Oxford, 1929, p. 170.

¹⁶⁴ Irnerio's rhetorical origin and school of arts of Irnerio remain in his work: tone delicacy, formal taste, discreet elegance of expression, dialectical discussion, logical content.

Albano Sorbelli, *Storia della Università di Bologna*, Volume I, *Il Medioevo (Secc. XI-XV)*, Nicola Zanichelli Editori, Bologna, 1944, pp. 36-37.

protagonist of the juridical renaissance, appears as *Magister Artium*,¹⁶⁵ i.e. he was connected to the liberal arts throughout his career, first as a student and then as a teacher.

Six personalities of the *ars dictaminis* will be remembered: Alberico di Montecassino, Giovanni di Gaeta, Alberto di Morra, Boncompagno da Signa, Rolandino Passageri and Giovanni di Bonandrea.

Alberico di Montecassino and Giovanni di Gaeta

Alberico di Montecassino,¹⁶⁶ *senior* (c 1030-c 1105), according to the tradition, might be the first who set out in writing the rules of the art of dictating, in two works: *Flores Rhetorici* or *Radii Dictaminum*, and *Breviarum de Dictamine*.¹⁶⁷ When Pope Urban II visited Montecassino in the year 1088, he took Giovanni di Gaeta, a disciple of Alberico's as his secretary, so that he would restore the *leonine cursus*, an ancient prosaic rhythm of the clauses in the documents of the Curia. Giovanni restored it when he became Chancellor's and, later on, he confirmed it with his own authority, upon being elected Pope under the name of Gelasius II.¹⁶⁸ The *cursus*, in addition to its beauty, allowed for the distinction of genuine documents from false ones, and even today it is studied in the auxiliary science of history called "diplomatic".¹⁶⁹

Alberto di Morra

Since the style of the papal chancellery was the model imitated throughout Europe, another personality of the *ars dictaminis* should be remembered: Alberto di Morra or Mora, of Benevento, also Chancellor of the Roman Church (1187) and Pope, under the name of Gregory VIII, who in his work *Forma Dictandi*, set out the style of the Curia which, to his homage, is usually called "Gregorian".¹⁷⁰

The *ars dictaminis* passed from Montecassino to Bologna,¹⁷¹ where it achieved an autonomous university level and then gave rise to the *ars notaria*. It reached the French

¹⁶⁵ Franz Wieacker, *Historia del Derecho Privado de La Edad Moderna (Privatrechts-Geschichte der Neuzeit unter Besonderer Berucksichtigung)*, edited for Vanderhoeck & Ruprecht, Göttinga), traducción de Francisco Fernández Jardón, Aguilar, Madrid, 1957, p. 42.

¹⁶⁶ A. Lentini, Alberico di Montecassino, Senior, *Dizionario Biografico degli Italiani*, Istituto della Enciclopedia Italiana, Vol. 1, Roma, 1960, pp. 643-645.

¹⁶⁷ Alberic of Monte Casino, *Flowers of Rhetoric*, translated by Joseph M. Miller, in Joseph M. Miller, Michael Prosser y Thomas W. Benson, *Readings in Medieval Rhetoric*, Bloomington, Indiana, 1973, pp. 131-161.

Breviarum de Dictamine has been completely edited by Peter-Christian Groll, in part 2 of his doctoral thesis *Das "Enchiridion de prosis et de rithmis" des Alberich von Monteccassino un die anonymi "ars dictandi"*, Freiburg im Breisgau, 1963, according to Martin Camargo, *Ars Dictaminis, Ars Dictandi, Typologie des Sources du Moyen Age Occidental*, Fasc. 60, A.V.A2*, Brepols, Turnhout-Belgium, 191, p. 51, n. 88.

¹⁶⁸ Tomasso Lecissotti, *Montecassino*, Badia di Montecassino, 1967, pp. 222-223.

¹⁶⁹ A. Giry, *Manuel de Diplomatie*, Nouvelle Édition, Librairie Felix Alcan, Paris, 1925, pp. 479-492.

¹⁷⁰ James J. Murphy, *Rhetoric in The Middle Ages a History of Rhetorical Theory from St. Augustine to The Renaissance*, University of California Press, Berkeley, 1974, p. 250.

James Murphy, *La Retórica en La Edad Media, Historia Teoría de la Retórica desde San Agustín hasta el Renacimiento*, Traducción de Guillermo Hirata Vaquera, Fondo de Cultura Económica, México, 1986, p. 257.

Ars Dictaminum, Francesco di Capua, da *Enciclopedia Italiana*, Istituto Giovanni Treccani, Roma, 1929, Vol. IV, p. 674.

¹⁷¹ For the school of Bologna see:

schools located in Blois, Meung, Tours and, especially, Orleáns, which at some point got to mar the original places, until the Italians re-emerged as the undisputed masters of such art.¹⁷²

Boncompagno da Signa

Boncompagno,¹⁷³ Buoncompagno o Boncompagnus da Signa (c. 1165-c 1240) also sought to join law and rhetoric in his work,¹⁷⁴ since he thought that both princes and officials of the Commune and of the Curia, i.e. all those dealing with politics, had the need to have good jurists who knew how to write a letter, a diploma, a treaty, even a speech, as the case might be.¹⁷⁵ He was the most famous teacher of the *ars dictaminis* in the school of Bologna and wrote numerous works. Among them, *Boncompagnus* (or *Candelabrum*, or *Pratum Eloquentia*, or *Rhetorica Antiqua*)¹⁷⁶ related to the *ars dictaminis*, and *Rhetorica Novissima*,¹⁷⁷ which competed against the book *De Inventione*, also known as *Rhetorica Vetus*, by Cicero. In the prologue of *Rhetorica Antiqua*, in the juridical form of the author's testament, Boncompagno named his heiress in the epistolary style, and affirmed that she would be the empress of liberal arts and of the students of both civil and canonical laws.¹⁷⁸ In the brief work titled *Cedrus*

Von Franz-Josef Schmale, Die Bologneser Schule der Ars Dictandi, Deutsches Archiv zur Erforschung des Mittelalters 13 (1957), pp. 16-34.

Giuseppe Vechi, Il Magistero delle " Artes" Latine a Bologna nel Medioevo, Pubblicazioni della Facolta di Magistero, Università di Bologna, N. 2, Casa Editrice Prof. Ricardo Patron, Bologna, 1958, 27 pp.

¹⁷² Martin Camargo, Ars Dictaminis, Ars Dictandi, Typologie des Sources du Moyen Age Occidental, Fasc. 60, A.V.A2*, Brepols, Turnhout-Belgium, 191, pp. 47-50.

¹⁷³ V. Pini, Boncompagno da Signa, Dizionario Biografico Degli Italiani, Istituto della Enciclopedia Italiana, Vol. 11, Roma, 1969, pp. 720-725.

¹⁷⁴ Francesco di Capua, Boncompagno da Signa, da Enciclopedia Italiana, Istituto Giovanni Treccani, Roma, 1930, Vol. VII, p. 396.

¹⁷⁵ Alfredo Galletti, Storia dei Generi Letterari Italiani. L' Eloquenza (Dall' Origine al XVI Secolo), Casa Editrice Francesco Vallardi, Milano, 1904-1938, p. 452.

¹⁷⁶ V. Pini, Boncompagno, da Dizionario Biografico degli italiani, Istituto Giovanni Treccani,, Roma, 1969, p. 721.

To read a partial edition of The Rhetorica Antiqua, with the preface, the complete table of six books, fragments of the books I, III – VI and conclusion, see:

L. Rockinger, Briefsteller und Formelbücher des Elften bis Vierzehnten Jahrhunderts, en Quellen und Erörterungen Zur Bayerischen un Deutschen Geschichte, IX, 1863, pp. 128-174, according to V. Pini, Boncompagno, da Dizionario Biografico Italiano, Istituto Giovanni Treccani, Roma, 1969, p. 722, column 2, which the author of this book has failed to see.

There is a complete Latin edition of Rhetorica Novissima:

Bibliotheca Iuridica Medii Aevi Editio Augustus Gaudentius, Scripta Anecdota Glossatorum, Volumen II, Boncompagni Rhetorica Novissima, Bononiae, In Aedibus Petri Virano Olim Fratrum Treves, Anno MCCCLXXXII, pp. 251-297.

Boncompagno, Opera omnia Boncompagnus (1194-1243), 13. Boncompagnus, Medieval Diplomatic and the Ars Dictandi, Steven M. Wight, Internet Edition:

<http://www.loop.com/~swight/bonproln.htm>, Los Angeles, 1998. This edition contains the text in Latin and some translations into English of other works by Boncompagnus, in addition to the Rhetorica Antiqua and Rhetorica Novissima as well the *ars dictaminis* by other authors.

New address, on 10/25/2011:

<http://scrineum.unipv.it/wight/bonproln.htm>

¹⁷⁷ Boncompagno da Signa, Francesco di Capua, Enciclopedia Italiana, Istituto Giovanni Treccani, Roma, 1930, Vol. VII, p. 396.

V. Pini, Boncompagno, en Dizionario Biografico degli italiani, Istituto della Enciclopedia Treccani, Roma, 1969, p. 722.

¹⁷⁸ Boncompagno, Opera omnia Boncompagnus (1194-1243), 13. Boncompagnus, Medieval Diplomatic and the Ars Dictandi, Steven M. Wight, Internet Edition:

and without detriment to the others, he particularly deals with the composition of the laws.¹⁷⁹

As in the case of other famous scribes who are still remembered and paid tribute to, the library of his hometown was named after him, Boncompagno da Signa.

Rolandino Passageri

In this brief sketch on the art of legislation Rolandino Passageri, chancellor of the Commune of Bologna (*notario dictator*) in the XIII century (c 1217), will also be remembered. He participated in the writing of the famous decree dated August 26, 1256 by means of which the serfdom was abolished in Bologna, before any other Italian city. After becoming one of the greatest notaries and teachers of the notarial art, also the author of the famous *Summa Artis Notariae*, he acquired a great deal of prestige as politician and legislator. His mortal remains are still kept in a funeral ark, a beautiful sepulchral monument at the Square of Santo Domenico, in Bologna.¹⁸⁰

Giovanni di Bonandrea

An interesting case, which illustrates the exchange between practice and teaching, is that of Giovanni di Bonandrea, a notary and chief of the chancellery of the Commune of Bologna, who was appointed teacher of rhetoric at the University in 1303, due to the prestige he had acquired as officer.¹⁸¹ He was the author of an influential work, *Summa Dictaminis* or *Brevis Introductio*,¹⁸² in which we may find examples of letters and model speeches. He is still remembered as a "renowned teacher".¹⁸³

<http://www.loop.com~swight/bonproln.htm>, Los Angeles, 1998. The quote is taken from the translation into English of the Prologue of the Boncompagnus.

New address, on 10/25/2011:

<http://scrineum.unipv.it/wight/bonproln.htm>.

¹⁷⁹ Steven M. Wight, *Opera Omnia Boncompagni* (1194-1243), 7. Cedrus, Medieval Diplomatic and the Ars Dictandi, Internet Edition:

<http://www.loop.com~Nswight/cedrusn.htm>, Los Angeles, 1998, bajado el 3/6/98.

New address, on 10/25/2011:

<http://scrineum.unipv.it/wight/bonproln.htm>

Steven M. Wight, *Opera Omnia Boncompagni* (1199-1243), 13, Boncompagnus, Medieval Diplomatic and the Ars Dictandi, Internet Edition, <http://www.loop.com~swight/bonproln.htm>, Los Angeles, 1998, downloaded 5/2/98.

New address, on 10/25/2011:

<http://scrineum.unipv.it/wight/bonproln.htm>

¹⁸⁰ Arturo Palmieri, *Rolandino Passageri*, Nicola Zanichelli Editore, Bologna, 1933, p. 50; pp. 74-82; pp. 207 and subsequent pages.

¹⁸¹ Hastings Rashdall, *The Universities of Europe in The Middle Ages*, A New Edition in Three Volumes, Edited by F.M. Powicke and A.B. Emden, Volume I, Salerno-Bologna-Paris, at The Clarendon Press, Oxford, 1936, n. 3, p. 111.

¹⁸² Edited by James Banker, like Appendix A, pp. 329 et seq, in his doctoral thesis, *Giovanni di Bonandrea's "Ars dictaminis" Treatise and the doctrine of Invention in the Italian Rhetorical Tradition of the Thirteenth and Early Fourteenth Centuries*, Diss. Rochester 1972, according to Martín Camargo, *Ars Dictaminis*, *Ars Dictandi*, *Typologie des Sources du Moyen Age Occidental*, Fasc. 60, A.V.A2*, Brepols, Turnhout-Belgium, 191, p. 52, text and note 90.

¹⁸³ Albano Sorbelli, *Storia della Università di Bologna*, Volume I, *Il Medioevo* (Secc. XI-XV), Nicola Zanichelli Editori, Bologna, 1944, p. 120.

e. *Ars arengandi*

The *ars dictaminis*, a new art integrated by sets of examples (models of letters and outlines of speeches), rules or both, emerged due to the fact that in the independent Communes, as in the city-states of the classical Greece, rhetoric had a fundamental practical importance, being that the legal, political and diplomatic matters used to develop by means of formal speeches and debates.¹⁸⁴

Among the authors who stood out for their works related to public speeches, called *ars arengandi* or *ars dicendi*, the following will be remembered: Guido Fava, Matteo de'Libri and Albertano da Brescia.

Guido Fava, Matteo de'Libri and Albertano da Brescia

Guido Fava or Faba (c 1190-1240)¹⁸⁵ was a grammar and rhetoric teacher in Bologna, where he competed against Boncompagno for academic prestige. As for the *ars dictaminis*, he wrote two important works: *Summa Dictaminis*¹⁸⁶ (system of rules) and *Gemma Purpurea*¹⁸⁷ (set of examples included in a form of official letters). With regard to the *ars arengandi*, he was the author of compilations of speeches, one in Latin, *Arengae*, and the other one in common language, *Parlamenti et Epistole*, which also included two or three samples of letters in Latin.¹⁸⁸

Matteo de'Libri (c1250) published a collection of speeches in common language, destined to the most important officers in the Communes, *Dicerie di Ser Matteo de'Libri da Bologna*.¹⁸⁹

In the year 1245, Judge Albertano da Brescia wrote a work for his son Stefano,¹⁹⁰ called "The Art of Speaking and of Being Quiet" (*Ars Loquendi et Tacendi*) which,

¹⁸⁴ Quentin Skinner, *The Foundations of Modern Political Thought, Volume One, The Renaissance*, Cambridge University Press, First Published 1978, Reprinted 1979, 1980, 1988, 1990, 1992, 1994, 1996, Cambridge, 1996, pp. 30-31.

¹⁸⁵ Quentin Skinner, *The Foundations of Modern Political Thought, Volume One, The Renaissance*, Cambridge University Press, First Published 1978, Reprinted 1979, 1980, 1988, 1990, 1992, 1994, 1996, Cambridge, 1996, p. 30.

¹⁸⁶ Published by Augusto Gaudenzi, see:

Il Propugnatore 23 (N.S. 3) (1890), I, 287-338 y II, 345-393, according to James J. Murphy, *Rhetoric in The Middle Ages, A History of Rhetorical Theory From St. Augustine to The Renaissance*, University of California Press, Berkeley, 1974, p. 256, n. 116.

James Murphy, *La Retórica en La Edad Media, Historia Teoría de la Retórica desde San Agustín hasta el Renacimiento*, Traducción de Guillermo Hirata Vaquera, Fondo de Cultura Económica, México, 1986, p. 263, n. 116.

¹⁸⁷ Critical edition of E. Monaci, Rome, 1901, according to Alfredo Galletti, *Storia dei Generi Letterari Italiani, L'Eloquenza (Dall'Origine al XVI Secolo)* Casa Editrice Francesco Vallardi, Milano, 1904-1938, p. 628, n.; p. 462-466.

¹⁸⁸ Alfredo Galletti, *Storia dei Generi Letterari Italiani, L'Eloquenza (Dall'Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, pp. 462-466, who mentions in the note of p. 628 that "Parlamenta et epistulae" was published by A. Gaudenzi in his book "I nomi, le forme e le parole dell'odierno dialetto della città di Bologna", Torino, 1889, pp. 127.

¹⁸⁹ Published by Luigi Chiappelli, Pistoia, 1900, according to Alfredo Galletti, *Storia dei Generi Letterari Italiani, L'Eloquenza (Dall'Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, pp. 473-474, p. 629, n.

¹⁹⁰ Published as Albertano Causidice Brianiensis *Tractatu de arte loquendi et Tacendi*, appendix in *Della Vita e delle Opere di Bruneto Latini, de Sundry-Renier*, Firenze, 1884, pp. 475-506, according to Alfredo Galletti, *Storia dei Generi Letterari Italiani, L'Eloquenza (Dall'Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, p. 467; p. 629.

The text of *Ars Loquendi et Tacendi* can be found on the Internet:

<http://freespace.virgin.net/angus.graham/Loquendi.htm>; downloaded 10/23/2004.

either in a conscious form or not, follows the tradition of wisdom ad eloquence transmitted from parents to children.

f. The education of the Podestá

During the XIII and XIV centuries, in the Italian republics, we may find the *Rector Civitatis* or *Podestá*, the maximum officer in charge of justice, administrative affairs and foreign relationships. This position emerged as that of a delegate of the emperor, but then, owing to the instability caused by the internal, political and military struggles, in the cities, it represented a compromise, an acceptable solution for all. The person holding this position had to be a noble person, from an ancient family, known to be brave, prudent and honest.¹⁹¹ He ended up being a foreign temporary and civil officer, usually from a friendly city, between thirty and sixty years old, responsible before the people, elected and paid for by the Commune. He had to form his own Curia of subordinate officers with foreigners: judges, notaries, chancellors and sheriffs; he would pay to all of them out of his own funds, rather than out of the Commune's. He was entrusted with passing ordinances and establishing petty fines, convening and presiding assemblies and councils, as well as over public celebrations.¹⁹²

To satisfy the need to educate the Podestá and his officers a special literature (*podesteril*) came to light, also deriving from the *ars dictaminis* and the *ars arengandi*. The authors of the above mentioned literature mostly came from the academic world, where they devoted themselves to teaching rhetoric to those aspiring to hold positions and, upon directly addressing magistrates with their advices books, they became the natural political advisers to "rulers and cities".¹⁹³ There were also some cases of magistrates which, from the political arena become academicians, such as the above mentioned Giovanni di Bonandrea.

The three most famous works used for the education of the Podestá were: *Oculus Pastoralis*, *Liber de Regimine Civitatum* and *Li Livres dou Trésor*.

Oculus Pastoralis

The *Oculus Pastoralis*, an anonymous work written c 1222, was published for the first time in the XVIII century by Ludovico Muratori, who surmised that its author might have been some member of the regular clergy and later insinuated that such authorship belonged to Boncompagno.¹⁹⁴

¹⁹¹ Alfredo Galletti, *Storia dei Generi Letterari Italiani, L' Eloquenza (Dall' Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, pp. 454-456; p. 454.

¹⁹² Gian Piero Bognetti, *Podestá. Storia del Diritto*, da *Enciclopedia Italiana*, Istituto Giovanni Treccani, Roma, 1935, Vol. XXVII, pp. 578-579.

¹⁹³ Quentin Skinner, *The Foundations of Modern Political Thought, Volume One, The Renaissance*, Cambridge University Press, First Published 1978, Reprinted 1979, 1980, 1988, 1990, 1992, 1994, 1996, Cambridge, 1996, p. 33.

¹⁹⁴ Alfredo Galletti, *Storia dei Generi Letterari Italiani, L' Eloquenza (Dall' Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, p. 457.

Oculus Pastoralis, Ludovico Muratori, *Antiquitates Italicae Med. Aevi*, 6 Vol., Milan, 1738-1742, Vol. IV, pp. 93-132, según Quentin Skinner, *The Foundations of Modern Political Thought, Volume One, The Renaissance*, Cambridge University Press, First Published 1978, Reprinted 1979, 1980, 1988, 1990, 1992, 1994, 1996, Cambridge, 1996, p. 264.

Oculus Pastoralis, Ludovico Muratori, *Antiquitates Italicae Med. Aevi*, Vol. IV, Milan, 1741, repr. Bologna, 1966, pp. 93-132, according to Terence O. Tunberg, *Oculus Pastoralis*, PHD Thesis, University

It was a sort of manual on the "perfect Podestá", in which laymen of a poor culture could find wise advices and eloquent speeches for the most important occasions that they might be involved in while in office, as it is inferred from the Prologue. It includes chapters about the wisdom of the Podestá: what he must do when, upon being elected, he arrives for the first time in the territory where he will perform his duties (Part I, Cap. III); ways, criteria and sagacity to govern in order to acquire a good reputation without offending the governed (Part II, eleven Chapters); and modesty and discipline (Part VI, Cap. V). It contains nearly twenty-three models of eloquent speeches, most of them to be used by the Podestá, but also by ambassadors, advisers and even by private citizens, as in the four that refer to war and peace.¹⁹⁵

Liber de Regimine Civitatum

Giovanni da Viterbo is the author of *Liber de Regimine Civitatum*,¹⁹⁶ also a work of the XIII century. It is based on the experience he acquired as an adviser to the Podestá of Florence and his knowledge both on civil law and the Latin classics, since he used the following works as sources of his book: *De Ira, De Clementia* and *Epistolae*, by Seneca; *De Officiis*, by Cicero; *Rethorica ad Herennium*; and *Controversiae*, by Séneca the elder or the rhetorician. It has a Prologue, where he tells that he did all the writing at nights and in the rarely free time that he had available being an adviser to the Podestá, as well as one hundred forty eight chapters. The knowledge of the Podestá is developed in Chapters CXVII-CXLVIII, which deal with the way he must behave: in front of the people and at citizens' councils; with ambassadors; with other Podestás from nearby cities; in war and peace times; in the administration of justice and finances; and with the authorities of the empire and the papacy. Eloquence is there represented by examples of official correspondence, as in Chapters XII-XXIII, as well as by speeches, some of which have the exordium written in common language and the scheme in Latin, in Chapters LVI-LVII.¹⁹⁷ Chapter CXLI deals with law reform.¹⁹⁸

Li Livres dou Trésor

As from mid XII century to the Renaissance humanism, *Oculus Pastoralis*, an anonymous work, and *Liber de Regimini Civitatum*, by Giovanni da Viterbo, together with *Parlamenti et Epistole*, the two versions of the *Arengae* by Guido Fava or Faba, and *Dicerie di Ser of Matteo de'Libri da Bologna*, were studied by the young Italians who aspired to politics, first as officers of the communes and then as advisers and ministers to the *Signoria*.¹⁹⁹

Furthermore, from the second half of the XIII century, there was an encyclopedic work in common language, *Li Livres dou Trésor*, with all the necessary knowledge for

Of Toronto, 1986, p. 1, n. 1. The above mentioned thesis contains a preliminary study (pp. 1-131) and a critical edition of the Latin text, with notes (pp. 131-244).

¹⁹⁵ Alfredo Galletti, *Storia dei Generi Letterari Italiani, L' Eloquenza (Dall' Origine al XVI Secolo)* Casa Editrice Francesco Vallardi, Milano, 1904-1938, p. 457, pp. 460-461.

¹⁹⁶ *Liber of Regimine Civitatum*, ed. C. Salvemini, *Bibliotheca Juridica Medii Aevi*, ed. Augustus Gaudentius, 3 vols, Bologna, 1888-1901, Vol. 3, pp. 215-280.

¹⁹⁷ Alfredo Galletti, *Storia dei Generi Letterari Italiani. L' Eloquenza (Dall' Origine al XVI Secolo)*, Casa Editrice Francesco Vallardi, Milano, 1904-1938, pp. 468-473.

¹⁹⁸ *Liber de Regimine Civitatum*, ed. C. Salvemini, *Bibliotheca Juridica Medii Aevi*, ed. Augustus Gaudentius, 3 vols, Bologna, 1888-1901, Vol. 3, pp. 278.

¹⁹⁹ Alfredo Galletti, *Storia dei Generi Letterari Italiani, L' Eloquenza (Dall' Origine al XVI Secolo)* Casa Editrice Francesco Vallardi, Milano, 1904-1938, pp. 474-475.

the education of those who had to rule a city. The work comprised three books: the first one, about the birth of all things; the second one, about ethics; and the third one, about rhetoric and politics.²⁰⁰

The author of *Li Livres dou Trésor* is Brunetto di Bonaccorso Latini, better known as Brunetto Latini. He was born c 1220 and he was a son of Bonnacursus Latini of Lastra, *Imperiali Auctoritate Judex et Notarius*. After working as notary and travelling on diplomatic missions, he returned from the French exile and, on August 20, 1267 he was appointed as official notary of the vicarial government of Florence, *Dittatore del Comune*. As an intellectual, he had Guido Cavalcanti and Dante, who used to call him *il mio maestro*, as faithful disciples. He was highly respected, since, apart from serving as an officer, he taught how to rule and speak well to the Florentine Republic. He died in 1294; his remains are buried in the crypt of the Church of Santa Maria Maggiore, in Florence, where, in one of the four columns supporting the sarcofagus, the following inscription may be read: *Sepulcrum Brunetti Latini et filiorum*.²⁰¹

g. The Humanists

Humanism affirmed the need to join wisdom with eloquence. Three professionals rhetoricians and civil servants defended the subordination of eloquence to wisdom (Salutati), their equality (Bruni) and the superiority of eloquence (Valla).

Coluccio Salutati

Humanist Coluccio Salutati (1331-1405?),²⁰² a professional rhetorician and civil servant, after working as chancellor in Lucca, and then in Florence from the year 1375 till his death,²⁰³ initiated the Florentine tradition of writers who put their culture to the service of the art of governing.²⁰⁴

The subordination of eloquence to wisdom fully arises from the following passage taken from Salutati's collection of letters:

"The best thing is for wisdom and eloquence to join together, so that the second expounds what the first comprehends. In a contest over which was to be preferred, give the palm to wisdom. Never think it is useless, however, to give individual, especial and continued attention to eloquence. For the pursuit of eloquence is itself a duty of wisdom. Eloquence is placed under wisdom, and contained in it as in the sum of all things which can be known, so that whoever pursues wisdom necessarily pursues eloquence at the same time. Accordingly as the two can be separated by the intellect, however, eloquence is more difficult than wisdom, since rarity is a most certain evidence of difficulty in those attainments which are the products of study and

²⁰⁰ *Li Livres dou Trésor* by Brunetto Latini, Edition Critique par Francis J. Carmody, University of California Press, Berkeley and Los Angeles, California, 1948, XXV-XXVI; Livre III, pp. 317-422.

²⁰¹ *Li Livres dou Trésor* by Brunetto Latini, Edition Critique par Francis J. Carmody, University of California Press, Berkeley and Los Angeles, California, 1948, Introduction, p. XIII, pp. XVIII-XX.

²⁰² Jean Delorme, *Chronologie des Civilisations*, Presses Universitaires de France, Paris, 1956, p. 434. Seigel asserts that Brunetto Latini died in 1406:

Jerrold E. Seigel, *Rhetoric and Philosophy in Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, p. 65.

²⁰³ Jerrold E. Seigel, *Rhetoric and Philosophy in Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, pp. 64-65.

²⁰⁴ Emilio Santini, *Enciclopedia Italiana*, Istituto Giovanni Treccani, Roma, 1930, Vol. VII, Bruni, Leonardo, p. 974.

industry, and which we obtain through effort. Let it be added that the intention, zeal, and opportunity for speaking well spurs us in the desire to know; so that the pursuit of eloquence is a means to the end of seeking wisdom. For nothing can be well said which is not most perfectly known. We can know many things, however, which we do not know how to say clearly and with the required ornament or grandeur of speech. Therefore eloquence, with its connection to the pursuit of wisdom, ought especially to be studied."²⁰⁵

Leonardo Bruni

Leonardo Bruni (1379-1444), also known as "The Aretino", was a disciple of Coluccio Salutati and, on his recommendation and on that of Poggio Bracciolini's, he served as Secretary for the papal Curia from 1405 to 1410, and during 1410 he acted for a few months as Chancellor of Florence, a position which he resumed in 1427, upon succeeding his teacher, and held until 1444, when he died.²⁰⁶

He was one of the most important figures of humanism in the times of Cosimo di Medici. He spread the classics, specially from the Greek culture, translated Demosthenes, Aeschines, Xenophon, Plutarch, Plato and Aristotle; he also wrote in Latin, but defended the use of the common language and was a famous historian. Due to his knowledge and experience on governmental issues, his opinions were rarely contradicted in the *Consiglio della Signoria*. Solemn funerals were held in his name and his mortal remains are buried in *Della Santa Croce* Church, Florence, in a mausoleum built by Bernardo Rossalino, which may still be admired.²⁰⁷

Unlike Salutati, who by the end of his life subordinated eloquence to wisdom, Bruni neither criticized rhetoric nor doubted its harmonic relation to philosophy throughout his career, and kept a positive attitude towards continuing the union of wisdom and eloquence unscathed.²⁰⁸

Lorenzo Valla

Lorenzo Valla (1407-1457), a disciple of Leonardo Bruni, was the most famous humanist of the first half of the XV century; he exemplified the spirit of free investigation and independence typical of the Renaissance and set the foundations of philology and historical criticism.²⁰⁹

Valla, unlike Bruni, who defended the harmonic equality between wisdom and eloquence, subordinated the ancient philosophy and the scholasticism to rhetoric, in line with his intention to take the defence of eloquence against its slanderers.²¹⁰

²⁰⁵ Jerrold E. Seigel, *Rhetoric and Philosophy in Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, pp. 83-84.

²⁰⁶ Jerrold E. Seigel, *Rhetoric and Philosophy in Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, pp. 99-100.

²⁰⁷ Jerrold E. Seigel, *Rhetoric and Philosophy in Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, p. 136.

Emilio Santini, Bruni, Leonardo, *Enciclopedia Italiana*, Istituto Giovanni Treccani, Rome, 1930, VII, p. 974.

²⁰⁸ Jerrold E. Seigel, *Rhetoric and Philosophy in Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, p. 98; p. 103.

²⁰⁹ Jerrold E. Seigel, *Rhetoric and Philosophy in the Renaissance Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, p. 137.

²¹⁰ Jerrold E. Seigel, *Rhetoric and Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, pp. 137-139.

" "Philosophy is like a soldier or tribune under the command of oratory, the queen, as a great tragedian calls it," wrote Valla".²¹¹

The next Chapter will deal with the Modern and Contemporary History of the art of legislation.

²¹¹ On the True Good, *Scritti* [Filosofici e Religiosi, Firenze, 1953], pp. 30-31; *Opera* [Torino, 1962], pp. 906-907: "Siquidem philosophia velut miles est aut tribunus sub imperatrice oratione, et ut magnus quidem Tragicus appellat, regina", above transcription and this note from Jerrold E. Seigel, *Rhetoric and Humanism, The Union of Eloquence and Wisdom, from Petrarch to Valla*, Princeton University Press, Princeton, New Jersey, p. 142, according to bibliographical information in n. 1 of p. 138 of his book.

Chapter III Modern and Contemporary History

1. Modern history

From modern history, the following authors will be remembered: Bacon, for his disquisition on the certainty of laws and rhetorical investigation (*inventio*); Hopper, for constructing a general juridical theory of legislation and recognizing the importance of rhetoric for law professionals; Montesquieu, for making a rich source of argumentations out of a single book; Mably, for strongly pointing out the importance of the study of passions (*pathos*); and Filangieri, for developing such study.

a. Bacon

Here the humanist officer reappears, the son of an officer, as the oriental scribe used to be. Nicholas Bacon, Francis's father, was a famous Adviser to Queen Elizabeth and Lord Keeper of the Great Seal for more than twenty years in charge, until he died.²¹² An act of Parliament declared that Lord Keeper of the Great Seal had Lord Chancellor's same rights and duties to avoid doubts about Nicholas Bacon's authority.

Francis Bacon (1561-1626), like his progenitor, held the office of Lord Keeper of the Great Seal, but he overcame him in the bureaucratic and political career, since he was formally appointed Lord Chancellor, both offices fulfilled under James I. As for dignities, he was first Knight, then Baron of *Verulam* and finally Viscount of Saint Alban, until he lost them all for being a self-confessed corrupt (1621).²¹³

He was a great orator in the Courts of Justice, in his capacity as attorney-at-law, prosecutor or judge, and also for a long time in the House of Commons, barely as a member of the opposition party, but most times as a member of the government party, all of this under the reigns of Elizabeth I and James I. In order to keep him as a representative, the above mentioned House (1613) granted him the right to remain a member, in spite of having been appointed Attorney General, since both positions could not be held at the same time.²¹⁴

With Francis Bacon the deliberative genre of rhetoric was reborn, after one thousand six hundred years of silence.²¹⁵ Ben Jonson (1573-1637) said in this regard:

²¹² Dr. Rawley's Life of Bacon, in *The Works of Francis Bacon, Popular Edition*, based upon *The Complete Edition of Spedding, Ellis, and Heath, I. Philosophical Writings*, Houghton, Mifflin and Company, The University Press, Cambridge, Boston, p. 55.

Charles de Rémusat, *Bacon sa Vie, son Temps, sa Philosophie, et son Influence Jusque a Nos Jours*, Didier et Ce., Libraires Éditeurs, Paris, 1858, p. 8.

²¹³ Dr. Rawley's Life of Bacon, *The Life of the Honourable Author*, in *The Works of Francis Bacon, Popular Edition*, Based upon *The Complete Edition of Spedding, Ellis, and Heath, I. Philosophical Writings*, Houghton, Mifflin and Company, The University Press, Cambridge, Boston, p. 42; p. 43, n.2. Charles de Rémusat, *Bacon sa Vie, son Temps, sa Philosophie, et son Influence Jusque a Nos Jours*, Didier et Ce., Libraires Éditeurs, Paris, 1858, pp. 102-121.

²¹⁴ Bacon, *Oeuvres Philosophiques de Bacon, Publiées d'Après les Textes Originaux, avec Notice, Sommaires et Éclaircissements*, par M. N. Bouillet, Tome I, Librairie Classique et Élémentaire de L. Hachette, Notice sur Bacon, Tome I, Paris 1834, p. XXI.

²¹⁵ George A. Kennedy, *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times*, The University of North Carolina Press, Chapel Hill, 1980, p. 216.

"Yet there happened in my time one noble speaking, who was full of gravity in his speaking. His language (where he could spare or pass by a jest) was nobly censorious. No man ever spoke more neatly, more pressly, more weightily, or suffered less emptiness, less idleness, in what he uttered. No member of his speech but consisted of his own graces. His hearers could not cough, or look aside from him, without loss. He commanded where he spoke; and had his judges angry and pleased at his devotion. No man had their affections more in his power. The fear of every man that heard him was, lest he should make an end."²¹⁶

In addition to having been a great orator, he is one of the first English classic writers,²¹⁷ to such an extent that some polemicists consider him as the author of Shakespeare's works and his books are still being re-edited today. If this mastery of the spoken and written prose is hard to find, it is even harder to believe that he had also written about rhetoric and influenced its historical development, following Cicero's precedent.²¹⁸ From the point of view of his contributions to rhetoric in general, he extended the stage of invention or investigation, included the forms and the promptuary along with the topics, and expanded the use of the colours of good and evil to dress the valid arguments as well as the sophistic arguments, as it will be discussed in detail in Chapter V of this book.

Although owing to his lack of wisdom he committed the offense that led him to end his career and be criminal punished, his vast experience in official affairs and his intellectual capacity, together with his eloquence as orator and writer, bloomed in works where he could show his political wisdom, such as in both versions of his Advice to Villiers, on his performance as King's Favorite,²¹⁹ and in The Essayes or Counsels, Civil and Moral.²²⁰

He had a lot of experience in the art of legislation, both as regards the composition and the criticism of general juridical norms, which can be verified, between with these examples, amongst others: the criticism of a Criminal Code bill²²¹ and the composition

²¹⁶ Dr. Rawley's Life of Bacon, The Life of the Honourable Author, The Works of Francis Bacon, Popular Edition, Based upon The Complete Edition of Spedding, Ellis, and Heath, I. Philosophical Writings, Houghton, Mifflin and Company, The University Press, Cambridge, Boston, p. 50, n. 1.

²¹⁷ [Bacon], Oeuvres Philosophiques de Bacon, Publiées d'Après les Textes Originaux, avec Notice, Sommaires et Éclaircissements, par M. N. Bouillet, Tome I, Librairie Classique et Élémentaire de L. Hachette, Notice sur Bacon, Tome I, Paris 1834, p. X.

²¹⁸ As regards his contribution to rhetoric, see:

Karl R. Wallace, Francis Bacon on Communication & Rhetoric or: The Art of Applying Reason to Imagination for the Better Moving of the Will, The University of North Carolina Press, Chappel Hill, Chapter Twelve, Bacon's Contribution, pp. 205-218; Chapter Thirteen, Bacon and Post-Elizabethan Rhetorical Theory, pp. 219-227.

He holds that what Bacon said about rhetoric was not so new as it had sometimes been presented: Thomas M. Conley, Rhetoric in The European Tradition, Longman, New York & London, 1990, p. 164.

²¹⁹ Francis Bacon, Advice to Villiers, in The Works of Francis Bacon, Volume XIII, The Letters and Life, Volume VI, Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Longmans, Green, Reader, and Dyer, London, 1872, pp. 13-26; pp. 27-56.

²²⁰ Francis Bacon, in The Works of Francis Bacon, Popular Edition, based upon the Complete Edition of Spedding, Ellis, and Heath, II. Literary and Religious Works, Houghton, Mifflin and Company, The University Press, Cambridge, Boston, Part II, 281 pp.

²²¹ Francis Bacon, A Certificate to His Majesty Touching the Projects of S. Stephen Proctor relating to the Penal Law (1608), dans Oeuvres Philosophiques de Bacon, Publiées d'Après les Textes Originaux, avec Notice, Sommaires et Éclaircissements, par M. N. Bouillet, Tome I, Librairie Classique et Élémentaire de L. Hachette, Notice sur Bacon, Tome I, Paris 1834, p. XX, n. 3.

of the Procedural Ordinances of the Chancery, when he was in charge of it.²²² A long permanence in Parliament, as well as his positions as Adviser, Keeper of the Great Seal and Chancellor, gave him frequent opportunities to counsel or discounsel general juridical norms. He projected a Digest of the Laws of England, which he failed to achieve, but from his effort²²³ the following works emerged: *Maxims of the Law*, *Proposal for Amending the Laws of England*, *De Diversis Regulis Juris*, *De Dignitate et Augmentis Scientiarum*, from which the well-known “*Justitia Universalis sive of Fontibus Juris*” was taken (Book VIII, Chapter 3, final part).²²⁴

In his book *The Advancement of Learning*, published in 1605, he observed:

"Notwithstanding, for the more public part of government, which is Laws, I Think good to note only one deficiency; which is, that all those who have written of laws, have written either as philosophers or as lawyers, and none one as statesman. As for the philosophers, they make imaginary laws for imaginary commonwealths; and their discourses are as the stars, which give little light because their are so high. For the lawyers, they write according to the states where they live, what is received law, and not what ought to be the law: for the wisdom of the lawmaker is one, and of a lawyer is another."²²⁵

In the Latin version of the above-mentioned work, notably amended and augmented, which was published in 1623, under the title *De Dignitate et Augmentis Scientiarum*, he divided the civil knowledge into three parts, in accordance with three succinct actions of a society: to converse, to negotiate and to govern. Legislating is a part of the wisdom to rule or the wisdom of the State,²²⁶ an activity for which he enunciated the following PRINCIPLES:

²²² A considerable number of these Ordinances were his, because of his intention to purify the Chancery. Among the ones that belong to him, the Hundred Rules of Court established the practical issues and made a defined Court of Justice, under an organized Government, not just a mere Court of Conscience, with erratic measurements of equity in a disordered and gracious way.

James E. G. de Montmorency, Francis Bacon, Baron of Verulam, in *Great Jurist of the World*, Edited by Sir John Macdonell and Edward Mason, with an Introduction by Van Vechten Veeder, with Portraits, Little, Brown, and Company, Boston, 1914, p. 155; pp. 167-168.

²²³ James E. G. de Montmorency, Francis Bacon, Baron of Verulam, in *Great Jurist of the World*, Edited by Sir John Macdonell and Edward Mason, with an Introduction by Van Vechten Veeder, with Portraits, Little, Brown, and Company, Boston, 1914, pp. 151-153.

²²⁴ Francis Bacon, *Of the Dignity and Advancement of Learning*, Book VIII, Chapter III, Example of a Treatise on Universal Justice or the Fountains of Equity, by Aphorisms: one Title of it, in *Works of Francis Bacon*, Collected and Edited by James Spedding, Robert Leslie Ellis, Douglas Denon Heath, Volume V, *Translations of the Philosophical Works*, Vol. II, New Edition, Longman & Co. etc, London 1889, pp. 88-110.

Francis Bacon, *De Dignitate et Augmentis Scientiarum*, dans *Oeuvres Philosophiques de Bacon*, Publiées d'Après les Textes Originaux, avec Notice, Sommaires et Éclaircissemens, par M. N. Bouillet, Librairie Classique et Élémentaire de L. Hachette, Tome I, Paris 1834, pp. 438-474.

Francis Bacon, *Essai d'un Traité sur la Justice Universelle ou les Sources du Droit*, latin-français, J. B. De Vauzelles, Chez B. Wareé, Paris, 1824.

²²⁵ Francis Bacon, *The Advancement of Learning*, Second Book, in *The Works of Francis Bacon*, Popular Edition, Based upon The Complete Edition of Spedding, Ellis, and Heath, I. *Philosophical Writings*, Part III, Houghton, Mifflin and Company, The University Press, Cambridge, Boston, p. 389. Francis Bacon, *The Advancement of Learning and New Atlantis*, with a Preface by Thomas Case, Oxford University Press, London, 1906, reprinted 1913, 1929, 1944; reset 1951, reprinted 1956, 1960, pp. 236-237.

²²⁶ Francis Bacon, *The Advancement of Learning*, Second Book, in *The Works of Francis Bacon*, Popular Edition, Based upon The Complete Edition of Spedding, Ellis, and Heath, I. *Philosophical*

"7. But Before I proceed to the actual body of particular laws, I will take a brief survey of the virtues and dignities of law in general. That the law may be set down as good, which is certain in meaning, just in precept, convenient in execution, agreeable to the form of government, and productive of virtue in those that live under it."²²⁷

Out of all these principles, regrettably, he only developed the one related to certainty. In spite of that, it was a very important milestone in the historical continuity of the art of legislation, since he also followed the wisdom and eloquence of classic tradition to write it. It represented progress because, although some of his predecessors had included the art of legislation in the art of government, he adopted the practical point of view of the experienced and reasonable statesman, thus managing to write a small great work about certainty, in ninety-seven aphorisms,²²⁸ with a depth, scope and elegance never seen before in ancient or contemporary philosophers, politicians and lawyers. Since then, this work has been a mandatory reference for posterity.

b. Hopper

Jochim Hopper (1523-1576) was born in Sneek, Friesland. Following his solid juridical and humanistic education, he devoted himself to teaching until 1554, when he left the academic life and engaged in politics under the Spanish crown, an activity that he developed in The Netherlands and in Madrid, where he died.²²⁹

Writings, Part III, Houghton, Mifflin and Company, The University Press, Cambridge, Boston, p. 348; pp. 389-391.

Francis Bacon, *The Advancement of Learning and New Atlantis*, with to Preface by Thomas Case, Oxford University Press, *The Advancement of Learning*, The Second Book, Chapter XXIII, 2; 49, London, 1906, reprinted 1913, 1929, 1944; reset 1951, reprinted 1956, 1960, p. 206; pp. 236-238.

Francis Bacon, *Of the Dignity and Advancement of Learning*, Book VIII, Chapter I, in *Works of Francis Bacon*, Collected and Edited by James Spedding, Robert Leslie Ellis, Douglas Denon Heath, Volume. V, *Translations of The Philosophical Works*, Vol. II, New Edition, Longman and Co. etc, London 1889, London, 1889, p. 32.

Francis Bacon, *De Dignitate et Augmentis Scientiarum*, Liber Octavus, Caput I, dans *Oeuvres Philosophiques of Bacon*, Publiées d'après they Textes Originiaux, avec Notice, Sommaires et Éclaircissemens, par M. N. Bouillet, *Tomes I, Librairie Classique et Élémentaire of L. Hachette*, *Tomes I*, Paris 1834, p. 386.

²²⁷ Francis Bacon, *Of The Dignity And Advancement of Learning*, Book VIII, Chapter III, *Example of a Treatise on Universal Justice or the Fountains of Equity*, by Aphorisms: one Title of it, Aphorism 7, in *Works of Francis Bacon*, Collected And Edited By James Spedding, Robert Leslie Ellis, Douglas Denon Heath, Vol. V, *Translations of The Philosophical Works*, Vol. II, New Edition, Longman & Co. etc, London 1889, pp. 89-90.

Francis Bacon, *Essai d'un Traité sur la Justice Universelle ou les Sources du Droit*, latin-français, J. B. De Vauzelles, Chez B. Wareé, Paris, 1824, *Aphorisme 7*, p. 47.

Francis Bacon, *De Dignitate et Augmentis Scientiarum*, Liber Octavus, Caput III, dans *Oeuvres Philosophiques de Bacon*, Publiées d'après les Textes Originiaux, avec Notice, Sommaires et Éclaircissemens, Par M. N. Bouillet, *Tome I, Librairie Classique et Élémentaire de L. Hachette*, *Tome I*, Paris 1834, *Aphorismus VII*, pp. 452-453, text in Latin.

²²⁸ Francis Bacon, *Of The Dignity and Advancement of Learning*, Book VIII, Chapter III, *Example of to Universal Treatise on Justice or the Fountains of Equity*, by Aphorisms: one Title of it, in *Works of Francis Bacon*, Collected and Edited By James Spedding, Robert Leslie Ellis, Douglas Denon Heath, Vol. V, *Translations of The Philosophical Works*, Vol. II, New Edition, Longman and Co. etc, London, 1889, pp. 88-110.

²²⁹ Manuel Jesús Rodríguez Puerto, *La Modernidad Discutida (Jurisprudencia frente a isunaturalismo en el siglo XVI)*, Servicio de Publicaciones de la Universidad de Cádiz [1998], XI + 470 pp, pp. 45-46.

Out of the twelve books composing his main work, *Seduardus*,²³⁰ dedicated to Phillip II, the first four deal with *nomothesia*, “a civil and regal art, which by means of laws and rights induces the republic and men to justice”,²³¹ subdivided in turn into a theoretical part dedicated to the most general concepts of law, and a practical part dedicated to legislation making.

He created a “general theory of legislation” from a technical and juridical conception, not merely political, something unusual in his time, and he also acknowledged the importance of rhetoric for law professionals.²³²

Those who be willing to learn about Hoppers’ *nomothesia* in more detail may consult, in addition to the book by Rodriguez Puerto, the following work:

Nomothesia sive de Iuris et Legum condendarum scientia, Versuch einer Bearbeitung der Bücher I-IV der Werkes “*Seduardus sive de vera iurisprudencia*” von Joachim Hopper (1523-1576), Dissertation, vorgelegt der Johannes Gutenberg Universität in Mainz, von Regierungsrat Paul Schäaus Mainz, Referent: Professor Dr. Th. Viehweg, Korreferent: Profesor Dr. P. Noll, Tag der mündlichen Prüfung: 21, februar 1967, XXXI + 416 pp + X pp.

c. Montesquieu

Charles Louis de Secondat, Baron de la Brède et de Montesquieu (1689-1755), a provincial magistrate, position which he had inherited from his uncle and then sold legally, a successful writer, an habitué of the great Parisian literary lounges, managed to become a memeber of the Academy of France.²³³ Without any political experience or a significant juridical education, in spite of his university studies and judicial activities,²³⁴ as fruit of a solitary investigation and personal reflection during twenty years,²³⁵ in 1748 he published *De l'Esprit des Lois* (The Spirit of the Laws), a work that caused sensation and, although included in the Index of Prohibited Books of the Catholic Church,²³⁶ became a great political, juridical and philosophical outstanding classic.

Before its publication, the work already had its detractors, such as the famous Marquess D'Argenson (1694-1757), the Secretary of State of Luis XV, who affirmed:

"It is said that he aspires and prepares himself to publish finally his great work on the laws. I already know some fragments that, supported by the reputation of the author, cannot but increase it. But I am afraid that the whole work is insufficient, and that there

²³⁰ *Seduardus, sive de Vera Iurisprudencia, ad Regem, libri XII. Nempe: Nomothesia, sive de Iuris & Legum Condendarum Scientia, Libri IIII. Rerum Divinarum et Humanorum, sive de Iure Civili Publico, Libri IIII. Ad Pandectas, sive de Iure Civili Privato, Libri IIII, Adiectus est eiusdem Auctoris De Institutione Principis Liber Singularis, Antuerpiae, in Officina Plantiniana, Apud Viduam, et Ioanem Moretum, 1590,*

²³¹ Manuel Jesús Rodríguez Puerto, *La Modernidad Discutida (Iurisprudencia frente a isunaturalismo en el siglo XVI)*, Servicio de Publicaciones de la Universidad de Cádiz [1998], p. 361, text and note 489.

²³² Manuel Jesús Rodríguez Puerto, *La Modernidad Discutida (Iurisprudencia frente a isunaturalismo en el siglo XVI)*, Servicio de Publicaciones de la Universidad de Cádiz [1998], p. 361, text and note 489.

²³³ Montesquieu, *Penseés, Le Spicilege*, Édition Établie par Louis Desgraves, Chronologie, Édition Robert Laffont S.A., Paris, 1991, p. 122.

²³⁴ The education received at the University of Bordeaux was not the most effective one, because of the deficiencies of the faculty; he was not a great magistrate either, see:

Robert Shackleton, *Montesquieu, A Critical Biography*, Oxford University Press, 1961, p. 8; p. 18.

²³⁵ Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société les Belles Lettres, Tome Premier, Préface*, Paris, 1950, p. 11.

²³⁶ Robert Shackleton, *Montesquieu, A Critical Biography*, Oxford University Press, 1961, pp. 370-377; p. 375.

are many pleasant chapters to read, many ingenious and seductive ideas, other than real and useful instructions on the way in which laws should be written and understood. Nevertheless, this is the book that we should but do not still have, although much has been written so far on this matter.

We have good institutes from the Roman civil law, some fairly good from French law, But we do not have anything of the general and universal public law. We have nothing from the spirit of the laws, and I strongly doubt that my friend, president Montesquieu, may give us one that could serve as a compass to every legislator in the world. I admit he has all the possible spirit. He has acquired most grasslands [sic] [a vast] knowledge, both in his trips and in his retreats to the country. But I predict, once again, that he will not give us the book that we should have, even though we may find in the one that he is writing many deep ideas, new thoughts, surprising images, the splendor of the spirit, genius and a multitude of curious facts, which application, yet, may imply more taste than study.²³⁷

While the first edition of the book *De l'Esprit des Lois*, under the care of Jacob Vernet was being printed in Geneva, at Jacques Barrilot's publishing house, Montesquieu added²³⁸ Book XXIX, "*De la Manière de Composer les Lois*" (How to Compose Laws), which Chapter XVI, entitled "*Choses à Observer dans la Composition des Lois*" (Issues to Bear in Mind while Composing Laws), contains some rules to write laws.²³⁹

²³⁷ "On prétend qu'il (Montesquieu) se prépare enfin a publier son grand ouvrage sur les lois. J'en connais déjà quelques morceaux, qui soutenus par la réputation de l'auteur, ne peuvent que l'augmenter. Mais je crains bien que l'ensemble n'y manque, et qu'il n'y ait plus de chapitres agréables a lire, plus d'idées ingénieuses et séduisantes, que de véritables et utiles instructions sur la façon dont on devrait rédiger les lois et les entendre. C'est pourtant là le livre qu'il nous faudrait, et qui nous manque encore, quoiqu'on ait déjà écrit sur cette matière.

Nous avons de bons instituts de droit civil romain, nous en avons de passables de droit français; mais nous n'en avons absolument point de droit public universel. Nous n'avons point l'esprit des lois et je doute fort que mon ami le président de Montesquieu, nous en donne un qui puisse servir de guide et de boussole à tous les législateurs du monde. Je le connais tout l'esprit possible. Il a acquis les connaissances les plus vastes [sic], tant dans ces voyages que dans ces retraites à la campagne. Mais je prédis encore une fois qu'il ne nous donnera pas le livre qui nous manque, quoique l'on doive trouver dans celui qu'il prépare beaucoup des idées profondes, des pensées neuves, d'images frappantes, de saillies d'esprit et de génie, et une multitude de faits curieux, dont l'application suppose encore plus de goût que de l'étude."

Sir Courtenay Ilbert, Montesquieu, in *Great Jurists of the World*, Edited by Sir John Macdonell and Edward Mason, with an Introduction by Van Vechten Veeder, with Portraits, Little, Brown, and Company, Boston, 1914, pp. 433-434, n. 1, *Mémoires du Marquis d'Argenson* (ed. 1825), pp. 430-431, text reproduced above.

See also:

Mémoires et Journal Inédit du Marquis D'Argenson, Ministre des Affaires Étrangères sous Louisa XV, Publiés et Annotés par M. le Marquis D'Argenson, Paris, 1858, Tome V, pp. 89-90., Kraus Reprint, Nendeln/Liechtenstein, 1979, online: www.gallica.bnr.fr.

²³⁸ Robert Shackleton, *Montesquieu, A Critical Biography*, Oxford University Press, 1961, p. 241.

²³⁹ Against the above mentioned rules:

Destutt de Tracy, in a book comprising all *The Spirit*, which he wrote for Thomas Jefferson, where he included an unpublished Condorcet text with regard to Book XXIX, *Commentaire sur l'Esprit Des Lois*, Paris, Madame Lévi, Libraire, 1828, De Tracy, pp. 356-357; Condorcet, pp. 360-391, especially with regard to the Chapter XVI, pp. 376-377.

In favour of the above mentioned rules:

François Geny, with a transcription of some aphorisms extracted from the mentioned Chapter XVI, in *La Technique législative dans la Codification civile moderne (à propos du Centenaire du Code Civil)*, Le Code Civil 1804-1904, Livre du Centenaire Publiée par La Société d'Etudes Législatives, Arthur Rousseau, Éditeur, Paris, 1904, Tome Second, pp. 1005-1006.

A lot has been and will still be argued on the merit of Montesquieu's masterpiece. Nevertheless, while critics keep on debating its virtues and defects, well-informed legislators and advisers find in the above mentioned work a great variety of wise and eloquent argumentations to compose and criticize, counsel and discounsel general juridical norms. There, in the same book, a rich source of inspiration is available, which consists in abundant rhetorical syllogisms, political maxims and historical examples, but difficult to remember, due to the lacking of a systematical order allowing for its opportune use.

Thus, Montesquieu showed the desire that led him to write *The Spirit of the Laws*:

"If I could act in a way that those who are in charge increased their knowledge about what they must prescribe, and that those who obey found a new pleasure in obeying, I would believe to be myself the happiest of mortals."²⁴⁰

Next, some passages written by Montesquieu are transcribed.

Reasonableness of the prescriptions:

"Law, in general, is human reason, inasmuch as it governs all the people of the Earth; and the political and civil laws of each nation ought to be only particular cases to which this human reason is applied."²⁴¹

Political maxims:

They are spread throughout his entire work, due to his stylistic tendency towards the use of epigrams.

"Many things govern men: [... among them] the government maxims [...]"²⁴²

²⁴⁰ "Si je pouvais faire en sorte que ceux qui commandent augmentassent leurs connoissances sur ce qu'ils doivent prescrire, et que ceux qui obéissent trouvassent un nouveau plaisir à obéir, je me croirais le plus heureux des mortels."

Montesquieu, *De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur*, Paris, Garnier Frères, Libraires-Éditeurs, without date, Préface, p. II, text reproduced above.

See also:

Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Premier, Préface*, Paris, 1950, p. 12.

²⁴¹ "La loi, en général, est la raison humaine, en tant qu'elle gouverne tous les peuples de la terre; et les lois politiques et civiles de chaque nation ne doivent être que les cas particuliers où s'applique cette raison humaine."

Montesquieu, *De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur*, Paris, Garnier Frères, Libraires-Éditeurs, without date, Livre I, Chapitre III, p. 8, text reproduced above.

See also:

Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Premier, Livre Premier, Chapitre III*, Paris, 1950, p. 44.

²⁴² "Plusieurs choses choses gouvernent les hommes [...] les maximes du gouvernement [...]"

Montesquieu, *De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur*, Paris, Garnier Frères, Libraires-Éditeurs, without date, Livre XIX, Chapitre IV, p. 275, text reproduced above.

See also:

"In any magistracy it is necessary to compensate the magnitude of power with the brevity of its duration."²⁴³

Historical examples, although the accuracy of some of them has been questioned, serve as imaginary examples, where historical truth fails. Fables are considered as such in the rhetorical tradition, since they are not introduced as sophisms, to cheat knowingly, but to teach with hypothetical special cases in political speeches, given the scarce number of examples on real similar cases.²⁴⁴

In spite of the strong criticism that he received in his time, posterity could not avoid praising the eloquence showed in Montesquieu's book, as Ilbert once wrote:

"The leading definitions are loose and vague; the treatment is unmethodical and uncritical; half the statements of facts are inaccurate; half the inferences are mere guesses. And yet it changed the thought of the world. What is the explanation of this paradox?

Much, no doubt, was due to charm of style. If you want to be read, still more if you want to be widely read, you must be readable. In Montesquieu's time, books on political and legal science were, as a rule, unreadable. But the Spirit of Laws was, and still is, an eminently readable book. No one before Montesquieu had dealt so lively and brilliant a manner with the dry subject of laws and political institutions."²⁴⁵

Chevalier D'Aydie, a friend of Montesquieu's, predicted that The Spirit of the Laws:

"[...] will contribute to make kings, ministers and people wiser in the future [...]"²⁴⁶

Montesquieu, De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Troisième, Livre Dix-neuvième, Chapitre IV, Paris, 1958, p. 7.

²⁴³ "Dans toute magistrature, il faut compenser la grandeur de la puissance par la brièveté de sa durée": Montesquieu, De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Livre II, Chapitre III, p. 15, text reproduced above.

See also:

Montesquieu, De l'Esprit des Lois, Texte Établi et Présenté Par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Premier, Livre Deuxième, Chapitre III, Paris, 1950, p. 44.

²⁴⁴ Aristotle, Rhetoric, 1394a.

Aristotle, Rhetoric, 1394a, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing 1985, p. 2220.

Aristóteles, Retórica, 1394a, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 408.

Aristote Rhétorique, Livre Premier, 1394a, Texte Etabli et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Paris, 1932, p. 106.

Aristotele, Retorica, 1394a, a cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 133.

²⁴⁵ Sir Courtenay Ilbert, Montesquieu, in Great Jurists of the World, Edited by Sir John Macdonell and Edward Mason, with an Introduction by Van Vechten Veeder, with Portraits, Little, Brown, And Company, Boston, 1914, p. 431.

²⁴⁶ "[...] contribuera à rendre, à l'avenir, les rois, les ministres et les peuples plus sages [...]", dans Louis Desgraves, Introduction, dans Montesquieu, Pensées, Le Spicilège, Édition Établie par Louis Desgraves, Chronologie, Édition Robert Laffont S.A., Paris, 1991, p. 96.

d. Mably

Abbot De Mably (1709-1785), brother of Condillac's, the philosopher, who was also an abbot, met Montesquieu at Madame de Tencin's literary lounge. Either due to a desire to emulate or to an independence of judgment, as Montesquieu had published in the 1734 *Considérations sur les Causes de la Grandeur des Romains et de leur Décadence* (Considerations on the Causes of the Greatness of the Romans and their Decline), Mably's first work was published in 1740, *Parallèle des Romains et des Français par Rapport au Gouvernement* (Parallel between the Romans and the French with Regard to Government). Thus, *De l'Esprit des Lois* first appeared in 1748, Mably's *De la Législation ou Principes des Lois* (On the Legislation or Principles of the Laws) appeared in 1776.²⁴⁷

Montesquieu, upon describing what the spirit of the laws was consisting, had said:

"They must be related to the physical [aspect] of the country, the freezing, torrid or moderate climate; the quality of the territory, its situation, its extension, the genre of life of its peoples, farmers, hunters or shepherds: they must be related to the degree of freedom that the Constitution can support; the religion of the inhabitants, their inclinations, their wealth, their number, their commerce, their customs, their ways of behaving. Anyway, they relate to each other; to their origin, to the purpose of the legislator, to the order of things on which they are established. It is within the framework of all these points of view that it is necessary to consider them. This is what I begin to do in this work. I will examine all these relations: they all form what is known as the SPIRIT OF THE LAWS."²⁴⁸

Without mentioning Montesquieu, Mably said:

"On the contrary, a pretended philosophy, upon taking what is done out of senselessness in the world as the rule of what should be done, has come to help ours prejudices, and has given them who knows what reason to eternize its empire. The chatterboxes have flattered our caprices; and, willing to teach us before even overcoming their own ignorance, their beautiful spirit could not have given them anything more than sophisms that we have taken as truths, and we go lost with method. They have not descended in any way inside our heart; they have not studied in any way our passions; it is within things, so to speak, outside men, that they have looked for the laws and the establishments that should make society happy. If they should be believed, the

²⁴⁷ M. Villemain, *Cours de Littérature Française*, A. Jamar, Éditeur, Bruxelles, 1840, *Tableau du Dix-Huitième Siècle, Première Partie*, 1827, *Dix Septième Leçon*, p. 155.

²⁴⁸ "Elles doivent être relatives au physique du pays, au climat, glacé, brûlant o tempéré; à la qualité du terrain, à sa situation, à sa grandeur, au genre de vie de ses peuples, laboureurs, chasseurs ou pasteurs: elles doivent se rapporter au degré de liberté que la constitution peut souffrir; à la religion des habitants; à leurs inclinations, à leur richesses, à leur nombre, à leur commerce, à leurs moeurs, à leurs manières. Enfin, elles ont des rapports entre elles; elles en ont avec leur origine, avec l'objet du législateur, avec l'ordre des choses sur lesquelles sont établies. C'est dans toutes ces vues qu'il faut les considérer.

Montesquieu, *De L'Esprit Des Lois*, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, Livre I, Chapitre III, without date, p. 8, text reproduced above.

See also:

C'est ce que je entreprends de faire dans cet ouvrage. J'examinerai tous ces rapports: ils forment tous ensemble ce que l'on appelle l'ESPRIT DES LOIS."

Montesquieu, *De l'Esprit des Lois*, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société les Belles Lettres, Tome Premier, Livre Premier, Chapitre III, Paris, 1950, p. 26.

providence has made different types of happiness for the ancient and for us; for Asia, Africa, America and Europe. They will seriously say to you that the good laws in the tenth grade of latitude, are no longer valuable any more under the thirtieth degree; truthfully: shouldn't a legislator consult the affections of our heart rather than a thermometer, to know what to order or prohibit? Are plains, mountains, a drier, more humid, more or less fertile soil, the neighborhood of the sea or a big coast, and hundreds of similar geographical features important to decide what the most suitable laws to make man happy are? Does the nature of climates change the nature of their heart? Are the same needs not everywhere, the same organs, the same senses, the same inclinations, the same passions and the same reason? Are the attraction for pleasure and fear of pain not the motives of our thoughts and of our actions? Are they not everywhere equally bound to cheat the desire we have to be happy? Under the Equator as well as under the Pole, inside the plains and the valleys as in the mountains, does each of our senses not open our soul for a hundred different passions? Which are the soils favored by the sky where avarice, ambition, indolence and voluptuousness cannot germinate? Within which climates will these poisoned plants grow with impunity? Within a certain place, our passions will be more imperious, and within other one they will be more disciplinables; there they will be exposed to more frequent temptations; here particular features will slow down development and progress, and I consent to all that you wish to say about the power of climates. But these passions everywhere are not the source of our happiness or of our unhappiness, depending on whether they are well or badly regulated? Everywhere they have the need of a brake and a driver, the law must begin by straightening them up.

But this great art of governing our passions: who will teach it to me? Where will I drink its secrets from? In the study of the human heart."²⁴⁹

²⁴⁹ "Au-contraires, une prétendue philosophie prenant ce qui se fait d'insensé dans le monde pour la règle de ce qui doit se faire, est venue à secours de nos préjugés, et leur a donné je ne sais quel air de raison propre à éterniser leur empire. Des charlatans ont flatté nos caprices; et voulant nous instruire avant que d'être eux-mêmes sortis de leur ignorance, leur bel esprit n'a pu leur fournir que des sophismes que nous avons pris pour des vérités, et nous nous égarons avec méthode. Ils ne sont point descendus dans notre cœur; ils n'ont point étudié nos passions; c'est dans des choses, pour ainsi dire, étrangères à l'homme qu'ils ont cherché les lois et les établissements qui doivent faire le bonheur de la société. S'il faut les croire, la providence a fait des bonheurs différents pour les anciens et pour nous, pour l'Asie, l'Afrique, l'Amérique et l'Europe. Ils vous diront gravement que des lois bonnes au dixième degré de latitude, ne valent plus rien sous le trentième; en vérité un législateur ne devrait-il pas plutôt consulter les affections de notre cœur qu'un thermomètre, pour savoir ce qu'il doit ordonner ou défendre? Qu'importent des plaines, des montagnes, un sol plus sec, plus humide, plus ou moins fertile, le voisinage de la mer ou d'une grande rivière, et cent autres pareils accidents, pour décider des lois plus propres à faire le bonheur de l'homme? La nature des climats change-t-elle la nature de son cœur? N'a-t-il pas partout les mêmes besoins les mêmes organes, les mêmes sens, les mêmes penchants, les mêmes passions et la même raison? Partout l'attrait du plaisir et la crainte de la douleur ne sont-ils pas les mobiles de nos pensées et de nos actions. Partout ne sont-ils pas également sujets à tromper le désir que nous avons d'être heureux? Sous l'équateur comme sous le pôle, dans les plaines et des vallées comme sur les montagnes, chacun de nos sens n'ouvre-t-il pas notre âme à cent passions différentes? Quelles sont les terres favorisées du ciel où l'avarice, l'ambition, la paresse et la volupté ne puissent pas germer? Dans quels climats ces plaintes empoisonnées se produiront-elles impunément? Dans un lieu, si l'on veut nos passions seront plus impérieuses, et dans l'autre plus disciplinables; là elles seront exposées à des tentations plus fréquentes, ici des accidents particuliers retarderont le développement et le progrès; et je consens à tout ce que vous voudrez dire du pouvoir des climats. Mais partout ces passions ne sont-elles pas la source de notre bonheur, suivant qu'elles sont bien ou mal réglées? Partout elles ont donc besoin d'un frein et d'un conducteur, la loi doit donc commencer par les rendre droites.

Mais ce grand art de gouverner nos passions, qui me l'apprendra? Où puisserai-je les secrets? Dans l'étude du cœur humain."

Mably, *Oeuvres Complètes de l'Abbé de Mably, Tome Douzième, De la Législation ou Principes des Lois*, Livre Premier, Chapitre Premier, à Toulouse, Chez N. Etienne Sens, à Nîmes, Chez J. Gaude, 1793, pp. 24-26.

Nevertheless, Montesquieu had asserted:

"There is this difference ¹ between the nature of [each of the forms of] government and its principle, that its nature is what makes it be such [as it is]; and its principle what makes it act. One is its particular structure, and other the human passions which set it in motion.

¹ This distinction is very important, and I will extract abundant consequences: she is the key of an infinity of laws."²⁵⁰

According to Montesquieu, the principle of the Republic is political virtue; the principle of monarchy, honor; and the principle of despotism, fear.²⁵¹ He had limited his initial generalization about the spirit of the laws when, referring to the general spirit and to customs and habits, he said:

"Many things govern men: the climate, the religion, the laws, the maxims of government, the examples of past things, the customs, the habits; from which it forms a general spirit that from it results.

As, in every nation, when one of these causes acts with more force, the others weaken proportionally. Nature and the climate dominate savages almost by themselves; habits govern the Chinese, laws tyrannize Japan; custom had formerly all its influence on Lacedaemon; the maxims of government and the ancient customs had also all their influence on Rome."²⁵²

²⁵⁰ "Il y a cette difference ¹ entre la nature du gouvernement et son principe, que sa nature est ce qui le fait être tel; et son principe ce qui le fait agir. L'une est sa structure particulière, et l'autre les passions humaines qui le font mouvoir.

¹ Cette distinction est très important, et j'en tirerai bien des consequences: elle est la clef d'une infinité des lois."

Montesquieu, *De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc.*, Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Livre III, Chapitre 1, p. 19, text reproduced above.

See also:

Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Premier, Livre Troisième, Chapitre I, Paris, 1950, p. 55.*

²⁵¹ Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Premier, Livre Troisième, Chapitre IX, Paris, 1950, pp. 64-65.*

²⁵² "Plusieurs choses gouvernent les hommes: le climat, la religion, les lois, les maximes du gouvernement, les exemples des choses passées, les moeurs, les manières; d'où il se forme un esprit général qui en résulte.

A mesure que, dans chaque nation une de ces causes agit avec plus de force, les autres lui cèdent d'autant. La nature et le climat dominant presque seuls sur les sauvages; les manières gouvernent les Chinois; les loix tyrannisent le Japon; les moeurs donnent autrefois le ton dans Lacédemone; les maximes de gouvernement et les moeurs anciennes le donnaient dans Rome."

Montesquieu, *De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc.*, Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Livre XIX, Chapitre IV, p. 275, text reproduced above, without note 2.

See also:

Montesquieu, *De l'Esprit des Lois, Texte Établi et Présenté par Jean Brethe de la Gressaye, Société Les Belles Lettres, Tome Troisième, Livre Dix-neuvième, Chapitre IV, Paris, 1950, pp. 7-8.*

In an unpublished manuscript from his time, which Mably may have read, Montesquieu had asserted, before the publication of *l'Esprit des Lois*: "Les causes morales forment plus le caractère général d'une nation et décident plus de la qualité de son esprit que les causes physiques."

Mably, omitting the above mentioned passages and others that can be found dispersed in the work he criticizes, diminishes the importance of the factors pointed out by Montesquieu, but he is right when he claims the need for the study of human passions for the art of legislation.

Before Mably, Plato had demanded the study of the soul, so that rhetoric should rise to the category of the art of educating them or of leading them (psychagogy).²⁵³ Aristotle fulfilled the desire of his teacher, describing passions and characters, with certain detail, but not as a foundation of rhetoric, but as one of the means of proof that depends on the technical skill of the orator upon delivering his speech, which is distinguished from those who are already given to him (witnesses, contracts, etc.).²⁵⁴

e. Filangieri

Cavalier Gaetano Filangieri (1752-1758), a Neapolitan young nobleman, author of a famous book divided into VII volumes and published between 1780 and 1785, now almost forgotten, reproduces and extends the above paragraph by Bacon, without mentioning him, to explain his intention and the title that he has chosen, in the following way:

"It is a strange thing: among so many writers who have devoted themselves to the study of the law, there is someone who has treated this subject just as a legal expert, someone who has done it as a philosopher, another one as a politician, without taking into consideration more than only one part of the immense building; there [is] someone, like Montesquieu, who has reasoned more on what has been done than on what should be done, but none has provided a complete and reasoned system of legislation; none has

"Moral causes form more the general character of a nation and decide more the quality of its spirit, than physical causes."

Essais sur les Causes qui Peuvent Affecter les Esprits, transcript by Étiemble, Montesquieu, Encyclopédie de la Pléiade, Histoire des Littératures, III, Littératures Françaises, Connexes et Marginales, Volume Publié sous la Direction de Raymond Queneau, Librairie Gallimard, Paris, 1958, p. 704. This Essai, 1734-1732 (sic 1742?), it was published for the first time in *Mélanges Inédits de Montesquieu*, ed. Baron de Montesquieu et T. Céleste, Bordeaux et Paris, 1892, according to Robert Shackleton, *Montesquieu, A Critical Biography*, Oxford University Press, 1961, p. 400; p. 406. Produced before 1742, in accordance with Montesquieu, *Penseés, Le Spicilège*, Édition Établie par Louis Desgraves, Chronologie, Édition Robert Laffont S.A., Paris, 1991, (113) 1, p. 932.

²⁵³ Plato, *Phaedrus*, 261a; 271c.

Platón, *Fedro*, 261a; 271c, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, p. 54 ("seducir"); p. 70.

Platon, *Oeuvres Complètes*, Tome IV, 3a. Partie, *Phèdre*, 261a; 271 c, Texte Traduit par Léon Robin, Société d'Édition "Les Belles Lettres", Paris, 1933, p. 63; p. 82.

Platon, *Phèdre*, 261a; 271c, dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin avec la Collaboration de J. Moreau, Bibliothèque de la Pléiade, Volume II, Paris, 1942, p. 53; p. 70.

²⁵⁴ Aristotle, *Rhetoric*, 1355b-1356a; 1378a-1391b.

Aristotle, *Rhetoric*, 1355b-1356a; 1378a-1391b, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing 1985, pp. 2153-2156; pp. 2194-2217.

Aristotle, *Rhetoric*, 1355b-1356a; 1378a-1391b.

Aristóteles, *Retórica*, 1355b-1356a; 1378a-1391b, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, pp. 174-175; pp. 309-391.

Aristote Rhétorique, Livre Premier, 1355b-1356a, Texte Etabli et Traduit par Médéric Dufour, Société D'Édition Les Belles Lettres, Paris, 1932, p. 76. Livre II, 1378a-1391b, Paris, 1938, pp. 60-99.

Aristotele, *Retorica*, 1355b-1356a; 1378a-1391b, a cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 5-8; pp. 80-125.

yet reduced this matter to a safe science, joining the means to the rules, and the theory to the practice. This is what I undertake to do in this work, entitled: The Science of Legislation.²⁵⁵

He did not mentionably either, but took responsibility for his claim on the need to include the study of passions, which Filangieri had announced in the reasoned plan of his work, in Book I, where, referring to his future Book IV, he wrote:

"From the direction of education to that of the passions, we will see the analysis of the second virtue-producing force, without the knowledge, without the use of which legislation will always be the most formless, more useless, more pernicious work, that may come out of the hand of men. This will be one of the most interesting parts of this work, because the refutation of some errors depends on it, that the politics of the century, in spite of its progress, has adopted banefully because the establishment of a truth that is of interest to know more than all others depends on that one too, but it requires a better development, like that one, which hits against a common prevention."²⁵⁶

In 1785 the volume VII was published, the last one appearing during the life of the author. Although he left the work incomplete, he managed to fulfill his promise to develop the topic of passions in legislative matters, as it can be appreciated from the transcription of the pertinent titles in the Index of Book IV, Part II: Laws that are related to Customs and Public Instruction:

Chapters: XXXIV Object of this part of Legislative Science; XXXV Possibility of Achieving the mentioned object; XXXVI The only original passion of Men and the effects of their modification in the diverse dominating artificial passions in diverse peoples; XXXVII Physical, moral and political circumstances which form the dominating passions of the peoples, and the double and main existing influence between these and Legislation; XXXVIII The connection of the preceding ideas and the examination to which they lead; XXXIX How the dominating passions of the people proceed to get or to lose the object proposed; XL Continuation of the same matter. The conducive passions; XLI The love for one's homeland, and its necessary dependence on the knowledge of laws and government; XLII Appendix to previous Chapter. The Effects of the Passion for glory in a people where the passion for one's homeland reigns; XLIII The means that Legislation should use to introduce, establish, expand, invigorate the passion for glory; XLIV Continuation of the

²⁵⁵ "E cosa strana: fra tanti scrittori, che si sono consacrati allo studio della legge, chi a trattata questa materia da solo giureconsulto, chi da filosofo, chi anche da politico, ma non prendendo di mira, che una sola parte di questo immenso edificio; chi come Montesquieu ha ragionato piuttosto sopra quello, che si è fatto, che sopra quello, che si dovrebbe fare; ma niuno ci ha dato ancora un sistema compiuto, e ragionato di legislazione, niuno ha ancora ridotta questa materia ad una scienza sicura, ed ordinata, unendo i mezzi alle regole, e la teoria alla pratica. Questo è quello, che io intraprendo di fare in quest'opera, che ha per titolo: La Scienza della Legislazione."

Filangieri, *La Scienza della Legislazione*, del Cavalier Gaetano Filangieri, Nella Stamperia Raimondiana, Napoli, 1780, Tomo I, p. 14.

²⁵⁶ "Dalla direzione dell'educazione passando a la passioni, noi verremo all'analisi delle seconde forza produttrice della virtù, senza la conoscenza, senza l'uso della quale la legislazione sarà sempre il lavoro più informe, più inutile, più pernicioso anche, che può uscire dalle mani dell'uomo. Questa sarà una delle parti più interessante di quest'opera, perchè da questa dipende la confutazione di alcuni errori, chi la politica del secolo ha, malgrado i suoi progressi, funestamente adottati perchè da questa dipende lo stabilimento d'una verità, che interessa di sapere più di tutte le altre, ma che ha bisogno di essere molto ben più sviluppata, come quella, che urta contro una prevenzione comune."

Filangieri, *La Scienza Della Legislazione*, Del Cavalier Gaetano Filangieri, Nella Stamperia Raimondiana, Napoli, 1780, Tomo I, 40-41.

same Matter; XLV Objection; XLVI The real cause for which wealth may have led, lead and may lead to the corruption of the people; XLVII The absence of these causes in a people which the Legislative System that forms the object of this work, was adopted.²⁵⁷

2. Contemporary history

In contemporary history, Bentham will be remembered for having analyzed almost every topics on the art of legislation; afterwards, this chapter will synthetically deal with what happened after his death.

a. Bentham

Jeremy Bentham (1748-1732), a prodigy who began to study Latin at the age of four and could write it by the age of five and nine months, attended Westminster School (1755) and the Queens College, Oxford (1755-1763), where he graduated with a Bachelor of Arts degree; was admitted into Lincoln's Inn (1763), went back to Oxford and graduated with a Master's degree of Arts (1766), on the following year dropped out of Oxford University, returned to London and was admitted to the English bar (1769).

Being the grandson and son to lawyers, despite the hopes of his father, who had wanted a succesful son to continue with family profession so as to became a Chancellor, he did not practice the profession in the conventional way. Although he lived long periods in accommodations for lawyers, such as Lincoln's Inn and Middle Temple, he failed to become Chancellor, despite his studies, the disciples who helped him, the interest that he showed on legislation and the intellectual influence that he had in its reform, both within and without his country.²⁵⁸ He neither litigated in courts, defended private interests, described the current law in special jurist work, taught in universities, nor finished his career as parliamentarian, Judge or Minister of the Crown, as any traditional English lawyer used to do.

²⁵⁷ INDICE DE CAPITOLI COMPRESI NEL VII, VOLUME, LIBRO IV. DELLE LEGGI CE RIGUARDANO L'EDUCAZIONE, I COSTUMI, E L'ISTRUZIONE PUBBLICA. PARTE SECONDA. Delle Leggi, che riguardano i costumi, CAP. XXXIV Scopo di questa parte della Scienza legislativa. XXXV Della possibilità di giugnere all'indicato scopo, XXXVI Della passione unica originaria dell'uomo, e degli effetti delle sue modificazioni nelle diverse passione fattizie dominanti ne' diversi popoli, XXXVII Delle circostanze, fisiche, morale e politiche, che concorrono a formare la passioni dominanti de' popoli, e della doppia, e principale influenza, che vi ha tra queste e la Legislazione, XXXVIII Del nesso delle antecedenti idee, e dell'essame, al quale essi si conducono, XXXIX Come dalle passioni dominanti de'Popoli proceda il consegimento, o lo smarrimento del proposto scopo, XL Proseguimento dell'estesso soggetto. Delle passioni conducenti, XLI Dell'amor della patria, e della sua necesaria dipendenza dalla sapienza delle leggi e del governo, XLII Appendice all'antecedente Capo. Sugli effetti della passione della gloria in un popolo, ove regna quella della patria, XLIII De mezzi, che la legislazione deve impiegare per introdurre, stabilire, espandere, invigorire la passion della gloria, XLIV Proseguimento dell'istesso soggetto, XLV Obbiezione, XLVI Delle vere cause, per le quali la ricchezza son divenute, divengano, e possono divenire le corrompitrice de'popoli, XLVII Dell'assenza di queste cause in un pópolo, nel quale il sistema legislativo, che forma l'oggetto di quest'Opera, verrebbe adotato." Filangieri, *La Scienza Della Legislazione*, Del Cavalier Gaetano Filangieri, Nella Stamperia Raimondiana, Napoli, 1785, Tomo VII, pp. 1-108.

²⁵⁸ Ross Harrison, Bentham, Routledge & Kegan Paul, London, Boston, Melbourne and Henley, 1983, first published as a paperback in 1985, p. 16. Bentham, *The Collected Works of Jeremy Bentham, An Introduction to The Principles of Morals and Legislation*, Edited by J. H. Burns and H. L. A. Hart, with a New Introduction by F. Rosen, Clarendon Press, Oxford, Introduction of F. Rosen, 1996, p. xxxiii.

All his work was related to the problem of the law that should be, not the problem of the law that is; it related to the reform of the laws, not to the explanation or application them. During his long life, and according to the plan that he had designed for himself, he wanted to create a new art of legislation, with the purpose of smoothing the path for the writing of two parallel and connected systems: 1) a complete body of laws and 2) its political justification; both adaptable to any particular State.²⁵⁹ To such an end, Bentham considered that:

"4. [...] in as far as the measures it [the art of government] displays itself in are of permanent nature, is generally distinguished by the name of legislation: as it is by that of administration, when they are of temporary nature, determined by the occurrences of the day 4. [...]."²⁶⁰

"20. [...] Private ethics teaches how each man may dispose itself to pursue the course most conducive to his own happiness, by such motives as offer of themselves: the art of legislation (which may be considered as one branch of the science of jurisprudence) teaches how a multitude of men, composing a community, may be disposed to pursue that course which upon the whole is the most conducive to the happiness of the whole community, by means of motives to be applied by the legislator [...]

ii. Jurisprudence, its branches.

21 Jurisprudence is a fictitious entity: nor can any meaning be found for the word, but by placing it in company with some word that shall be significative of a real entity. To know what is meant by jurisprudence, we must know, for example, what is meant by a book of jurisprudence. A book of jurisprudence can have but one or the other of two objects: 1. to ascertain what the law is: 2. to ascertain what it ought to be. In the former case it may be styled a book of *expository* jurisprudence; in the latter, a book of *ensorial* jurisprudence: or, in other words, a book on the *art of legislation*.

22. A book of expository jurisprudence is either *authoritative* or *unauthoritative*. It is styled authoritative, when it is composed by him who, by representing the state of the law to be so and so, causeth it so to be; that is of the legislator himself: unauthoritative, when it is the work of any other person at large".²⁶¹

Every morning of his long life, he would write from ten to fifteen pages, in single sheets, indicating the place that they had within the general plan of all the works and within the scheme of each one of them in particular. Whenever a topic was unclear to him, he would interrupt his work and devote himself to clarify it in a new work, without going back to the former one for further revision. His disciples were entrusted with the hard task of transforming these originals into publishable works. In the first hours of every evening, after dinner, while walking around his desk, he usually dictated his texts, as he did with his autobiography, among others.²⁶² This easily explains the fact that, after his death, the publication of a collection of his works has amounted to eleven

²⁵⁹ It should have been the introduction to a Penal code, it was printed in 1780, but it was published for the first time in 1789 and then republished in 1823.

Bentham, *The Collected Works of Jeremy Bentham, an Introduction to The Principles of Morals and Legislation*, Edited by J. H. Burns and H. L. A. Hart, with a New Introduction by F. Rosen, Clarendon Press, Oxford, Preface by Bentham, 1996, p. 6; p. 9.

²⁶⁰ Bentham, *The Collected Works of Jeremy Bentham, An Introduction to The Principles of Morals and Legislation*, Edited by J. H. Burns and H. L. A. Hart, With a New Introduction by F. Rosen, Chapter XVII, *Of the Limits of the Penal Branch of Jurisprudence, i. Limits Between Private Ethics and the Art of Legislation*, Clarendon Press, Oxford, 1996, p. 283.

²⁶¹ Bentham, *The Collected Works of Jeremy Bentham, An Introduction to The Principles of Morals and Legislation*, Edited by J. H. Burns and H. L. A. Hart, With a New Introduction by F. Rosen, Chapter XVII, *Of the Limits of the Penal Branch of Jurisprudence*, Clarendon Press, Oxford, 1996, pp. 293-94.

²⁶² Ross Harrison, *Bentham*, Routledge & Kegan Paul, London, Boston, Melbourne and Henley, 1983, first published as a paperback in 1985, p. 4.

volumes,²⁶³ of which the last two contain the story of his life and an elaborated index. As for his manuscripts, there are one hundred forty eight boxes at the University College in London with approximately seventy thousand free sheets, which – fortunately– have already microfilmed; some others are kept at the British Library, and the rest is being kept at the *Bibliothèque Publique et Universitaire de Genève* (Public and University Library of Geneva).²⁶⁴ The Collected Works of Jeremy Bentham is a scholarly new edition, which began to be published in 1968 and, some time later, under the editor F. Rosen and the care of different specialists from the prestigious Clarendon Press, from Oxford University.²⁶⁵

He did not manage to become a legislator in any nation,²⁶⁶ but he gave counsel to several governments. He had a great influence, both within and without his country. In France, the Assembly neither accept his parliamentary rules, nor his report on the reform of the Judiciary, not even his model jail (*Panopticon*), but he was granted the title of citizen (1792). The translation and systematization of his works by Genevan Étienne Dumont, *Traité de Législation Civile et Pénale* (1802), in successive editions extended under the title of *Oeuvres*, sold forty thousand copies in Spanish America, as calculated in 1830, and had an influence on their constitutions and legislations. In Spain his work influenced Jovellanos and the Constitution of that country, as well as the Constitution of Portugal and other States.²⁶⁷ In England, due to the irony of life, the Reform Bill of 1832 which established the ideas he had anticipated in his Plan of Parliamentary Reform of 1817, obtained Royal Assent one or two days after his death.²⁶⁸

Although he wrote numerous bills and criticized some others, and intervened in debates in which he counseled and discounseled general juridical norms, he never performed direct legislative functions, since his influence was based on his reputation both as a writer and as an independent adviser.

²⁶³ Bentham, *The Works of Jeremy Bentham*, Published under the Superintendence of his Executor, John Bowring, William Tait, Edinburgh; Simpkin, Marshall & Co., London, 1838-1843.

²⁶⁴ A. Taylor Milne, *Catalogue of the Manuscripts of Jeremy Bentham in the Library of University College*, London, 2nd. edition, London, 1962.

Bentham, *The Collected Works of Jeremy Bentham, An Introduction To The Principles of Morals and Legislation*, Edited by J. H. Burns and H. L. A. Hart, With a New Introduction by F. Rosen, Clarendon Press, Oxford, Introduction of F. Rosen, 1996, pp. lxxi-lxxii.

Ross Harrison, *Bentham*, Routledge & Kegan Paul, London, Boston, Melbourne and Henley, 1983, first published as a paperback in 1985, p. 1.

²⁶⁵ For consulting a not exhaustive but very useful list of the works by Bentham, since they are enumerated individually, by year of publication, from 1774, with a brief title, stating whether it is original and if not, the name of the person who was in charge, also including the new edition as "New Collected Works", see:

Ross Harrison, *Bentham*, Routledge & Kegan Paul, London, Boston, Melbourne and Henley, 1983, first published as a paperback in 1985, p. XV-XXIV.

²⁶⁶ Bentham, *The Collected Works of Jeremy Bentham, An Introduction to The Principles of Morals and Legislation*, Edited by J. H. Burns and H. L. A. Hart, with a New Introduction by F. Rosen, Clarendon Press, Oxford, Introduction of F. Rosen, 1996, p. xlvi.

²⁶⁷ John Maxcy Zane, *Jeremy Bentham*, in *Great Jurists of the World*, Edited by Sir John Macdonell and Edward Mason, With an Introduction by Van Vechten Veeder, with Portraits, Little, Brown, and Company, Boston, 1914, pp. 537-538; 540.

²⁶⁸ Ross Harrison, *Bentham*, Routledge and Kegan Paul, London, Boston, Melbourne and Henley, 1983, first published as a paperback in 1985, p. 2, says on the following day; in p. 22, two days later.

Bentham analyzed almost all the topics of the art of legislation, but he failed to establish a well assembled fundamental system, just as any other author has also failed to do so far.

b. Later...

In the XIX century, the development of the art of legislation was centered in France, Germany and England. In France, through the tasks developed by the State Council, Legislation Section in the enactment of the 1804 Civil Code and in the speeches of Portalis on this matter. In Germany, early that same century, through the controversy between Thibaut and Savigny on the codification, and, upon its end, with the publication of interesting works on the art of legislation, led by the arguments concerning the 1900 Civil Code. In England, through the Parliamentary Reform of 1832 and, in the second half of the century, through the creation of the Office of The Parliamentary Counsel to The Treasury.

During the first half of XX century, publications kept on emerging in Germany motivated by the enactment of the Civil Code of 1900 (Zitelmann, Kohler); in France, by the centenary of the Civil Code of 1804 (Geny); and in England, emerged from the experience acquired in the Office of The Parliamentarian Counsel to The Treasury (Thring, Courtenay Ilbert). In the second half, in the United States of America and in Canada, the interest in the art of legislation increased, due to a search for uniformity in states legislation and the teaching of legislation as a subject matter at university level. In the 1970s, the expectation that England might enter the European Economic Community and the scarcity of legislative drafters in the Commonwealth also increased the interest in this type of studies. As from 1990, the market economy and the globalization have generated the need to reform the laws in many nations, with the consequent demand for handbooks, teachers and experts in the art of legislation.

The following Part II: System, includes Chapter IV Legislative Genres, Chapter V Investigation, Chapter VI Systematics and Chapter VII Style.

Part II: System

Chapter IV Legislative Genres

Laws should comprise two speeches: one prescriptive and other persuasive.²⁶⁹ The functions of persuasive speeches, as bills, consist in counseling and discouraging the debate and enactment of general juridical norms and, as laws enacted and published, consist in aiding their interpretation and application, according with the purpose sought by legislators. The functions of prescriptive speeches consist in: obliging, prohibiting, permitting, rewarding or punishing conducts.²⁷⁰ This chapter will firstly address the prescriptive speech because it precedes the persuasive one in the composition, although the latter follows the former in the presentation of a bill.

1. Prescriptive speeches

Prescriptive speeches comprise two legislative genres: the systematizing genre and the fragmentary genre.

²⁶⁹ Plato, *The Laws*, IV, 723d.

Plato, *The Laws*, IV, 723, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 186.

Platón, *Las Leyes*, IV, 723d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo I, p. 157.

Platón, *Leyes*, IV, 723d, Introducción, Traducción y Notas de Francisco Lisi, en Platón, *Diálogos VIII Leyes (Libros I-VI)*, Editorial Gredos, Madrid, 1999, p. 390.

Platon, *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, *Les Lois*, IV, 723d, Paris, 1942, p. 775.

Platone, *Dialoghi*, Vol. VII, *Le Leggi*, IV, XII 723d, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 123.

Giacomo Gavazzi, *La Motivazione delle Leggi*, *Il Politico*, a. 39, no. 2, giugno 1974, pp. 173-193.

²⁷⁰ The Digest foresaw to command, to prohibit, to permit and to punish.

D.1.3.7

D.1.3.7. "Modestinus, liber I. Regularum.- Legis virtus haec est: imperare, vetare, permittere, punire."

D.1.3.7. "Modestinus, libro I. De las Reglas.- La naturaleza o esencia de la ley es esta: mandar, vedar, permitir y castigar."

El Digesto del Emperador Justiniano, 1.3.24, Traducido y Publicado por el Licenciado don Bartolomé Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Madrid, 1872, Tomo. I, p. 42.

D.1.3.7. "Modestinus, liber I. Regularum.- Legis virtus haec est imperare, vetare, permittere, punire."

Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum, Digesta, Recognovit, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 6.

The project of Civil Code prepared by the Commission of the Government, which was giving birth to the Napoleonic Code (1804), had an article, 7, later suppressed, that added the rewards, in the following terms:

"She [the law] orders, she allows, she prohibits, she [announces the rewards and the punishments]."

"Elle [la loi] ordonne, elle permet, elle défend, elle annonce des récompenses et des peines"). Jean Ray, *Essai sur la Structure Logique du Code Civil Français*, Librairie Félix Alcan, Paris, 1926, p. 46.

a. Systematizing genre

The prescriptive speeches that reduce a multiplicity of texts to the current unity of a single arranged text, a compilation or a digest; or that reduce a multiplicity of norms and principles to the unity of an institutional law, a consolidation or a code belong to the systematizing genre. The prescriptive speeches that fail to systematize their norms or principles in institutions (casuistic laws, laws of principles)²⁷¹ or that introduce unsystematizing changes to other laws, either partially to their texts, or to their validity (amending laws) belong to the fragmentary genre,²⁷²

Juridical system

Before dealing with such species of laws as belong to the systematizing genre, it is necessary to rely on a theoretical model of juridical system, which advisers and legislators should always take into consideration as an implicit context for every genre of speech and every legislative species.

PRINCIPLE: Laws shall be composed and criticized, advised and dissuaded, in accordance with the criterion with which they shall be interpreted and applied, taking into consideration the whole text of the law (explicit context), not only some of its parts,²⁷³ and the whole juridical system (implicit context), not only some of its parts.

The concept of juridical system or juridical order²⁷⁴ imposes on legislators, administrators, judges, lawyers and jurists in general the duty to maintain the reasonableness of positive law, preserving the juridical cosmos from falling into the chaos of arbitrariness.

The knowledge of a juridical system characterizes an expert and separates him from a lay person²⁷⁵ who, no matter how educated he may be, is unable to appreciate the

²⁷¹ For the distinction between the casuistic method and the method of the laws of principles, see: R. von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur la 3a. Édition avec l'Autorisation de l'Auteur, par O. de Meulnare, Liv. II, Ie. Part., Titre III, Technique, Chap. I., Sect. 2. Concentration Logique, # 45, Tome III, A. Marescq, Ainé, Éditeur, Paris, F. Clemm, Gand, 1877, p. 44.

²⁷² Similar, although not equal, to Geny's distinction, between the fragmentary legislation (isolated laws) and codification. The difference lies in having isolated laws that are systematizing (institutional laws), as it will be discussed later on. On Geny's distinction, see: François Geny, *La Technique Législative dans la Codification Civile Moderne (A Propos du Centenaire du Code Civil)*, dans *Le Code Civil, 1804-1904, Livre du Centenaire* Publié par la Société d'Études Législatives, Arthur Rousseau Éditeur, Tome Second, Paris, 1904, p. 994.

²⁷³ D.1.3.24

D.1.3.24. "CELSUS liber VIII digestorum Incivile est nisi tota lege perspecta una aliqua particula eius proposita indicare vel respondere.", *Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum, Digesta, Recognovit, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 6.*

D.1.3.24. "Celso, libro IX del Digesto.- Es contra derecho el juzgar ó responder en vista de alguna parte de la ley, sin tenerla toda muy presente."

D.1.3.24. "Celsus liber IX Digestorum.- Incivile est, nisi tota lege perspecta, una aliqua particula eius proposita iudicare, vel respondere."

El Digesto del Emperador Justiniano, 1.3.24, Traducido y Publicado por el Licenciado don Bartolomé Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Madrid, 1872, Tomo. I, p. 43.

²⁷⁴ Norberto Bobbio, *Teoria Generale del Diritto*, G. Giappichelli Editore, Torino, 1993, p. 159.

²⁷⁵ Plato, *The Laws*, I, 632c-d.

wisdom of a certain norm, due to the fact he does not know the point at which it should be inserted in the juridical system to incorporate it, as the intermediate terms between the norm and its ultimate motivations, since he lacks the general vision and the logical perception of the whole.²⁷⁶ An adviser or legislator, before composing and criticizing, advising and dissuading general juridical norms, for any genre of legislative speech and any species of law, must know the point of insertion of the new law into the juridical system as the reasons for which he chooses such point, thus foreseeing the consequences, either desired or undesired, but always noticed, of such an insertion.

In past times, Civil Law²⁷⁷ countries were characterized by the notion of juridical system; now, this notion also characterizes Common Law countries,²⁷⁸ although both maintain their respective tendencies, rationalist the former and empiricist, the latter. Today, both types may be considered systematic, i.e. like a set of laws (general norms) and judicial precedents (individual norms), since there has been a modification of the relative importance of the above mentioned sources of law. In Civil Law countries, which did not admit judicial precedents, legislation is still the starting point, but judicial precedents are increasingly being resorted to. In Common Law countries, based on case law, legislation had a secondary function, but, as from Roosevelt's New Deal, the norms contained in the legislation are increasingly taken as a starting point which is then followed by judicial precedents.²⁷⁹ A convergence between both positive law types has taken place in terms of considering legislation and judicial precedents as sources, and in both types, positive law is considered as a system, not a chaos born out of the whims of legislators, judges, or both.

A system or set is defined as any multiplicity that can be thought as a unity.²⁸⁰ Systematization tasks shall reflect the above mentioned idea of system, without any defects or excesses.

Plato, *The Laws*, I, 632, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 56.

Platón, *Las Leyes*, I, 632c-d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo I, pp. 12-13.

Platón, *Leyes*, I, 632c-d, Introducción, Traducción y Notas de Francisco Lisi, en Platón, *Diálogos VIII Leyes* (Libros I-VI), Editorial Gredos, Madrid, 1999, pp. 205-206.

Platon, *Les Lois*, I, 632c-d, dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Paris, 1942, p. 646.

Platone, *Le Leggi*, I, 632c-d, da *Dialoghi*, Vol. VII, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 14.

²⁷⁶ R. von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur la 3a. Édition avec l'Autorisation de l'Auteur, par O. de Meulenaere, Liv. II, Ie. Part., Titre III, Technique, Chap. I., Sect. 2.-A, But de la Technique, # 43, Tome III, A. Marescq, Ainé, Éditeur, Paris, F. Clemm, Gand, 1877, p. 15.

²⁷⁷ Enrico Allorio, "Scienza Giuridica Europea", *JUS*, Dicembre 1952, pp. 433-70.

²⁷⁸ *All jurisprudence*, its general theory of the law, is, in a certain way, an explanation of that assumption, Julius Stone, *Legal System and Lawyers' Reasonings*, First Printing, 1964, Second Printing, 1968, Maitland Publications, Sydney, 1968, p. 20.

For an analysis of Austin's theories (scarse), Bentham, Kelsen and Hart, see:

Joseph Raz, *The Concept of a Legal System, An Introduction to the Theory of Legal System*, Clarendon Press, Oxford, 1970, 212 pp.

²⁷⁹ Miles O. Price and Harry Bitner, *Effective Legal Research, A Practical Manual of Law Books and Their Use*, Little Brown and Company, Boston-Toronto, 1953, p. 6.

²⁸⁰ Cantor, the creator of the set theory, affirms that he was inspired in the Philebus dialogue by Plato to define the set concept.

RULE: The attempts of systematization shall stay below the idea of system if multiplicity fails to reach unity; they shall stay above, if they try to reach unity, more or less, but lack multiplicity.²⁸¹

When a system is difficult to understand, one can resort to a well-known understandable system, with fundamental similarities, to consider the one which is difficult to understand as if it were the one already well-known. If the similarities were only verbal, a metaphor –a mere figure of speech – would be obtained. Whenever the similarities are deeper, as those founded on the equality of the elements, the structure (isomorphism), the function (homology) or the properties, a theoretical model would thus arise, which will provide for a transference of both the terminology and the knowledge, from one system to the other, which will facilitate the understanding of the most difficult of them both.²⁸²

A juridical system is integrated by the following elements: juridical norms (individual and general), juridical principles, juridical institutions and juridical branches (or branches of the law).

The non-customary general juridical norms, are the answers provided by legislators to solve the problems raised by certain facts, acts and activities of social importance.

Cantor, *Fondements d'une Théorie Générale des Ensembles*, *Mathematische Annalen*, XXI, pp. 545-586, traduction par J. Miller, dans *Cahiers pour l'Analyse, La Formalisation*, Revue Trimestrelle Publiée par La Société du Graphe, Imprimée et Difusée par Les Éditions du Seuil, 10, Hiver 1969, p. 35, n. 1.

Plato, *Philebus*, 16c-17a; *Phedrus*, 265a-266c, 273e, 277b.

Platon, *Philèbe*, 16c-17a, *Phèdre* 265a-266c, 273e, 277b, dans *Platon Oeuvres Complètes*, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Paris, 1942, pp. 557-558; pp. 60-63, p. 73, pp. 78-79.

Platón, *Fedro*, 265a-266c, 273e, 277b, *Edición Bilingüe*, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, pp. 60-63, p. 72, pp. 79-80.

Platon *Phèdre*, 265a-266c, 273e, 277b, dans *Oeuvres Complètes de Platon*, Tome IV, 3e. Partie, *Phèdre*, Texte Traduit par Léon Robin, Société d'Édition "Les Belles Lettres", Notice, Deux procédés, La division, Paris, 1933, CLIV-CLVIII; pp. 70-73, p. 86, pp. 92-92.

Cicero, *De Oratore*, I, 186-188.

Cicéron, *De l'Orateur*, I, 186-188, Livre Premier, Texte Établi et Traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres", Paris, Première Édition 1922, Sixième Tirage 1967, pp. 66-67.

M.F.C. de Savigny, *Traité de Droit Romain*, Traduit de l'Allemand par Ch. Guenoux, Librairie de Firmin Didot Frères, Paris, 1855, Tome Premier, Chapitre IV, XXXIII, p. 207.

²⁸¹ Friederich Karl Von Savigny, *Metodología Jurídica [Curso de Invierno 1802-1803] (Juristische Methodenlehre*, K.F. Koehler Verlag, Stuttgart, 1951), Traducción de J. J. Santa Pinter, Ediciones Depalma, Buenos Aires, 1979, p. 35; p. 37.

Friederich Karl Von Savigny, *Juristische Methodenlehre*, K.F. Koehler Verlag, Stuttgart, 1951, pp. 35-36; p. 37.

²⁸² As regard the models, see:

Mary Hesse, *Models and Analogy in Science*, *The Encyclopedia of Philosophy*, The Macmillan Company & The Free Press, New York Collier Macmillan Limited, London, 1967, pp. 354-359.

Max Black, *Modelos y Metáforas*, translation by Víctor Sánchez de Zavala, Capter XIII, *Modelos y arquetipos*; as read at the University of Pennsylvania 9th December 1958 firstly published in *Both Human and Humane*, ed, de C. E. Bowe, Philadelphia, University of Pennsylvania Press, 1960, Tecnos, Madrid, 1967, pp. 20-38.

Enrico di Robilant, *Modelli nella teoria del diritto*; it reproduces the text of a conference in German dated January 22 th, 1970 in Hochschule für Verwaltungswissenschaften of Spira and dated January 26 th, 1970 at the University of Mainz, *Rivista Trimestrale. di Diritto e Procedura Civile*, 1970, pp. 705-721.

The juridical institutions are integrated by sets of general juridical norms²⁸³ related to certain facts, acts and activities of social importance, founded on certain juridical principles.

The branches of the law are sets of institutions related to certain facts, acts and activities of social importance, founded on certain juridical principles of their own. Whenever the principles are proper of the branches, it is said that these are autonomous; whenever they are not proper, it is said that these branches are special. The difference is important since, being that the special branches lack principles of their own, after resorting to analogy, the general principles of the law are directly applied in order to integrate their gaps.

The juridical principles, i.e., the reasons or foundations of the norms (individual and general), are elements even more general and abstract than the norms themselves. They may be established in such a way that they remain isolated; together with norms but without integrating sets with them; or otherwise integrated in sets. Whenever they are integrated in sets, the principles serve as a foundation to institutions, the branches and the systems. This is the reason why it is necessary to distinguish which the considered level of abstraction is: the institution (principles of marriage, of property, etc.), the branch (civil law principles, criminal law principles, etc.), the internal juridical system (general principles of law), or the international juridical system (“general principles of law recognized by civilized nations”²⁸⁴).

The empirical level of the juridical system, which allows it to make contact with the reality of the social system and is common to all levels of abstraction, is the set of certain concrete facts, acts and activities of social importance, which supports the relevant juridical relations. The increasing levels of abstraction are determined by: *the norms* (individual and general); *the principles, the institutions; the branches; the internal order; and the international order*. In the systematical conception of the Law underlies the idea of the double way of abstraction and concretion, of ascend and descend of understanding. A great lawyer is that whose understanding allows him to consider the general problems in a particular case and the particular cases in a general problem, while his will keeps on devising the most just solutions for the problems that he may cope with.

The structure of the juridical system is the logical relation between its elements: the norms, the principles, the institutions and the branches, within the internal order (national, regional, provincial or local), and within the international order (other national, regional juridical systems or the universal system).

To find the best-known system that may serve as a theoretical model of the juridical system, two types of logical systems will be considered, in accordance with their respective structures: deductive and classificatory systems. Geometry is an example of the deductive systems; botany and zoology are examples of the classificatory systems.

Among the elements that integrate a juridical system, principles play a fundamental role.

In a juridical system of a deductive structure, principles are considered as axioms from which branches, institutions and norms can be deduced. The multiplicity of the elements of the juridical order is conceived as a unity, because the more general elements allow to deduce the less general, as subsequent links are bound to the first

²⁸³ Bernardo Windscheid, *Diritto delle Pandette*, Traduzione dei Professore Carlo Fadda e Paolo Emilio Bensa, Nuova Ristampa Steriotipa, Unione Tipografico-Editrice Torinese (UTET), Torino, 1925, T. I, 370, pp. 110-111.

²⁸⁴ Formula established in Article 38, section c) of the Statute of the International Court of Justice.

ones to create a chain. The logical relationship existing among the elements of the juridical system is a deduction.

In a juridical system of a classificatory structure, principles are considered as the fundamental criteria allowing for the inclusion of norms, institutions, branches and the juridical order as subsets, in accordance with the relevant similarities and differences among the above-mentioned elements, as synoptic tables, as the parts that make up a tree.²⁸⁵ The multiplicity of the elements of the juridical system is conceived as a unity, because the less general elements are included as subsets within the more general: the norms within the institutions, the institutions within the branches, the branches within the internal order and the internal order within the international order, as in a synoptic table allowing for a clear vision and easy memory of the set and its elements. The logical relationship existing among the elements of the juridical system is the inclusiveness among classes, the classification in genres and species.²⁸⁶ The fundamental opposition between the juridical systems as classificatory or deductive was clearly seen by Ascarelli, among others:

"7. Early in the XVII century, reasoning was generally made in a strictly mathematical fashion. Hobbes does not escape this method. Actually he no longer considers genres and species, but connections and relations. He seeks to create models which may capture connections and not elaborate classifications which may allow for the identification of species."²⁸⁷

The deductive model of a juridical system, in the same fashion as geometry (*more geometrico*), had its well-known supporters, such as the above-mentioned Thomas Hobbes (1588-1679), in the Anglo-Saxon world; and Samuel Puffendorf (1632-1694) and Christian Wolff (1679-1754), in the European continental world,²⁸⁸ under the

²⁸⁵ Claude du Pasquier, *Introduction à la Théorie Générale et à la Philosophie du Droit*, Deuxième Édition, 1942, p. 148.

²⁸⁶ The distinction between the syllogistic and the tabular methods is taken from:

Logique de Kant, Traduction par J. Tissot, Paris, 1862, p. 21.

For the deductive systematization and the classificatory systematization in traditional logic, see: Christopher Sigwart, *Logic*, Translated by Helen Dendy, London, Swan Sonnenschein & Co., New York, Macmillan & Co., Vol. II, pp. 508-528.

For the difference between hypothetical inclusive systems, like biology, and hypothetical deductive systems, like mathematics, see:

Jean Piaget, *Introduction à l'Épistémologie Génétique*, Presses Universitaires de France (PUF), Tome III, p. 22.

For the logical aspects of biological classifications, see:

Jean Piaget, *Traité de Logique, Essai de Logistique Opératoire*, Librairie Armand Colin, Paris, 1949, pp. 66-70, pp. 81-125.

Also see:

John Greig, *The Language of Taxonomy, An Application of Symbolic Logic to the Study of Classificatory Systems*, Columbia University Press, New York, 1954, IX, 70 pp.

George Gaylord Simpson, *Principles of Animal Taxonomy*, Columbia University Press, New York and London, First printing 1961, Fourth printing 1969, xii pp., 247 pp.

²⁸⁷ "7. Au début du XVIIe. siècle on raisonnait généralement d'une façon rigoureusement mathématique. Hobbes n'échappe pas à cette méthode. Il ne considère plus, en effet, les genres et les espèces, mais les rapports et les relations. Il cherche à créer des modèles qui permettraient de saisir des rapports et non à élaborer des classifications qui permettraient d'identifier des espèces."

Tullio Ascarelli, *Étude introductive traduite par Claude Doucouloux-Favard, dans Th. Hobbes, A dialogue between a Philosopher and a Student of the Common Law of England*, G. W. Leibniz, *Specimen Quaestionum Philosophicarum Ex Jure Collectarum.- De Casibus Perplexis.- Doctrina Conditium.- De Legum Interpretatione*, Dalloz, Paris, 1966, p. 13.

²⁸⁸ For the history and theory of juridical systematizing, see:

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- Giorgio La Pira, *La Genesi del Sistema nella Giurisprudenza Romana, I. Problemi Generali*, Studi in Onore di Filippo Virgilio nel XL Anno d'Insegnamento, Società Editrice del Foro Italiano, Roma, 1935, pp. 159-182 (non vidi).
- Giorgio La Pira, II. *L'Arte Sistematrice*, *Bulletino dell'Istituto di Diritto Romano Vittorio Scialoja*, XLII (Vol. I Nuova Serie), pp. 336-355.
- Giorgio La Pira, III. *Il Metodo*, *Studia et Documenta Historiae et Iuris*, I, 1935, N. 1, pp. 319-348.
- Giorgio La Pira, IV. *Il Concetto di Scienza e Gli Strumenti della Costruzione Scientifica*, *Bulletino dell'Istituto di Diritto Romano Vittorio Scialoja*, XLIV (Vol. III Nuova Serie), 1936-1937, pp. 131-159.
- Luis Sánchez Agesta, *Historia del Sistema de la Ciencia del Derecho Privado*, *Boletín de la Universidad de Granada, España*, 1941, pp. 507-524; pp. 633-666.
- Vincenzo Arangio-Ruiz, *La Formation du Système des Commentaires de Droit Civil dans la Science Juridique Romaine*, *Annales de la Faculté de Droit d'Istanbul, Turquie*, 1953, 2-3, pp. 136-145.
- Michel Villey, *Recherches sur la Littérature Didactique du Droit Romain (A propos d'un texte de Cicéron De oratore 1-188 à 190)*, *Les Éditions Domat-Montchrestien, Paris*, 1945, p. VI, p. 84.
- Michel Villey, *Logique d'Aristote et Droit Romain*, *Revue Historique de Droit Français et Etranger*, 1951, pp. 309-328.
- Michel Villey, *Questions de Logique Juridique dans l'Histoire de la Philosophie du Droit*, *Travaux du Centre National de Recherche de Logique, Volume II, Droit et Logique, Les Lacunes en Droit, Etablissements Emile Bruyland, Bruxelles*, 1967, pp. 3-23.
- Michel Villey, *La Formation de la Pensée Juridique Moderne. Cours d'Histoire de la Philosophie du Droit 1961-1966*, *Les Éditions Montchrestien, Paris*, 1968, 715 pp.
- Helmut Coing, *Historia y Significado de la Idea de Sistema en la Jurisprudencia (Geschichte und Bedeutung des Systemgedankes i der Rechtswissenschaft)*, *Vittorio Klostermann, Frankfurt am Main*, 1956), Traducción de Robert S. Hartman y José Luis González, *Cuaderno No. 1, Centro de Estudios Filosóficos, Universidad Autónoma de México, Mexico*, 1959, pp. 21-36.
- Theodor Viehweg, *Tópica y Jurisprudencia (Topik und Jurisprudenz, C. H. Beck'sche Verlagsbuchhandlung, Munich*, 1963), Prólogo de Eduardo Garcia de Enterría, Traducción de Luis Díez-Picazo de León, *Taurus, Madrid*, 1964, 144 pp. + Index.
- Theodor Viehweg, *Topica e giurisprudenza (Topik und Jurisprudenz, C.H. Beck'sche Verlagsbuchhandlung, München*, 1953), a cura di Giuliano Crifó, Giuffrè Editore, Milano, 1962, xxiv + 128 pp., Index, with a preface by the author for the Italian edition and important introduction by the translator.
- Ricardo Orestano, *Introduzione allo Studio Storico del Diritto Romano*, Ristampa della Seconda Edizione, *G. Giappichelli, Torino*, 1963, pp. 39-112.
- Max Kaser, *En Torno al Método de los Juristas Romanos (Zur Methode der Römischen Rechtsfindung, Nachristen der Akademie der Wissenschaften in Göttingen, Phililog-hist Klasse, Gotinga*, 1962), Traducción por Juan Miquel, *Publicaciones de los Seminarios de la Facultad de Derecho de Valladolid, Valladolid*, 1964, 55 pp.
- Mario G. Losano, *Sistema e Struttura nel Diritto*, Volume Primo *Dalle Origini alla Scuola Storica*, Università di Torino, *Memorie dell'Istituto Giuridico, Serie II, Memoria CXXXIV, G. Giappichelli, Torino*, 1968, 302 pp. + XXXII, *Indice*, *Introduzione*, Torino, 1968.
- Mario G. Losano, *Giuscibernetica, Macchine e Modelli Cibernetici nel Diritto*, *Piccola Biblioteca Einaudi, Torino*, 1969, 206 pp.
- Mario G. Losano, *The Legal System from Theology to Technology*, *Archiv. fur Recht-und Sozialphilosophie*, 1971, pp. 485-501.
- Kaius Tuori, *The Myth of Quintus Mucius Scaevola Founding Father of Legal Science*, *The Legal Story Review, Volume LXXII*, 2004, pp. 243-262.
- Jean G. Renauld, *La Systematisation dans le Raisonement Juridique*, *Logique et Analyse*, 1958, 3-4, pp. 168-183.
- Giorgio Lazzaro, *Sistema Giuridico*, *Novissimo Digesto Italiano, UTET, Torino*, pp. 459-464.
- Joseph Raz, *The Concept of a Legal System, An Introduction to the Theory of Legal System*, *Clarendon Press, Oxford*, 1970, ix + 212 pp.
- Claus-Wilhelm Canaris, *El Sistema en la Jurisprudencia (Systemdenken und Systembegriff in der Jurisprudenz; entwickelt am Beispiel des deutschen Privarechts, 2. überarbeitete Auflage, Berlin*, 1983), Traducción de Juan Antonio García Amado, *Fundación Cultural del Notariado, Madrid*, 1998, 186 pp.
- Norberto Bobbio, *Teoria Generale del Diritto*, *G. Giappichelli Editore, Torino*, 1993, Parte Seconda, *Teoria dell'Ordinamento Giuridico*, pp. 159-292.

influence of the rationalism of René Descartes (1596-1650). In the XX century Alphonse Ménard's traditional geometric version,²⁸⁹ the most modern versions of the axiomatic deductive system influenced by the contemporary development of the mathematical logic by Elemér Kováts, Miklós Ajtai, Luigi Ferrajoli²⁹⁰ and, by the deontic logic, by Carlos E. Alchourrón and Eugenio Bulygin²⁹¹, are worth to be remembered.

The deductive inference is important for the application of juridical norms. The logical structure of the juridical norms may be represented as follows:

If *A* were, *B* must be, where *If A were* is the part of the statement which describes the facts, acts and activities of social importance and their necessary and sufficient requisites (the antecedent); and *B must be* is the part of the statement that prescribes the obligatory, prohibited, permitted, rewarded or punished conducts that are imputed (the juridical consequence).

The application of juridical norms is usually represented as a syllogism, in which the norm is its major premise, the subsumption of the facts, acts and activities is its minor premise, and the logical conclusion is the application of the norm.²⁹² Beccaria, a classic criminal law author, said:

"In each crime the judge has to do a perfect syllogism: the major premise must be the general law; the minor premise the action conform or not to the law; the consequence freedom or punishment. When the judge is restrained, or wants to do at least two syllogisms, a door to uncertainty is opened."²⁹³

Aristotle had previously said:

"I call perfect syllogism to that which, in addition to all that has been assumed, requires nothing else to reveal the need for deduction; and I call, in turn, imperfect syllogism to that which requires the addition of one or several objects, which are rather necessarily required by the terms placed in the base, but which have not been assumed through the premises."²⁹⁴

²⁸⁹ Alphonse Ménard, *Essai d'une Critique Objective de la Technique Juridique en Matière d'Obligation*, Librairie de la Société du Recueil Sirey, Paris, 1926, 376 pp. + errata and index.

²⁹⁰ Miklós Ajtai, [Le] *Chemin le plus court de la pensée juridique*, Exposé de l'Ideographie Juridique de M. Elemér Kováts, Avocat à la Cour de Budapest, avec une étude sur l'Axiomatization des Sciences Morales, Presses Universitaires de France, 1930, 128 pp.

Luigi Ferrajoli, *Teoria Assiomatizzata del Diritto*, Parte Generale, Dott. A. Giuffrè, Milano, 1970, 208 pp.

²⁹¹ Carlos E. Alchourrón y Eugenio Bulygin, *Normative Systems*, Springer-Verlag, New York, Wien, 1971, xviii, 208 pp.

²⁹² "From the logical point of view, any decision of the courts evokes a syllogism. Premises are placed inside motives, by a juridical norm, general and abstract as major [premise] and a really particular and concrete situation as minor [premise]. The conclusion is deduced in the prescriptive part." English translation from French by the author of this book.

"Du point de vue logique, toute décision de justice évoque un syllogisme. Les prémisses en sont posées dans les motifs, par une règle de droit, générale et abstraite qui tient lieu de majeure et une situation de fait particulière et concrète faisant l'office de mineure. La conclusion est tirée au dispositif.", dans: Roger Mendegris, *Le Commentaire d'Arrêt*, Dalloz, Paris, 1975, p. 10.

²⁹³ "In ogni delitto si deve fare dal giudice un sillogismo perfetto: la maggiore dev'essere la legge generale; la minore l'azione conforme o no alla legge; la conseguenza la libertà o la pena. Quando il giudice sia costretto, o voglia fare anche soli due sillogismi, si apre la porta alla incertezza." Cesare Beccaria, *Dei Delitti e delle Pene*, da Beccaria e il Diritto Penale, Cesare Cantù, Barbera Editore, Firenze, 1862, p. 391.

²⁹⁴ Aristotle, *Prior Analytics*, I, 24b.

The English version was translated from the following Italian version:

Here follows an example of what is commonly considered a judicial syllogism:

If someone kills a person, he shall be punished with imprisonment for not less than 8 and not more than 25 years (law).

John Doe killed a person (subsumption).

Therefore, John Doe shall be imprisoned for 25 years (sentence).

From the logical point of view, norms are applied when the antecedent has been proved, in accordance with a hypothetical syllogism in *modus ponens extended* to make it applicable to the juridical reasoning. The *modus ponens*, typical of the propositional logic, originally was one of five basic arguments of the stoic logic that did not require any demonstration, since its validity was evident.

The scheme of the argument was:

If the first, then the second.

The first.

Therefore, the second.

The example that used to be quoted was the following:

If it is day, then it is light.

It is day.

Therefore, it is light.²⁹⁵

The *modus ponens extended* to logically express the judicial syllogism could be formulated as follows:

If A were, B shall be.

A has been proved.

Therefore, B shall be applied.

But the most serious difficulty for the judicial application of the norms does not generally lie in going from the premises to the conclusion, that is to say, in making the deductive inference that, as it has been pointed out, consists in applying the *modus*

"Chiamo dunque sillogismo perfetto quello che oltre a quanto è stato assunto non ha bisogno di null'altro, affinché si rivelli la necessità della deduzione, e chiamo invece imperfetto il sillogismo che esige l'aggiunta di uno o di parecchi oggetti, i quali sono bensì richiesti necessariamente dai termini posti alla base, ma non sono stati assunti attraverso le premesse.", Aristotele, Primi Analitici, I, 24b, Organon, a Cura di Giorgio Colli, Adelphi Edizione S.P.A., Milano, 2003, pp. 92-93.

Aristotle, Prior Analytics, I, 24b, 23-26, The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 40.

Aristotle, Prior Analytics, A1, 24b, 20-25, translated with introduction, notes and commentary by Robin Smith, Hackett Publishing Company, Indianapolis/Cambridge, 1989, p. 2.

Aristóteles, Analíticos Primeros, 1, 24b, en Aristóteles, Tratados de Lógica (ORGANON) II, Sobre la Interpretación, Analíticos Primeros, Analíticos Segundos, Introducciones, Traducciones y Notas por Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1995, p. 95.

²⁹⁵ Benson Mates, Stoic Logic, University of California Press, Berkeley and Los Angeles, California; Cambridge University Press, England, London, 1953, p. 67, pp. 69-70.

ponens, which is a very simple logical rule, but in being able to find the relevant texts and reconstruct the applicable norm (major premise), as well as in proving its antecedent (minor premise).

The judge reconstructs the norm from the texts, since rarely do the letter of the law and the complete legal norm which will serve as a major premise coincide, a circumstance which becomes serious due to the legislative hyperinflation. For the judge to enter a sentence for homicide, having a person killed another, is just only one of prerequisites, since others should be borne in mind, such as criminal responsibility, illegality, guilt, etc. Acknowledging the antecedent of the norm as proven will neither be easy for him, since the subsumption requires that the judge has verified the performance of certain facts, acts and activities, and that he has qualified them as included in the antecedent of the norm.²⁹⁶ Once the applicable norm has been obtained and the performance of certain facts, acts and activities, qualified as included in the antecedent of the former has been proved, yet expressly assuming everything that is necessary for the inference, and once such delicate juridical operations have been completed, the judge will then have the major and the minor premises of the perfect syllogism which will make it possible for him to apply the norm "automatically",²⁹⁷ due to the simplicity of the logical rule used (*modus ponens*).

If someone goes from the judicial interpretation and application of the juridical norms to the legislative task, the deductive system also turns out inadequate, among other reasons, because it would be obscure for lay people due to its length, since they could not follow the thread of a thought from a very distant starting point and for its verbiage, since obvious things would be said upon listing the propositions of each one of the syllogisms.²⁹⁸

The function of a deductive system consists in expressing what is implied in axioms and in propositions that necessarily derive from them through deductive logical inferences. In a juridical system conceived as deductive, Law is created only by the constituent power; everything else is a direct application of or a consequence deduced from the Constitution. The interpretation is not necessary; only deductive logical

²⁹⁶ Chaim Perelman, *La Distinction du Fait et du Droit. Le Point de Vue du Logicien*, *Dialectica*, 59/60, Vol. 15, No. 3/4, 15-9, 15-12, 1961, p. 603.

²⁹⁷ "This way, in the so called subsumption, what is decisive is almost exclusively the finding of the premises: once the "major premise" and the "minor premise" are sufficiently specified and syntonized which each other –to which end the formal logic is not essential– the real task of the jurist has been fulfilled; from this moment on, the conclusion is extracted, so to say, automatically."

English translation from Spanish by the autor of this book.

"Así, en la llamada subsunción lo decisivo es casi exclusivamente el hallazgo de las premisas: una vez que la "premisa mayor" y la "premisa menor" están suficientemente concretadas y entre sí sintonizadas –para lo cual la lógica formal no es esencial– está cumplida la verdadera tarea del jurista; a partir de ese momento la conclusión se extrae, por así decir, automáticamente."

Claus-Wilhelm Canaris, *El Sistema en la Jurisprudencia*, traducción de Systemdenken und Systembegriff in der Jurisprudenz, Dunker und Humboldt, Berlin, 1983, por Juan Antonio García Amado, Fundación Cultural del Notariado, Madrid, 1998, p. 31.

²⁹⁸ As observed by Aristotle in relation to the enthymeme, the rhetorical syllogism.

Aristotle, *Rhetoric*, II, 1395b25-27.

Aristotle, *Rhetoric*, II, 1395b25-27, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2224.

Aristóteles, *Retórica*, Libro II, 1395b, 25-30, *Introducción, Traducción y Notas por Quintín Racionero*, Editorial Gredos, Madrid, 1990, p. 417.

Aristote, *Rhétorique*, Livre II, 1395b23-27, *Texte Établi et Traduit par Médéric Dufour*, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 111.

Aristotele, *Retorica II*. 1395b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 139.

inferences from the Constitution are needed. In order to apply the norms to an individual case the facts, acts and activities are qualified or subsumed as if it were an automatic mechanism. Since no gaps may exist in the law, because what is not regulated or derived by analogy is not law, integration seems to be unnecessary. Some have imagined juridical systems of such a nature, but their impracticability prevents any reasonable man from believing that they could have existed as positive law or descriptive sciences of such Law.

Both the positive law and the science of the law are open systems²⁹⁹, interacting with society, in which it is always necessary to harmonize the requirements of juridical security, the foundation of certainty,³⁰⁰ with the requirements of justice, the foundation of the law, not only when constitutions are established. As for certainty, both positive law and the science of the law use natural language, but they also use a specialized, more precise language, although not exempted from ambiguity and vagueness. There are procedures intended to eliminate ambiguity and to reduce vagueness, as it will be discussed when dealing with legislative definitions. Nevertheless, it is impossible to avoid interpreting norms or to consider the qualification of all the cases as automatic, as those supporting the traditional deductive juridical system expect, or perhaps, as some of the supporters of the modern deductive juridical system may dream about. The latter wish they had a formalized language and an axiomatic system capable of eliminating interpretation and application as art tasks, reducing the controversies to a mere calculation, as Leibniz desired.³⁰¹ As for justice, unforeseen problems or undesired effects of the adopted solutions result in the emergence of law gaps that will have to be filled, so that the integration of the juridical system could neither be avoided.

The taxonomic or classificatory model of a juridical system began with Quintus Mucius Scaevola Pontifex, at the beginning of the first century B.C., and culminated with Rudolf Von Ihering (1818-1892). Scaevola reduced the multiplicity of the civil law of his time to the unity of eighteen books,³⁰² under the influence of his own family, especially his cousin, Quintus Mucius Scaevola Augur and the stoic Panaetius of

²⁹⁹ For the open system see:

Ludwig von Bertalanffy, *General Systems Theory*, 6, *The Model of Open System*, Penguin University Books, 1973, pp. 146-162.

³⁰⁰ Flavio López de Oñate, *La Certeza del Derecho (La Certezza del Diritto)*, Casa Editrice Gismondi, Roma, 1942), Traducción de Santiago Sentís Melendo y Marino Ayerra Redin, EJEa, Buenos Aires, 1953, p. 73.

³⁰¹ Louis Couturat, *La Logique de Leibniz*, Félix Alcan, Éditeur, Paris, 1901, p. 98 y n. 3.

³⁰² D.1.2.41.

(D.1.2.41. "After these Quintus Mucius, son of Publii's, was the first one who, being a Maximum Pontiff, arranged methodically the whole Civil Law, reducing it to eighteen books.")

D.1.2.41. "Después de éstos Quinto Mucio, hijo de Publio, fue el primero que siendo Pontífice Máximo, ordenó metódicamente todo el Derecho Civil, reduciéndolo a diez y ocho libros."

D.1.2.41. "Pos hos Quintus Mucius, Publii filius, pontifex maximus ius civile primus constituit, generatim in libros decem et octo redigendo."

El Digesto del Emperador Justiniano, 1.2.41. Traducido y Publicado por Bartolomé Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Madrid, 1872, Tomo. I, p. 39.

D.1.2.41. "Pos hos QUINTUS MUCIUS Publii filius pontifex maximus ius civile primus constituit generatim, in libros decem et octo redigendo.", in:

Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum, Digesta, 1.2.41, Recognovit, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 4.

Rhodes.³⁰³ It was a work much admired in the ancient world so, there, for the first time, as for the content, civil law was synthesized, which avoided the task of resorting to previous special works³⁰⁴ and, as for the form, a turn was made from casuistry to a systematical classification by genres³⁰⁵ and species, which although criticized,³⁰⁶ made it possible to notice the existence of the respective principles, in such a way that the knowledge of the law was raised from an empirical state, which fails to provide reasons, to a technical state, which is capable of giving them. In the XIX century, Ihering found in natural history, a discipline that describes the things of the mineral, vegetable and animal kingdom,³⁰⁷ the model of the juridical technique:

"[...] in the same way a naturalist classifies the objects of natural history, we must coordinate all the juridical bodies in a one and only systematical order."³⁰⁸

The taxonomic model, which considers the juridical system as a classificatory system, similar to botany or zoology, is the conception that prevails in the European continental juridical science.³⁰⁹ This is the reason why, nearly a century after Ihering, it could be held that:

"And when the jurist rises to concepts of a higher and more comprehensive order, such as rights in rem, obligations, juridical capacity, private or public law, etc., he does nothing else but follow the same logical process of abstraction and generalization. There is no difference between the logical work and the construction of concepts, of institutes and of the systems inasmuch as there is no difference in the

³⁰³ Gabriel Lepointe, *Quintus Mucius Scaevola, Sa Vie et son Oeuvre Juridique, Ses doctrines sur le Droit Pontifical*, Thèse pour le Doctorat, Société Anonyme du Recueil Sirey, Paris, 1926, p. 41.

³⁰⁴ Gabriel Lepointe, *Quintus Mucius Scaevola, Sa Vie et son Oeuvre Juridique, Ses doctrines sur le Droit Pontifical*, Thèse pour le Doctorat, Société Anonyme du Recueil Sirey, Paris, 1926, p. 44.

³⁰⁵ Antonio Guarino, *Storia del Diritto Romano*, 4a. Ed., Casa Editrice Dott. Eugenio Jovene, Napoli, 1969, p. 321.

³⁰⁶ Fritz Schulz, *History of Roman Legal Science*, Oxford University Press, First Published 1946, Corrected Sheets of the First Edition with New Addenda, 1953, 1963, Oxford, p. 64.

³⁰⁷ (Natural history) *Historia Natural*.

Enciclopedia Universal Ilustrada Europeo-Americana, Espasa-Calpe, Tomo XXVII, p. 1793.

Histoire, 10, Fig., dans:

E. Littré, *Dictionnaire de la Langue Française*, Tome Deuxième, D-H, Librairie Hachette et Cie., p. 2028.

³⁰⁸ "[...] de la même manière que le naturaliste classe les objets d'histoire naturelle, nous devons coordonner tous les corps juridiques dans un ordre systématique unique."

The translation from French into English was done by the author of this book.

R. Von Ihering, "Nôtre Programme" (*Jahrbücher für die Dogmatik des Heutigen Römischen und Deutschen Rechts*, T.I. Jena 1837, *Gesammelte Aufsätze*. T. I, p. 1. Jena 1881.), *Études Complémentaires de L'esprit du Droit Romain*, IV, *Mélanges*, traduit par O. de Meulenaere, Librairie A. Maresq, Aîné, Chevalier'Maresqu et Cie., Éditeurs, Paris, 1902, p. 10.

R. Von Ihering, *L'esprit du Droit Romain dans les Diverses Phases de son Développement*, Tome III, Livre Deuxième, *Système du Droit Strict (Suite)*, Titre III, *Technique du Droit Ancien*, Traduit de la 3e. Édition avec l'autorisation de l'auteur par O. Meulenaere, Librairie A. Maresq, Aîné, Chevalier'Maresqu et Cie., Éditeurs, Paris, Gand: F. Clemm, 1877, 355 pp.

Jeremy Bentham (1748-1832), before Ihering, showed that the means of invention and the method models, together with metaphysics, physics, and medicine, were discovered by him in natural history, in Linneo.

Jérémie Bentham, *Traité de Législation Civile et Penale* par Ét. Dumont, dans:

Oeuvres de Jérémie Bentham, Troisième Édition, Société Belge de Librairie Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 6-7.

³⁰⁹ Ricardo Orestano, *Introduzione allo Studio Storico del Diritto Romano*, Ristampa della Seconda Edizione, G. Giappichelli, Torino, 1963, p. 244.

classification of animals that a naturalist does as regards orders, types of families, species. Formation and classification of juridical concepts: here lies a jurist's main job."³¹⁰

Classifications are useful to express the natural relations among things and to allow the subsumption of particular things with ease and certainty.³¹¹ A juridical classificatory system is not aimed at deducing as principal function, but rather at showing the similarities and differences among its elements. It makes easier to find the norm sought for its application, provides an implicit context to interpret it and, should the norm not exist, it provides an implicit context to create it by analogy and thus insert it in the proper place, that is to say, to integrate it, which in turn, will also allow it to be remembered, interpreted, applied, suspended, repealed, restored or to create another by analogy. The classificatory conception facilitates the discovery of both the norm which serves as the major premise and of the one which serves as the minor premise. The subsumption is also facilitated by virtue of the mental habit that is acquired upon contrasting the similarities and differences of the abstract elements of the juridical system with the concrete facts, acts and activities, to determine whether the individual case, only identical to itself, coincides or not with the description contained in the relevant norm.

Therefore, it is worth of remembering that, as it has been said for another taxonomic discipline:

"Before continuing, it should be convenient to distinguish two processes which, in Biology, are often confused: "classification" and "determination". The first implies ordering or arranging living beings in definite classes which, finally, will constitute a system. Determination is a task subsequent to the classification and consists in specifying the position of an organism within a system possibly in use. Unities are classified, specimens are determined. Classification is a synthesis activity, whereas determination is basically analytical.

Thus, when the keys of a manual of the flora of a region are used, the plant that has been collected or observed, already classified, is being determined.

Only when unknown specimens are found, are they classified, named and given position within the system.

Since taxonomic hierarchies are defined as concepts of classes of individuals, a plant or concrete an animal is "determined" [,] not "identified", since there are not two beings exactly equal in nature, even though they may seem so. Identity only works with regard to an individual."³¹²

³¹⁰ "E quando il giurista assurge a concetti di ordine piú comprensivo ed levato, come diritto reale, obbligazione, capacità giuridica, diritto privato o pubblico, etc., non fa che seguire lo stesso processo logico di astrazione e generalizzazione. Nessuna differenza di lavoro logico esiste tra la costruzioni dei concetti, degli istituti e dei sistemi come niun divario corre tra la classificazione che degli animali, fa il naturalista in ordini, tipi famiglie, specie. Formazione e classificazione di concetti: ecco il lavoro principale del giurista."

The translation from Italian into English was done by the autor of this book.

G. Maggiore, *La Dottrina del Metodo Giuridico e la sua Revisione Critica*", *Rivista Internazionale di Filosofia del Diritto*, 1926, p. 379.

³¹¹ Christoph Sigwart, *Logic*, Second Edition, Revised and Enlarged, Translated by Helen Dendy, Vol. II, *Logical Method*, Chapter V Systematization, Swan Sonnenschen & Co., London, Macmillan, New York, 1895, p. 508.

³¹² "Antes de continuar es conveniente distinguir dos procesos que, en Biología, se confunden a menudo: "clasificación" y "determinación". Lo primero implica ordenar o disponer los seres vivos en clases definidas que, por último, constituirán un sistema. La determinación es una labor posterior a la clasificación y consiste en precisar la ubicación de un organismo dentro de un sistema eventualmente en

The parts of the juridical system or the dogmatic science that describes them, in which maximum certainty is demanded (as in criminal law and tax law) do not admit analogy for interpretation, integration and application purposes, but are neither considered deductive subsystems conceived as syllogisms chains, but as tables of crimes or taxes, i.e., as classificatory systems. Whenever the principles of reservation and legality are respected, advisers, legislators and authors of juristic writings, motivated by the gap noticed upon examining the crimes and taxes contemplated in the juridical system in view of the conducts observed in the social system, may promote the passage of new types of crimes or taxes –closed, never open–, similar to the ones already in force. In the criminal and tax subsystems, *analogy* is restricted, as far as the art of judging (*ars judicandi*) is concerned, but it is admitted as an art of investigating or inventing laws (*ars inveniendi*), since the examples provided by history and by comparative law are the main source of knowledge for advisers and legislators.

The contemporary positive law is almost unmanageable, due to the diversity of sources and the number of accumulated norms. Today, more than ever, it is necessary to consider it as a classificatory system, to easily know and remember its main guidelines,³¹³ by means of a synoptic vision, which is some sort of a map or mental description of the set,³¹⁴ a guide to go through it and to remember its routes and accidents, since the following affirmation of Linneo is also applicable to the law:

"A system is Ariadne's thread to Botany, without it this science is nothing but chaos. Those who have stretched this thread deserve the acknowledgement of all centuries; without it Botany would not offer but meanders in the middle of which it would be impossible not to be shipwrecked."³¹⁵

uso. Las unidades se clasifican, los ejemplares se determinan. La clasificación es una actividad de síntesis, mientras que la determinación es básicamente analítica.

Así, cuando se emplean las claves de un manual de la flora de una región, se está determinando la planta que se ha coleccionado u observado, la cual está ya clasificada.

Sólo cuando se encuentran especímenes no conocidos aún, se los clasifica, dándoles un nombre y un puesto en el sistema.

Como las jerarquías taxonómicas son por definición conceptos de clases de individuos, una planta o animal concreto se "determina" [,] no "identifica", ya que no hay en la naturaleza dos seres exactamente iguales, por más afines que sean. La identidad sólo funciona con respecto al individuo."

Spanish into English translation by the author of this book.

Elías R. de la Sota, *La Taxonomía y La Revolución en las Ciencias Biológicas*, Departamento de Asuntos Científicos, Unión Panamericana, Secretaría General, Organización de los Estados Americanos, Serie Biología, Monografía No. 3, Washington, 1967, p. 2.

³¹³ Cicero, *De Legibus (Laws) II*, XVIII 45-46

Cicero, *De Legibus (Laws) II*, XVIII 45-46, in *De Re Publica, De Legibus*, with an English Translation by Clinton Walker Reyes, The Loeb Classical Library, William Heinemann Ltd., London, Harvard University Press, Cambridge, Massachusetts, 1966, pp. 428-429.

Marco Tulio Cicerón, *Las Leyes*, II, 18, 45-46, Traducción, Introducción y Notas por Alvaro d'Ors, Instituto de Estudios Políticos, Reimpresión de la Primera Edición de 1953, Madrid, 1970, pp. 164-167.

³¹⁴ Leibniz, *Nova Methodus Discendae Docendaeque Jurisprudentiae* (1667), Gottfried Wilhelm Leibniz, *Philosophische Schriften*, Herausgegeben von der Preussischen Akademie der Wissenschaften, Erster Band 1663-1672, Otto Reichl Verlag Darmstadt, 1930, p. 296.

Roscoe Pound, *An Introduction to the Philosophy of Law*, New Haven and London, Yale University Press, Seventh Printing, March 1965, p. 25.

³¹⁵ "Un Système est le fil d'Ariane pour la Botanique, sans lui cette science n'est qu'un chaos. Ceux qui ont tendu ce fil méritent la reconnaissance de tous les siècles; sans lui la Botanique n'offrirait que des moindres au milieu desquelles il seroit impossible de ne pas égarer."

French into English translation by the author of this book.

Neither will a level of certainty be reached, nor will computer systems for the storage and retrieval of information be fit for improving it, if users lack a theoretical model of the juridical system that works like an implicit context, in which it is possible to include the relevant information obtained. If, in the past, ignorance of the law consisted in not having current juridical texts available, on file by and for a minority, now such ignorance arises from the huge number of texts, the validity of which is impossible to determine with certainty in every case, especially in those regarding a tacit repeal.

It is indispensable to promote the certainty of the law,³¹⁶ providing the juridical system with such reasonable precision and fixedness as may facilitate the knowledge of the juridical qualification of hypothetical behaviors, since certainty finds its foundation in the juridical security that makes it possible to foresee the juridical consequences of human actions, so that law-abiding subjects may direct their respective conducts, because, as Bacon said:

“Certainty is so essential to law, that law cannot even be just without it. "For if the trumpet give an uncertain sound, who shall prepare himself to the battle?" 1 So if the law give an uncertain sound, who shall prepare to obey it? It ought therefore to warn before it strikes. It is well said also, "That is the best law which leaves least to the discretion of the judge; 2 and this comes from the certainty of it.

1 Corinth., xiv.8.

2 Arist. Rhet.I. 1."³¹⁷

To satisfy the function of certainty, based on the juridical security that it offers, a juridical system must comprise certain properties: consistency (absence of contradictions or antinomies); completeness (absence of loopholes or gaps); and economy (absence of unnecessary or superfluous elements).³¹⁸

It is interesting to remember that, in the ancient law of Athens, the thesmothetai were the magistrates in charge of the drafting, publication and conservation of the laws,³¹⁹

Linné, *Philosophia Botanica*, p. 98, *Revue Générale des Ecrits de Linné par Richard Poultney, Traduit de l'Anglais par L. A. Millin de Grandmaison, avec Notes et Additions du Traducteur*, Paris, 1799, note 105, p. 170.

³¹⁶ Flavio López de Oñate, *La Certeza del Derecho (La Certeza del Diritto)*, Casa Editrice Gismondi, Roma, 1942), Traducción de Santiago Sentís Melendo y Marino Ayerra Redin, EJEA, Buenos Aires, 1953, pp. 71-89.

³¹⁷ Bacon, *Translation of The Augmentis Scientiarum*, Book VIII, Chap. III, [...] Example of a Treatise on Universal Justice or The Fountains of Equity, By Aphorisms: One Title of It [...] Title I. Of the Primary Dignity of Laws, that they Be Certain [...], Aphorism 8, in [Bacon] *The Works of Francis Bacon*, Collected and Edited by Robert Leslie Ellis, and Douglas Denon Heath, Vol V, Translation of the *Philosophical Works*, Vol. II., New Edition, Longman & Co.; etc., London, 1883, p. 90.

³¹⁸ The Section Juridique, Centre National de Recherches de Logique, directed by Chaim Perelman published two collective works, one on antinomies and other one on gaps, which include a final synthesis essay in each one by Perelman himself:

Les Antinomies en Droit, Dialectica, 69/72, Vol. 18, No. 1-4, 1964, 408 pp.

Le Problème des Lacunes en Droit, Etablissements Emile Bruylant Aristotle, Bruxelles, 1968, 554 pp.

³¹⁹ Aristotle, *Constitution of Athens*, 3-4.

Aristotle, *Constitution of Athens*, 3-4, in *Aristotle's Constitution of Athens and Related Texts*, Translated with an Introduction and Notes by Kurt Von Fritz and Ernst Kapp, Hafner Publishing Company, New York, 1950, pp. 69-72.

Aristóteles, *La Constitución de Atenas*, 3-4, Edición, Traducción y Notas, con Estudio Preliminar, por Antonio Tovar, Instituto de Estudios Políticos, Madrid, 1948, p. 49.

which they meticulously checked every year, to verify whether a law was inconsistent with another, or was not longer in force among the current ones, or whether more than one law was related to the same action. They had to file a detailed report to the Assembly of the People so that a legislative commission of nomothetai could be appointed, entrusted with voting the laws that would be eliminated and those which would remain in force, in such a way that only a law would remain in force for each action.³²⁰ Any citizen could propose laws before the Assembly of the People in which all the legislation was ratified when it was convened at the beginning of each year.³²¹

Legislative contradictions or antinomies are defects that must be avoided,³²² since the consistency of the system contributes both to the predictability of the qualification of conducts and to promoting a feeling of equality among its recipients,³²³ through the restriction of arbitrary interpretations and applications.

In philosophy, the principle of Ockham's razor, with which he presumably shaved Plato's beard, asserts that entities must not be multiplied unnecessarily.³²⁴ Although it is

Aristote, Constitution d'Athènes, III, 4, Texte Traduit par Georges Mathieu et Bernard Haussoullier, Société d'Édition "Les Belles Lettres", Paris, 1922, p. 3.

³²⁰ Aeschines, Against Ctesiphon, 38-39.

[Aesquines] The Speeches of Aeschines, with English Translations by Charles Darwin Adams, III. Against Ctesiphon, 38-39, The Loeb Classical Library, William Heineman, London, G. Putnam's Sons, New York, 1919, pp. 337-339.

Eschine, Discours Contre Ctésiphon, Traduit par M. Sommer, Librairie Hachette et Cie., Paris, 1908, pp. 47-49.

Eschine, Discours, Tome II, Texte Établie et Traduit par Victor Martin et Guy de Budé, Société d'Édition "Les Belles Lettres", III. Contre Ctésiphon, 38-39, Paris, 1928, pp. 28-29.

³²¹ Demosthenes, Against Timocrates, 20-23; 25.

Demosthenes, Against Timocrates, 20-23; 25, in Demosthenes with an English Translation by J. H. Vince, The Loeb Classical Library, William Heinemann, London, G. P., Harvard University Press, Massachusetts, 1935, pp. 385-387.

Demóstenes, Contra Timócrates, 20-23; 25, en Demóstenes, Discursos Políticos, Introducción Traducción y Notas de A. López Eire, Editorial Gredos, Madrid, 1985, Tomo III, pp. 130-132.

³²² Contradiction is the most feared of all defects:

Meijer, De la Codification en Général et de Celle de l'Angleterre en Particulier, Série de Lettres Adresses à Mr. C.P. Cooper par J.D. Meijer, Diederichs Frères, Éditeurs, Amsterdam, 1830, pp. 187-188.

Antonio Texeira da Freitas, Nova Apostilla a Censura do Senhor Alberto de Moraes Carvalho Sobre o Projecto do Codigo Civil Portuguez, Rio do Janeiro, 1859, p. 116.

³²³ Henri Battifol, Aspect Philosophiques du Droit International Privé, Éditions Dalloz, Paris, 1956, pp. 291-292.

³²⁴ "Odd Entia sunt multiplicanda praeter necessitatem", which correctly represents Ockham's thought, has not been found in any of his writings. In the most similar fragment he asserted:

"Nunquam ponenda est pluralitas sine necessitate, Supper Quattuor Sententiarum, Ed. Lugud, 1495, i, dist 27, qu. 2, K., but it could not be denied that he bore in mind the principle of economy:

"Frustra fit per plura quod potest fieri per pauciora", Summa Tottius Logica, i, 12."

William Kneale and Martha Kneale, The Development of Logic, Oxford University Press, First Published 1962, From Corrected Sheets of The First Edition 1964, 1966, 1968, 1971 (with corrections), p. 243; p. 243 n.2.

Jöel Biard points out that Ockham attributes the principle of economy to Aristotle in Quaestiones in libros Physicorum Aristotelis, d. St. Brown, "Opera Philosophica", VI, St Bonaventure, New York, 1984, qu. 11, p. 420 and qu. 38, p. 496, with reference to Physica, I, 188th 17-18, but he considers that it is difficult to provide a general statement of the above mentioned principle, which, on the other hand, although later attributed to Ockham, may be also found in Duns Escoto. See:

Guillaume d'Ockham, Somme de Logique, Première partie, traduit du Latin par Jöel Biard, 2e. Édition revue et corrigé, Trans-Europ-Repress, Bramepan, F-32120 Mauvezin, 1988 1re. édition, 1993, 2e. édition, p. 10, n. 2.

true that it is a more esthetic than logical principle,³²⁵ linked to the elegance of the system, since from a strictly logical point of view it is not essential, it is also an economic principle. In the juridical world it is highly inconvenient to cumulate unnecessary materials, since one ends being crushed by a continuously growing mass, succumbing under the weight of its own wealth,³²⁶ as it presently happens with legislative hyperinflation.

PRINCIPLE: The essential properties of the juridical system, namely consistency or unity (absence of contradictions or antinomies), and completeness or universality (absence of loopholes or gaps), have only one and the same base, unity, which will be negatively restored by removing the contradictions or antinomies and, positively, by filling the loopholes or gaps).³²⁷

RULE: Advisers and legislators shall exercise control over economy and elegance. Negatively, by abstaining from legislating, unless it turns to be indispensable, in order to avoid adding superfluous elements to the juridical system; and, positively, by promoting the enactment of arranged texts, compilations, digests, consolidations, codifications and institutional laws, in order to simplify and grant certainty to the juridical system.

The procedures designed for the elimination of antinomies by means of interpretation are also useful for advisers and legislators, either because they may use them to remove the existing ones from the system, by promoting the enactment of an interpretative law, or to prevent the bill proposed from having internal contradictions, or conflicting with other bills or with the juridical order.

The plenitude of the juridical order does not mean that there are no gaps but, that when they do appear, judges or legislators must fill them in. It is convenient to distinguish the doubtful cases, which call for interpretation, from the unforeseen cases, which call for the integration of the gaps.

RULE: Advisers and legislators shall not promote the enactment of a law should they verify that it is possible to integrate the gaps by means of case law in a timely fashion.

RULE: Advisers and legislators shall take into consideration the taxonomic model of juridical system, as an implicit context, when they compose and criticize, advise and dissuade the enactment of general juridical norms.

³²⁵ Robert Blanché, *L'axiomatique*, Presses Universitaires de France, 1re. édition 1955, 3e. édition 1965, p. 44.

³²⁶ R. von Ihering, *L'esprit du Droit Romain dans ses Diverses Phases de son Développement*, traduit de l'anglais par O. de Meulenaere, Liv. II, 1e. Part., Titre III, Technique, Chap. I., Sect. 2. th. End of the Technique, # 43, Tome III, A. Marescq, Aîné, Éditeur, Paris, F. Clemm, Gand, 1877, p. 22.

³²⁷ F. C. de Savigny, *Traité de Droit Romain*, Traduit de l'Allemand par Ch. Guenoux, Librairie de Firmin Didot Frères, Paris, 1855, Tome Premier, p. 253.

Somehow, unity, coherence and completeness would be a reflex of the three fundamental logical principles of identity, non contradiction and excluded third or middle, see: Gaetano Carcaterra, *Metodologia Giuridica*, da Corso di Studi Superiori Legislativi, 1988-89, a cura di Marco d'Antonio, etc., Cedam-Casa Editrice Dott. Antonio Milani, Padova, 1990, p. 159.

Systematizing laws

Systematizing laws reduce a multiplicity of texts or norms, principles and institutions, to the unity of a law in force in just one arranged text, compilation, digest, code or institutional law. There are two species: the external and the internal systematizing laws.

External systematizing laws

Systematizing laws are external when they just gather in a single text in force the scattered texts of a law which was subjected to many amendments, without introducing any changes in its wording, except for such grammatical, numerical and nomenclature updates as are necessary to carry out the arrangement (arranged texts);³²⁸ when they just gather in a single collection all texts in force related to certain matter scattered in multiple laws that do not modify the same law, arranged in accordance with a chronological plan, without introducing changes in their wording (compilations); and when they are arranged in accordance with a systematic plan (digests). They are internal when they reduce to the unity of a new complete legislative body, without antinomies and redundancies, a multiplicity of scattered norms, principles and institutions, and the law in force is rewritten, without introducing any changes to its content, in accordance with a proper systematic plan of exposition (consolidations); when they consolidate and introduce changes in content of the law in force, or only introduce changes in the content of the law in force and regulate a complete branch of the law (codifications); and when they legislate in the same fashion as codifications, but only regulate up to the level of institutions (institutional laws).

Arranged texts

Whenever a law has been subjected to amendments to such an extent that it is uncertain or troublesome to determine the text in force, it is necessary to systematize it, reducing the multiplicity of amendments to the unity of the amended text, so as to get a single text in force (arranged text). The original text of the law is then compared to the amendments, and numerical and grammatical modifications as well as nomenclature updates indispensable to obtain a single text in force are introduced. In addition to the single text in force, the legal sources of the included and excluded texts, as well as the updated nomenclature, are described in attached charts.

From a theoretical point of view it is a task of philological nature, which turns out very practical if performed as if it were the critical edition of a classical work.³²⁹

³²⁸ In the Italian law they are known as "testi unici":

Rodolfo Pagano, *Introduzione alla legistica. L'arte di preparare le leggi*, Dott. A. Giuffrè, Milano, 1999, 1.9.3., p. 65.

In Spanish law "texto refundido":

Curso de Técnica Legislativa, Gretel, Centro de Estudios Constitucionales, Madrid, 1989, p. 315.

³²⁹ For those who lack philological knowledge, see:

Gustave Rudler, *Les Techniques de la Critique et de l'Histoire Littéraires en Littérature Française Moderne*, Oxford University Press, Oxford, 1923, XIV + 204 pp.; Chapitre IV Critique de Restitution-Principes des Éditions Critiques, pp. 59-97; Chapitre V Critique de Restitution (Suite). *Un Peu de Philologie*, pp. 98-116.

PRINCIPLE: The changes to be introduced in arranged texts shall be the least indispensable ones and shall be exhaustively explained, leaving no doubts as regards their only purpose, which consists in establishing with certainty which the updated single text in force of the original amended law is.

The task seems very simple, but many times difficulties arise, since it is necessary to find the amending texts, which could be anywhere within the juridical order and, although reduced to the indispensable minimum number, the interpretation about the scope of the amendments introduced may not be eliminated. Since there should not be any remaining doubts, the intervention of the legislative organ is needed, either directly or through the express delegation of the power to draft the relevant arranged text, this being not a question of a mere republication, but a very delicate technical operation.

The approval of arranged texts on a regular basis, like in the case of tax and social security laws, contributes to juridical certainty. Approving arranged texts sporadically, erratically, without a plan, or authorizing such approval by norms of a rank lower than Executive Orders, adds uncertainty instead of eliminating it, since, if the arranged text does not reach its potential recipients, a new factor of disturbance is created for everyone.

RULE: The bodies in charge of the publication of the laws shall keep and disseminate an updated list of all arranged texts, describing the following information in detail: title, norm by which they were approved, means of publication, date and page thereof; effective term, and chronological-numerical indexes of topics and of updated nomenclature.

Uncertainty is also generated whenever there is a text in force that already solves a specific problem but, due to ignorance of or fear about its validity, unnecessary laws are introduced, a vicious practice also used when the objective is to avoid an amendment to a relevant law in force, contributing to legislative hyperinflation and to a higher entropy or disorder of the juridical system.

Juridical certainty could be fostered if the new amending laws were clear-cut about the resulting amended text, establishing the respective arranged text without hampering the urgent need to legislate.

RULE: The new amending laws shall approve the arranged text of the laws amended by them. Whenever reasons of urgency, which shall be expressly stated in its motivations, made the approval of the arranged text inconvenient, the prescriptive part shall determine which body shall be entrusted with such a task, and shall set a reasonable term for such fulfillment, under the warning of specific penalties in the event of unjustified nonfulfillment.

Compilations

When the norms related to a certain matter are scattered in multiple laws and fail to amend a same law, since if it were the same amended law one could resort to the method of the arranged texts, it is necessary to systematize them, creating a collection with all the texts in force, to facilitate their consultation (compilation), with two indexes, one of them containing a numerical-chronological order of laws included there and the other one, an alphabetical order of the topics dealt with.

Digests

When a compilation is insufficient to facilitate consultations, then it becomes necessary to arrange the collection in accordance with a systematical plan (digest), with three indexes: first, a systematical index of the whole work; second, a chronological-numerical index of the laws included in it and third, and alphabetical index listing the topics dealt with in alphabetical order.

It has already been said that the arranged texts are similar to critical editions of classical works; now it could be affirmed that compilations and digests are similar to anthologies.

Internal systematizing laws

The internal systematizing laws comprise three species: institutional laws, consolidations and codifications.

Institutional laws

The laws that reach the level of abstraction of institutions (institutional laws) reduce a multiplicity of norms to the unity of a single text in force, grouping them around principles, either new or traditional –although with certain innovations–, respectively done by the laws on organ transplants, on protection of privacy, etc., and by those of bankruptcy proceedings, companies, etc., in decodifying processes.

Consolidations

The inclusion of juridical norms within the relevant institution; the institutions within a branch; the branches within an internal, local, provincial, regional or national order; and internal orders within an international, regional or universal order, may be uncertain, since they are hard to find and, since once they are found, their texts in force may not be determined with a reasonable degree of certainty. Furthermore, if there is not a basic original law allowing to resort to the method of arranged texts and the interpretation of scattered laws, which often overlap with one another, is quite uncertain –all of which prevents from the use of compilations or digests– then it turns out necessary to resort to a more complex technical operation: consolidation. A consolidation consists in reducing a multiplicity of scattered norms, principles and institutions, to the unity of a new legislative body, without antinomies and redundancies, thus drafting again the law in force, without introducing a new content, within an only explicit legislative context, in accordance with a proper systematic expository plan, in harmony with the juridical system, implicit context of the speech.

If arranged texts are similar to critical editions of classical works and the compilations and digests to anthologies, consolidations are like those masterly treatises that reshape the content of scattered topics in articles, monographs and other treatises that, without introducing new knowledge, establish the current status of the matter.

Many times, tasks are delayed on account of the obstacles that usually come up. Before such tasks are commenced, it may be necessary to enact laws which facilitate consolidation and, afterward, should the government promote laws on the same matter, it will be necessary to wait for their enactment to include them. Among other obstacles, it may be remembered that usually drafters are only a few, that high-ranking officials of the departments in charge of the enforcement of the laws to be consolidated are usually

under pressure and have to deal with other priority tasks and therefore are unable to give advice with its thorough knowledge of the current law, etc..³³⁰

Consolidations are measures abstractly praised by everyone, but which nobody feels like complying with. Added to the technical difficulties mentioned before, is the lack of interest of political authorities, who think they cannot obtain any benefits, and of their advisers, who refuse to change the form of the laws with which they are familiar and whose preparation might imply a lot of time, both theirs and of their subordinates.³³¹

RULE: The preparation of arranged texts, compilations, digests and consolidations shall be entrusted to only one public, technical and specialized body which, as primarily responsible for such task, may require cooperation from other public or private entities, as well from specialists.

Codifications

Unity is achieved by bringing together all the scattered modifying texts in force, related to a same law, in a single text of the modified law (arranged texts); by bringing together all the scattered texts in force related to a subject, in a single collection arranged in numerical-chronological fashion (compilation) or systematical (digest); by gathering all the texts in force on certain subject in a single legislative body, without antinomies and redundancies, in accordance with a proper systematical plan (consolidation). In arranged texts, compilations and digests, as well as in consolidations, it is always a question of the law in force, without filling in the gaps that may exist at the moment of their approval.

Although codification³³² also grants certainty to a part of the law in force at the time of its approval, since the historical experience shows that it is very difficult to change it

³³⁰ The Preparation of Legislation, Report of a Committee Appointed by The Lord President of the Council, Chairman: The Rt. Hon Sir David Renton, Presented to Parliament by the Lord President of the Council by Command of Her Majesty, May 1975, Her Majesty's Stationery Office, Cmnd. 6053, Chapter XIV Consolidation, The Main Obstacles, London, 1975, pp. 89-92.

³³¹ Courtney Ilbert, *The Mechanics of Law Making*, Columbia University Press, New York, 1914, pp. 39-40.

³³² With a highly selective criterion, see:

Thibaut y Savigny, *La Codificación, Una Controversia Programática Basada en sus Obras sobre la Necesidad de un Derecho Civil General para Alemania y De la Vocación de Nuestra Época para la Legislación y la Ciencia del Derecho, Con Adiciones de los Autores y Juicios de sus Contemporáneos, Introducción y Selección de Textos de Jacques Stern, Traducción del Alemán de José Díaz García*, Aguilar S.A. de Ediciones, Madrid, 1970, Advertencia Preliminar xiv + Introducción y Textos, 282 pp., Índice Sistemático.

Bentham, *De la Codification, dans Oeuvres de Jérémie Bentham par Ét. Dumont, Société Belge de Librairie, Hauman et Cie., Troisième Édition, Bruxelles, 1840, Tome Troisième, pp. 91-123.*

Portalís, *Discours Préliminaire, Code Civil, dans La Législation Civile, Commerciale et Criminelle de La France ou Commentaire et Complément des Codes Français, par Le Baron Locré, Treutel et Wurtz, Libraires, Strasbourg et Londres, Paris, 1827, Tome I, pp. 251-316.*

Meijer, *De la Codification en Général et de Celle de l'Angleterre en Particulier, Série de Lettres Adresses à Mr. C.P. Cooper par J.D. Meijer, Diederichs Frères, Éditeurs, Amsterdam, 1830.*

Helmut Coing, *An Intellectual History of European Codification in the Eighteenth and Nineteenth Centuries, Problems of Codification*, Edited by S.J. Stoljar, Department of Law, Research School of Social Sciences, The Australian National University, Canberra, 1977, pp. 16-32.

Barbara Shapiro, "Codification of the Laws in Seventeenth Century England", *Wisconsin Law Review*, Volume 1974, pp. 428-465.

S.A. Baytich, "La Codificación en el Derecho Civil y en el Common Law (Estudio Comparativo)", Traducción de Jorge Larrea Bravo, *Boletín Mexicano de Derecho Comparado*, Año III, No. 7, Enero-

completely, it also has another purpose, its main purpose: to enact a reform that, in addition to granting certainty, may do justice. Antinomies and redundancies are thus removed, but gaps of the juridical system are also filled in, introducing changes in both the form and content of the law in force.

In the XIX century, the multiplicity of sources of the law –legislation, custom and case law– corresponding to the fundamental branches of the juridical system, were limited to the unity by means of the enactment of the civil, commercial, criminal and procedural codes.

From the XX century on, no branch of the law is usually demanded for every code; it is sufficient if it regulates a matter of social importance, like traffic, customs, food, etc. A triple process is also noticed: recodification, which unifies the civil branch with the commercial one in private law codes; decodification, which separates certain institutions from codes, like legislation on: adoption, bankruptcy, corporations, negotiable instruments, etc.; and institutionalized, where new sets of norms appear regarding facts, acts and activities of social importance grouped according to certain principles, such as organ transplantation, privacy protection of computerized information, etc.

Arranged texts are like critical editions of classic texts, compilations and digests are similar to anthologies, and consolidations to masterly treatises that reshape the content of a scattered matter in articles, monographs and other treatises, without introducing any new knowledge. Codes are similar to masterly treatises that, in addition to stating the current knowledge, rectify the state of the relevant juridical science and introduce new knowledge which establish them as paradigms to be followed by scientists as models of the normal science that relegate previous paradigms to the history of the relevant discipline, until the appearance of another one causes a new scientific revolution.³³³

Unlike arranged texts, compilations, digests and consolidations, codifications grant political credit and personal prestige. Napoleon, in spite of his victories in times of war, considered that he would be remembered more as a legislator than as a soldier. Since the French Revolution, all attempts to codify the civil legislation had failed, but Napoleon, who wanted to achieve such codification as soon as possible, created a commission that drafted the bill in just four months, and he personally participated in the subsequent debate held at the Council of the State.³³⁴ Enacted as the French Civil Code, it increased the reputation of its promoter; it was later denominated “Napoleonic Code”, the name with which it is known nowadays. He may have inspired in Machiavelli, who had written:

Abril 1970, pp. 3-57, a wider and updated version of the original published in *Civil Law and the Modern World*, Ed. Yiannopoulos, sponsored by Louisiana Law Institute, 1965.

³³³ On the comparison between code and book, “[...] as Alberdi says - Posthumous works, t. vii, p. 285 - “a book is a code of ideas”, wherefrom it is inferred that a code is a book of juridical norms [...]” (Sobre la comparación entre código y libro, “[...] como dice Alberdi – Obras Póstumas, t. vii, p. 285 – “un libro es un código de ideas”, de donde se infiere que un código es un libro de normas jurídica [...]”). Alfredo Colmo, *Técnica Legislativa del Código Civil Argentino*, Segunda Edición, Librería Bartolomé Mitre de Hall y Acevedo, Buenos Aires, 1927, p. 25 (in the reprint of Abeledo-Perrot, Buenos Aires, 1961, p. 38).

About the paradigms, the normal science and the scientific revolutions, see:

Thomas S. Kuhn, *La Estructura de las Revoluciones Científicas* (The Structure of Scientific Revolutions, by Thomas Khun, Chicago University Press, Chicago, 1962), y Posdata: 1969, Traducción de Agustín Contín, Primera Edición en Español, Fondo de Cultura Económica, México, 1971, 319 pp.

³³⁴ Jean Ray, *South Essai Structure Logique du Code Civil Français*, Librairie Félix Alcan, Paris, 1926, p. 26.

"And no thing gives so much honor to a new man who emerges, as a new law and the new orders found by him. These things, when they are properly founded and have greatness in themselves, make him respectable and admirable."³³⁵

No bureaucrat would ever refuse to appear among the codifiers of his country.

b. Fragmentary genre

Laws are fragmentary when they do not systematize their norms or principles in institutions (casuistic laws and laws of principles),³³⁶ or when they introduce unsystematic changes to other laws, either partially in their texts, or otherwise in their validity (amending laws).

Casuistic laws

Casuistic laws usually emerge in the first stages of the development of a statute law, when, from the experience acquired from problematic cases and their previous individual solutions, the legislator passes a text vested with authority, with the maximum degree of concretion and the minimum degree of abstraction. Isolated norms multiply, even though they respond to the same principle, instead of using wide formulae that produce the logical concentration of the matter dealt with.

Casuistic laws should not be confused with the prolix but internal systematizing laws, although they descend to the regulation of the details that come up, they have principles which serve as their basis, whose consequences the legislator prefers to specify in sets of explicit norms and around principles which serve as foundation to them (institutions), instead of leaving them to custom, case law or juristic writings. Laws which only contain principles, only norms, or principles and norms isolated which fail to be systematized in institutions, should not be confused with internal systematizing laws.

RULE: Casuistic laws should not be confused with the prolix but internal systematizing laws. Nor shall the laws which only contain principles, only norms, or principles and

³³⁵ "[15] E veruna cosa fa tanto onore ad un uomo che di nuovo surga, quanto fa le nuove legge e li nuovi ordini trovati da lui; queste cose, quando sono bene fondate et abbino in loro grandezza, lo fanno reverendo e mirabile."

Niccolò Machiavelli, *De Principatibus*, Testo Critico a cura di Giovanni Inglese, Istituto Storico Italiano per il Medio Evo, *Fonti per la Storia dell'Italia Medievale*, Antiquitates, 1, Roma, 1964, p. 309.

Italian into English translation by the author of this book.

Other editions:

Machiavelli, *Il Principe* by Niccolò Machiavelli, Edited by L Arthur Burd, with an Introduction by Lord Acton, at The Clarendon Press, Oxford, 1891, p. 369.

Niccolò Machiavelli, *Il Principe*, Tutte le Opere di Niccolò Machiavelli a cura di Guido Mazzoni e Mario Casella, G. Barbera Editore, Firenze, 1929, p. 50.

Machiavelli, *The Prince*, Edited by Quentin Skinner and Russell Price, Cambridge University Press, Cambridge, New York, New Rochelle, Melbourne, Sydney, First Published 1988, p. 89.

Niccolò Machiavelli, *Il Principe*, Nuova edizione a cura di Giorgio Inglese, Einaudi Tascabili, Torino, 1995, pp. 171-172.

³³⁶ For the distinction between the casuistic method and the method of the laws of principles, see:

R. von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur la 3a. Édition avec l'Autorisation de l'Auteur, par O. de Meulenaire, Liv. II, Ie. Part., Titre III, Technique, Chap. I., Sect. 2. Concentration Logique, # 45, Tome III, A. Marescq, Ainé, Éditeur, Paris, F. Clemm, Gand, 1877, p. 44.

norms isolated which fail to be systematized in institutions, be confused with internal systematizing laws.

Whenever a legislator faces new problems calling for urgent concrete solutions, but fails to have available new principles allowing him to implicitly include the relevant norms in laws of principles or to pass internal systematical laws such as institutional laws, in spite of not being in a primitive stage of the historical development, he usually resorts to casuistic laws to satisfy such urgent social need.

RULE: Whenever new problems shall need urgent legislative solutions, and there is no possibility of enacting laws of principles or of having these ones serve as a foundation to enact institutional laws, then casuistic laws may be resorted to.

Casuistic laws, when understood as exceptions to established principles, form a singular law (*ius singulare*). However it should be borne in mind that, when they appear for the first time, it may be the right historical moment for the inception of a new principle of a more abstract nature than the urgent solution of the concrete problem.³³⁷ This new principle, once explicit, will allow the legislator to concentrate the matter logically, by grouping norms which had been scattered, eliminating the superfluous ones and adding others that are a consequence of the aforesaid principles; so that new institutions will form, allowing the juridical system to overcome the exceptional situation raised by the existence of the singular law.

RULE: Before opting for casuistic laws, it shall be verified whether it is the right historical moment for the inception of a new principle, which would allow norms to be grouped in institutions, in which case institutional laws shall be resorted to.

Laws of principles

Legislators may be required neither to enact a special norm for each and every concrete situation that may emerge in real life, nor to show all principles so clearly that the consequences applicable to all the cases may derive from them.³³⁸ Therefore, principles and norms coexist in every mature juridical system. The natural place for principles is the persuasive speech, but sometimes, principles are included in the prescriptive speech in the form of concise formulae and norms are not systematized in institutions, when it is preferred that norms or institutions be inferred from custom, case law or juristic writings.

RULE: Principles shall be included, without systematizing the norms in institutions, whenever a legislator may prefer that norms or institutions be inferred from custom, case law or juristic writings.

³³⁷ R. von Ihering, *L'Esprit du Droit Romain dans ses Diverses Phases of son Développement*, Traduit sur la 3rd édition avec l'Autorisation de l'Auteur, par O. de Meulenaere, Liv. II, 1^{er} Part., Titre III, Technique, Chap. I., Sect. 2--A. But de la Technique, # 43, Tome III, A. Marescq, Aîné, Éditeur, Paris, F. Clemm, Gand, 1877, p. 30.

³³⁸ Judgment entered by the German Supreme Court, RGI. Zs. 2.2. 1889, RGZ 24, 50, quoted by: Josef Esser, *Principio y Norma en la Elaboración Jurisprudencial del Derecho Privado (Grundsatz und Norm in der Richterlichen Fortbildung des Privatrechts)*, J.C.B. Mohr (Paul Siebeck), Tübingen, 1956), Traducción de Eduardo Valenti Fiol, Edit. Bosch, Barcelona, 1961, 498 pp., pp. 5-6, n. 2.

Amending Laws

Amending laws introduce unsystematic changes to the text or to the validity of other laws, as parts of a complex speech formed by the law introducing the changes (amending law) and those who turn out to be changed (amended laws).

The basic principle of amending laws consists in the fact that they must be adapted to the respective amended laws and, therefore, should not introduce in them alien matters that may turn them difficult to retrieve, or different styles that may cause unnecessary interpretative doubts, since in both cases the juridical certainty of the system would be adversely affected.

PRINCIPLE: Amending laws shall be adapted to the modified laws and no alien matters or different styles shall be introduced to them, so that the certainty of the juridical system may remain unaffected.

Spatial validity

Laws amending the spatial validity of other laws are usually used in serious situations, such as droughts, floods, epidemics, rebellions, wars, etc.

Temporal validity

Laws amending the temporal validity either suspend, extend or repeal the validity of the amended laws.

Suspension

There are some species of laws not very well-known or studied, the so-called *laws of dispensation or laws of waiver*, which suspend the application of other laws, either in whole or in part, without repealing or abrogating them.³³⁹

The laws of provisional dispensation, generally passed in times of crisis or serious disorders, suspend the application of ordinary or regular laws, which recover their validity once such crisis or disturbances have been overcome. They are also passed when legislators wish not to re-open the debate of a very controversial law but to avoid its application, as in the case of the Decree-law 4070/56 which suspended Section 31 of Law 14.394, which had admitted absolute divorce in the Argentine Republic.

The laws of definitive dispensation, besides suspending the application of the ordinary or regular ones, establish different regulations that are not reached when the suspended laws recover their application. They can be of defeasance (*leges annullatoriae*), as those of amnesty, which render punishments ineffective, or those related to the cancellation of debts, which render claims ineffective (Hebrew jubilee, Solon's *Seisachtheia*, etc.). They are confirmatory (*leges confirmatoriae*), when they make certain null and void acts produce legal effects, as in the case of notarized instruments made by French notaries before only one witness, against the law that required the presence of either a notary and two witnesses, or of two notaries. This ground for nullity could not have been ignored by judges, the norm having been so clear; however, its very serious consequences were avoided by a special Law of

³³⁹ Paul Roubier, *Le Droit Transitoire (Conflit des Lois dans le Temps)*, 2e. Édition Entièrement Refondue, Éditions Dalloz et Sirey, Paris, 1960, pp. 17-21.

Confirmation dated June 21, 1843. The retroactiveness of this type of laws has been justified, because it respects the intentions of the parties, despite any defects in the solemn formulae, and tends to peace and the settlement of past transactions.³⁴⁰

Extension in time

Laws that extend the application of other laws in time are also amending laws,³⁴¹ generally non textual, but they could be so, should the transitory disposition of the amended law be replaced for other extending its validity in time. Both merely transitory laws and those of dispensation are usually extended when the reasons for their enactment remain or when new reasons arises. Contemporary laws on fiscal moratorium (taxes, social security matters), have denatured their name, since they do not limit themselves to establish time extensions for payments, due to the fact that they also establish deductions, debts cancellations, and amnesties of applicable fines and interests.

Repeal

Under Roman law there used to be a distinction between abrogation (*abrogatio*), which caused another law to be completely ineffective, and repeal (*derogatio*), which caused another law partially ineffective.³⁴² Today it is frequent to speak of a total or partial repeal.

³⁴⁰ "Aphorism 49. Laws which strengthen and confirm the real intentions of acts and instruments against the defects of form and usages very properly includes past actions. For the principal inconvenience of a retrospective law is that it creates disturbance; but confirmatory laws of this sort tend rather to peace and the settlement of past transactions. We must however take care not to call in question matters already adjudged.", in Bacon, *The Works of Francis Bacon, Collected and Edited by Robert Leslie Ellis, and Douglas Denon Heath, Vol V, Translation of The Philosophical Works, Vol. II., New Edition, Longman & Co.; etc., Translation of The Augustis Scientiarum, Book VIII, Chap. III, London 1889, p. 97.*

"XILX. Leges quae actorum instrumentorum veras intentiones contra formularum aut solemnitarum defectus roborant et confirmant, rectissime praeterita complectuntur: legis enim quae retrospectiva, vitium vel praecipuum est, quod perturbet. At hujusmodi leges confirmatoriae ad pacem et stabilitatem eorum quae transacta sunt spectant. Cavendum tamen est ne convellantur res judicata."
[Bacon] *Oeuvres Philosophiques de Bacon, Publiées d'Après les Textes Originaux, avec Notice, Sommaires et Éclaircissements, par N.M. Bouillet, Tome I., De Dignitate et Augustis Scientiarum, Liber Octavus, Caput III, Exemplum Tractatus de Justitia Universalis, Sive de Fontibus Juris, In uno Titulo, per Aphorismos, Aphorismus XLIX, Librairie Classique et Élémentaire de L. Hachette, Paris, 1834, p. 460.*

³⁴¹ GRETEL (Grupo de Estudios de Técnica Legislativa), *La Forma de las Leyes, 10 Estudios de Técnica Legislativa, VII, Las Leyes Modificativas, Edit. Bosch, Barcelona, 1986, p. 203.*

M. Teresa Castiñeira Palou, *Las Leyes Modificativas, in the collective work Curso de Técnica Legislativa, GRETEL (Grupo de Estudios de Técnica Legislativa), Centro de Estudios Constitucionales, Madrid, 1989, p. 178.*

³⁴² D.50.16.102.

D.50.16.102. "Idem [Modestinus]; Reglas, Libro VII.- Se deroga la ley o se abroga: se deroga quando se quita alguna parte de ella, se abroga quando enteramente se quita." ("The same [Modestinus]; Rules, Book VII. – A law may be repealed or abrogated: it is repealed when some part thereof is removed from it; it is abrogated when it is totally removed.")

D.50.16.102. "Idem [Modestinus] I free VII Regularum. - Derogatur legi, aut abrogatur; derogator legi, quum pars detrahitur, abrogatur legi, quam prorsus tollitur."

El Digesto del Emperador Justiniano, Traducido y Publicado por el Licenciado don Bartolomé Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Tomo III, Madrid 1874, p. 816.

Whether the law expressly refers to the repeal of all opposed provisions or whether it says nothing in that regard, there will always be a tacit repeal of the opposed previous laws, due to the principle that establishes that later or subsequent laws repeal previous ones (*lex posterior derogat priori*).

Tacit repeal

RULE: There shall be a tacit repeal³⁴³ of a previous law, whenever a later law complies with all the following requisites:

- a) equality of matters;
- b) identity of recipients;
- c) contradiction and incompatibility of the ends sought;
- d) equal or higher normative hierarchy.

Express repeal

To avoid interpretive doubts about tacit and organic repeals as a result of the enactment of a later law, it is also preferable to expressly repeal all the norms related to the previous law that are not wished to be kept in force.

RULE: Whenever a new law is enacted and the previous law is completely repealed, all the norms related to the previous law that are not wished to be kept in force shall be explicitly repealed, so as to avoid interpretative doubts.

RULE: Whenever a purpose in a general law is to repeal a special law, the method of express repeal shall be used in the prescriptive text to avoid interpretative doubts.

RULE: Whenever a law expressly repeals another law, it may state that it shall produce its effects immediately, as from a term, or retroactively.³⁴⁴ This last hypothesis shall be exceptional and not always valid.

Amendment method

Amending laws, from the viewpoint of the method through which they may be formulated, present two species: textual amending laws and non-textual amending laws.³⁴⁵

D.50.16.102. "IDEM [Modestinus] liber septimo regularum "Derogatur" legi aut "abrogatur", derogatur legi, cum pars detrahitur: abrogatur legi, cum prorsus tollitur."

Corpus Christi Iuris Civilis, Editio Stereotipa Octave, Volume Primum, Digesta, Recognovit, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 861.

³⁴³ Bernardo Supervielle, De la Derogación de las Leyes y demás Normas Jurídicas, Apartado del Libro Estudios Jurídicos en memoria de Juan José Amézaga, Montevideo, 1958, pp. 153, p. 34.

³⁴⁴ Raoul Ruttiens-Mansart, De l'Abrogation. Étude de Technique Législative, Recueil de Jurisprudence du Droit Administratif et du C. E., 4 e. Trimestre 1960, No. 4, pp. 209-212; p. 210.

³⁴⁵ For textual and non-textual modifications, see:

The Preparation of Legislation, Report of a Committee Appointed by The Lord President of The Council, Chairman: The Rt. Hon Sir David Renton, Presented to Parliament by The Lord President of The Council by Command of Her Majesty, May 1975, Her Majesty's Stationery Office, Cmnd. 6053, Chapter XIII Amending Existing Legislation, London, 1975, pp. 76-84.

Textual amending laws

RULE: Textual amending laws shall partially and expressly amend the texts of the amended laws by means of *suppression, addition, substitution, division, reunion* or *transposition*.³⁴⁶

Suppression

A suppression repeals part of the text of the modified law.

Addition

An amending law may add text to the amended law; this change has also been known as integration.³⁴⁷

Substitution

Substitution consists in the repeal, generally partial, of the text of the amended law and the addition of the text introduced by the amending law.

Whenever a law is completely changed by another one, the new law is usually passed and the old one is totally repealed, without substituting the text of the old for the text of the new, unless the name and the number of the old law are to be kept.

Frequently, the text of the amended law is partially changed. Legislators proceed as a publisher who publishes an erratum or an addendum, mentioning which parts of the text of the old law must be substituted by the text of the new law.³⁴⁸ It would be preferable to use legislative systematical units such as subsections, sections, etc., instead of grammatical units, like words, phrases etc. In this case the interpreter is entrusted with the task of reconstructing the text of the systematical unit as it will be after the substitution, but it is preferable that such task be directly carried out by legislators. If, furthermore, a comparative chart showing the differences between the old text and the new one is attached, the understanding of the scope of the amendments is facilitated, both for legislators and for the interpreter.

RULE: Whenever a new law substitutes partially the text of an old law, the whole partial legislative systematical unit of the later shall be substituted and a comparative chart of both texts shall be attached in a special annex.

³⁴⁶ It refers to the ideas contained in bills, not to the text of modified laws, but their categories are also useful here:

Bentham, De la Codification, dans Oeuvres de Jérémie Bentham par Ét. Dumont, Société Belge de Librairie, Hauman et. Ce., Troisième Édition, Tactique des Assemblées Politiques Délibérantes, Bruxelles, 1840, Tome Premier, p. 393.

³⁴⁷ Ermanno Bonazzi, L'Informatica delle Modifiche Legislative. Un Esperimento sulla Normativa Regionale, Rosenberg & Sellier, Torino, 1979, pp. 48-49.

³⁴⁸ The Preparation of Legislation, Report of a Committee Appointed by The Lord President of The Council, Chairman: The Rt. Hon Sir David Renton, Presented to Parliament by The Lord President of The Council by Command of Her Majesty, May 1975, Her Majesty's Stationery Office, Cmnd. 6053, Chapter XIV Consolidation, The Main Obstacles, London, 1975, 13.2, p. 76.

Division

RULE: Upon deliberation, everything that may be separated for better understanding, voting and application shall not be considered as a whole, to which end the provisions shall be divided until the simplest systematical units be reached.

Reunion

RULE: Whenever systematical units are scattered, they shall be reunited, in order to homogenize the explicit context.

Transposition

RULE: Whenever a systematical unit is not placed where it belongs according to the fundamental criterion adopted, such unit shall be transposed.

Non-textual amending laws

Non-textual amending laws introduce partial and implicit changes to the regulation of conducts which have already been regulated by other laws.

Due to the complexity of the contemporary juridical system, worsened by the number and poor quality of the laws, it is very difficult to reach the knowledge of the law currently in force in a precise form and before its application. It is also difficult to exactly determine the effects that a new law will produce, since they will be like a stone thrown in a pond, which sinks at a certain spot, but the waves of which reverberate in almost the whole surface, or like an ink jet, which colours the surface wherever it falls and then vanishes away in water. Non-textual amending laws, usually enacted without this previous knowledge, would not have been enacted more than once had legislators foreseen their incidence on other norms.³⁴⁹

RULE: When permitted by the circumstances and the political intentions, textual amending laws shall be preferred, without referrals, as long as they shall preserve juridical certainty and forbid interpretations as may be feasible, but opposite to the purpose sought by legislators.

2. Persuasive speeches

Persuasive speeches are adapted to the nature of prescriptive speeches and may be considered from two points of view: as prologues and as speeches *per se*. As prologues, like the preludes in music or overtures in concerts, operas and ballets, they introduce the works instead of beginning them directly in their main part. They smooth the way, prepare the audience, trying that they show themselves attentive (*attentos*), docile (*docile*) and benevolent (*benivolos*).³⁵⁰ As speeches *per se*, they try to teach (*docere*), please (*delectare*) and move (*movere*).³⁵¹

³⁴⁹ Bernardo Supervielle, *Derogación de las Leyes y demás Normas Jurídicas*, Apartado del Libro Estudios Jurídicos en Memoria de Juan José Amézaga, Montevideo, 1958, 153 pp.; p. 33.

³⁵⁰ [Aristotle], *Rhetoric to Alexander*, Ch. 29; Ch. 36.

[Aristotle], *Rhetoric to Alexander*, Ch. 29; Ch. 36., in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2296-2299; pp. 2306-2308.

RULE: As prologues of prescriptive speeches, persuasive speeches, shall try that their addressees show themselves attentive, docile and benevolent and, as speeches *per se*, they shall try to teach, please and move.

RULES: Persuasive speeches shall fulfill two functions: to counsel and to discourse. To those who may be in a position to enact or reject bills they shall counsel, on the one hand, the enactment of the bill; and, on the other hand, they shall criticize and discourse them, implicitly or explicitly, either to keep the current juridical system unchanged, or to come up with other solutions different from the bill proposed.

Legislators, when composing and counseling the enactment of a bill seeks, as supreme ideal, the introduction of the proposed changes –and not of others– to the juridical order; or, as a realistic alternative, the introduction of other changes, provided always that they are acceptable; but they shall only admit that no change be made, should those changes be unacceptable. The other recipients who shall also have to be persuaded are all members of public opinion, most of it, most of the wise men, the most distinguished of those, and those who will have to interpret and apply the laws, either spontaneously or forcibly.

As persuasive speeches have certain characteristics of their own, it will be very useful to consider their species. Since the use of persuasive speeches has been questioned, the most frequent objections will be then refuted and it will be established when the above mentioned speeches turn out to be necessary.

[Cicero], *Rhetorica ad Herennium*, Libro Primero, IV, 6.

[Cicero], *Rhetorica ad Herennium*, Liv.6, with an english translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, London, England pp. 12-13.

[Cicerón], *Retórica a Herenio*, Libro Primero, IV, Traducción, introducción y notas de Juan Francisco Alcina, Bosch, Casa Editorial S.A., Barcelona, pp. 68-69.

[Cicéron], *Rhétorique a Hérennius*, Livre Premier, IV, 6, Traduction Nouvelle de Henri Bornecque, Librairie Garnier Frères, Paris, pp. 8-9.

Cicero, *De Inventione I*, XV, 20.

Cicéron, *De l'Invention (De Inventione)*, Livre I, XV, 20, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 30-31.

Cicero, *De Oratore*, II, XXVII, 115.

Cicéron, *De l'Orateur (M. Tulli Ciceronis, De Oratore)*, Texte Établi et Traduit par Edmond Courbaud, Livre II, XXVII, 115, Société d'Édition "Les Belles Lettres", Paris, 1927, p. 53.

Cicero, *Brutus*, LXXX.

Cicéron *Brutus ou Dialogue des Orateurs Illustres (M. Tulli Ciceronis, Brutus seu Dialogus de Claris Oratoribus)*, Texte Établi, traduit et Annoté par François Richard, LXXX, Librairie Garnier Frères, Paris, 1934, pp. 182-183.

Octave Navarre, *Essai sur la Rhétorique Grecque avant Aristote*, Librairie Hachette et Cie., Paris, 1900, p. 213.

³⁵¹ Cicero, *Brutus*, LXXX.

Cicéron, *Brutus ou Dialogue des Orateurs Illustres (M. Tulli Ciceronis, Brutus seu Dialogus de Claris Oratoribus)*, LXXX, Texte Établi, traduit et Annoté par François Richard, Librairie Garnier Frères, Paris, 1934, pp. 182-183.

Cicero, *De Oratore*, II, XXVII, 115.

Cicéron, *De l'Orateur (M. Tulli Ciceronis, De Oratore)*, Livre II, XXVII, 115, Texte Établi et Traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres", Paris, 1927, p. 53.

a. Species

The most common species of persuasive speeches are: the preambles, the “whereas” section, the exposition of motives, and the messages, reports, notes and epilogues.

Preambles

Preambles were a very important tool to restore the origins and the purposes, the past and the future, that is to say, the ontological and teleological aspects of legislation, until they fell in disuse,³⁵² except in constitutions.

The preamble of the Constitution of the United States of America, which may serve as an example of this species of persuasive speech, indicates the source from which its title comes in order to be obeyed, the people of the United States, and sets forth the great purposes of the Constitution established by it:

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this Constitution for the United States of America"³⁵³

The “WHEREAS” section

The “WHEREAS” sections of executive orders and resolutions, which also precede the prescriptive speeches, are more concrete than preambles of constitutions and, therefore, similar to the grounds of court judgments, which consist of two parts that come before the judgement in strict sense: the “WHEREAS” and the “AND ALSO CONSIDERING” sections.³⁵⁴

The persuasive speeches of executive orders and resolutions may be composed of only one part, the “WHEREAS” section; or by two parts, when the “AND ALSO CONSIDERING” section is added.

RULE: In the WHEREAS section of executive orders and resolutions, the problems to be solved shall be detailed or reference shall be made to the documents in which they are detailed; the AND ALSO CONSIDERING section shall describe in detail the explanations and justifications of the solutions to be adopted.

The understanding of the sense of AND ALSO CONSIDERING seems clear, while that of the WHEREAS part needs to appeal to the maxim of political wisdom that recommends controlling that things are not only real and fair or just, but that they also look as such, with the typical verisimilitude of the rhetoric, this being the reason why Roman senators and judges, who gave so much value to appearance, would render their

³⁵² N J. Jamieson, Towards a Systematic Statute Law. Appendix E, 8, Otago Law Review, Volume 3, No. 4, 1976, p. 582.

³⁵³ Federal Textbook on Citizenship, Our Constitution and Government, Prepared by Catheryn Seckler-Hudson, M-7, (Revised 1978) N, United States Government Office, Washington, 1978, p. 80.

³⁵⁴ The observation about the similarity between executive orders and judicial decisions was made by Silvia Myriam Marchili, daughter of the author of this book.

decisions by beginning with the verb *videri*,³⁵⁵ a historical background that would explain the current use.

Exposition of Motives

The expositions of motives are persuasive speeches that also precede prescriptive speeches, although separated from one another. They are not part of the same text, together with the prescriptive speech, like the Preamble of a constitution and the WHEREAS and the ALSO CONSIDERING sections of an executive order or resolution. They provide explanations on the relations among the different parts of the prescriptive speech, both among themselves as well as with regard to the current law, and they also provide justifications that state the reason for each adopted solution, providing clarifications and materials³⁵⁶ to which one may resort for the debate, interpretation and enforcement of the law.

Jean Étienne Marie Portalis (1745-1807) has left to posterity three models of expositions of motives. The first one is his famous Preliminary Speech of the Civil Code Bill. The second one is the General Exposition that he personally delivered in the session of the Legislative Body on the 3rd day of *frumaire* of year X. The third one is the Exposition of Motives also personally delivered by him in the Legislative Body session on the 28th day of *ventose* of year XII, upon presenting the bill for which the civil laws were reunited in a single body entitled “Civil Code of the French,”³⁵⁷ a piece less known, but still significant to be imitated.

Messages and Reports

Messages are typical of the Executive Power in the exercise of its authority to initiate laws. They are also persuasive speeches, separated from the prescriptive speeches that explain and justify them. They differ from expositions of motives because they accompany the complete bill (persuasive and prescriptive speeches) before the legislative organ and emphasize more the political aspects than the technical ones, trying to move recipients so that the prescriptive speech is discussed, approved, interpreted and applied in accordance with the purpose sought by the legislator. The Reports issued by Legislative Commissions, typical of the Legislature, are also persuasive speeches separated from prescriptive speeches, of a political and juridical nature, based on which the members of the respective Commissions vote before sending the relevant bill to the Plenary session of each Chamber.

³⁵⁵ Vico, *Il Metodo degli Studi del Nostro Tempo*. Prolusione Tenuta alla Gioventù Studiosa delle Lettere Il 18 Ottobre 1708 in Ocasione della Solenne Inaugurazione della Regia Università del Regno di Napoli indi Accresciuta (*De Nostri Tempore Studiorum Ratione [...]*), Giambattista Vico, *Opere Filosofiche*, Introduzione di Nicola Badaloni, Testi, Versione e Note a Cura di Paolo Cristofolini, Sansoni Editore, Firenze, 1971, p. 810, p. 812; italiano; p. 813, latin.

³⁵⁶ Prof. Dr. Eugène Huber, *Code Civil Suisse, Exposé des Motifs de l'Avant-Projet du Département Fédéral de Justice et Police, Tome Premier, Introduction. Droit des Personnes et de la Famille*, Imprimerie Büchele & Co., Berne, 1901, p.1.

³⁵⁷ Locré, *La Législation Civile, Commerciale et Criminelle de la France, ou Commentaire et Complément des Codes Français*, par le Baron Locré, Treuttel et Würtz, Libraires, Strasbourg et Londres, Tome Premier, Paris, 1827, *Discours Préliminaire*, pp. 251-316; *Exposé Général*, pp. 316-336; *Exposé de Motifs*, pp. 337-350.

Notes

A persuasive speech may accompany the prescriptive one as if it were a scientific work, explaining the bill in notes published as footnotes, as in the Argentine Civil Code,³⁵⁸ or published all together at the end, after all sections, as in the Chilean Civil Code.³⁵⁹

Although they may just indicate the sources of the sections, notes of the prescriptive speeches are persuasive speeches which provide information and work as arguments of authority that justify the relevant parts of the prescriptive speeches.

Epilogues

The preambles, expositions of motives, messages and reports are persuasive speeches that precede prescriptive speeches. Epilogues, which are also persuasive speeches, close prescriptive speeches, but they are not longer used. In ancient times they were included to dissuade subsequent legislators from changing the respective laws, thus exhorting them to maintain them, cursing them or blessing them depending on whether or not they satisfied such a desire, as it has been said and exemplified in Chapter II upon recalling the Mesopotamian codes by Lipit-Ishtar and Hammurabi.

b. Refutation of certain frequent objections

No one would ever dare to question prescriptive speeches as a tool to which may be resorted to under certain circumstances, except anarchists; but persuasive speeches have been subjected to objections against the use of their best-known species, the preambles.

Two criticisms usually come up: that preambles make laws lengthier, when these should be briefer so that they may be memorized more easily, and that laws should order, not teach, since they order to be obeyed, not to be questioned.³⁶⁰

As it will be said upon discussing style, it is worth noting that brevity in itself is not a virtue of the laws and moreover it may also turn them obscure.

³⁵⁸ Código Civil de la República Argentina, Edición Oficial, Establecimiento Tipográfico "La Pampa", Buenos Aires, 1883.

³⁵⁹ Código Civil de la República de Chile, Edición Autorizada por el Supremo Gobierno, Imprenta Chilena, Santiago De Chile, Julio de 1858, pp. 359-404.

³⁶⁰ The classic citations are from Seneca and Bacon.

Seneca is in favor and not against the persuasive speech, since he quotes Posidonius to refute it: ("[...] Besides, laws also of assistance towards good habits, if they instruct as well as command. On this point I disagree with Posidonius, who says: "Why Plato's laws should have principles added to them? A law should be brief, in order that the ignorants grasp it all more easily. It should be a voice sent down from heaven; it should command, not argue. Nothing seems to me duller or more useless than a law with a preamble. Warn me, tell me what you want me to do; I am not learning but obeying.")

"[...] las leyes también aprovechan para las buenas costumbres si, además de mandar, encima enseñan. En este punto disiento de Posidonio, quien dice: "¿Por qué a las leyes de Platón se añaden los principios? La ley ha de ser breve para que los ignorantes las retengan con facilidad. Sea la ley como una voz venida del cielo; mande no discuta. Nada me parece más frío ni más inepto que una ley con preámbulo. Adviérteme, dime lo que quieres que haga, no aprendo; obedezco."

Spanish to English translation by the author of this book.

Lucio Anneo Séneca, Obras Completas, Discurso Previo, Traducción y Notas de Lorenzo Riber, Cartas a Lucilio, Libro XV, Carta XCIV: Utilidad de los Preceptos, Aguilar S.A. de Ediciones, Madrid, 1949, p. 669.

Bacon admits the utility of the persuasive speech, although with restrictions, in his aphorisms 69, 70 and 71, as will be discussed later on.

RULE: Persuasive speeches shall explain, justify³⁶¹ and exhort the enactment and application of the relevant prescriptive speeches, in such a way that the interpretation, the memory and the application of these be facilitated.

Some laws may even be more concise, not only brief, when preambles show their principles, since this would allow the legislator to reduce the use of prolix formulae in prescriptive speeches, replacing them with others which are more general.³⁶²

As preambles lead prescriptive speeches, those who challenge their mandatory force generally explain that preambles are not part of prescriptive speeches, but that they precede them, as it has been said about the Preamble of the Constitution of the United States of America.³⁶³ Including prescriptions in the persuasive speech to oblige, prohibit, permit, reward or punish conducts, instead of doing so in the prescriptive speech, constitutes a violation of the rules of the art of legislation, since a persuasive speech is not appropriated for such purpose; but disregarding the persuasive speech to interpret the prescriptive one represents a hermeneutic error.

RULE: Persuasive speeches shall not include prescriptive texts to oblige, permit, prohibit, permit, reward or punish conducts, but to explain and justify them.

Without denying the utility of preambles, it is recommended that certain vices be avoided when possible, because preambles tend to be insufficient as they describe the intention of the law, limiting themselves to exemplify certain passages and leaving aside other significant ones; or excessive, as they include restrictions of the law which do not require an explanation³⁶⁴ and prescriptions referred to in the text of the law, making it more obscure and less safe.³⁶⁵

³⁶¹ Capitant, *Vocabulaire Juridique*, Redigé par des Professeurs de Droit, des Magistrats et des Jurisconsultes, sous la Direction de Henri Capitant, mots "Exposé des motifs", Les Presses Universitaires de France, Paris, 1936, p. 244.

³⁶² It will be as a compass that will indicate the desired course and an anchor that will fix the legislative texts in memory.

Bentham, *Oeuvres de Jérémie Bentham*, par Et. Dumont, Troisième Édition, Société Belge de Librairie, Hauman et Ce., Tome Troisième, De la Codification, Section IV, Rationnel de La Loi, ou Commentaire Justificatif, Bruxelles, 1840, p. 96.

Bentham, *The Collected Works of Jeremy Bentham, "Legislator of The World": Writings on Codification, Law and Education*, Edited by Philip Schofield and Jonathan Harris, Clarendon Press, Letter V, III, Of Justifiedness, as applied to a Body of Law, Oxford, 1998, p. 141; p. 145.

³⁶³ Corwin affirms that the Preamble, strictly speaking, is not a part of the Constitution, but that it precedes it; by itself alone, it can afford no basis for a claim either of governmental power or private right, with a quotation from *Jacobson v. Mass.*, 197 U.S. 11.

Edward S. Corwin, *La Constitución Norteamericana y su Actual Significado (The Constitution and what it Means Today)*, Traducción del Dr. Rafael M. Demaría, Prólogo del Dr. Juan Agustín Moyano, Editorial Guillermo Kraft Ltda., Buenos Aires, 1942, p. 1.

³⁶⁴ [Bacon] *The Works of Francis Bacon*, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol V., *Translations of The Philosophical Works, Of the Dignity and Advancement of Learning. Book VIII, Example of a Treatise on Universal Justice or The Fountains of Equity*, by Aphorism: one Title of it, aphorism 70, Vol. II., New Edition, London, Longmans & Co. etc., 1883, pp. 102-3.

³⁶⁵ [Bacon] *The Works of Francis Bacon*, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol V., *Translations of The Philosophical Works, Of the Dignity and Advancement of Learning. Book VIII, Example of a Treatise on Universal Justice or The Fountains of Equity*, by Aphorism: one Title of it, aphorism 71, Vol. II., New Edition, London, Longmans & Co. etc., 1883, p. 103.

RULE: Persuasive speeches shall deal with such parts of a bill as may require an explanation and shall not include prescriptions referred to in the text of the law, so as to prevent the latter from becoming more obscure and less safe, thus disrupting their functions.

RULE: Defects should be avoided, instead of avoiding the use of persuasive speeches because they may bring about defects. In judging laws, not only their brevity should be considered, but whether that makes them better or worse, since their lengthiness can be good, if it fulfills a useful function.³⁶⁶

The storage of wisdom, this being understood as pieces of advice on life, is largely found in literature written with eloquence, either as prose or poetry. Laws, presently written in prose, are also eloquent expressions of wisdom. They deserve the greatest attentions³⁶⁷ and should not be considered orders to be obeyed, but conduct models to be imitated or avoided. But even when they are considered orders, having the legislator's persuasive speech at hand as a resource of education, they are of an undeniable utility;³⁶⁸ this is how peoples transmit their culture generation to generation, since when orders are well understood they are better obeyed.

³⁶⁶ Plato, *The Laws*, IV, 722 and X, 891

Plato, *The Laws*, IV, 722 y X, 891, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 184 y p. 419.

Platón, *Las Leyes*, IV, 722a; X, 891a, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo I, p. 155 y Tomo II, p. 155.

Platón, *Leyes*, IV, 722a; X, 891a, Introducción, Traducción y Notas de Francisco Lisi, en Platón, *Diálogos VIII Leyes (Libros I-VI)*, Editorial Gredos, Madrid, 1999, p. 386; *Diálogos IX Leyes*, Libros VII-XII), Editorial Gredos, Madrid, 1999, p. 199.

Platon, *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, *Les Lois*, IV, 722a y X, 891 a, Paris, 1942, p. 772 y p. 1012.

Platone, *Dialoghi*, Vol. VII, *Le Leggi*, IV, XII 722a y X, 891a, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 121 y p. 312.

³⁶⁷ Plato, *The Laws*, IX, 858.

Plato, *The Laws*, IX, 858, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 364.

Platón, *Las Leyes*, IX, 858c-d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo II, p. 108.

Platón, *Leyes*, IX, 858c-d, Introducción, Traducción y Notas de Francisco Lisi, en Platón, *Diálogos IX Leyes*, (Libros VII- XII), Editorial Gredos, Madrid, 1999, pp. 136-137.

Platon, *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, *Les Lois*, IX, 858c-d, Paris, 1942, pp. 962-963.

Platone, *Dialoghi*, Vol. VII, *Le Leggi*, IX, IV 858c-d, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 275.

³⁶⁸ "[...] laws are also of assistance towards good habits if, in addition to order, they teach."

"[...] las leyes también aprovechan para las buenas costumbres si, además de mandar, encima enseñan."
Translation from English to Spanish by the autor of this book.

Lucio Anneo Séneca, *Obras Completas*, *Discurso Previo*, Traducción y Notas de Lorenzo Riber, *Cartas a Lucilo*, Libro XV, Carta XCIV: Utilidad de los Preceptos, Aguilar S.A. de Ediciones, Madrid, 1949, p. 669.

RULES: The legislator's persuasive speech shall be useful, whether prescriptive speeches are considered orders to be obeyed or pieces of advices (conduct models to be imitated or avoided), since laws that are well understood are better obeyed.

The persuasive speech of a law, once written, remains fixed and, although it is true that it cannot answer the questions of whoever wants to learn, as it happens in oral dialogues,³⁶⁹ it is not less true that, as a pedagogic resource, it remains always ready for the scrutiny of the slow-witted in understanding, who may examine it again and again.³⁷⁰

The assistants to medical doctors, in classical Greece, were either free men or slaves who, due to their regular contact with the practice of medical doctors, learnt that when certain symptoms appeared, specific treatments had to be applied; but they neither knew nor could explain the reasons why it should be like that and not otherwise. In general, they were slaves who, to relieve medical doctors from the burden of their tasks, took over the treatment of sick slaves, to whom they prescribed medications with a speed typical of their ignorance and with the confidence of a tyrant who only demands obedience, without accepting or giving reasons.

Unlike their assistants, medical doctors generally treated sick free men, and talked with them in order to identify the causes of the illness out of their symptoms and choose the right medication and, only then, they would tell their patients the reasons underlying their illness and persuade them to follow the advised treatment.³⁷¹

³⁶⁹ Platón, Fedro, 275d.

Platón, Fedro, 275d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, p. 77.

Platon, Oeuvres Complètes de Platon, Tome IV, 3e. Partie, Texte Traduit par Léon Robin, Société d'Édition "Les Belles Lettres", Phédre, 275d, Paris, 1933, pp. 89-90.

Platon, Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Phédre, 275d, Paris, 1942, p. 76.

³⁷⁰ Plato, The Laws, X, 891.

Plato, The Laws, X, 891, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 419.

Platón, Las Leyes, X, 891a, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo II, p. 155.

Platón, Leyes, IX, 858a, Introducción, Traducción y Notas de Francisco Lisi, en Platón, Diálogos IX Leyes, (Libros VII- XII), Editorial Gredos, Madrid, 1999, p. 199.

Platon, Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Les Lois, X, 891a, Paris, 1942, p. 1012.

Platone, Dialoghi, Vol. VII, Le Leggi, X, IV 891, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 312.

³⁷¹ Plato, The Laws, IV, 720-723.

Plato, The Laws, IV, 720-723, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, pp. 181-185.

Platón, Las Leyes, IV, 720a-723a, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo I, pp. 152-155.

Platón, Leyes, IV, 720a-723a, Introducción, Traducción y Notas de Francisco Lisi, en Platón, Diálogos VIII Leyes, (Libros I-VI), Editorial Gredos, Madrid, 1999, pp. 382-389.

Platon, Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Les Lois, IV, 720a-723a, Paris, 1942, pp. 768-773.

A legislator who discusses the interests affected by a law with its recipients turns out to be pleasant and nice, shows his benevolence, that he loves them well as if he were a parent³⁷² or a friend³⁷³ who gives them wise and eloquent pieces of advice,³⁷⁴ not a tyrant that threatens to punish them. Those who consider that laws are orders and value brevity as a manifestation of power, should be told that, even though a legislator may apparently lose his majestic brevity, he is in fact acquiring more power over the spirit of his recipients,³⁷⁵ since his words are worth of more credit, and the prescriptive speech is then more easily received by them.

The persuasive speeches of medical doctors during the treatment of free men did not only inform them of their illness and medications, because they were not trying to train a professional in the art of medicine, but to educate patients so that they could consider,

Platone, Dialoghi, Vol. VII, Le Leggi, IV, X-XII 720a-723a, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, pp. 119-122.

³⁷² Plato, The Laws, IX, 859.

Plato, The Laws, IX, 859, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 365.

Platón, Las Leyes, IX, 859a, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo II, p. 108.

Platón, Leyes, IX, 859 a, Introducción, Traducción y Notas de Francisco Lisi, en Platón, Diálogos IX Leyes, (Libros VII-XII), Editorial Gredos, Madrid, 1999, p. 138.

Platon, Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Les Lois, IX, 859a, Paris, 1942, p. 963.

Platone, Dialoghi, Vol. VII, Le Leggi, IX, IV 859a, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 276.

³⁷³ Mably, De la Législation ou Principes des Lois, Livre Second, Chapitre III, Oeuvres Complètes de l'Abbé de Mably, Tome Douzième, N. Étienne Sens, Toulouse, J. Gaude, Nismes, 1793, p. 280.

³⁷⁴ ("XXXII

4595 A father who can advise you
is more than a father, he's a friend;
so it's as a friend I warn you
to be on your guard in life:
you can never know what corner

4600 your enemy's lurking in").

"XXXII

4595 "Un padre que da consejos
más que padre es un amigo;
así como tal les digo
que vivan con precaución:
naides sabe en qué rincón

4600 se oculta el que es su enemigo"

José Hernández, Martín Fierro, Edición con Estudio, Notas y Vocabulario de Eleuterio D. Tiscornia, Editorial Losada S.A., Buenos Aires, Primera Edición 1939, Segunda 1941, Tercera 1945, Parte II La Vuelta de Martín Fierro XXXII, 4595-4600, p. 250.

"32

4595 Un padre que dá consejos
más que padre es un amigo,
así como tal les digo
que vivan con precaución
naide sabe en qué rincón

4600 se oculta el que es su enemigo."

José Hernández, Martín Fierro, Edición Crítica de Carlos Alberto Leumann, Ángel Estrada y Cía. S.A., Buenos Aires, Primera edición 1945, Segunda edición 1951, La Vuelta de Martín Fierro, 32, 4595-4600.

³⁷⁵ Mably, De la Législation ou Principes des Lois, Livre Second, Chapitre III, Oeuvres Complètes de l'Abbé De Mably, Tome Douzième, N. Étienne Sens, Toulouse, J. Gaude, Nismes, 1793, p. 280.

accept,³⁷⁶ interpret and apply the prescribed therapy, in accordance with the purpose sought by the medical doctors, educating and leading their souls (psycagogy)³⁷⁷ to a healthy life.

If prescriptive speeches were never accompanied by persuasive speeches, they would be like orders given by ignorant slaves and tyrants convinced that they would all be obeyed, that it is enough to prescribe medications in order to heal. Legislators, who do not belong to a superior species and speaks to other reasonable men, being themselves subjected to errors, must give and accept reasons.³⁷⁸

RULE: Persuasive speeches shall explain prescriptive speeches to their recipients, with teachings and justifications, as parents or as friends, who love them well and give wise and eloquent pieces of advice to them, nicely, not as a tyrant who threatens to impose a punishment on them.

RULE: Persuasive speeches shall motivate recipients of prescriptive speeches to consider, pass, interpret and apply the conducts to be imitated and avoided, in accordance with the purpose sought by legislators.

Persuasive speeches are composed after prescriptive speeches, thus providing an excellent opportunity to control the quality of the later, modify the noticed defects and rebut probable criticism in advance, in the event that waiting for a debate is not preferable.

RULE: Upon the composition of a persuasive speech, the quality of the prescriptive speech shall be controlled and any probable criticism shall be rebutted in advance, in the event that waiting for a debate is not preferable.

The juridical reason (*ratio juris*) is specified in custom by the requirement of the need in public opinion (*opinio cive necessitatis*), in court decisions by the exposition of the reasons on which such decision are grounded (*ratio decidendi*) and in the law, which is a general decision, by the reasons which justify it (*ratio legis*).

³⁷⁶ Still the one who does not approve preambles at all, admits their persuasive function in order that laws be passed, both by Parliament and by the people:

"Nor should I at all approve of the preambles of laws, which were formerly deemed impertinent, and which represent laws disputing and not commanding, if we could endure the ancient manners. But as times now are, these preambles are necessarily used in most cases, not so much to explain the law, as to persuade Parliament to pass it, and also to satisfy the people. But avoid preambles as much as possible, and let the law commence with enactment.", in Bacon, *The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol V., Translations of The Philosophical Works, Of the Dignity and Advancement of Learning. Book VIII, Example of a Treatise on Universal Justice or The Fountains of Equity, by Aphorism: one Title of it, aphorism 69, Vol. II., New Edition, London, Longmans & Co. etc., 1883, p. 102.*

³⁷⁷ Plato, Phaedrus, 271c

Platon, Phèdre, 271c, in Platon, *Oeuvres Complètes de Platon, Tome IV, 3e. Partie, Texte Traduit par Léon Robin, Société d'Édition "Les Belles Lettres", , Paris, 1933, p. 82.*

Platon, Phèdre, 271c, in Platon, *Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec la Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Paris, 1942, p. 70.*

³⁷⁸ Mably, *De la Législation ou Principes des Lois, Livre Second, Chapitre III, Oeuvres Complètes de L'Abbé De Mably, Tome Douzième, N. Étienne Sens, Toulouse, J. Gaude, Nismes, 1793, pp. 279-280.*

Persuasive speeches serves as barriers³⁷⁹ that may limit the power of legislators. If they are prudent, they will refrain from using the prescriptive speech spontaneously, because of the absence of acceptable reasons that justify it and, in case they achieve acceptance, it may be possible to judge whether the means chosen are proportional to the purposes sought, to which end there are usually institutional remedies, like a veto by the Executive Power, or a declaration of unconstitutionality by the Judiciary due to lack of reasonableness.

RULE: Persuasive speeches shall act as barriers for legislators, whenever they prudently set limits to themselves, or when those speeches allow judging whether the means chosen are proportional to the purposes sought (reasonableness), to which end there are usually institutional remedies, like a veto by the Executive Power, or a declaration of unconstitutionality by the Judiciary.

c. Need for persuasive speeches

There are those who hold that laws must always be provided with their corresponding persuasive speech, as a sort of complete treatise, a reasoned comment that should accompany them all.³⁸⁰

Persuasive speeches may be composed for any prescriptive speech, but there are not always necessary.³⁸¹ To determine when they are necessary, the level of defensibility of bills should be taken into consideration, which allows for their classification as easy, difficult and doubtful. They are not necessary when they are: easily defensible, as in honest prescriptive speeches, which coincide with the feelings of public opinion; clear-cut, which do not need major efforts to understand the meaning of the problems to be resolved and the proposed solutions; and humble, of little importance, except when it is

³⁷⁹ Bentham, *The Collected Works of Jeremy Bentham, "Legislator of the World": Writings on Codification, Law and Education*, Edited by Philip Schofield and Jonathan Harris, Clarendon Press, Letter V, III. Of Justifiedness, as applied to a Body of Law, Oxford, 1998, p. 142.

Mably, *De la Législation ou Principes des Lois, Livre Second, Chapitre III, Oeuvres Complètes de L'Abbé De Mably*, Tome Douzième, N. Étienne Sens, Toulouse, J. Gaude, Nismes, 1793, pp. 280-281.

³⁸⁰ Mably, *De la Législation ou Principes des Lois, Livre Second, Chapitre III, Oeuvres Complètes de l'Abbé de Mably*, Tome Douzième, N. Étienne Sens, Toulouse, J. Gaude, Nismes, 1793, pp. 280-281.
Bentham, *Oeuvres de Jérémie Bentham, par Et. Dumont, Troisième Édition, Société Belge de Librairie, Hauman et Ce., Tome Premier Promulgation des Lois, Promulgation des Raisons des Lois; Tome Troisième, De la Codification, Section IV, Rationnel de la Loi, ou Commentaire Justificatif*, Bruxelles, 1840, p. 249 y p. 96.

Bentham, *The Collected Works of Jeremy Bentham, "Legislator of The World": Writings on Codification, Law and Education*, Edited by Philip Schofield and Jonathan Harris, Clarendon Press, Letter V, III. Of Justifiedness, as applied to a Body of Law, Oxford, 1998, p. 144.

³⁸¹ Plato, *The Laws*, IV, 723.

Plato, *The Laws*, IV, 723, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 186. Platón, *Las Leyes*, IV, Platón, 723d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo I, p. 157.

Platón, *Leyes*, IV, 723d, Introducción, Traducción y Notas de Francisco Lisi, en Platón, *Diálogos VIII Leyes*, (Libros I-VI), Editorial Gredos, Madrid, 1999, p. 390.

Platon, *Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec La Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Les Lois*, IV, 723d, Paris, 1942, p. 775.

Platone, *Dialoghi*, Vol. VII, *Le Leggi*, IV, XII 723d, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 123.

necessary to defeat the inertia so that they may be discussed and approved. They are necessary when their defensibility is difficult, either because the proposed solutions differ from the ones supported by public opinion, as in the case of awkward and obscure matters, or because they are important.³⁸² They are also necessary when easy and difficult parts are combined, making them of a doubtful defensibility, since the resulting strength or weakness cannot be established. Therefore, in a persuasive speech rebuttals shall anticipate any probable criticism to the prescriptive speech, to leave the prospective opponents of the bill without arguments in the debate stage. Finally, they are also necessary in those prescriptive speeches for the interpretation and application of which it is generally not foreseen that lawyers be consulted, since all trust their own judgment, for which they need the most complete explanation possible.³⁸³

RULES: Persuasive speeches shall be composed, whenever the prescriptive speech has:

- a) little importance, so that it may be debated and enacted;
- b) a difficult defensibility, as in awkward matters, so that it may decrease; as in obscure matters, so that they may be cleared up; as in important matters, to show the pertinent care;
- c) a doubtful defensibility, to leave the opponents in the debate without arguments;
- d) a direct interpretation by the interested parties, without consulting with their lawyers, since they will need the most complete explanation possible.

A speech is the result of a rhetorical process which comprises five stages: investigation, systematization, style, action and memory.³⁸⁴ Investigation (*inventio*)

³⁸² Roland Barthes, L'Ancienne Rhetorique, dans Communications, 16, 1970, p. 215, he refers to the exordium for any speech, based on the judicial genre.

Relevance as fundamental criterion is established in Plato, The Laws, IV, 723d.

Plato, The Laws, IV, 723, Translated with an Introduction by Trevor J. Saunders, Penguin Books, Harmondsworth, Middlesex, England, First Edition 1970, Reprinted 1972, p. 186.

Platón, Las Leyes, IV, 723d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por José Manuel Pabón y Manuel Fernández-Galiano, Clásicos Políticos, Instituto de Estudios Políticos, Primera Edición, Madrid, 1960, Tomo I, p. 157.

Platón, Leyes, IV, 723d, Introducción, Traducción y Notas de Francisco Lisi, en Platón, Diálogos VIII Leyes, (Libros I-VI), Editorial Gredos, Madrid, 1999, p. 390.

Platon, Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin, avec La Collaboration de M. J. Moreau, Éditions de la Nouvelle Revue Française, Volume II, Les Lois, IV, 723d, Paris, 1942, p. 775.

Platone, Dialoghi, Vol. VII, Le Leggi, IV, XII 723d, Nuova Edizione a Cura di Attilio Zadro, Editori Laterza, Bari, 1952, p. 123.

³⁸³ [Bacon] The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol V., Translations of The Philosophical Works, Of the Dignity and Advancement of Learning. Book VIII, Example of a Treatise on Universal Justice or The Fountains of Equity, by Aphorism: one Title of it, aphorism 68-69, Vol. II., New Edition, London, Longmans & Co. etc., 1883, p. 102.

³⁸⁴ Benedetto Riposati, Problemi di Retorica Antica, en la obra colectiva Introduzione alla Filologia Classica, Dott. Carlo Marzorati, Editore, Milano, 1952, pp. 727-777.

Heinrich Lausberg, Handbook of Literary Rhetoric, A Foundation for Literary Studies, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David Orton, Edited by David E. Orton & R. Dean Anderson, Brill, Leiden, Boston, Köln, 1998, number 255, pp. 112-113.

Heinrich Lausberg, Manual de Retórica Literaria. Fundamentos de una Ciencia de la Literatura, Traducción de José Pérez Riesco del Original Alemán Hanbuch der Literarischen Rhetorik. Eine Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 255, pp. 226-228.

Edward P.J. Corbett and Robert J. Connors, Classical Rhetoric for the Modern Student, Oxford University Press, New York-Oxford, 1999, pp. 17-23.

consists in finding the things to say; systematization (*dispositio*), in placing the things to say in order; style (*elocutio*), in dressing the things to say with words; action (*actio*), in selecting the voice and the gestures with which the speech will be pronounced; and memory (*mnemé*) in retaining the things to say in the spirit, placed in order, with the words that express them and the voice and the gestures that are to be used upon delivering the speech. Written speeches comprise only three stages: investigation, systematization and style.³⁸⁵ Whether three stages are considered, as in the written speech (investigation, systematization and style), or the five stages, as in the oral speech (investigation, systematization, style, action and memory), it is all about successive operations inside a process, an *iter*, a way that is followed to obtain the good speech promised by rhetoric as the art of good saying (*ars bene dicendi*)³⁸⁶ and, in the present work, the good law promised by the art of good legislation (*ars bene legislandi*).

Since contemporary laws are, in general, written speeches, Chapter V will discuss Investigation; Chapter VI, Systematization; and Chapter VII, Style

[Cicero], *Rethorica ad Herennium*, I, II

[Cicero] *Rhetorica ad Herennium*, with an English translation by Harry Caplan, I.ii.3, The Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, London, England, p. 6 (latin), 7 (english).

[Cicerón], *Retórica a Herenio*, Traducción, introducción y notas de Juan Francisco Alcina, Bosch, Casa Editorial S.A., Libro Primero, II, Barcelona, pp. 64-65.

Cicero, *Partitiones Oratoriae*, I.3.

Cicéron *Divisions de l'Art Oratoire*, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Les Belles Lettres, I.3, Paris, 1960, p. 3.

Cicero, *De Inventione*, I, 9.

Cicéron, *De l'Invention (De Inventione)*. Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Livre I, 9, Paris, pp. 12-15.

Cicero, *De Oratore*, I, XXXI, 42.

Cicéron, *De l'Orateur*, Texte Établi et Traduit par Edmond Courbaud, Livre Premier, XXXI, 142, Société d'Édition "Les Belles Lettres", Paris, Première Édition 1922, Sixième Tirage, 1967, p. 141.

Quintilian, *Institutio Oratoria*, III, 3.1-3.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume I, Book III, iii, 1-3, London, 1921, pp. 382-385.

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome II, Livre III, 3.1-3, Paris, 1977, p. 147.

³⁸⁵ Gustave Lanson, *Conseils sur l'Art d'Écrire*, Treizième Édition, Librairie Hachette, Première Partie.

Préparation générale, pp. 1-40; Deuxième Partie, Invention, pp. 41-107; Troisième Part, Disposition, pp. 106-164; Quatrième Part, Élocution, Paris, 1926, pp. 165-248.

Roland Barthes, *L'Ancienne Rhétorique*. Aide Memoir, dans *Communications*, École Pratique de Hautes Études, Centre d'Études des Communications de Masse, 16, Seuil, Paris, 1970, pp. 172-223, B.0.5, p. 197.

³⁸⁶ Roland Barthes, *L'Ancienne Rhétorique*. Aide Memoir, *Communications*, École Pratique de Hautes Études, Centre d'Études des Communications de Masse, 16, Seuil, Paris, 1970, pp. 172-223, B.0.5, pp. 197-198.

Chapter V Investigation

The first stage in the drafting of a bill, like in the case of any other speech, consists in determining what to say. In the rhetorical tradition this is called *heuresis* (Greek) or *inventio* (Latin), which has preferably been translated into "investigation",³⁸⁷ because it is referred to a way towards the arguments (*via argumentorum*),³⁸⁸ in order to recover them from the place where they are, more than to create them.³⁸⁹ The author of the present work uphold that the investigation stage includes all the relevant things to say in prescriptive or persuasive speeches, unlike those who limit such stage to the arguments. But, before beginning the development of the investigation stage, it turns out suitable to deal with two previous matters: instructions and knowledge.

1. Previous instructions

RULE: Rulers shall establish the politics, which shall consist in the determination not only of the targets to be hit in the social system but also in the legislative changes to be introduced in the juridical system,³⁹⁰ giving previous instructions to their advisers about both aspects.

³⁸⁷ Bacon, Of the Dignity and advancement of Learning, The Fifth Book, Chap. I; Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of the Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, p. 407; p. 421.

³⁸⁸ Roland Barthes, L'Ancienne Rhétorique, Aide-memoire, dans Communications, 16, 1970, Seuil, Paris, p. 198.

³⁸⁹ Bacon, Of the Dignity and advancement of Learning, The Fifth Book, Chap. I; Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of the Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, pp. 421-422.

It is mentioned among Bentham's manuscripts, but it has not been published yet, "On invention in legislative matters"

"De la invention en matière de législation"), in Oeuvres de Jérémie Bentham, par Ét. Dumont, Troisième Édition, Société Belge de Librairie, Tome Premier, Discours Préliminaire, Bruxelles, 1840, p. 5. It has not been possible for the author of this book to consult it. Perhaps this is a question of the manuscript catalogued under box "CI", pp. "385-405. Logic, Ch X Of the art of invention", of the year 1814, see:

A. Taylor Milne, Catalogue of the Manuscripts of Jeremy Bentham in the Library of University College, London, First Issued 1937, Second Edition, University of London, The Athlone Press, Bristol, 1962, p. 31.

³⁹⁰ "For the sake of brevity, from now on we will call political element of the Law to the connection in which it meets the general life of people, and technical element of the Law, to the scientific life separated from the same."

"Por razones de brevedad, en lo futuro llamaremos elemento político del Derecho a la conexión en que éste se encuentra con la vida general del pueblo, y elemento técnico del Derecho a la vida científica separada del mismo.":

Savigny, De la Vocación de Nuestra Época para la Legislación y la Ciencia del Derecho, (1814), Thibaut y Savigny, en La Codificación, Una Controversia Programática Basada en sus Obras Sobre la necesidad de un Derecho Civil General para Alemania y De la Vocación de Nuestra Época para la Legislación y la Ciencia del Derecho, con Adiciones de sus Autores y Juicios de sus Contemporáneos, Introducción y Selección de Textos de Jacques Stern, Traducción del Alemán de José Díaz García, Aguilar, Madrid, 1970, p. 57.

On juridical politics, see:

Jean Dabin, La Technique de l'élaboration du Droit Positif Spécialement du Droit Privé, Établissements Émile Bruylant, Bruxelles, Librairie du Reçueil Sirey, Paris, pp. 36-56.

RULE: Previous instructions shall be given in writing, with sufficient reasons to sustain the fostered politics, in the form of conclusions deriving from a report that will contemplate, at least, the following points:

a) the accredited controversial facts, in accordance with the submitted proofs;
b) the opinions about the sectors involved, in accordance with the proof of the declarations made by them;

c) other opinions that have been or could be adopted.³⁹¹

Should the rulers fail to establish the legislative politics, this shall be decided by their advisers, who will have worked in vain if the rulers, founded on political reasons, reject such bills as may have been submitted to them.

RULE: In the absence of instructions from the rulers, the advisers shall try to request them from the rulers, assisting them with diplomacy. The instructions may be completed by oral hearings and by the reading of other documents, if necessary.

The instructions must not be substituted for an already drafted bill, which may lead to misinterpretations about the purpose sought, except when such purpose is expressly established in the corresponding persuasive speech, in which case it will play the role of the instructions. In spite of a good interpretation of the purpose sought, it is usually expected that the bill will be reviewed and returned on the same day or the following one, which is often the last one of the useful term. The creative imagination of the advisers is also restricted, inciting them to a mere review. Had the bill circulated, it will generate resistance from those who participated before and must review it again, since they will not admit any attempt of altering its fundamental structure, hoping to find something similar to what they had already considered.³⁹²

RULE: The written instructions to legislate shall not be substituted for an already drafted bill.

2. Previous knowledge

After studying the instructions received and before the drafting of the prescriptive and persuasive speeches, certain previous knowledge (*noesis; intellectio*)³⁹³ is required

Alf Ross, *Sobre el Derecho y la Justicia* (On the Law and Justice, Stevens & Sons Limited, London, 1968), traducción de Genaro Carrió, Capítulos XV-XVII, Eudeba, Buenos Aires, 1963, pp. 317-364.

³⁹¹Taylor unifies points b and c, and adds that if it is recommended to legislate, a bill and the speech of proposition to the legislature should be prepared, as part of an exercise for the education of the young people who will devote themselves to the public administration (*civil service*), consisting in the study of the papers related to an already debated matter, without the reports, and the drafting of a proper report, with the text of the law that would execute the recommended intentions and of the speech with which the proposed law should be introduced, if it is recommended to legislate:

Henry Taylor, *The Statesman*, Original Edition London, 1836, with a New Introduction by C. Northcote Parkinson, a Mentor Book, Published by The New American Library, First Printing, New York, December 1958, p. 29.

³⁹²Elmer A. Driedger, *The Composition of Legislation*, First Edition, Edmond Cloutier, Queen's Printer and Controller of Stationery, Ottawa, 1957, pp. xvi-xvii; Second Edition Revised, Published by The Department of Justice, Ottawa, 1976, p. xix.

³⁹³George A. Kennedy, *Greek Rhetoric Under Christian Emperors*, Princeton University Press, Princeton, New Jersey, 1983, p. 104.

in connection with the state of the cause, the defensibility of the initiative and the determination of the legislative genre and its species.

a. The state of the cause³⁹⁴

Those who take the initiative to legislate know that they will face a struggle with the opposition or with the government party, an agonistic situation that determines the fundamental position that they must adopt in terms of the performance expected from the opponent, who can question it, mainly taking into consideration the topics developed in point 5 of this Chapter.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 97, pp. 130-131 y T. III, número 1243, p. 115.

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation for Literary Study*, Translated by Matthew T. Bliss, Annemiek Jansen, David Norton, Edited by David Orton & R. Dean Anderson, Brill, Leiden, Boston, Köln, 1998, number 97, pp. 47-48; number 1244, I), p. 685.

³⁹⁴Stasis (Greek), status or constitutio (Latín), consists in the main question evaluated from the position held by the orator to whom a penal case is entrusted. See:

Benedetto Riposatti, *Problemi di Retorica Antica*, in *Introduzione alla Filologia Classica*, Dottore Carlo Marzorati, Editore, Milano, 1952, pp. 657-787, *Teoria Degli Status Causae*, pp. 708-726, p. 709, n. 3.

Roland Barthes, *L'Ancienne Rhétorique. Aide Memoir*, *Communications*, École Pratique de Hautes Études, Centre d'Études des Communications de Masse, 16, Seuil, Paris, 1970, pp. 172-223, B.1.26, p. 211.

Although it is more developed in the judicial genre, it is also applicable to the deliberative genre. See:

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, números 224-238, pp. 203-212.

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation for Literary Study*, Translated by Matthew T. Bliss, Annemiek Jansen, David Norton, Edited by David Orton & R. Dean Anderson, Brill, Leiden, Boston, Köln, 1998, numbers 224-238, pp. 97-102.

Cicero, *Rethorica ad Herennium*, Book I, xi-xv.

Cicerón, *Retórica a Herenio*, Libro I, XI-XV, Traducción Introducción y Notas de Juan Francisco Alcina, Erasmo, *Textos Bilingües*, Editorial Bosch, Barcelona, 1991, pp. 84-97.

Cicéron, *Rhétorique a Herennius*, Livre I, 18-25, *Ouvrage Longtemps Attribué a Ciceron*, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Paris, pp. 20-33.

Cicero, *De Inventione*, Book I, 10-16.

Cicerón, *De la Invención Retórica*, en *Obras Completas de Marco Tulio Cicerón*, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica, Tomo XIV, Tomo I, pp. 1-103, Madrid, 1879, Libro Primero, pp. 6-9.

Cicéron, *De l'Invention (De Inventione)*, Livre I, 10-16, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 14-25.

Quintilian, *The Institutio Oratoria of Quintilian*, Book III, vi.

Quintilian, *The Institutio Oratoria of Quintilian*, Book III, vi, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume I, London, 1921, pp. 406-463.

Quintilien, *Institution Oratoire*, Livre III, VI, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome II, Paris, 1977, pp. 160-188.

Hermogenes, *Staseis*.

Hermogène, *Les États de Cause (Staseis)*, dans *L'Art Rhétorique*, Première Traduction Française Intégrale, Introduction et Notes par Michel Patillon, Préface de Pierre Laurens, L'Age d'Home, Paris, 1997, pp. 153-208.

b. Defensibility³⁹⁵

An initiative may be of an easy, difficult or doubtful defensibility.

Easy defensibility

RULE: Defensibility shall be easy in the case of honest, clear and humble initiatives. Such initiatives will be:

- a) honest, if they coincide with the feelings of public opinion;
- b) clear, if no major efforts are required to understand their respective meaning;
- c) humble, if they solve problems of minor importance.

Difficult defensibility

RULE: Defensibility shall be difficult in the case of awkward, dark or important initiatives, that is to say, in the case of initiatives opposite to those of easy defensibility.

Doubtful defensibility

RULE: Defensibility shall be doubtful when the initiatives combine easy and difficult elements, without the resulting strength or weakness being established.

³⁹⁵On *Genera causarum* in the the rhetorical tradition, see:

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del original alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 64, pp. 109-110.

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation for Literary Study*, Translated by Matthew T. Bliss, Annemiek Jansen, David Norton, Edited by David Orton & R. Dean Anderson, Brill, Leiden, Boston, Koln, 1998, number 64, pp. 34-38.

Cicero, *Rethorica ad Herennium*, Libro I, III.

Cicerón, *Retórica a Herenio*, Libro I, III, Traducción Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Barcelona, 1991, pp. 66-69.

Cicerón, *Retórica a C. Herennio*, en *Obras Completas de Marco Tulio Cicerón*, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Tomo I, pp. 105-210, Madrid, 1879, Libro Primero, p. 109.

Cicéron, *Rhétorique a Herennius*, Livre I, III, 5, *Ouvrage Longtemps Attribué a Cicéron*, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, pp. 6-7.

Cicero, *De Inventione*, Book I, III, 5.

Cicerón, *De la Invención Retórica*, en *Obras Completas de Marco Tulio Cicerón*, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Tomo I, pp. 1-103, Madrid, 1879, Libro I, p. 12.

Cicéron, *De l'Invention (De Inventione)*, Livre I, 20, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 30-31.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IV, i, 40.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IV, i, 40, with an English Translation by H.E. Butler in Four Volumes, Volume II, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons, New York, 1921, pp. 26-27.

Quintilien. *Institution Oratoire*, Livre IV, 1, 40, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome III, Paris, 1976, p. 28.

RULE: If the defensibility of the initiative is:

- a) easy, the answers to the foreseeable objections shall be reserved up to the discussion of the bill, to favor victory in the debate;
- b) difficult, a prescriptive speech without these objections shall have to be prepared with the view to avoid the expected criticism;
- c) doubtful, the answers shall be anticipated in the persuasive speech, so as to deprive the opposition of suitable arguments.

c. Determination of the legislative genre and its species

RULE: After having evaluated the defensibility of the initiative, the legislative genre and the species of the bill to be prepared shall be determined, in order to entrust the investigation tasks and to fix the term in which the corresponding report shall have to be submitted.

In the case of either a persuasive or prescriptive speech, in the task of finding the things to say (investigation), the legislators and their advisers may not rely only on their respective memory and imagination or fantasy,³⁹⁶ in matters of such a vast scope as legislative issues are. The above mentioned natural skills are perfected, facilitating their opportune exercise when they are promoted by the art of legislation, since legislators and advisers are used to perform certain intellectual operations as a means to obtain abundant things to say in each case (instruments)³⁹⁷ and previously keep on file such things to say as are convenient to have available for repeated use (promptuary).³⁹⁸

³⁹⁶Memory and imagination or fantasy are necessary for orators and jurists alike.

Giambattista Vico, *Il Metodo degli Studi del Nostro Tempo*, 1708, da *Opere Filosofiche*, Introduzione di Nicola Badaloni, Testi, Versioni e Note a Cura di Paolo Cristofolini, Sansoni Editore, Firenze, 1971, III, p. 796.

³⁹⁷Aristotle, *Tópicos*, I, 13-18.

Aristotle, *Topics*, I, 13-18, in *The Complete Works of Aristotle. The Revised Oxford Translation* Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 175-181.

Aristóteles, *Tópicos*, I, 13-18, en *Aristóteles, Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 109-121.

Eug. Thionville, *De la Théorie des Lieux Communs Dans les Topiques d'Aristote, et des Principales Modifications qu'elle a subies jusqu'à nos Jours*, Thèse présentée à la Faculté des Lettres de Paris, Réimpression de l'Édition de 1855, Osnasbrück, Otto Zeller, 1965, pp. 47-54.

Aristote, *Topiques*, I, 13-18, Texte Établi et Traduit par Jacques Brunschwig, Société d'Édition "Les Belles Lettres", Paris, 1967, Tome I, Livres I-IV, p. 18-33.

W.A. de Pater, *La fonction du lieu et de l'instrument dans les Topiques*, in *Aristotle on Dialectic, Proceedings of the Third Symposium Aristotelicum*, Edited by G.E.L. Owen, Oxford at The Clarendon Press, 1968, pp. 164-188.

Ivan Pelletier, *La Dialectique Aristotélicienne, Les Principes Clés des Topiques*, Montréal, Bellarmin, Montréal, 1991, pp. 321-322.

Aristotle, *Topics*, I, 13-18, in *Aristotle Topics Books I and VIII*, Translated with a Commentary by Robin Smith, Clarendon Press, Oxford, 1999, pp. 11-19.

Paul Slomkowski, *Aristotle's Topics*, Brill, Leiden, New York, Köln, 1997, pp. 54-58.

Stéphanie Grégoire, *The Dialectic Tools: Theory and Practice*, Thèse Présentée à la Faculté des Études Supérieures de l'Université Laval pour la obtention du grade de Philosophiae Doctor (PH.D), Faculté de Philosophie Université Laval, Novembre 1999, Bibliothèque Nationale du Canada 0-612-47571-9, 350 pp.

The author of this book extends the application of the Instruments to the securing of the abundant and available things to say, for their opportune use, whether or not they work as premises or conclusions.

3. Instruments

As well as there are procedures to obtain abundant words to say (*copia verborum*),³⁹⁹ there are instruments to obtain abundant things to say in connection with each bill (*copia rerum*), which perfect the exercise of the natural imagination and memory as well as the use of the artificial resources included in the promptuary.

RULE: To obtain abundant things to say in connection with each bill, one shall resort to the following four intellectual operations (instruments):⁴⁰⁰

Aristotle applies the instruments only to the acceptable things to say (endoxas) that work as premises (arguments).

³⁹⁸Bacon, Of the Dignity and Advancement of Learning, the Fifth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, pp. 422-423. Karl R. Wallace, Francis Bacon on Communication & Rhetoric, the University of North Carolina Press, Chapel Hill, 1943, p. 56.

The author of this book extends the conception of Bacon's Promptuary, incorporating the Topics to it. On the other hand, Bacon supports that the provision of arguments for the speeches is obtained in two different ways: with the Promptuary (the arguments are composed in advance and remain to be used) and with the Topics (the places where the things must be looked for are marked, as if they were indexed):

Bacon, Of the Dignity and Advancement of Learning, The Fifth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, p. 422.

³⁹⁹Erasmus in his treatise De Duplici Copia Rerum et Verborum, or De Utraque Verborum ac Rerum Copia (1511), usually quoted as "On Copia" ("On Abundance"), lists 150 ways of saying "I liked your letter very much" in Latin and 200 ways of saying, also in Latin, "I will remember you as long as I live", according to George A. Kennedy, Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times, The University of North Carolina Press, Chapel Hill, 1980, p. 206.

⁴⁰⁰The instruments in Aristotle's Topics are applied to reasonings, deductive arguments, deductions, or to syllogisms and inductions, according to the different translations of Aristotle, Topics, I, 13, 105a20.

To reasonings:

Aristóteles, Tópicos, I, 13, 105a20, en Aristóteles, Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 109,

Ivan Pelletier, La Dialectique Aristotélicienne, Les Principes Clés des Topiques, Montréal, Bellarmin, Montréal, 1991, p. 329.

To deductions:

Aristotle, Topics, I, 13, 105a20, in The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 175,

Aristotle, Topics, I, 13, 105a20, Aristotle Topics Books I and VIII, Translated with a Commentary by Robin Smith, Clarendon Press, Oxford, 1999, p. 11.

To deductive arguments:

Aristote, Topiques, I, 13, 105a20, Texte Établi et Traduit par Jacques Brunschwig, Société d'Édition "Les Belles Lettres", Paris, 1967, Tome I, Livres I-IV, p. 19,

To syllogisms:

Aristotele, Topici, I, 13, 105a20, da Aristotele, Organon, a Cura di Giorgio Colli, Adelphi, Edizioni, Milano, 2003, pp. 422-423.

Aristotle, Topics, I, 13, dans Stéphanie Grégoire, The Dialectic Tools: Theory and Practice, Thèse Présentée à la Faculté des Études Supérieures de l'Université Laval pour la obtention du grade de Philosophiae Doctor (PH.D), Faculté de Philosophie Université Laval, Novembre 1999, Bibliothèque Nationale du Canada 0-612-47571-9, p. 118,

To syllogisms and inductions:

- a) to obtain acceptable and relevant things to say in connection with each bill, whether they are included in the promptuary or not;
- b) to distinguish how many ways there are to say each thing;
- c) to find the differences;
- d) to examine the resemblances.

RULE: The acceptable and relevant things to say in connection with each bill shall be ordained⁴⁰¹ in accordance with the following divisions:

- a) ethical⁴⁰² (including political), physical and logical issues;⁴⁰³
- b) in increasing universality grades, being that the species are included in the genres;⁴⁰⁴
- c) in decreasing authority grades: in terms of the coincidence with the opinion accepted by all or the majority, by all the wise persons or the majority or the most reputed ones; of the similarity or contradiction with the opposite ones; and of agreement with recognized techniques.⁴⁰⁵

4. Promptuary of the things to say RULE: To deal with the vast scope of legislative matters and to be able to find the acceptable things to say in a rapid manner, a file shall

Aristote, Topiques, I, 13, dans Eug. Thionville, De la Théorie des Lieux Communs Dans les Topiques d'Aristote, et des Principales Modifications qu'elle a subies jusqu'à nos Jours, Thèse présentée à la Faculté des Lettres de Paris, Réimpression de l'Édition de 1855, Osnabrück, Otto Zeller, 1965, pp. 48.

In this book the instruments are applied to the whole Promptuary and to all things to say, whatever their origin may be (memory, imagination, books, magazines, Internet, etc.).

⁴⁰¹ Ivan Pelletier, Dialectique Aristotélicienne, Les Principes Clés des Topiques, Montréal, 1991, Bellarmin, Montréal, 1991, pp. 368-369.

⁴⁰² Aristotle, On Rhetoric, A Theory of Civic Discourse, Newly Translated with Introduction, Notes, And Appendixes by George A. Kennedy, Oxford University Press, New York, Oxford, p. 51.

⁴⁰³ Aristotle, Topics, I, 14, 105b20-25.

Aristóteles, Tópicos, I, 14, 105b20-25, en Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 110.

Aristotle, Topics, I, 14, 105b20-25, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One; Princeton University Press, Princeton, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 175-176.

Aristote, Topiques, I, 14, 105b20-25, Texte Établi et Traduit par Jacques Brunschwig, Société d'Édition "Les Belles Lettres", Paris, 1967, Tome I, Livres I-IV, p. 20-21.

⁴⁰⁴ Aristotle, Topics, I, 9; 14, 105b32-33.

Aristotle, Topics, I, 9 y 14, 105b32-33, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One.; Princeton University Press, Princeton, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 172-173; p. 176.

Aristóteles, Tópicos, I, 9; 14, 105b34-36, en Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 103-104; p. 110.

⁴⁰⁵ Aristotle, Topics, I, 14, 105a35-105b.

Edited by Jonathan Barnes, Volume One.; Princeton University Press, Princeton, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 175-176.

Aristóteles, Tópicos, I, 14, 105a 35-105b, en Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre Las Refutaciones Sofísticas, Introducciones, Traducciones Y Notas De Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 109-110.

Aristotle, Topics, I, 14, 105a35-105b5, in The Complete Works of Aristotle, The Revised Oxford Translation, Aristotle, Topiques, I, 14, 105a35-105b5, Texte Établi et Traduit par Jacques Brunschwig, Société d'Édition "Les Belles Lettres", Paris, 1967, Tome I, Livres I-IV, p. 19-21.

be prepared in advance and kept available for immediate use when needed (promptuary).⁴⁰⁶

RULE: They promptuary shall be composed of:

- a) the most common acceptable things to say, free from any particular circumstances⁴⁰⁷ (forms);
- b) the arguments for and against relevant issues (*dissoi λόγοι* or double reasons);
- c) the most favorable colors to promote the acceptance of the things to say (colors of good and evil);
- d) an ordained set of things acceptable to say (topics);
- e) an ordained set of things acceptable to say only in appearance (sophisms).

a. Forms

In ancient Greece, before the emergence of rhetorical rules, oratory was learned by way of examples, imitating the speeches of the great orators. The teaching of the first sophists consisted in making their disciples learn by heart speeches that they could use to compose or criticize other speeches, changing the particular circumstances mentioned in them. In the Middle Ages, forms appeared firstly, followed by the manuals on *ars dictaminis*.⁴⁰⁸

Prologues and epilogues are those parts of persuasive speeches that turn out most suitable to form collections of examples to be used when the favorable occasion arises. Fifty six Demosthenes' prologues have come up to us.⁴⁰⁹ Cicero, perhaps, also had a collection of prologues, as it might be inferred from the apologies asked from his good friend Atticus for having sent to him his work *On Glory* with the same prologue that had appeared in the third book of the *Academics*, anticipating him that he had already sent a new one to him.⁴¹⁰

In his "Promptuary". Bacon included digressions, transitions, intimations about that which will next happen, excusations and other similar "interstices of the speech", which he denominated "Lesser Forms", whose description finished with the four following

⁴⁰⁶Bacon, *Of the Dignity and Advancement of Learning*, the Fifth Book, Chap. III, in *The Works of Francis Bacon*, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of *The Philosophical Works*, Vol. I, New Edition, Longman & Co., etc, London, 1883, pp. 422-423; the Sixth Book, Chap. III, pp. 455-493.

⁴⁰⁷Cicerón, *De Oratore*, II, XXX, 130.

Cicéron, *De l'Orateur*, Livre Deuxième, XXX-130, Texte Établi et Traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres", Paris, 1927, pp. 58-59.

⁴⁰⁸With regard to *ars dictaminis*, see:

A. Giry, *Manuel de Diplomatie*, Nouvelle Édition, Librairie Félix Alcan, Paris, 1925, p. 482.

⁴⁰⁹Demosthenes, *Exordia*.

Demosthenes, *Exordia*, in *The Orations of Demosthenes*, Translated by Charles Rann Kennedy, Bohn's Classical Library, George Bell, Sons, Vol. V, London, pp. 302-337.

Demosthenes, *Exordia*, Translated by Norman W. de Witt and Norman J. de Witt, The Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, William Heinemann Ltd., London, Vol VII, pp. 86-193.

Demóstenes, *Proemios de Discursos Políticos*, en *Discursos Políticos III*, Introducción Traducción y Notas de A. López Eire, Editorial Gredos Madrid, 1985, pp. 340-407.

⁴¹⁰Cicero, *Letter to Atticus*, XVI, 6.

Cicero, *Letter to Atticus*, XVI, 6, in *Cicero, Letters to Atticus III*, with an English Translation, by E. O. Winstedt, The Loeb Classical Library, William Heinemann Ltd, London, Harvard University Press, Cambridge, Massachusetts, 1961, pp. 393.

EXAMPLES:

"A CONCLUSION IN A DELIBERATIVE [SPEECH]

So may we redeem the fault passed and at the same time prevent the inconveniences to come."⁴¹¹

"COROLLARY OF AN ACCURATE DISTRIBUTION

That all may know that I have no wish either to evade anything by silence or to obscure it by speech¹.

1. Cic. Pro Cluent. c. i.

A TRANSITION WITH HINT

Let us pass these things, and yet no without marking and turning back to look at them as we go by.¹

1. Cic. Pro. Sext. C. 5.

A FORM TO PREOCCUPY THE MIND AGAINST AN OPINION PREVIOUSLY FORMED

I will make you understand in all this business how much is truth, how much error, and how much envy.²

2. Cic. Pro Cluent. C. 4."⁴¹²

From times immemorial, the chancelleries have relied on forms for the writing of their documents; like for example the ones that existed in the Middle Age, before and after the appearance of the manuals on *ars dictaminis*.⁴¹³ In the art of legislation of the modern times, the respective forms of Ilbert, Russell, Driedger and Crabbe may be remembered.⁴¹⁴

The official rules of legislative drafting, both North American and European, are usually accompanied by examples to be imitated and forms to be filled in.⁴¹⁵

⁴¹¹Bacon, Of the Dignity and Advancement of Learning, the Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, p. 492.

⁴¹²Bacon, Of the Dignity and Advancement of Learning, the Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, pp. 492-493.

⁴¹³A. Giry, Manuel de Diplomatie, Nouvelle Édition, Librairie Félix Alcan, Paris, 1925, pp. 479-492, on the forms and manuals; pp. 661-820, on the chancelleries.

⁴¹⁴Sir Courtney Ilbert, Legislative Methods and Forms, Oxford at The Clarendon Press, 1901.

Sir Alison Russell, Legislative Drafting and Forms, Butterworth & Co.(Publishers) Ltd., Fourth Edition, London, 1938.

Elmer A. Driedger, Legislative Forms and Precedents, Ottawa, 1963, later attached to a previous work in The Composition of Legislation, Legislative Forms and Precedents, Second Edition, Published by The Department of Justice, Ottawa, 1976.

V.C.R.A.C. Crabbe, Legislative Drafting, Cavendish Publishing Limited, London, 1993.

V.C.R.A.C. Crabbe, Legislative Precedents, Volume II, Cavendish Publishing Limited, London, 1998.

⁴¹⁵For Canada, from 1949, see:

RULE: The forms, a section that integrates the promptuary, shall include such persuasive and prescriptive speeches, or parts thereof, as are likely to be used as they are or with certain particular circumstances being specified.

The preparation of the forms, as classical tradition requires, is a personal task performed by legislators and advisers or an institutional task entrusted to specialized organs.

RULE: The forms shall include a selection of successful persuasive and prescriptive speeches, as well as others that might also achieve success.

After the print appeared, notebooks were replaced by dictionaries of quotations, perhaps in the future the personal and institutional forms will be replaced by national, regional and international forms, but nothing will prevent legislators and their advisers from treasuring and composing persuasive and prescriptive speeches, to use them when the favorable occasion arises.

b. Double reasons (*dissoi logoi*)

Double reasons, antithesis of things, contradictions, arguments for and against certain important topics, were already known in ancient Greece (*dissoi logoi*), among them, the famous ones by sophist Protagoras of Abdera (c 490-420 B.C.).⁴¹⁶ To have an idea of the topics argued about, one should remember the antithesis by an anonymous author, traditionally placed after the works of Sextus Empiricus (c ends of the II century), concerning good and evil, the beautiful and the awkward, the just and the unjust, the true and the false, whether wisdom and virtue are likely to be taught, whether magistratures should be elected by drawing lots, and whether the practise and teaching of an art may be merged in the same person, including in the development of the latter topic an incomplete praise of the advantages of memory.⁴¹⁷

Uniformity of Legislation in Canada-An Outline and Rules of Drafting, Published by The Conference of Commissioners on Uniformity of Legislation in Canada, 1949, 41 pp., and the successive Annual Meeting Proceedings.

For The United States of America, see the style manuals of the different States, among which the following one stands out:

Minnesota Revisor's Manual, With Styles and Forms, by The Office of The Revisor of Statutes, St. Paul, Minnessota, 2002.

At Federal level, see:

A Guide for Drafting Federal Legislation, Department of Air Force, Judge Advocate General, AFP 110-1-1, 12December, 1951, 9 pp.

Style Manual for Drafting Regulations in The Department of Transportation, Department of Transportation, Office of The General Counsel, 17 pp.

Preparation of Papers Related to Legislation (Other than Appropriation Bills) Executive Orders, and Proclamations, Headquarters, Department of The Army, Memorandum No. 340-6, Washington DC, 21 november 1972, 44 pp., especially the Appendixes, pp. 28-44.

For Europe, see:

Rodolfo Pagano, Introduzione alla Legistica, L'Arte di Preparare Leggi, Dott. A. Giuffrè, Appendice n. 2, Elenco di Testi Ufficiale di Direttive di Legistica ed Altri Testi Attinenti alla Produzione Legislativa, Milano, 1999, pp. 303-310.

⁴¹⁶Mario Untersteiner, I Sofisti, Giulio Einaudi, Torino, 1949, pp. 17-54.

⁴¹⁷Sofisti, Testimonianze e Frammenti, Introduzione, Traduzione e Commento a Cura di Mario Untersteiner, Fascicolo Terzo, La Nuova Italia Editrice, Firenze, 1a. edizione 1954, 1a. ristampa, 1967, pp. 150-191.

As an example of an orator held contradictory positions in successive speeches reference is often made to skeptic Carneades of Cyrene (214/213-129 B.C.) who, together with other two Greek philosophers, peripatetic Critolaus and stoic Diogenes, integrated the embassy to Rome in 155 B.C., to defend the interests of Athens before the Senate. The three of them took advantage of their stay in Rome to give lessons or deliver lectures in the city, which impressed the youth. Carneades, in two successive and contradictory speeches, argued for the justice one day and against it on the next, following the custom among Academicians, with like eloquence, not based on philosophical conviction, but as an intellectual exercise, to support arguments for and against an important topic. Nevertheless, the scandal was so great among the Romans, that Cato the censor demanded and obtained the rapid departure of the Athenian delegation, to protect the youth from the bad influence of the aforesaid philosophers.⁴¹⁸

In the Middle Ages, there were four fundamental methods applicable to disputes⁴¹⁹ for and against a thesis: common, Socratic, megarian and syllogistic. When the common method was used, the orators expressed their respective contradictory speeches with great freedom. With the Socratic method practised in the platonic Academy and also in the educational institutions of the Middle Ages, given a question that admitted only two contradictory answers, one of the parties took over one of two admissible answers and tried to answer the questions of the other one, without incurring contradictions with the answer given at the beginning; and the party who asked the questions did so to obtain an answer contradicting the initial one. According to the megarian method, each party tried to show that the assertions of the other implied a contradiction. In the employment of the syllogistic or scholastic method, of medieval origin, this way of arguing for and against was strictly followed.⁴²⁰

While forms included complete speeches or parts of them, which may be used as they are or specifying the particular circumstances involved, in the case of double reasons there is a higher abstraction level, because the arguments are synthesized for and against important and recurrent topics in concise and sharp sentences, so that they may be easily memorized. The existence of opposite or contradictory speeches is not required, as long as they serve to sustain each of both positions, to amplify them in a concrete confirmatory or refutatory speech and, in the latter case, so that the author may be warned and prepared for an opportune reply.⁴²¹

⁴¹⁸George Kennedy, *The Art of Rhetoric in the Roman World, 300 B.C.-A.D. 300*, Princeton University Press, Princeton, New Jersey, 1972, pp. 53-54.

⁴¹⁹For the distinctions between the common, Socratic methods and silogístico, see: Ivan Pelletier, *La Dialectique Aristotélicienne, Les Principes Clés des Topiques*, Bellarmin, Montréal, 1991, p. 104, n. 16.

For the distinction Socratic between the methods Socratic, megarian and syllogistic, see: Ignacio Angelelli, *The Techniques of Disputation in the History of Logic*, *The Journal of Philosophy*, 57 (1970), p. 802, n.7.

⁴²⁰Martín Grabmann, *Filosofía Medieval*, traducción de Salvador Minguijón, Editorial Labor, Barcelona, 1928, p. 36.

⁴²¹Aristotle, *Topics*, VIII, 14, 163b1-16.

Aristotle, *Topics*, VIII, 14, 163 b, 1-16, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 276.

Robin Smith, *Aristotle Topics, Books I and VIII, Translated with a Commentary*, Clarendon Press, Oxford, 1997, pp. 38-39.

Aristóteles, *Tópicos*, VIII, 14, 163b1-16, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 302-303.

RULE: In double reasons, a section that integrates the forms, arguments shall be synthesized for and against important and recurrent topics in concise and sharp sentences, so as to facilitate their opportune memorization and amplification.

Bacon collected forty seven antitheses, under the following titles:

I. NOBILITY, II. BEAUTY, III. YOUTH, IV. HEALTH, V. WIFE AND CHILDREN, VI RICHES, VII. HONOURS, VIII. EMPIRE, IX. PRAISE, REFUTATION, X. NATURE, XI. FORTUNE, XII. LIFE, XIII. SUPERSTITION, XIV. PRIDE, XV. INGRATITUDE, XVI. ENVY, XVII. UNCHASTITY, XVIII. CRUELTY, XIX. VAIN-GLORY, XX. JUSTICE, XXI. FORTITUDE, XXII. TEMPERANCE, XXIII. CONSTANCY, XXIV. MAGNANIMITY, XXV. KNOWLEDGE, CONTEMPLATION, XXVI. LEARNING, XXVII. PROMPTITUDE, XXVIII. SILENCE IN MATTERS OF SECRECY, XXIX. FACILITY, XXX. POPULARITY, XXXI. LOQUACITY, XXXII. DISSIMULATION, XXXIII. BOLDNESS, XXXIV. CEREMONIES, PUNTOS, AFFECTATION, XXXV. JESTS, XXXVI. LOVE, XXXVII. FRIENDSHIP, XXXVIII. FLATTERY, XXXIX. REVENGE, XL. INNOVATION, XLI. DELAY, XLII. PREPARATION, XLIII. MEETING THE FIRST MOVE, XLIV, VIOLENT COUNSELS, XLV. SUSPICION, XLVI. THE WORDS OF THE LAW, XLVII. FOR WITNESS AGAINST ARGUMENTS.⁴²²

Only three antitheses will be transcribed, as examples representating the collection:

EXAMPLES

"XXI. FORTITUDE.

For.

Nothing is to be feared except fear itself.

There is nothing either solid in pleasure, or secure in virtue, where fear intrudes.

He that looks steadily at dangers that he may meet them sees also how he may avoid them.

Other virtues free us from the domination of vice, fortitude only from the domination of fortune."⁴²³

Against.

A noble virtue, to be willing to die yourself in order to kill another!

A noble virtue, which a man may acquire by getting drunk!

He that is prodigal of his own life is dangerous to other men's.

Fortitude is the virtue of the iron age.

As a curiosity and a sample of its contemporary employment, it is necessary to remember that President Franklin Delano Roosevelt (1882-1945), in its First Inaugural Speech, said:

⁴²²Bacon, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, pp. 473-493.

⁴²³Bacon, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, p. 481.

"The only thing we have to fear is fear itself."

Similar statements, in addition to those of Bacon and Roosevelt, are found in the Bible and in Montaigne, Wellington and Thoreau.⁴²⁴

"XXVII PROMPTITUDE.

For.

Wisdom that comes not
quick comes out of season.
He that quickly errs quickly
amends his error.
He that is wise in
deliberation and not upon
the moment does no great
matters

Against.

The wisdom that is ready at
hand does not lie deep.
Wisdom is like garment,
it must be light if it be for speed.
He whose counsels are not
ripened by deliberation, his
wisdom will not ripen with age.

Things speedily devised speedily
fall out of favour."⁴²⁵

"XLI. DELAY

For.

Fortune sells many things
to him that is in a hurry,
which she gives to him that waits
While we hasten to take
hold of the beginnings of
things, we grasp shadows.
While things are wavering,
watch; when they have taken
their direction, act.
Commit the beginnings of
Actions to Argus,⁴²⁷ the end
to Briareus.⁴²⁸

Against.

Opportunity offers the handle
of the bottle first, and
afterwards the belly.
Opportunity is like the
Sibyl; she raises the price as
she diminishes the offer.
Speed is Pluto's⁴²⁶ helmet.
Things that are done
betimes are done with judgement;
things that are put off too late,
by circuit.1

1. Per ambitum: meaning, I suppose (if the reading is correct) that first you can choose the best way, but at last you must take the way that offers.- J. S."⁴²⁹

⁴²⁴ John Bartlett, Familiar Quotations, Fourteen Edition, Revised and Enlarged, Emily Morison Beck, Editor, The Macmillan Press Ltd., London, etc., 1977, p. 189, n. 4.; p. 971.

⁴²⁵ Bacon, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, p. 483.

⁴²⁶ Pluto (Plutus, in Latin) personifies wealth, under the appearance of a blind old man.

Kevin Clinton, "Plutus", The Oxford Classical Dictionary, Third Edition, Edited by Simon Hornblower, Antony Spawforth, Oxford University Press, Oxford-New York, 1996, p. 1202.

⁴²⁷ Argus or Panoptes, a superman of a hundred eyes, some of them always open.

Dictionary of Greek and Roman Biography and Mythology, Edited by William Smith, Published by Taylor and Walton, London, 1844, Vol. I., p. 282.

⁴²⁸ Briareus or Aegaeon, a monster of a hundred and fifty arms.

Dictionary of Greek and Roman Biography and Mythology, Edited by William Smith, Published by Taylor and Walton, London, 1844, Vol. I., p. 24.

⁴²⁹ Bacon, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath,

c. The colors of good and evil

In addition to having the sections corresponding to forms and double reasons available, it is necessary to consider the cases in which reason alone is insufficient to move the will of the recipients of prescriptive and persuasive speeches, to which end the colors of good and evil must be resorted to.

RULE: When reason alone turns out insufficient to move the will of the recipients of the prescriptive and persuasive speeches, one shall appeal to imagination and to the basic political emotions (hope and fear), resorting to the colors of good (usefulness) and evil (uselessness or harmfulness) and, should this be impossible, comparatively maximizing the good (hope) and minimizing the evil (fear) or vice versa.

The will of the recipients of persuasive and prescriptive speeches usually succumbs to the force of emotion, because emotion shows the good and the evil as real and immediate. Since reason shows the good and the evil as underlying, deep and mediate, to gain the above mentioned wills, it is necessary to appeal to imagination and to introduce the reasonable goods and evil as currently present in the minds of the recipients,⁴³⁰ with more liveliness and strength.

EXAMPLE: "Your enemies will be glad with this", instead of: "this will be bad for you."⁴³¹

RULE: Persuasive and prescriptive speeches shall be introduced by resorting to the colors of good (usefulness) and evil (uselessness or harmfulness), applying reason to imagination, so that the latter will show problems and solutions as currently present in the minds of the recipients, to move their wills in the desired direction.

d. Topics

The topics method, a section made a part of the promptuary, facilitates the finding of things to say in persuasive and prescriptive speeches on any legislative matter. Likewise, it facilitates the avoidance of confrontations, to which end it takes as a starting point the opinions acceptable for all or for the majority, for all or the majority of the wise persons or for the most reputed ones, provided always that they are not paradoxical or contrary to the opinion of the majority. This method also takes as a starting point the opinions similar to the acceptable ones, those that contradict the opinions contrary to the above and those that are consistent with recognized techniques. Such starting opinions, on which men agree, become acceptable just by making reference to them or by enunciating them, without the need to justify them (endoxa)⁴³²

Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883, pp. 489-490.

⁴³⁰Bacon, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, in The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, New Edition, Longman and Co., etc, London, 1883, p. 455.

⁴³¹Bacon, Of the Colours of Good and Evil, Preface, in The Works of Francis Bacon, Popular Edition Based Upon the Complete Edition of Spedding, Ellis and Heath, II, Literary and Religious Works, III Houghton, Mifflin and Company, The University Press, Cambridge, Boston, p. 458.

⁴³²See, in general:

and, when used as principles, they allow for systematization of the prescriptive speech and for motivation of the persuasive speech. Topics will be developed in point 5 of this Chapter.

e. Sophisms

If the acceptable, normal things to say, found or not with topics, painted or not with the colors of good and evil, were acceptable only in appearance, because they endure certain secret pathologies (sophisms), then it shall be necessary to describe in systematical form how to diagnose them and to prescribe how to apply the corresponding therapies to cure them. Sophisms will be discussed in point 6 of this Chapter.

5. Topics

The use of acceptable opinions, the justification of which turned out unnecessary, already existed in the ancient Greece. They were used by Sócrates, who upheld that Homer could characterize Ulysses as a man of "sure word", because he used them too.⁴³³ The method was systematized by Aristotle in a special work made a part of his logical writings, *Organon* or *Instrument*, and applied in his *Rhetoric*.⁴³⁴ Adapted to the

L. M. Régis, *L'Opinion Selon Aristote*, *Libr. Philosophique J. Vrin*, Paris, Inst. d'Études Medievales, Ottawa, 1935, 284 pp.

⁴³³Homer, *Odyssey*, VIII, 171.

Homero, *Odisea*, Introducción de Manuel Fernández Galeano, Traducción de José Manuel Pabón, VII, 171, Editorial Gredos, Madrid, 1982, p. 212.

Homère, *Odyssée*, Chant VIII, 171, dans *Poésie Homérique*, Texte Établi et Traduit par Victor Bérard, Quatrième Édition, Tome II Chants VII-XV, Société d'Édition "Les Belles Lettres", Paris, 1946, p. 9.

Jenofonte, *Memorabilia*, IV, 6, 15.

Xenophon *Memorabilia and Oeconomics*, With an English Translation by E.C. Marchant, The Loeb Classical Library, *Memorabilia*, IV, vi, 15, London: William Heiemann, New York: G.P. Putnam's Sons, 1923, pp. 346-347.

Xenophon, *Entretiens Mémorables de Socrate*, IV, VI, Expliqués Littéralement Traduit en Français et Annoté par E. Sommer, Librairie Hachette et Cie., Paris, 1886, p. 131.

Émile Boutroux, *Socrate Fondateur de la Science Morale*, dans *Études d'Histoire de la Philosophie*, Félix Alcan. Éditeur, Troisième Édition, Revue, Paris, 1908, p. 45.

⁴³⁴Aristotle, *Topics*, I, 1a 17-21; 100b,24-27; 104a8-13.

Aristotle, *Topics*, I, 1, 100a 20-23, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, 100b20-22; 100; 104a9-15, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 167; p. 73.

Aristóteles, *Tópicos*, I, 1, a17-21; 100b,24-27; 104a8-13, en *Aristóteles, Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 89-90; pp. 104-105.

Aristotle, *Rhetoric*, Libro I, 2, y II, 18-26.

Aristotle, *Rhetoric*, I, 2; II, 18-26, in *The Complete Works Of Aristotle*. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2217-2237.

Aristóteles, *Retórica*, Libro I, 2; II, 18-26, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, pp. 173-192 y pp. 391-470.

Aristote, *Rhétorique*, Livre I, 2 ; II, 18-26, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1932, pp. 76-83; pp. 98-135.

Aristotele, *Retorica*, Libro I, I y II, 18-24, A cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 6-14; pp. 126-166.

Georgiana Paine Palmer, *The Topoi of Aristotle's Rhetoric as Exemplified in the Orators*, A Dissertation Submitted to the Faculty of the Division of Humanities in Candidacy for the Degree of Doctor in

law and spread by Cicero,⁴³⁵ it culminated in ancient Latin times with a final synthesis by Boethius,⁴³⁶ who pointed out that topics promise something great, a footpath to discovery, that the ignorant people believe is owed only to natural talent, without noticing how much is acquired through its study, of that which gives force to art and power to nature.⁴³⁷

Bacon, with his promptuary method, preserved the sophistic tradition of topics: to memorize speeches or its parts (forms), to argue for and against (antithesis of things), and revalued the acceptable opinions (topics), but fought those that were so in appearance (sophisms regarded as colors of good and evil).

Vico also preserved the importance of topics against the attacks of Descartes' followers, but detected insufficiencies in the followers of certain ancient and modern schools: in those of the Academy, the platonic ones, because they identified dialectics with the art of invention, and in those of the Porch, the stoics, because they identified it with the art of judging, and none of them understood that neither can invention be true without judgment, nor judgment without invention.⁴³⁸ He advised young people to begin with the topics method, which prepares the materials, to judge them later with logic, as he himself did, following the natural course of the ideas, which are firstly learned, then judged and finally reasoned, preventing them from being arid and dry in their explanations, for not having done anything and for trying to judge everything.⁴³⁹ In the light of the overvaluation of topics by the ancient ones (the platonic) and the scorn of the modern ones (Descartes' followers), Vico was salomonic in the quarrel. He considered that if truth is one, verisimilitudes multiple and falsities infinite, then topics represent a defective method, because it often assumes true things as false; and that the critical method of Descartes's followers is also defective, because it rejects what is verisimilar.⁴⁴⁰

Cicero, who had already criticized the stoics for having deal with judgment only, and recognized Aristotle as the prince of both arts (inventing and judging), describes the concrete motives that led him to write about a method to find the arguments (Topics).⁴⁴¹

Philosophy, Department of Greek Language and Literature, 1932, Private Edition, Distributed by The University of Chicago Libraries, Chicago, Illinois, 1934, 84 pp.

⁴³⁵On the resemblances and differences between the Topics of Cicero and Aristotle, see:

Benedetto Riposati, Studi Sui "Topica" di Cicerone, Edizioni Dell'Università Cattolica del S. Cuore, Serie Pubblicazioni Volume XXII, Società Editrice Vita e Pensiero, Milano, 1947, pp. 290-291; pp. 294-299, who supports Cicero's originality, that, on having joined two ideals of ancient culture, philosophy and rhetoric, in a theoretical and practical work, a mature synthesis of the opinions of the previous authors and of its own writings, systematized rhetorical invention.

⁴³⁶Sten Ebbesen, Commentators and Commentaries on Aristotle's Sophistici Elenchi, A Study of Post-Aristotelian Ancient and Medieval Writings on Fallacies, Volume I The Greek Tradition, E.J. Brill, Leiden, 1981, p. 120.

⁴³⁷Boethius's The Topicis Differentiis, Book I, 1182D31-34, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 42.

⁴³⁸Vico, L'Antichissima Sapienza Degli Italici da Ricavarsi dalle Origine della Lingua Latina Libri Tre (1710), Giambattista Vico, Opere Filosofiche, Introduzione di Nicola Badaloni, Testi, Versioni e Note a Cura di Paolo Cristofolini, Sansoni Editore, Firenze, 1971, p. 120.

⁴³⁹Vico, Vita di Giambattista Vico Scritta da se Medesimo (1725-1728), da Giambattista Vico, Opere Filosofiche, Introduzione di Nicola Badaloni, Testi, Versioni e Note a Cura di Paolo Cristofolini, Sansoni Editore, Firenze, 1971, p. 12.

⁴⁴⁰Vico, Il Metodo Degli Studi del Nostro Tempo (1708), da Giambattista Vico, Opere Filosofiche, Introduzione di Nicola Badaloni, Testi, Versioni e Note a Cura di Paolo Cristofolini, Editore, Firenze, 1971, III, Svantaggi della Nuova Critica, p. 798; p. 800.

⁴⁴¹Cicero, Tópicos, I, 1-6.

He says that he was at his library in Tusculano, with a friend, jurist C. Trebatius, consulting the works, each one independently from the other and according to their respective tastes, when a book entitled "Topics" called Trebatius's attention and, stung by curiosity, he asked what it was about. When Cicero said to him that in said book Aristotle exposed an infallible method to find arguments, a lively desire to know such method awoke in him and he asked Cicero to explain it to him. Cicero advised him to read it alone or with the help of a rhetor that he recommended to him. Later on, as Cicero knew that, on account of the darkness of the work and the rhetor's ignorance, Trebatius had not achieved success, during a trip by ship, not to appear as ungrateful or proud, with no books at hand, he wrote a special work, known as "Topics to C. Trebatius",⁴⁴² which he dedicated to him, with examples taken from the law, except when others were necessary,⁴⁴³ fortunately for his friend and for posterity.⁴⁴⁴

Cicero's Topics proved useful to jurists romanists and law philosophers. Together with the Topics by Aristotle, Boethius, Bacon and Vico, now all of them prove useful to the art of legislation. Topics may be applied with little efforts to the persuasive speech, traditionally included in the deliberative genre of rhetoric, through which the enactment of a bill is counselled or discourseled. More effort is needed with regard to the prescriptive speech, that is, to that part of a bill intended not to argue, but to oblige, prohibit, permit, punish and reward conducts. Without it being necessary to take sides in the controversy between jusnaturalism and juspositivism, it is convenient to bear in mind that, to be incorporated and remain in a positive juridical system, except for a few temporary exceptions, only the norms based on acceptable reasons or principles (endoxa) make it possible to obtain such consent from the rulers and governed people as is required for their approval, interpretation and application in an effective and lasting manner.

While it is easy to find a hidden thing if the place where it remains has been marked and recognized, to trace arguments we must know the topics or places (*topoi, loci*) where they are located, as if they were their seats.⁴⁴⁵ The method is infallible to

Cicerón, Tópicos a Cayo Trebacio, en Obras Completas de Marco Tulio Cicerón Traducidas del Latín por Marcelino Menéndez Pelayo, Imprenta Central a Cargo de V. Saiz, Madrid, 1879, Tomo I, p. 214.

Cicéron, Topiques, I, 1-6, dans Cicéro, Divisions de l'Art Oratoire, Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles-Lettres", Paris, 1960, Les Topiques de M. Tullius Cicéron Adressés a C. Trebatius, pp. 66-69.

⁴⁴²Cicero, Tópicos, I, 1-5.

Cicerón, Tópicos a Cayo Trebacio, en Obras Completas de Marco Tulio Cicerón Traducidas del Latín por Marcelino Menéndez Pelayo, Imprenta Central a Cargo de V. Saiz, Madrid, 1879, Tomo I, pp. 213-214.

Cicéron, Les Topiques de M. Tullius Cicéron Adressés a C. Trebatius, dans Divisions de l'Art Oratoire, Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles-Lettres", Paris, 1960, I, 1-5, pp. 66-69.

⁴⁴³Cicero, Topics, VII, 32.

Cicerón, Tópicos a Cayo Trebacio, Obras Completas de Marco Tulio Cicerón Traducidas del Latín por Marcelino Menéndez Pelayo, Imprenta Central a Cargo de V. Saiz, Madrid, 1879, Tomo I, p. 219.

Cicerón, Les Topiques de M. Tullius Cicéron Adressés a C. Trebatius, VII 32, dans Cicéron, Divisions de l'Art Oratoire, Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles-Lettres", Paris, 1960, pp. 66-69.

⁴⁴⁴Cicero, Topics, XIX, 72.

Cicerón, Tópicos a Cayo Trebacio, Obras Completas de Marco Tulio Cicerón Traducidas del Latín por Marcelino Menéndez Pelayo, Imprenta Central a Cargo de V. Saiz, Madrid, 1879, Tomo I, p. 229.

Cicéron, Divisions de l'Art Oratoire. Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles-Lettres", Paris, 1960, Les Topiques de M. Tullius Cicéron Adressés a C. Trebatius, XIX 72, p. 91.

⁴⁴⁵Cicero, Topics, II, 7-8.

overcome more quickly the absence of ideas, the syndromes of slowness and silence in an improvised oral speech, or that of a white sheet in a written speech. As we spontaneously associate the question with the acceptable opinions (endoxa), or review those that compose the promptuary or others suggested by them, using the Instruments to select such topics as may be adequate to deal with the concrete question, something relevant to say will usually arise in our mind. It is so because this method stimulates memory,⁴⁴⁶ one of the parts of prudence,⁴⁴⁷ as well as imagination or fantasy, which is the source, the eye of ingenuity. This is the faculty to join diverse and separate things; it is sharp when it penetrates with more speed and facility, and joins the diverse things more closely, like an angle narrower than a rectum; it is obtuse when it penetrates more slowly and with difficulty, leaving things separated and distant, like an angle wider than a rectum.⁴⁴⁸ To invent or to investigate does not consist in constructing new combinations with already well-known entities, since many of them prove useless, but in choosing those that reveal unsuspected kinships between certain entities that have been mistakenly considered strange, forming analogies with elements taken from very distant domains, some of which, very rare, are the most fecund of all.⁴⁴⁹

Cicerón, Tópicos a Cayo Trebatius, Obras Completas de Marco Tulio Cicerón Traducidas del Latín por Marcelino Menéndez Pelayo, Imprenta Central a Cargo de V. Saiz, Madrid, 1879, Tomo I, p. 214.

Cicéron, Divisions de l'Art Oratoire. Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles-Lettres", Paris, 1960, Les Topiques de M. Tullius Cicéron Adressés a C. Trebatius, II 7-8, p. 69.

Aristotle, Topics, VIII, 163b28-30.

Aristotle, Topics, VIII, 163b28-30, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 276.

Aristóteles, Tópicos, VIII, 163b28-30, en Aristóteles, Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre Las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín,

⁴⁴⁶"But one must get hold of a starting-point. This explains why it is that persons are supposed to recollect sometimes by starting from "places". The cause is that they pass swiftly from one point to another, e.g. from milk to white, from white to mist, and thence to moist, from which one remembers Autumn if this be the season he is trying to recollect. "

Aristotle, On Memory, 2, 452a14-17

Aristotle, On Memory, 2, 452a14-17, The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 718.

⁴⁴⁷("Prudence is the knowledge of the good, the bad and the indifferent things. Its Parts are: memory intelligence and providence. Due to memory, a man remembers what it was; due to intelligence he knows what it is, due to providence he sees something before it happens.")

"Prudencia es el saber de las cosas buenas, malas é indiferentes. Sus Partes son: memoria inteligencia , providencia. Por la memoria recuerda el hombre lo que fue; por la inteligencia conoce lo que es, por la providencia ve algo antes que suceda."

Cicero, De Inventione, II, LII, 160.

Cicerón, De la Invención Retórica, en Obras Completas de Marco Tulio Cicerón, Traducidas del Latín, por Marcelino Menéndez Pelayo, Biblioteca Clásica, T. XIV, Madrid, 1879, T. I, p. 98.

Cicéron, De l'Invention (De Inventione), II, LII, 160, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Fères, Paris, p. 256 (latin), p. 257 (french).

⁴⁴⁸Giambattista Vico, Opere Filosofiche, Introduzione di Nicola Badaloni, Testi, Versioni e Note a Cura di Paolo Cristofolini, L'Antichissima Sapienza degli Italici da Ricavarsi dalle Origine della Lingua Latina Libri Tre, 1710, Sansoni Editore, Firenze, 1971, III, La Memoria e la Fantasia, are synonymous in Latin, pp. 114-115; IV L'Ingegno, is a synonymous for "nature" in Latin, sharp or obtuse, p. 116; V La Facoltà Propria del Conoscere con Certezza, the fantasy is the eye of ingenuity, p. 126.

⁴⁴⁹Henri Poincaré, L'Invention Mathématique, Conférence Faite a l'Institut Général Psychologique le 23 Mai 1908, Revue Générale des Sciences Pures et Appliquées, T. 19 (1908), p. 522.

Here follows a discussion about the following topics: public opinion, opinion of the interested sectors and opinion of the experts; legislation, custom, case law and juristic writings; character of the legislator (*ethos*), hope and the fear of the recipients (*pathos*), and reasonableness of the speeches, examples and enthymemes (*logos*): definitions, genres, species, similarities, differences, contraries, concomitances; antecedent, consequent and incompatibly, causes, effects, comparisons, possibility, feasibility, probability, need, opportunity, merit, antinomy, justice, expediency and harmonization of justice, expediency and juridical security.

a. Public opinion

To learn about public opinion, reports by spies were resorted to; later on, in the XIX century, press releases were taken into account; and from the XX century on, other mass media, like radio, television and the Internet were added; finally, surveys⁴⁵⁰ are almost decisive at present. Since surveys are conducted by specialized public, private and mixed entities, legislators and advisers, before using them, should evaluate how reliable they are.⁴⁵¹

RULE: Before using public opinion surveys, their reliability shall be determined through the evaluation of:

- a) the identity of the sponsor and the background of the surveyor;
- b) the objective and exact linguistic formulation of the questions;
- c) the care with which the sample was defined and its size and the method selected;
- d) the percentage of real answers and its relation with partial and total ones;
- e) the consultation way (personal or by mail, phone, Internet);
- f) the period during which the surveys were performed, since supervening events may make respondents change their opinions.

In addition to public opinion, it is necessary to know the opinion of the interested sectors

b. Opinion of the interested sectors

A complete list of the interested sectors to be affected by the enactment of a bill is not always made available to legislators and advisers.

RULE: Legislators and advisers shall be provided with a complete list of such interested sectors as will be affected by the enactment of a bill, to consult them and to evaluate the effects that will take place in the stages of drafting, promotion, debate, rejection, enactment, veto, publication and dissemination.

It is convenient to remember that the opinions of the interested parties almost always will subsume the sectorial interest in the general interest. This is the reason why it is necessary to consider them with a critical spirit, but without an automatic disqualification.

⁴⁵⁰On the surveys about legislative public opinion, its differences with the referendum; the importance of the consensus and the legislator's freedom, see:

J. Carbonnier, *Sociologie Juridique*, Armand Colin, Paris, 1972, pp. 310-313.

⁴⁵¹W. Phillip Davison, "Public Opinion", in *Encyclopaedia Britannica*, 15 Th. Edition, 1978, p. 215.

RULE: The opinion of the interested sectors subsumed in the general interest shall not automatically discredit the critics or the formulated proposals.

c. Opinion of the experts

The experts may be independent or be proposed by the interested parts; experience indicates that their attitude tends to be less objective in the latter case. In addition to not coloring his opinions with interests foreign to the art practiced by him, a specialist although independent, should always be able to say on time "I do not know it", so as not be later forced to say "I was wrong because I did not know it", since not only the scope of his knowledge will be evaluated: he will also be demanded to have the exact notion of what he ignores.⁴⁵²

RULE: The opinions of the experts shall be considered both in terms of their impartiality and of the scope and limits of their knowledge.

d. Legislation

Aristotle studied one hundred fifty eight constitutions of Greek and barbarian peoples, as materials gathered for his work *Politics*, of which only the Constitution of Athens, found by Sir Frederic Kenyon and published in 1891,⁴⁵³ has come to us in its historical and systematical aspects. Perhaps Aristotle also used it in connection with his role as legislator of his reconstructed hometown,⁴⁵⁴ Stagirus, or for the benefit of his disciples, so that they could learn the art of legislation or practice it as legislative advisors. He considered useful both the study of the current laws in the past and of other peoples in the present, for which latter purpose he recommended reading voyage stories.⁴⁵⁵

The legend goes that, for the preparation of the Laws of XII Tables, three patrician Romans were sent to Athens to obtain a copy of Solon's Laws.⁴⁵⁶

In the past, laws were very different and difficult to obtain; today, as a result of globalization, they have become more uniform, given the similarity of problems and

⁴⁵² According to the opinion of Dr. Brouardel, quoted by M. P. Fabreguettes, *La Logique Judiciaire et l'Art de Juger*, Librairie Générale de Droit & Jurisprudence, Paris, 1914, p. 153.

⁴⁵³ Bernard Haussoullier, *Aristote, Constitution d'Athènes*, Texte Traduit par George Mathieu et Bernard Haussoullier, Société d'Édition "Les Belles Lettres", Paris, 1922, Introduction, pp. I-II.

⁴⁵⁴ Plutarque, *Contre Colotés*, 32, dans *Oeuvres Complètes de Plutarque, Oeuvres Morales et Oeuvres Diverses*, Traduites en Français par Victor Bétolaud, IV, Librairie Hachette et Cie., Paris, 1870, pp. 638-639.

A.E. Taylor, *Plato, The Man and his Work*, Meridian Books Inc., Reprinted by Arrangement with the Humanities Press Inc, from the Sixth Edition, Reprinted 1952, New York Sixth Printing, April 1960, p. 464.

⁴⁵⁵ Aristotle, *Rhetoric*, Book I, 1360a31-39.

Aristotle, *Rhetoric*, I, 4, 1360a31-37, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2162-2163.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro I, 1360a31-39, Editorial Gredos, Madrid, 1990, p. 395; n. 219, pp. 396-398.

Aristote, *Rhétorique*, Livre I, 4, 1360a30-37, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1932, pp. 88-89.

Aristotele, *Retorica*, I, 4, 1360a, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 20.

⁴⁵⁶ Pietro Bonfante, *Storia del Diritto Romano, Seconda Edizione Riveduta ed Ampliata*, Milano, 1909, pp. 135-137; pp. 569-607.

solutions, and easier to obtain on account of the development of communications, especially across Internet. Today, more than ever, it is necessary to be able to compare the laws, considering them as a whole, not in isolation,⁴⁵⁷ before transplanting them,⁴⁵⁸ so that rejections do not take place in the juridical system, with pertinent care practices, as if it were a question involving high complex surgery.

RULE: Before transplanting laws, their operation in the system of origin shall be studied as much as their hypothetical reception in the system of destination, to prevent them from becoming invalid or ineffective or from producing undesired effects.

RULE: In order not to prepare a bill in vain and to avoid its rejection or, if approved, the annulment of the pertinent law, it shall be necessary to avoid:

- a) the incompetence of the organ that will take the initiative and that of the one that will receive it (*status traslationis, status conmutationis*),⁴⁵⁹ and the invalidity of the procedure to be followed by the legislative function that will be exercised (formal legality);
- b) the antinomy (*leges contrariae*) with other bills under analysis or with current laws,⁴⁶⁰ if the legislator does not wish it or if, wishing it, he lacks the authority required to withdraw such bills or to repeal such law (material legality).

⁴⁵⁷ Montesquieu, De l'Esprit des Loix, Oeuvres Complètes de Montesquieu, Texte Établi et Présenté par Jean Brethe de la Gressaye, Tome IV, Livre XXIX, Chapitre XI, Société "Les Belles Lettres", Paris, 1961, pp. 132-133.

⁴⁵⁸ Bentham, De l'Influence des Temps et des Lieux en Matière de Législation, Chapitre III-IV, Oeuvres de Jérémie Bentham, Ét. Dumont, Troisième Édition, Société Belge de Librairie, Tome Second, Bruxelles, 1840, pp. 269-275.

⁴⁵⁹ In the rhetorical tradition, the incompetence exception is called *status traslationis or conmutationis*, because after the orator has no competition, the auditorium, or both, the question should be transferred to others or changed, see:

Benedetto Riposati, Problemi di Retorica Antica, en AAVV., Introduzione alla Filologia Classica, Dottore Carlo Marzorati, Editore, Milano, 1952, p. 710.

⁴⁶⁰ For *leges contrariae* in the rhetorical tradition, see:

Aristotle, Rhetoric, I, 15, 1375b.

Aristotle, Rhetoric, I, 15, 1375b, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2190.

Aristóteles, Retórica, Libro I, 1375b, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, pp. 292-293.

Aristote, Rhétorique, Livre I, 15, 1375b, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Belles Lettres", Tome Premier, Paris, 1932, pp. 136-137.

Aristotele, Retorica, I, XV, 1375b, a Cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 72.

Rhetorica ad Herennium, Book I, XI, 20; Book II, X, 15.

Rhetorica ad Herennium, Book I, XI, 20; Book II, X, 15, With an English Translation by Harry Caplan, The Loeb Classical Library, LCL 403, Harvard University Press, Cambridge Massachussets, London, England, pp. 36-37; pp. 84-85.

Retórica a Herennium, Libro I, XI, Libro II, XV, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Barcelona, 1991, pp. 86-87, pp. 122-123.

Cicerón, Retórica a Cayo Herennio, Obras Completas de Marco Tulio Cicerón, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Clásica Tomo XIV, Tomo I, pp. 105-210, Madrid, 1879, Libro Primero, p. 115, Libro Segundo, pp. 128-129.

Rhétorique to Herennius, Livre I, XI, 20; Livre II, X, 15, Ouvrage Longtemps Attribué to Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Paris, p. 25; p. 55.

Cicero, De Inventione, II, 144-147.

e. Custom

Sometimes it turns out preferable not to legislate and leave the solutions of problems to custom or case law. In most cases, in spite of having been legislated, custom establishes the prevailing interpretation and integration, as a result of spontaneous fulfillments or of court decisions, since law is also made with the aid of time.

RULE: The legislator may entrust the solution of some problems to custom or case law. He shall bear in mind that custom, in most cases, will establish the prevailing interpretation and integration of the law, as a result of spontaneous fulfillments or of court decisions.

f. Case law

In connection with case law, the reason why a case was decided (*ratio decidendi*) differs from other considerations mentioned in the fundamentals of the judgment (*obiter dicta*). The former constitutes the precedent as such and from there its obligatory force arises, while the latter are statements lacking binding force, but which may be used as a source of inspiration in the art of legislation, since they arise from the experience of the judges, who compose one of the law users' sectors, in their capacity as public authorities entrusted with the administration of justice.

RULE: When case law is studied, the reasons why the cases were decided shall be taken into consideration as much the criticism of the current law and the suggested amendments.

g. Juristic writings

Without succumbing to the technocratic danger of believing that juristic writings are the only authorized source of law, it is necessary to consult them. Jurists have been

[Cicerón], *Obras Completas* of Marco Tulio Cicerón, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Libro I, De la Invención Retórica, pp. 1-103, Madrid, 1879, Libro II, pp. 93-94.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch Der Literarischen Rhetorik. Eine Grundlegung Der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, números 218-220, pp. 198-201 y número 225, p. 204.

Heinrich Lausberg, *Handbook of Literary Rhetoric, to Foundation for Literary Study*, Translated by Matthew T. Bliss, Annemiek Jansen, David Norton, Edited by David Orton and R. Dean Anderson, Brill, Leyden, Boston, Köln, 1998, number 218-220, pp. 93-95.

Benedetto Riposati, *Problemi di Retorica Antica, AAVV., Introduzione alla Filologia Classica*, Dottore Carlo Marzorati, Editore, Milan, 1952, p. 711, p. 713; pp. 723-724.

Cicéron de L'Invention (De Inventione), Livre II, 144-147, Texte Revu et Traduit Avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 244-249.

[Quintilian], *The Institutio Oratoria of Quintilian*, Book VII, vii.

[Quintilian], *The Institutio Oratoria of Quintilian*, Book VII, vii, With an English Translation by H.E. Butler in Four Volumes, Volume III, the Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons, New York, 1921, pp. 142-149.

Quintilien, Livre VII, 7, *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome IV, Paris, 1976, pp. 171-173.

Friedrich Karl Von Savigny, *Metodología Jurídica (Juristische Methodenlehre)*, K. F. Koehler Verlag, Stuttgart, 1951, que corresponde al curso de invierno 1802-1803), Traducción de J. J. Santa Pinter, Ediciones Depalma, Buenos Aires, 1979, p. 39.

assigned two tasks, which must be neither confused nor mutilated: the objective and systematic description of the current or historical, local or comparative law (juridical dogmatic), which takes the existing law as a material (*lege lata*); and the law imagined for the future (*lege ferenda*). Juristic writings should not be identified with juridical dogmatics, since they must also include the criticism and the composition of the laws.

RULE: When juristic writings are studied, the objective and systematic descriptions of the law shall be taken into consideration as much as the criticism and composition of the laws.

Classical rhetoric establishes that speeches may appeal to three technical resources to try to obtain persuasion: the favorable presentation of the orator's character (*ethos*), the excitement or calmness of the emotions of the audience (*pathos*) and the reasonableness of the speeches (*logos*).⁴⁶¹ Next, in accordance with the rhetorical model adopted in the present work, the orator will be concretized in the legislator, the emotions, in the hope and fear of the recipients of the laws, and the reasonableness of the speeches, in the examples and legislative enthymemes.

h. Character of the legislator (*ethos*)

The enactment of a bill and the interpretation, spontaneous fulfillment or enforcement, publication and dissemination of the enacted law are facilitated if the character of its author is presented in the most favorable way, as a virtuous person and a legislator worthy of credit, who deserves the authority vested in him.

The general character of a virtuous person and the particular character of a wise, eloquent, honorable and benevolent legislator must arise out of the prescriptive or persuasive speech itself.

RULE: The general character of a person with the virtues of justice, prudence, fortitude and temperance, and the particular character of a legislator with wisdom, eloquence,

⁴⁶¹ Aristotle, Rhetoric, I, 2, 1355b35; 1356a.

Aristotle, Rhetoric, I, 2, 1355b35; 1358 [sic] 1356a, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2155.

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro I, 1355b35; 1356a, Editorial Gredos, Madrid, 1990, p. 174 y p. 175. Racionero translates "ethos" as "talante".

Aristote, Rhétorique, Livre I, 2, 1355b35; 1356a1, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1932, p. 76.

Aristotele, Retorica, A cura di Armando Plebe, I, 2, 1355b; 1356a, Editore Laterza, Bari, 1961, pp. 6-7.

Plebe use "trovare" to (find) with regard to the technical arguments, which he distinguishes from the extratechnical staff (equivalent nomenclature to "with art" and "without art", to "intrinsic" and "extrinsic"). It is preferred on having "invented" of other versions, since it better denotes the idea of investigating and its happy achievement by means of the speech, as it is usually said where the expression "literary find" (in spanish expression: "hallazgo literario") is used.

Roland Barthes, L'Ancienne Rhétorique, Aide Memoire, Communications, École Pratique de Hautes Études, Centre d'Études des Communications de Masse, 16, Seuil, Paris, 1970, pp. 172-223; p. 199; pp. 211-12.

Benedetto Riposati, Problemi di Retorica Antica, AA.VV., Introduzione alla Filologia Classica, Dott. Carlo Marzorati, Editore, Milano, 1952, pp. 730-735.

Edward P.J. Corbett and Robert J. Connors, Classical Rhetoric for the Modern Student, Oxford University Press, New York-Oxford, 1999, pp. 31-84.

honorableness and benevolence shall arise from the prescriptive or persuasive speech itself, so as to arise fortitude and temperance and favor the enactment of the bill proposed, as well as the interpretation, spontaneous fulfillment or enforcement, publication and dissemination of the enacted law.

RULE: A prescriptive or persuasive speech shall not denote ignorance of the facts or of the law, incompatible interests or grudge against the recipients of the norms since, if the legislator was prestigious, he will lose such prestige and, had he not background, he will gain a bad reputation.⁴⁶²

i. Hope and fear of the recipients of the laws (*pathos*)

The enactment of a bill and the interpretation, application, publication and dissemination of the enacted law are also facilitated by exciting or calming down the emotions of its recipients.

No reference will be made here to emotions in general or to each one of them in particular, but only to the basic political emotions, namely, hope (*spes*) and fear (*metus*)⁴⁶³ since, when these are excited or calmed down, they predominate and stop the

⁴⁶²Isocrates, *Antidosis*, 278.

Isocrates, With an English Translation by George Norlin, Volume II, *Antidosis*, 278, William Heineman Ltd., London, G.P. Putnam's Sons, New York, 1929, pp. 338-339.

Isócrates Discursos, Introducción Traducción y Notas de Juan Manuel Guzmán Hermida, Editorial Gredos, Tomo II, *Sobre el Cambio de Fortunas*, Madrid, 1980, p. 145.

Isocrate, Discours, Texte Établi et Traduit par Georges Mathieu et Émile Brémond, Société d'Édition "Les Belles Lettres", Tome III, *Sur l'Echange*, 278, Paris, 1942, pp. 170-171.

Demosthenes, *De Falsa Legatione*, 339-340.

Demosthenes, *De Falsa Legatione*, 339-340, J.H. Vince, The Loeb Classical Library, William Heineman Ltd. London, G.P. Putnam's Sons, New York, 1926, pp. 468-469.

Demóstenes, Discursos Políticos, Introducción, Traducción y Notas de A. López Eire, XIX, *Sobre la Embajada Fraudulenta*, 339-340, Edit. Gredos, Tomo II, Madrid, 1985, p. 160.

Démosthène, Harangue sur les Prevarications de l'Ambassade, expliqué littéralement, traduit en français par Stiévenart, Librairie Hachette et Cie., Paris, 1848, pp. 430-431.

Aristotle, *Rhetoric*, Book II, 2, 1378a6-15.

Aristotle, *Rhetoric*, II, 2, 1378a7-15, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2194.

Aristóteles, *Retórica*, Libro II, 1378a6-15, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, pp. 308-309.

Aristote, *Rhétorique*, Livre II, 2, 1378a6-15, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 60.

Aristotele, *Retorica*, A cura di Armando Plebe, II, 2, 1378a, Editore Laterza, Bari, 1961, p. 80.

Roland Barthes, *L'Ancienne Rhétorique*, Aide Memoir, Communications, École Pratique de Hautes Études, Centre d'Études des Communications de Masse, 16, Seuil, Paris, 1970, pp. 172-223, B.1.28, p. 212.

Edward P.J. Corbett and Robert J. Connors, *Classical Rhetoric for the Modern Student*, Oxford University Press, New York-Oxford, 1999, *The ethical Appeal*, pp. 71-77.

⁴⁶³Two main affections of the deliberative genre, *spes* and *metus*, of the rhetorical tradition:

Heinrich Lausberg, *Handbook of Literary Rhetoric*, A Foundation for Literary Study, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton & Dean Anderson, Brill, cite Isid. Orig. 2.4.4), Leiden, Boston, Köln, 1998, p. 98.

Heinrich Lausberg, *Manual de Retórica Literaria*, Fundamentos de una Ciencia de la Literatura, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik*, Eine Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, con cita de Isid. Orig. 2.4.4., Madrid, 1966, T. I, número 229, p. 205.

Aristotle, *Rhetoric to Alexander*, 37, 1446a5-6.

others in the internal government of the minds and in the government of the states, like when in the latter case it turns out necessary to stop a faction with another one.⁴⁶⁴ When Pericles realized:

“For example, whenever he saw the dangerously over-confident, he would make a speech which shocked them into a state of apprehension, and likewise he could return them from irrational fear to confidence.”⁴⁶⁵

RULE: Men shall be more difficult to govern than other live beings when they are not treated in an intelligent way,⁴⁶⁶ but when reasonable hope and fear are generated in them, they will be easier to govern.

Some recipients of the laws know and approve good conduct, but nevertheless they adopt the worse one, letting them be driven by the emotional impulse of reaching the actual good. Reason, when applied to imagination, showing future and remote things as present in the spirit and probable in reality, takes emotion to its side and moves the will in a better way, motivating good conduct.

RULE: Reason shall be applied to imagination, exciting hope or fear,⁴⁶⁷ showing future and remote things as present in the spirit and probable in reality, to move the wills of the recipients of the laws in a better way:

Aristotle, Rhetoric to Alexander, 38, 1446a5-6, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2313.

Cicero, *Partitiones Oratoriae*, IV, 11.

Cicerón, *Particiones Oratorias, Obras Completas de Marco Tulio Cicerón, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Tomo I, Madrid, 1879*, p. 242.

Cicéron, *Divisions de l'Art Oratoire, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles Lettres", IV. 11, Paris, 1960*, p. 6.

⁴⁶⁴Bacon, *Of the Dignity and Advancement of Learning, The Seventh Book, Chap. III*, in *The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. V, Translation of The Philosophical Works, Vol. I, New Edition, Longman & Co., etc, London, 1883*, pp. 422-423; *The Sixth Book, Chap. III*, p. 24.

⁴⁶⁵Thucydides, *The Peloponnesian War*, II, 65.

English translation from:

Thucydides, *The Peloponnesian War, Translated by Martin Hammond, With an Introduction and Notes by P.J. Rhodes, Oxford World's Classics, OUP, New York, 2009*, p. 91.

Tucidides, *Historia de la Guerra del Peloponeso, Traducción de Francisco Rodríguez Andradós, Editorial Hernando, Tomo 1, Madrid, Reimpresión, 1984, II, 65*, p. 283.

Translation from Spanish to English by the author of this book.

⁴⁶⁶Xenophon, *Cyropaedia*, I,i,3.

Xenophon, *Cyropaedia, With an English Translation by Walter Miller, In Two Volumes, I,i,3*, Loeb Classical Library William Heinemann, London, G.P. Putnam's Sons, New York, 1925, pp. 4-5.

James Tatum, *Xenophon's Imperial Fiction, On the Education of Cyrus*, Princeton University Press, Princeton, New Jersey, 1989, p. 62.

⁴⁶⁷Digest, I, 1, 1.

("FIRST BOOK

TITLE I

On justice and the law

1. Ulpiano in the first book of the institutions.

– For any prospective law student, it is convenient to know, in the first place, the origin of this name, of justice, because as elegantly defined by Celsus, it is the art of the good and the equitable.

1 For such reason anyone may call us *priests*: since we cultivate justice; profess the news and science of the good and the equitable, separating the just from the unjust, discerning the licit from the illicit; in our

- a) in the prescriptive speech, through awards, punishments, or other measures that maximize usefulness and minimize harmfulness;
- b) in the persuasive speech, by explaining the motives for the awards, punishments, or other measures that maximize usefulness and minimize harmfulness.

j. Reasonableness of legislative speeches (*logos*)

The topics associated to the reasonableness of speeches (*logos*) serve as a check list that assures that the matter debated has been contemplated from many of the reasonable points of view that could appear, so that it may be well distinguished. They suggest concepts, judgments and reasonings, for the association of ideas. They facilitate the finding of an idea that joins other two about the debated question, the art of finding the

wish to make men good, not only for fear of punishment, but for the hope of reward: strongly desiring (if I do not deceive myself) the true and not the apparent philosophy.")

"LIBRO PRIMERO

TÍTULO I

De la justicia y del derecho

1. Ulpiano en el libro primero de las instituciones.

– El que haya de estudiar el derecho, conviene que primero sepa de donde trae origen este nombre; de la justicia, porque según la define elegantemente Celso, es el arte de lo bueno y equitativo.

1 Por lo cual nos puede llamar cualquiera *sacerdotes*: pues cultivamos la justicia; profesamos la noticia y ciencia de lo bueno y equitativo, separando lo justo de lo injusto, discerniendo lo lícito de lo ilícito; deseando hacer buenos a los hombres, no solo por el miedo de las penas, si también con la esperanza del premio: deseando con vehemencia (si no me engaño) la verdadera filosofía, y no la aparente."

D. I, 1, 1, El Digesto del Emperador Justiniano, Traducido y Publicado por el Licenciado don Agustín Rodríguez de Fonseca, del Colegio de Abogados de esta Corte, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Tomo I, Madrid, 1872, p. 31.

1 ULPIANUS LIBRO PRIMO INSTITUTIONUM. Iure operam daturum prius nosse oportet unde nomen iuris descendat est autem a nostra appellandum:

1 nam ganter Celsus definit, ius est ars boni et aequi. Cuius merito quis nos sacerdotes appellet: iustitiam namque colimus et boni et aequi notitiam profiteamur, aequum ab iniquo separantes, licitum et illicitum discernentes, bonus non solum metum poenarum, verum etiam praemiorum quoque exhortatione efficere cupientes, veram nisi fallor philosophiam, non simmilitam affectantes."

D. I, 1, 1, Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum, Digesta, Recognovit, Theodorus Mommsen, I, 1, 1, Apud Weidemanns, Berolini, 1899, p. 1.

See the work of the founder of the legists school:

Shang Yang, Le Livre du Prince Yang, Traduit du chinois et présenté par Jean Lévi, Chapitre IX De l'Établissement des lois, Flammarion, Paris, 1981, p. 107, chapter written after the death of Shang, as indicated in n. 1, p. 31.

Lord Shang, The Book of Lord Shang, Translated by J.J.L. Duyvendak, Original Edition, Probsthain, London, 1928, Introduction by Robert Wilkinson, Wordsworth Classics of World Literature, Hertfordshire, 1998, Chapter 3, 9 Establishing Laws, p. 187.

Plato, Laws, I, 644c.

Platón, Las Leyes, I, 644c, en Platón, Diálogos VIII, Libros I-VI, Introducción, Traducción y Notas de Francisco Lisi, Editorial Gredos, Madrid, 1999, p. 230.

Platon, Les Lois, I, 644c, dans Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin avec la Collaboration de M. J. Moreau, Bibliothèque de la Pléiade, Édition de la Nouvelle Revue Française, Paris, 1942, Paris, T. II, p. 663.

"Hope is the prospect of pleasure [...] Fear, is the prospect of pain [...]":

Bentham, An Introduction to the Principles of Morals and Legislation, in The Collected Works of Jeremy Bentham, Edited by J.H. Burnand H.L.A. Hart, Clarendon Press, Oxford, 1966, p. 18.

Bentham, Théorie des Peines et Récompenses, dans Oeuvres de Jérémie Bentham, par Ét. Dumont, Troisième Édition, Société Belge de Librairie, Tome Second, Bruxelles, 1840, pp. 1-234.

"middle term"⁴⁶⁸ allowing for the formulation of syllogisms and enthymemes, that is to say, where and how to look in order to find propositions containing the aforesaid middle term that may serve as premises necessarily leading to the conclusion in the desired sense, because they relate the two "extreme terms" of the proposition to be proved. The classic example of a syllogism in logic manuals, which does not belong to Aristotle, since he "does not introduce singular terms or premises into his system"⁴⁶⁹, is:

All men are mortal,
Socrates is a man,
Socrates is mortal.

"Men" is the middle term that allows to join two "extreme terms", namely, "Socrates" and "mortal" (it appears in the major premise and in the minor premise but not in the conclusion).

RULE: In any prescriptive speech, topics shall facilitate the finding, choice and use of principles and norms in a consistent, complete and, if suitable, concise manner, without being overwhelmed or getting lost; for such purpose the probable problems shall be considered and acceptable solutions (norms) shall be designed, taking as a starting point certain relevant endoxas that will provide them with reasonable support (principles).

RULE: In any persuasive speech, topics shall allow for the finding, choice and use of inductions and syllogisms and of examples and enthymemes, that will explain and justify the prescriptive speech.

As well as there are two types of logical inferences: inductions and syllogisms, two are the reasonable means of persuasion and prescription: rhetorical inductions (examples), and rhetorical syllogisms (enthymemes).⁴⁷⁰

⁴⁶⁸ Giambattista Vico, *L'Antichissima Sapienza degli Italici da Ricavarsi dalle Origine della Lingua Latina Libri Tre*, 1710, da *Opere Filosofiche*, Introduzione di Nicola Badaloni, Testi, Versioni e Note a Cura di Paolo Cristofolini, Sansoni Editore, Firenze, 1971, p. 163.

Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [30], pp. 182-183, pp. 186-189.

In addition to the topics, in medieval logical tradition, the search for the middle term in syllogisms was called "inventio medii", for this purpose a mnemonic formula (Thomas Bricot), or a diagram known as "pons asinorum" (bridge of the donkeys), because its obvious difficulty (Petrus Tartaretus), was used : I.M.Bochenski, *A History of Formal Logic (Formale Logik*, Verlag Karl Alber, Freiburg-München, 1956), Traslated and Edited by Ivo Thomas, University of Notre Dame Press, Notre Dame, Indiana, 1961, pp. 219-221.

Anton Dumitriu, *History of Logic (Istoria Logicii*, Revised Updated and Enlarged Translation of the Second Edition of the Single Volume Roumanian Work *Istoria Logicii*, Published by Editura Didactica, Bucharest, 1975, Translated by Duiliu Zamfirescu, Dinu Giurcaneanu, Doina Doneaud, Translation Edited by The Staff of Abacus Press, T. Wells, Kent, England, 1977, Volume II, pp. 118-120.

On "inventio medii" and the Aristotelian logic, see:

Carlo Cellucci, *La Ragione della Logica*, Prima Edizione 1998, Quarta Edizione, Gius, Laterza & Figli Spa, Roma-Bari, 2005, pp. 15-17; pp. 124-125.

⁴⁶⁹ "First, the premiss "Socrates is a Man" is a singular proposition, as is subject "Socrates" is a singular term. Now Aristotle does not introduce singular terms or premises into his system."

Jan Lukasiewicz, *Aristotle's Syllogistic from the Standpoint of Modern Formal Logic*, First Edition 1951, Second Edition Enlarged 1957, Reprinted from *Sheets of the Second Edition*, Oxford University Press, London, 1958, p. 1.

⁴⁷⁰ Aristotle, *Rhetoric*, Book I, 2, 1356b5.

Legislative examples

Examples are imperfect inductions,⁴⁷¹ since they are not as numerous as to allow for an induction, but turn out to be acceptable for analogy purposes. Induction climbs up from the individual or particular to the universal. An example or analogy goes from the individual

or particular to a similar individual or particular.⁴⁷²

The use of examples to prescribe, not only to persuade, is very clear in the Common Law system, where courts pronounce judgments following what has been decided in previous similar cases (*stare decisis*), that is to say, on the basis of the analogy existing between a previous case (precedent) and the one to be decided.⁴⁷³

Legislative precedents mentioned in the form of notes in the prescriptive speech are persuasive examples, arguments of authority based on the prestige of their origin. When they are used to oblige, prohibit, permit, punish and reward conducts, although their respective origins are not mentioned in the notes, they are prescriptive examples adopted as a result of their resemblances with the problems, the solutions, or both, reasonably imitating their models, by way of analogy.

RULE: When more than one example is used in the same provision of a prescriptive speech to facilitate its comprehension, it shall be made clear that it is not a question of a limited enumeration, to avoid useless controversies.

Legislation is not an easy task, in which it was enough to be provided with a collection of laws and choose the best, as if choosing examples and harmonizing them did not demand certain intelligence and a correct reasoning to such an end were not very important.⁴⁷⁴ Legislating is not an arbitrary practice that may remain freed to mere

Aristotle, Rhetoric I, 2, 1356b4-5, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2156, he translates "deductions" instead of "syllogisms".

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro I, 1356b5, Editorial Gredos, Madrid, 1990, p. 180.

Aristote, Rhétorique, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Livre I, 2, 1356b4-5, Paris, 1932, p. 78.

Aristotele, Retorica, I, 2, 1356 b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 8.

⁴⁷¹Boethius's *The Topicis Differentiis*, Book II, 1184A17-23, Translated, With Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 45.

⁴⁷²Friedrich Ueberweg, *System of Logic and History of Logical Doctrines*, Translated from the German with Notes and Appendices by Thomas M. Lindsay, Longmans Green, and Co., p. 476; p. 492.

⁴⁷³Edward P.J. Corbett, Robert J. Connors, *Classical Rhetoric for the Modern Student*, Fourth Edition, Oxford University Press, New York, Oxford, 1999, p. 119.

On reasoning by means of examples and rules in the North American Law, see:

Benjamin N. Cardozo, *La Naturaleza de la Función Judicial*, Con Prefacio de Carlos Cossio, Traducción de la primera edición en inglés, *The Nature of the Judicial Process*, Yale University Press, New Haven and London, 1921, por Eduardo Ponsa, Ediciones Arayu Buenos Aires, 1955, 148 pp.

Edward H. Levi, *Introducción al Razonamiento Jurídico*, Traducción, Revisión Técnica y Notas de Genaro R. Carrió, Eudeba, Buenos Aires, 1964, 148 pp. e índice, de la obra original *An Introduction to Legal Reasoning*, The University of Chicago Press, séptima reimpresión, Chicago, 1961.

⁴⁷⁴Aristotle, *Nicomachean Ethics*, X, 1181a15-1181b11.

Aristotle, *Nicomachean Ethics*, X, 1181a15-1181b11, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 1866-1867.

hazard or to the simple intuition of the inexperienced one, but a reasonable activity submitted to the rules of the art of legislation.

RULE: Practitioners of the art of legislation shall choose the best examples of laws, to imitate them, and the worst examples, to reject them, in accordance with the topic of reasonableness (*logos*), on account of the resemblance or structural and functional analogy between the law to be transplanted (comparative law) or re-implanted (history) and the juridical system that will receive it.

Usually, experienced advisers and legislators keep in their files a select repertoire of bills and laws, to use them as examples to be imitated in future similar cases, as they arose or were transformed into forms, like those used by notaries public and lawyers in their respective professional practice.⁴⁷⁵ With or without experience, with or without repertoires or forms, it may be affirmed that no advisor or legislator sets aside the precedents provided by history and comparative law, since examples⁴⁷⁶ constitute the main source of the invention or investigation to produce both prescriptive and persuasive speeches. Although situations are never equal, sometimes it is possible to find relevant resemblances, whether in the problems, in the solutions or in both simultaneously, since:

PRINCIPLE: Although analogy is not a strong method to judge, it is a very fecund method to invent.

Legislative enthymemes

A legislative principle, the reason for which one legislates (*ratio legis*), is a species of the juridical reason (*ratio juris*).

RULE: Principles shall not accompany their respective norms in the prescriptive speech, when:

Aristóteles *Ética a Nicómaco*, Edición Bilingüe y Traducción por María Araujo y Julián Marías, Introducción y Notas por Julián Marías, Centro de Estudios Constitucionales, X, 9, 1181a-1181b, Madrid, 1981, pp. 173-174.

⁴⁷⁵Elmer A. Driedger, *Legislative Forms and Precedents*, Second Edition, Revised, Published by The Department of Justice, Ottawa, Canada, 1976, pp. 143-316, published as an independent book in its first edition, in 1963, and in this second edition, together with the second edition of *The Composition of Legislation*, pp. V XXIX, pp. 1-141, the first edition of which was published in 1956.

⁴⁷⁶Quintilian, *The Institutio Oratoria of Quintilian*, Book III, viii.

Quintilian, *The Institutio Oratoria of Quintilian*, Book III, viii, 36, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume I, London, 1921, pp. 496-497.

Quintilien, *Institution Oratoire*, Livre III, 8.36, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome II, Paris, 1977, p. 205.

Heinrich Lausberg, *Handbook of Literary Rhetoric*, A Foundation For Literary Study, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton & Dean Anderson, Brill, number 61, point 2b, Leiden, Boston, Köln, 1998, p. 33.

Heinrich Lausberg, *Manual de Retórica Literaria*, Fundamentos de una Ciencia de la Literatura, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik*, Eine Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 61, punto 2b, p. 109.

- a) the norms were known and accepted in advance or the principles would clearly arise from the reading of the norms;⁴⁷⁷
- b) it will be enough that the principles are only made a part of the persuasive speech.

RULE: Principles shall accompany their respective norms in the prescriptive speech, when:

- a) the solutions were controversial, unusual or opposite to commonly accepted ones (paradoxical);⁴⁷⁸
- b) the norms were systematized around the principles (internal systematic laws).

Although it is true that reasonings would be improper in the style of a contemporary prescriptive speech, which is meant to oblige, prohibit, permit, reward and punish conducts, a legislator resorts to enthymemes, since a good prescriptive speech is reasonable in itself, be the principle explicit or not, when he systematizes the norms. Enthymemes are rhetorical syllogisms designed for ordinary people, who would neither arrive at a deductive conclusion starting from very distant premises, since such deduction would turn out obscure because of the length of the syllogisms chain, nor even admit the development of all the steps leading to the conclusion, since this means verbosity, as obvious things would be said.⁴⁷⁹ With regard to the above mentioned, it is convenient to know that the word "enthymeme", of Greek origin, means, in accordance with its etymology, to keep in the spirit (*in thumo*)⁴⁸⁰ or in mind,⁴⁸¹ and it is commonly used to name the imperfect, incomplete syllogism, in which one of the premises has been omitted, generally the major one (First Order enthymeme), the minor one (Second

⁴⁷⁷ Aristotle, Rhetoric, II, 21, 1394b11-16, with regard to the maxims. See

Aristotle, Rhetoric, II, 21, 1394b9-16, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2222.

Aristóteles, Retórica, Libro II, 1394b11-17, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 411.

Aristote, Rhétorique, Livre II, 21, 1394b11-16, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 107.

Aristotele, Retorica, A cura di Armando Plebe, II, 2, XXI, Editore Laterza, Bari, 1961, p. 135.

⁴⁷⁸ Aristotle, Rhetoric, II, 21, 1394b8-9, with regard to maxims.

Aristotle, Rhetoric, II, 21, 1394b8-9, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2221-2222.

Aristóteles, Retórica, Libro II, 1394b8-10, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 411.

Aristote, Rhétorique, Livre II, 21, 1394b8-10, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 107.

Aristotele, Retorica, II, 2, XXI, 1394b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 135.

⁴⁷⁹ Aristotle, Rhetoric, II, 21, 1395b25-27.

Aristotle, Rhetoric, II, 21, 1395b25-27, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2224.

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro II, 1395b25-30, Editorial Gredos, Madrid, 1990, p. 417.

Aristote, Rhétorique, Livre II, 21, 1395b23-27, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 111.

Aristotele, Retorica, II, 21, 1395b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 139.

⁴⁸⁰ Roland Barthes, L'Ancienne Rhétorique, Aide-Memoire, Séminaire Donné à l' école Pratique de Hautes Études, Paris, 1964-1965, Communications 16, Seuil, Paris, 1970, p. 202.

E. Littré, Dictionnaire de la Langue Française, Librairie Hachette et Cie, Paris 1889, T. II, p. 1424.

⁴⁸¹ W. S. Jevons, Elementary Lessons in Logic, Macmillan And Co., London, 1870, p. 153.

Order enthymeme), or the conclusion (Third Order enthymeme).⁴⁸² But it is not necessary to identify the rhetorical syllogism (enthymeme) with the incomplete syllogism, since an enthymeme may present itself as a complete or incomplete syllogism. It usually appears as incomplete because its premises or conclusion are acceptable opinions that do not require any further proposition to achieve acceptability (*endoxas*).

Enthymemes, as incomplete rhetorical syllogisms, are the ordinary way in which men express their reasonings, suppressing such propositions as will be easily replaced, for being too clear or well-known, since the spirit goes more rapid than words, so that, as the speech is being abridged, it is given more force and liveliness, pleasing the vanity of the interpreter at the same time, making the user of his own intelligence, without allowing him to fall down in the boredom to which prolixity leads.⁴⁸³

If to a maxim, that is, a general formula related to such human actions as must be chosen or avoided,⁴⁸⁴ one adds its respective reason, in an explicit or implicit way, a rhetorical syllogism or enthymeme is formed.⁴⁸⁵

When to a legislative juridical norm, that is a species of the maxims genre, one adds its respective principle or *ratio legis*, a legislative enthymeme is formed. In the contemporary prescriptive speech, there is neither an explicit principle for each norm, nor a norm for each principle, joined by logical particles such as "since", "because", "since then", "so", etc., and nor two premises at least, or a premise and the conclusion are made explicit.

⁴⁸²W. S. Jevons, *Elementary Lessons in Logic*, Macmillan And Co., London, 1870, pp. 153-154.

⁴⁸³Aristotle, *Rhetoric*, II, 21, 1395b1-12.

Aristotle, *Rhetoric*, II, 21, 1395b1-12, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2223.

Aristóteles, *Retórica*, Libro II, 1395b1-13, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, pp. 413-414.

Aristote, *Rhétorique*, Livre II, 21, 1395b1-12, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, pp. 109-110.

Aristotele, *Retorica*, A cura di Armando Plebe, II, 21, 1395b, Editore Laterza, Bari, 1961, pp. 138-139.

Antoine Arnauld et Pierre Nicole, *La Logique ou l'Art de Penser*, Sur la Cinquième Édition, Revue & de Nouveau Augmentée; Faite a Paris, Paris, Chez Guillaume Defprez, & C. en 1683, Chapitre XIV, Des Enthymèmes & des Sentences Enthymématiques, Introduction de Louis Martin, Paris, Flammarion, 1970, pp. 285-286.

⁴⁸⁴Aristotle, *Rhetoric*, II, 21, 1394a21.

Aristotle, *Rhetoric*, II, 21, 1394a21, in *The Complete Works of Aristotle*. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2221.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro II, 1394a20, Editorial Gredos, Madrid, 1990, p. 409.

Aristote, *Rhétorique*, Livre II, 21, 1394a19, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Les Belles Lettres", Tome Deuxième, Paris, 1938, p. 106.

Aristotele, *Retorica*, II, XXI, 1394a, A cura Di Armando Plebe, Editore Laterza, Bari, 1961, p. 134.

⁴⁸⁵Aristotle, *Rhetoric*, II, 21, 1394a31.

Aristotle, *Rhetoric*, II, 21, 1394a31, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2221.

Aristóteles, *Retórica*, Libro II, 21, 1394a31, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 410.

Aristote, *Rhétorique*, Livre II, 21, 1394a31, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 107.

Aristotele, *Retorica*. A cura di Armando Plebe, Libro II, XXI, Editore Laterza, Bari, 1961, p. 134.

Internal systematic laws (consolidations, codifications and institutional laws), as mentioned in Chapter IV of this work (Legislative Genres), use principles in their explicit or implicit form to systematize the prescriptive speech.

Section 1134 of the Napoleonic Code (1804) illustrates the incorporation of a principle, when the solution has been controversial and turns to be paradoxical like its systematization function. The above mentioned section, after an interesting debate, was finally written in this way:

“Legally formed conventions are like a law for those who have made them.
They may be revoked only by their mutual consent, or for the causes
authorized by law.
They must be performed in good faith.”⁴⁸⁶

The first two paragraphs of this section introduced the principle of autonomy of the will and one of its consequences, legal rescission, with a reference to other causes authorized by the law to render conventions ineffective. The third paragraph, which creates the obligation to perform conventions in good faith, is a clear norm, the historical inception of the principle of good faith, since this principle not only comprises performance as a whole, but also all its stages: the ones before inception (precontractual negligence), that of inception (included in the bill), interpretation, integration, modification and termination of the conventions, and the subsequent stage (postcontractual obligations). The above mentioned principle includes not only conventions or contracts, but also, juridical acts in general, as legal reasoning and experience were able to prove later on.

The Court of Cassation had already accepted the principle of autonomy of the will, but some jurists were still against it, because, without having been struck other than by the general will, that of the law, they did not want to acknowledge in contracts, in the will of the individuals, an emanation of the law itself, not less sacred than the former. Favard, in its report to the Tribunate, described and explained the above mentioned situation, justifying the incorporation of the principle of autonomy of the will:

"But there will not be any more uncertainty about this principle; it is founded on a positive law which secures the authority of the contracts, and consequently the fortune of the individuals; and, what is even more precious, the good faith that must dominate the performance of conventions. Thus, whenever a convention shall have been legally formed, and its causes acknowledged by law, such convention will be a law in itself, and any judgment supporting its violation will be submitted to the censorship of the courts entrusted by the constitution with the preservation of them all, and with protecting them against arbitrariness."⁴⁸⁷

⁴⁸⁶"Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites.

Elles ne peuvent être révoquées que de leur consentement mutuel, ou pour les causes que la loi autorise. Elles doivent être exécutées de bonne foi."

Le Baron Locré, La Législation Civile, Commerciale et Criminelle de la France, Ou Commentaire et Complément des Codes Françaises, Treuttel et Würtz, Libraires, Tome Douzième, Paris, 1828, p. 14.

⁴⁸⁷"Elles tiennent lieu de la loi à ceux qui les ont faites.

Dejà le tribunal de cassation avait consacré ce principe: quelques jurisconsultes trop rigoristes improuvaient sa jurisprudence; ils n'étaient frappés que de la violation faite à la volonté générale, qui est la loi; ils ne voulaient pas voir que le contrat légalement formé était une émanation de la loi même, en non moins sacré qu'elle.

Mais il n'y aura plus d'incertitude sur ce principe; il sera désormais fondé sur une loi positive et garante de l'autorité des contrats, garante par conséquent des fortunes des particuliers; et, ce qui est plus précieux encore, garante de la bonne foi qui doit régner dans l'exécution des conventions.

Bigot-Préameneu, in his Exposition of Motives, with reference to obligations and the systematization function of the principle of autonomy of the will, said:

“Having the necessary elements to form a valid obligation, the consent of the parties, their capacity, a thing or fact that were the object and matter of the commitment and a legitimate cause been compiled, now the effects of the obligations must be regulated. Here there immediately appears the principle that serves as a basis for this part of the Civil Code, and that is expressed in clear and simple terms.

"Legally formed conventions are like a law for those who have made them.

They may be revoked only by their mutual consent, or for the causes authorized by the law.

They must be entered and performed in good faith.

They oblige not only to what is expressed, but also to all the consequences that equity, use or the law attributes to the "obligation according to its nature."

There is no species of obligation, whether of giving, doing or refrain from doing, that does not rest on these fundamental rules: it is to these rules that one resorts for their interpretation, performance or determination of all their effects.”⁴⁸⁸

For further clarification,⁴⁸⁹ an enthymeme may be explicitly expressed either as a complete or and incomplete syllogism.

Ainsi toutes les fois qu'une convention aura été légalement formée, et dont les causes seront avouées par la loi, cette convention sera elle même une loi, et le jugement qui la violera sera soumis à la censure du tribunal chargé par la constitution de les conserver toutes, et de les garantir de l'entreprise de l'arbitraire." Le Baron Locré, La Législation Civile, Commerciale et Criminelle de la France, Ou Commentaire et Complément des Codes Françaises, Rapport Fait au Tribunat par M. Favard, dans la Séance du 13 Pluviose an XII (3 février 1804), Treuttel et Würtz, Libraires, Tome Douzième, Paris, 1828, p. 430.

⁴⁸⁸“Après avoir rassemblé les éléments nécessaires pour former une obligation valable, le consentement des parties, leur capacité, une chose ou un fait qui soit l'objet et la matière de l'engagement, une cause légitime, on a eu à régler quels sont les effets des obligations. C'est ici que se présente d'abord le principe qui sert de base à cette partie du Code Civil, et qui se trouve exprimé en ces termes clairs et simples.

"Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites.

Elles ne peuvent être révoquées que de leur consentement, ou pour les causes autorisées par la loi.

Elles doivent être contractées et exécutées de bonne foi.

Elles obligent non seulement à ce qui y est exprimé, mais encore à toutes les suites que l'équité, l'usage ou la loi donnent à la "obligation d'après sa nature."

Il n'est aucune espèce d'obligations, soit de donner, soit de faire ou de ne pas faire, qui ne repose sur ces règles fondamentales: c'est à ces règles qu'on a recours pour les interpréter, pour les exécuter, pour en déterminer, tous les effets.”

Le Baron Locré, La Législation Civile, Commerciale et Criminelle de la France, Ou Commentaire et Complément des Codes Françaises, Exposé de Motifs Fait par M. Bigot-Préameneu, Conseiller d'Etat et Orateur du Gouvernement, dans la Séance du 6 Pluvieuse an XII (27 janvier 1804), Treuttel et Würtz, Libraires, Tome Douzième, Paris, 1828, pp. 325-326.

⁴⁸⁹A similar didactic method has been used when reason expresses itself in the same proposition that enunciates a maxim (enthymematic statement), that is the most reputable one, as it may be noticed in the following example and its explicit reasoning:

Maxim (as an enthymematic statement):

“Being mortal, do not keep an immortal rancor.”

Aristotle, Rhetoric, II, 21, 1394b18-25.

“Siendo mortal, no guardes un rencor inmortal”,.Aristóteles, Retórica, Libro II, 1394b20-27, Introducción, Traducción y Notas por Quintín Racionero, Editorial Gredos, Madrid, 1990, p. 412. English translation by the author of this book.

Aristotle, Rhetoric, II, 21, 1394b18-25, in The Complete Works of Aristotle. The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2222.

EXAMPLE:

Complete syllogism

If constitutionally formed laws are obligatory upon all, because they arise from the general will (major premise) and legally formed conventions are like a law for those who have made them, because they arise from the will of the individuals (minor premise), then legally formed conventions are obligatory upon those who have made them (conclusion).

EXAMPLE:

Incomplete syllogism

If legally formed conventions are like a law for those who have made them, because they arise from the will of the individuals (minor premise), then legally formed conventions are obligatory upon those who have made them (conclusion).

In the enacted formula, the major complete premise was omitted, since it was obvious that laws were obligatory upon all, because they emerged from the general will. The conclusion was also partially omitted, because if the only enacted formula were the explicit norm establishing that conventions were obligatory for the parties, not all would accept it and many would consider it paradoxical. As the legislator wanted to explain, in the very text of the prescriptive speech, why conventions were obligatory, without explicitly mentioning their obligatory nature, he introduced the principle of autonomy of the will, that is to say, that the individuals could establish norms for themselves. To such end, he included only the minor, but incomplete premise, without saying that "conventions are obligatory", but associating the conventions to the laws in an explicit manner, and the particular will, generator of obligations, in an implicit manner, to the general will, generator of the law, an indisputable source of obligations. Whenever enthymemes are incomplete syllogisms, reasoning remains semisecret, since only one proposition is omitted, be one of the premises or the conclusion. In this example, two complete propositions were omitted, namely, the major premise and the conclusion, and also the part of the minor premise that deals with the particular will as generator of obligations, and reasoning stays completely secret, thus leaving an explicit principle (autonomy of the will) and an implicit norm (that conventions are obligatory upon the

Aristote, Rhétorique, Livre II, 21, 1394b20-26, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Première, Paris, 1938, p. 108.

Aristotele, Retorica, II, XXI, 1394b, A cura di Armando Plebe, Editore Laterza, Bari, 1961. 136.

An enthymeme (as species of incomplete syllogism):

If you are mortal (minor premise),
then your hate is not immortal (conclusion).

An enthymema (as species of perfect or complete syllogism):

If the one who is mortal must not keep an immortal hate (major premise),
and since you are a mortal (minor premise),
then you must not keep a an inmortal hate (conclusion).

Antoine Arnauld et Pierre Nicole, La Logique ou l'Art de Penser, Sur la Cinquième Édition, Revue & de Nouveau Augmentée; Faite à Paris, Chez Guillaume Defprez, &c. en 1683, Chapitre XIV, Des Enthymèmes & des Sentences Enthymématiques, Introduction de Louis Martin, Paris, Flammarion, 1970, p. 286.

parties). Having said that conventions are like the law, the legislator refers to their obligatory effect, but also to the reason behind them: they are obligatory for those who have made them because they arise from the will of the individuals, as well as the laws are obligatory for all because they arise from the general will of the people. This is not an enthymeme, but an enthymematic statement,⁴⁹⁰ a statement that, lacking the form of an enthymeme, which require two statements at least, produces its effects, because the principle or the norm and the logical inference between both remain implicit; in this case, it is a question of an explicit principle.

Principles usually takes the form of sententious sayings, and the juridical norms, the form of paraphrased principles.⁴⁹¹ Sententious sayings are resorted to because they are remembered more easily, and paraphrases, because they allow for the exemplification of the application of the principles and give more clarity to them. Sometimes, when the use of some word or figure of speech is undesired, an euphemism is used.

EXAMPLE:

The above mentioned section 1134 of Napoleonic Code, reads as follows:

"Legally formed conventions are like a law [euphemism for obligatory] for those who have made them", so as to avoid saying:
"Legally formed conventions are obligatory for those who have made them".

Principles, in addition to their usefull systematization purposes, also serves to fill the gaps by autointegration (within the same juridical order).⁴⁹² Since to fill the gaps one resorts to the general principles of law, the principles of the branches of law, the principles of the institutions, and to analogy, it is necessary to highlight that, from the point of view of rhetoric, principles are, in general, the endoxas that form enthymemes and enthymematic statements, and that analogy is an incomplete induction, a reasoning by example. Enthymemes and examples provide reasonableness to prescriptive or persuasive speeches.

To obtain enthymemes and examples, stronger arguments and reasonable things to say not regarded as arguments, it is possible to resort to legislative definitions and to other topics.

Legislative definitions

It has been repeatedly claimed that definitions in the laws are improper for being useless and dangerous. Useless, because there would no be provisions inside the law, but rather the result thereof, and they would not have a binding force on the interpreter, since laws should only order, not teach, a task proper of juristic writings. Dangerous,

⁴⁹⁰ Antoine Arnauld et Pierre Nicole, *La Logique ou l'Art de Penser*, Sur la Cinquième Édition, Revue & de Nouveau Augmenté; Faite à Paris, Chez Guillaume Defprez, &c. en 1683, Chapitre XIV, Des Enthymèmes & des Sentences Enthymématiques, Introduction de Louis Martin, Paris, Flammarion, 1970, p. 286.

⁴⁹¹ Claude du Pasquier, *Introduction a la Thèorie Générale et a la Philosophie du Droit*, Deuxième Édition, Revue et Mise a Jour, Éditions Delachaux, Niestlé S.A., Neuchatel, Suisse, Paris, France, 1942, p. 62.

⁴⁹² Norberto Bobbio, *Teoria Generale del Diritto*, G. Giappichelli Editore, Torino, 1993, p. 262.

because they would be very difficult to establish and, if turned out vicious, they may lead to false consequences.⁴⁹³

A provision may contain a complete juridical norm, like the definitions of crimes in the codes and special penal laws, which prescribe each crime (murder, assault and battery, robbery, theft, etc.) in the form of a figure of speech, the imprecation, which consists, in one of its variants, in threatening,⁴⁹⁴ in this case, enforcement of the respective punishment against those whom may perform certain conducts. There is not always a coincidence between the provision and the juridical norm (fact and consequence; in the aforesaid examples, crime and punishment). The provision may contain a part of a juridical norm, of a penal nature or otherwise, which, together with other provision or provisions, forms a complete juridical norm. Thus, from the point of view of the art of legislation, there would be implicit referrals,⁴⁹⁵ since, when the defined term is used in the same or other provision, it is considered that the interpreter will have to replace it mentally by the defined concept, as it happens with nominal and mixed definitions. But when a concept is formulated, whether or not denominated, without the same or other provisions mentioning the denomination, the definition might also be useful if the defined concept integrates, not in redundant form the factual or the juridical consequences of the norm in question.

It is true that some definitions proper of juristic writings are the result of the provisions, that is, a brief description of the content of the latter, namely, the rules of law, which, as such will be true or false; but this does not imply that the legislator, in the exercise of his powers, should not use definitions.

⁴⁹³In the discussion of the project of Civil Code in the Council of the State Session of January 27, 1803, presided over by Napoleon, as the definition of donations was dealt with, it was stated:

"M. REGNAUD (of Saint-Jean-d'Angely) thinks that definitions are useless, because they are not dispositions inside the law." ("M. REGNAUD (de Saint-Jean-Angely) pense que les définitions sont inutiles, puisque elles ne sont pas dispositions dans la loi.");

"M. BERENGER says that the definitions belong to case law, not law; they are very difficult. It is then dangerous to include them in a code because if they turned out vicious, they would lead to false consequences. ("M. BÉRENGER dit que les définitions appartiennent à la jurisprudence, et non à la loi; elles son très difficiles. Il est donc dangereux de les placer dans un code car si elles étaient vicieuses elles conduiraient à de fausses conséquences.);

Definitions are the result of the provisions of a code, they fall within the scope of science: whereas a code is what it is done by the legislator. (Les définitions sont le résultat de les dispositions du code, elles son donc du domaine de la science: or le code es le fait du législateur.")

Le Baron Locré, *La Législation Civile, Commerciale et Criminelle de la France*, Teutel et Würtz, Libraires, Tome Onzième, Paris, 1827, pp. 88-89 (REGNAUD), p. 90 (BÉRENGER).

"In law all general rules and conceptions are liable to cause catastrophes, as it is impossible, when formulating a rule, to foresee all possible complications which life may bring about."

Fritz Schulz, *Principles of Roman Law*, Translated from a Text Revised and Enlarged by the Author, by Marguerite Wolff, at The Clarendon Press, Oxford, First English Edition 1936, reprinted, 1956, 1967, p. 41. Original German First Edition, *Prinzipien Des Römischen Rechts*, Duncker Und Humblot, Munich, 1934.

⁴⁹⁴Antonio de Capmany and Montpalau, *Filosofía de la Elocuencia*, Londres, 1812, p. 459; pp. 463-465.

⁴⁹⁵Definitions would be not independent norms according to Hans Kelsen, *Théorie Pure du Droit*, Traduction française de la 2e édition de la Reine Rechtslehre, Franz Deuticke, Viena, 1960, par Charles Eisenmann, Dalloz, Paris, 1962, p. 77.

Incomplete juridical propositions are either explanatory, limitative or referencial. Explanatory propositions are either definitory ones, which usually refer to the factual antecedent, and complementary ones, which clarify a juridical consequence.

Karl Larenz, *Metodología de la Ciencia del Derecho*, Traducción de Enrique Gimbernat Ordeig del original *Methodenlehre der Rechtswissenschaft*, Springer Verlag OHC, Berlin, Göttingen, Heidelberg, 1960, Ediciones Ariel, Barcelona, 1966, pp. 175-176.

RULE: Definitions shall be used in the prescriptive speech, provided that they will serve to oblige, prohibit, permit, punish or reward conducts, where it will not be considered suitable to leave them in charge of custom, case law or juristic writings.

When the definitions of custom, case law or juristic writings precede the legislator, he will not unnecessarily detach himself from pre-existent concepts and usual words, since, in contrast to the formal propositions in logic and mathematics, juridical norms are formulated in a natural language that admits stipulative definitions, but does not tolerate arbitrary stipulations, since the legislator or the interpreter will rarely forget the previous meaning and substitute it for the new one. They often end up saying one thing and doing another, a real danger posed by legislative definitions.⁴⁹⁶

RULE: Definitions shall not unnecessarily be detached from pre-existent concepts and usual words, because both of them are of a very difficult replacement in the minds of legislators and interpreters.

Justinian's Digest states that any definition is dangerous in civil law, since subverting it is not possible in very few occasions.⁴⁹⁷ It was dangerous for the parties, for historical reasons, because in the "actions of the law" (*legis actiones*) they had to recite the exact words before the pretor (*in iure civilis*) since, as Gaius remembers a person whose vineyards had been knocked down lost his claim for having said "vineyard" instead of "trees", which was the general term used in the formula of the Law of the XII Tables.⁴⁹⁸ It has been and still is also dangerous for lawyers, because when the denomination of a fact, act or activity is argued about, if any of them risks a definition, as his adversary criticizes a word or adds or removes another one, he shall witness how such adversary snatches it off his hands and turns it against him.⁴⁹⁹

A definition, which always uses words, may linguistically formulate a concept without naming it (conceptual definition); establish the concept denomination (nominal definition); or linguistically formulate a concept and establish its denomination (mixed definition). Concepts should not be confused with the words or things.⁵⁰⁰ No mistake

⁴⁹⁶Sebastián Soler, *Las Palabras de la Ley*, Fondo de Cultura Económica, México, 1969, pp. 172-173.

⁴⁹⁷D. 50.17.202.

D.50.17.202, *Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum Digesta, Recognovit, Theodorus Mommsen, apud Weidemanos, Berolini, 1899, p. 873.*

D.I.17.202, *El Digesto del Emperador Justiniano, Traducido y Publicado por el Licenciado don Agustín Rodríguez de Fonseca, del Colegio de Abogados de esta Corte, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Tomo III, Madrid, 1874, p. 851.*

It is taken from Iavolenus, eleventh book epistolarum.

⁴⁹⁸[Gaius], *The Institutes of Gaius, Part I, Text With Critical Notes and Translation*, by Francis de Zulueta, Clarendon Press, Oxford, First Edition 1946, Reprinted 1951, Book IV, 11, Oxford, 1958, pp. 234-235.

Gaius, *Institutes, Texte Établi et Traduit par Julien Reinach, Société d'Édition "Les Belles Lettres"*, III, 11, Paris, 1950, p. 140.

Stella Maranca, *Le "Regulae Iuris" e la "Definitio in Iure Civilis"*, *Reçueil Gény, T. II, Paris, 1934, pp. 91-111; p. 97.*

⁴⁹⁹Cicero, *De Oratore, II, XXV, 108.*

Cicéron, *De l'Orateur, Livre II, XXV, 108, Texte Établi et Traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres"*, Paris, 1927, pp. 50-51.

⁵⁰⁰François Geny, *La Technique Législative dans la Codification Civile Moderne (A Propos du Centenaire du Code Civil)*, *Le Code Civil, 1804-1904, Livre du Centenaire, Arthur Rousseau, Editeur, T. II., Paris, 1904, p. 993.*

should be made about the most useful sequence to deal with the above mentioned aspects which, from the point of view of the interpretation, application and criticism is: words, concepts, things; and, from the perspective of the composition, is: concepts, words, things.

Conceptual definitions

Conceptual definitions, that is, the explanations of concepts in words,⁵⁰¹ must not be confused either with the concepts themselves, since concepts differ from their formulation by means of language,⁵⁰² or with nominal definitions.

Conceptual definitions are speeches that explain things existing in reality, that can be looked at or touched, like farms, leaks, etc.; or in the mind, like usucaption, guardianship, etc.⁵⁰³ The definitions of systematical concepts are more frequent in Civil Law, as it happens in the French Civil Code with the concepts of property (section 544), usufruct (section 578), easement (section 637), contract (section 1101), etc., while the definitions of non-systematic concepts are more frequent in the Common Law world.⁵⁰⁴ Should a speech admits two or more meanings, it would suffer from ambiguity,⁵⁰⁵ which can arise either from the way in which words are linked together (syntactic ambiguity) or from the words themselves (semantic ambiguity).

In the case of syntactic ambiguity it is difficult to immediately identify the subject and direct object of the sentence, as in the following example: Cicero recommends Tyro to Curius, since only those who knows that Tyro was a slave much valued by Cicero can interpret with certainty that said slave is the recommended one.⁵⁰⁶

⁵⁰¹Friedrich Karl Von Savigny, *Metodología Jurídica* (Juristische Methodenlehre, K. F. Koehler Verlag, Stuttgart, 1951, que corresponde al curso de invierno 1802-1803), Traducción de J. J. Santa Pinter, Ediciones Depalma, Buenos Aires, 1979, p. 39.

⁵⁰²R. Von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur La 3e. Édition avec l'Autorisation de L'Auteur par O. de Meulenaere, Liv. II, Ie. Part., Titre III, Technique, Chap. I. Sect. 2. B. 3., Construction. § 46. 3. 1. Notion et distinction des corps juridiques, Maresq, Ainé, Éditeur, Paris, F. Clemm, Gand, 1877, p. 54.

⁵⁰³Cicero, *Topics*, V, 26-27.

Cicéron, *Topique*, V, 26, dans *Cicéron, Divisions de l'Art Oratoire, Topiques*, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles Lettres", Paris, 1960, p. 74.

⁵⁰⁴Alf Ross, *Definition in Legal Language, Logique et Analyse*, Nouvelle Serie, 1e. Année, Août 1958, p. 147.

Jean Ray, *Index du Code Civil, Contenant Tous les Mots qui Figurent dans le Texte du Code Accompagnés des Références a Tous les Articles où ils se Trouvent et Illustrés de Citations qui Peuvent en Éclairer le Sens ou l'Emploi*, Librairie Félix Alcan, Paris, 1926, Préface IX pp., Abréviations 1 p., Index 117 pp., Addenda 1 p. This work was inspired in a similar one for the B.G.B., *Wörterverzeichnis Zum Bürgerlichen Gesetzbuch*, O. Gradenwitz, 1902, Préface, p. V.

⁵⁰⁵*Rhetorica ad Herennium*, Book I, XI, 16.

Rhetorica ad Herennium, Book I, XI, 16, with an English Translation by Harry Caplan, The Loeb Classical Library, LCL 403, Harvard University Press, Cambridge Massachusetts, London, England, pp. 84-85.

Retórica a Herenio, Libro I, XI, Traducción Introducción y Notas de Juan Francisco Alcina, Erasmio, Textos Bilingües, Editorial Bosch, Barcelona, 1991, p. 122.

Rhétorique a Herennius, Livre II, XI, 16, Ouvrage Longtemps attribué a Ciceron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Paris, pp. 56-57.

⁵⁰⁶Real Academia Española, *Gramática de la Lengua Española*, Nueva Edición Reformada, de 1931, Madrid, 1962, punto 482, p. 443.

RULE: To eliminate syntactic ambiguity (it is difficult to immediately identify the subject and direct object of the sentence), words shall be given a different placement, or linked with other particles, or any of the latter shall be omitted.

EXAMPLE:

Cicero recommends Tyro to Curius. (Who is the recommended one?).
Tyro is recommended by Cicero to Curius.

The semantic ambiguity refers to the comprehension of the concept, its typical properties, the core of meaning. Vagueness refers to the extension, to the class of elements with properties typical of the concept, contemplated on the border of meaning, from a half-light area.⁵⁰⁷

RULE: To eliminate semantic ambiguity, equivocal words shall be replaced by unequivocal ones, or they shall be defined.

Because the present work uses the taxonomic model of the juridical system, then:

RULE: Definitions following the method of the next genre and the specific difference shall be preferred.⁵⁰⁸

⁵⁰⁷"The fact is that all words are undoubtedly attributable in certain domain, but become questionable inside a half-light area, out of which they are again undoubtedly not attributable. Someone might try to obtain precision in the use of words, by saying that no word may be applied in the half-light area; but fortunately half-light itself is not exactly definable, and the whole ambiguity given by it to the primary use of the words, is also given by it as we try to fix a limit to its undoubtful applicability." Spanish to English translation by the author of this book.

"El hecho es que todas las palabras son sin duda atribuibles en cierto dominio, pero se tornan cuestionables dentro de una zona de penumbra, fuera de la cual nuevamente son sin duda no atribuibles. Alguien podría tratar de obtener precisión en el uso de las palabras, diciendo que ninguna palabra puede ser aplicada en la zona de penumbra; pero por fortuna la penumbra misma no es exactamente definible, y toda la vaguedad que confiere al uso primario de las palabras, la confiere también cuando tratamos de fijar un límite a su indudable aplicabilidad."

Bertrand Russell, Vaguedad ("Vagueness", *The Australasian Journal of Psychology and Philosophy*, 1, 1923, p. 84), en *Antología Semántica*, compilada por Mario Bunge, Traducciones de Mario Bunge, Emilio O. Colombo, Estela Arias y Lilia Fornasari), Ediciones Nueva Visión, Buenos Aires, 1960, pp. 17-18.

⁵⁰⁸Aristotle, *Topics*, I, 8, 103b14-15.

Aristotle, *Topics*, I, 8, 103b14-15, in *The Complete Works of Aristotle, The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 172.

Aristóteles, *Tópicos*, I, 8, 103b14-16, en *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 102.

On Aristotle's *Topics*, see:

Eug. Thionville, *De la Théorie des Lieux Communs dans les Topiques d'Aristote et des Principales Modifications qu'elle a Subies jusqu'à nos Jours*, Thèse Présentée à la Faculté des Lettres de Paris, Réimpression de l'édition de 1855, Osnabrück, Otto Zeller, 1965, 132 pp.

Aristote *Topiques*, Tome I, Livres I-IV, Texte Établi et Traduit par Jacques Brunschwig, Société d'Édition "Les Belles Lettres", Paris, 1967, CXLVIII pp., 177 pp.

Aristotle On Dialectic, *The Topics*, Proceedings of the Third Symposium Aristotelicum, Edited by G.E.L. Owen, At The Clarendon Press, Oxford, 1968, viii pp., 346 pp.

Ivan Pelletier, *La Dialectique Aristotélicienne, Les Principes Clés des Topiques*, Bellarmin, Montréal, 1991, 419 pp.

Alike any other writer who uses natural language, a legislator may eliminate both syntactic and semantic ambiguity, whereas vagueness may not be eliminated, only reduced. Doubts will always exist if some marginal concrete cases likely to appear remain included or excluded from formulated abstract definitions. To reduce the ambiguity of quantitative concepts, numbers may be used; in the case of qualitative concepts, all their species (*divisio*) or all their parts (*partitio*) may be enunciated, or replaced by other quantitative concepts, for example, the maturity that capacity requires upon attainment of the legal age, established by a certain number of birth anniversaries.⁵⁰⁹

RULE: To reduce ambiguity:

- a) in the definitions of quantitative concepts, numbers shall be used in their formulation.
- b) in the definitions of qualitative concepts, all their parts shall be enunciated (*partitio*), all their species (*divisio*),⁵¹⁰ or qualitative concepts shall be replaced by quantitative concepts.

Nominal definitions

In nominal definitions, the equivalence between the meaning of a name and the linguistic formula of a concept is established; thus the speech is abridged, since it is enough to use the name instead of the set of words that constitutes its linguistic formula.

The introduction of a definition just to abridge the speech is only justified if it turns out very uncomfortable to repeat the linguistic formulation of the concept⁵¹¹ and no appropriate usual name exists.

Robin Smith, Aristotle Topics, Books I and VIII, Translated with a Commentary, Clarendon Press, Oxford, 1997, XXXV pp., 207 pp.

Paul Slomkowski, Aristotles's Topics, Brill, Leiden, New York, Koln, 1997, VIII pp., 218 pp.

Alexander of Aphrodisias, On Aristotle Topics 1, translated by Johannes M. Van Ophuijsen, Cornell University Press, 2001, X, 228 pp.

Aristotele, Topici, Organon, a Cura di Giorgio Colli, Adelphi, Edizioni, Milano, 2003, pp. 407-643; pp. 917-1003.

Cicero, Topics, VI, 29.

Cicéron, Topiques, VI, 29, dans Cicéron, Divisions de L'Art Oratoire, Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition Les Belles Lettres, Paris, 1960, pp. 75-76.

On Cicero, Topics, see:

Studi sui "Topica", di Cicerone, Benedetto Riposati, Edizioni dell'Università Cattolica del S. Cuore, Serie Pubblicazioni, Volume XXII, Società Editrice "Vita e Pensiero", Milano, 1947, Sommario, Introduzione XV pp., Pianta Topica s.p., 338 pp; La definitio, pp. 53-79; La Partium Enumeratio, pp. 80-84.

Boethius's in Ciceronis Topica, Translated, with Notes and Introduction, by Eleonore Stump, Cornell University Press, Ithaca and London, 1988, 277 pp.

Tobias Reinhardt, A Commentary on Cicero's Topica, Corpus Christi College, Submitted for: D. Phil, 2000, British Thesis Service, 339 pp., D 211110.

Tobias Reinhardt, Cicero's Topica, Edited with an Introduction, Translation, and Commentary, Oxford University Press, New York, xvi + 435 pp.

⁵⁰⁹Jean Dabin, La Technique de l'Élaboration du Droit Positif Spécialement du Droit Privé, Établissements Émile Bruylant, Bruxelles, Librairie du Recueil Sirey, Paris, Le procedé du "chiffage", pp. 122-127; Les Spécificatiois par énumération, pp. 128-143. He does not distinguish partition (*partitio*) from division (*divisio*), like in the rhetorical tradition, where there are two methods of defining when the enumerations of the members (*partitio*) or of the species (*divisio*) are exhaustive.

⁵¹⁰Cicero, Topics, V, 28, VI-VII, 30-31.

Cicéron, Topique, V, 28, VI-VII, dans Cicéron, Divisions de l'Art Oratoire, Topiques, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles Lettres", Paris, 1960, p. 25, p. 76.

RULE: Nominal definitions shall be introduced only to abridge the speech, when it turns out very uncomfortable to repeat the linguistic formulation of the concept and no appropriate usual name exists.

RULE: Neither shall the same name be used as an equivalent for the linguistic formulae of several concepts, nor more than one name shall be used as an equivalent for the linguistic formulae of the same concept.⁵¹²

When the purpose sought consists in abridging the exposition only, but once the equivalence between the meaning of a name and the linguistic formula of a concept is established the name is no longer used in the rest of the speech, the definition turns out unnecessary, since there will be no opportunity to carry out replacements.

RULE: When definitions are established only to abridge the exposition (nominal definitions), but the name is no longer used in the rest of the speech, they shall turn out unnecessary.

The mental replacement of the linguistic formulation of a concept by a name not only abridges the speech, but also favors memorizing it, enhances the comprehension of the meaning and facilitates the discussion of the issues raised. It has the advantage of simplifying the speech, since what is understood with only one strike of attention, which in turn depends on the length of the symbols used, is better received; but it has the disadvantage of disregarding that the presence of many words serves to remember that a complex issue is being dealt with.⁵¹³

RULE: Nominal definitions shall abridge the speech, favor memorizing it, facilitate the comprehension of the meaning and simplify the discussion of the issues raised, but they shall lead to forgetting that a complex issue is being dealt with.

Mixed definitions

A mixed definition formulates a concept linguistically and establishes the only denomination of such concept that will be consistently used in the rest of the speech.

Due to the disparity of certain concepts and denominations in juristic writings, the German Civil Code of 1900 (B.G.B), established mixed definitions. It formulated the concepts and placed the respective *nomen iuris* only once between parentheses. With the linguistic formulation of the concept, it intended to eliminate the discrepancies existing among juristic writings and, as it established the *nomen iuris*, it looked for the concision of the prescriptive speech, since it turned out unnecessary to repeat the linguistic formulae of the concepts to use them in other provisions, since being it enough to use their denomination.⁵¹⁴

⁵¹¹Richard Robinson, Definition, Oxford University Press, Reprinted from Corrected Sheets of the First Edition, Oxford, 1954, 1962, 1965, pp. 80-81.

⁵¹²Richard Robinson, Definition, Oxford University Press, Reprinted from Corrected Sheets of the First Edition, Oxford, 1954, 1962, 1965, pp. 81-82.

⁵¹³Richard Robinson, Definition, Oxford University Press, Reprinted from Corrected Sheets of the First Edition, Oxford, 1954, 1962, 1965, p. 68; p. 79.

⁵¹⁴Code Civil Allemand, Traduit et Annoté, par R. Saleilles, Paris, 1904, p. XXXI.

RULE: A mixed definition shall extend, restrict or formulate a concept and shall establish the only denomination of such concept which will transparent it consistently, so that the prescriptive speech will gain clarity and concision.

Persuasive definitions

Conceptual, nominal and mixed definitions serve to obtain clarity and concision in the speech. Clarity, because they reduce ambiguity and eliminate vagueness, introducing, extending or restricting the meaning of words. Concision, because they allow to use a denomination instead of the linguistic formulation of a concept. However, persuasive definitions are not formulated to achieve clarity or concision in the speech, but as emotional arguments (*pathos*).⁵¹⁵

Persuasive definitions are those that, with an apparent impartiality, re-defines the descriptive meaning of words while retaining their emotional meaning, so that, generally in a secret way, they direct the emotion to the new object,⁵¹⁶ to move the wills. They will be open to criticism if they remain secret and without the respective reasonable justification in the persuasive speech.

In a nutshell:

RULE: Definitions may be resorted to when it is intended to:

- a) introduce, extend or restrict concepts;
- b) reduce ambiguity;
- c) eliminate ambiguity;
- d) abridge the speech;
- e) re-define the descriptive meaning and retain the emotional meaning, if acceptable reasons are given to justify them in the persuasive speech.

RULE: To introduce definitions, the following formulae shall be used, depending on whether such definitions are:

- a) conceptual: X, where X represents the linguistic formulation of the concept;
- b) nominal: "In the present law "X" will be denominated "Y", where "X" mentions the linguistic formulation of the concept, and "Y" mentions the *nomen iuris*;
- c) mixed: X (Y) where X, without quotation marks, represents the linguistic formulation of the concept, and (Y) the *nomen juris* appears between parentheses, instead of appearing between quotation marks, as in the nominal definition.

All definitions, whether nominal, conceptual, mixed or persuasive, make the tasks of both legislators and interpreters heavier, because instead of abiding only by the established meaning, they also have to remember the equivalence stipulated between the

⁵¹⁵Perhaps it would be necessary to add the definitions intended to show the legislator in a more favorable way (*ethos*).

⁵¹⁶They considers them to be a particular argument species:

C. L. Stevenson, Persuasive Definitions, *Mind*, XLVII (1938), pp. 334-350, in *Ethics And Language*, Yale University Press, New Haven, 1944. The article of *Mind* also was reproduced then in *Facts and Values, Studies in Ethical Analysis*, Yale University Pres, Yale University Press, New Haven and London, 1963, pp. 32-54.

Richard Robinson, *Definition*, Oxford University Press, from *Corrected Sheets of the First Edition 1954*, 1962, 1965, London, p. 168.

Douglas Walton, "Persuasive Definitions and Public Policy Arguments", *Argumentation and Advocacy, The Journal of the American Forensic Association*. 37 (Winter 2001), pp. 117-132.

concept, its linguistic formula and the nomen iuris, and to practice a mental replacement in a consistent way as they used or interpret the nomen or the formula,⁵¹⁷ these being the reasons why it is convenient to introduce the least possible number of definitions.

RULE: It is convenient to introduce the least possible number of definitions, so as not to make both the legislator's expression and the interpreter's comprehension heavier.

RULE: Before finishing the composition of a prescriptive speech, useless definitions, persuasive definitions not justified in the persuasive speech and the inconsistent use of the language with regard to the admitted definitions shall be eliminated.

For the purposes of obtaining reasonable things to say, in addition to legislative definitions, the following topics may be resorted to.

Genres

RULE: The things, which genres are different, shall themselves be different as well.⁵¹⁸

Species

RULE: The properties of the genre shall survive in its species.⁵¹⁹

Similarities

RULE: When the same quality appears in different things (similarity), the proposition shall be the same and only one.⁵²⁰

Differences

RULE: When things are different, the proposition shall not be the same and only one.⁵²¹

⁵¹⁷Cesare Grassetti, *Le Definizioni Legale e la Riforma dei Codici*, Studi in Onore di Giovanni Pacchioni, Facoltà di Giurisprudenza della R. Università di Milano, Dott. A. Giuffrè, Milano, 1939, pp. 312-313, n. 32.

Richard Robinson, *Definition*, Oxford University Press, Reprinted from *Corrected Sheets of the First Edition*, Oxford, 1954, 1962, 1965, p. 78.

⁵¹⁸Cicero, *Topica*, III, 13.

Cicéron, *Topique*, III, 13, dans *Divisions de l'Art Oratoire. Topiques*, Texte Établi et Traduit par Henri Bornecque, deuxième Édition, Société d'Édition "Les Belles Lettres", Paris, 1960, p. 71.

Boethius's *The Topicis Differentiis*, Book III, 1197C8-9, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 66.

⁵¹⁹Cicero, *Topica*, III, 14.

Cicéron, *Topique*, III, 14, dans *Cicéron, Divisions de l'Art Oratoire. Topiques*, Texte Établi et Traduit par Henri Bornecque, deuxième Édition, Société d'Édition "Les Belles Lettres", Paris, 1960, p. 71.

Boethius's *The Topicis Differentiis*, Book III, 1197C189, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 66.

⁵²⁰Boethius's *The Topicis Differentiis*, Book III, 1197 D, 33-35, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 66.

⁵²¹Boethius's *The Topicis Differentiis*, Book III, 1197 D, 33-35, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 66.

Contraries

RULE: Where contraries were:

- a) adverse (white/black); exclusive (justice/injustice), negatives (to live/not to live), it shall not be possible to reconcile one another;
- b) relative (master/servant), one will not happen without the other.⁵²²

Concomitances

RULE: When things were associated with others, it will be possible to consider concomitant circumstances,⁵²³ in which case a rebuttable or disputable presumption shall be established, in line with the force of conviction of such circumstances.

Precedents, consequents and incompatibles

RULE: When a proposition is conditional:

- a) if the precedent is affirmed, the consequent will follow;⁵²⁴
- b) if the consequent is negated, the precedent will be negated;⁵²⁵
- c) the consequences of contraries (incompatibles), will not be found at the same time in the same thing;⁵²⁶

Causes

RULE: When an efficient cause happens, the effect shall not be absent.⁵²⁷

Effects

RULE: When an effect happens, the efficient cause shall not be absent.⁵²⁸

Comparisons

RULE: When comparisons are made:

⁵²²Boethius's *The Topicis Diferentiis*, Book III, 1197B36-40; 1198A1-12 Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, pp. 66-67.

⁵²³Cicero, *Topica*, XI, 50-52

Cicéron, *Topique*, XI, 50-52, dans *Cicéron, Divisions de l'Art Oratoire*, *Topiques*, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition "Les Belles Lettres", Paris, 1960, pp. 82-83.

Boethius's *The Topicis Diferentiis*, Book III, 1198 A-B, 12-35, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 67.

⁵²⁴Boethius's *the Topicis Diferentiis*, Book III, 1198D26-27, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 68.

⁵²⁵Boethius's *the Topicis Diferentiis*, Book III, 1198D28-29, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 68.

⁵²⁶"Together", must be understood as "in the same thing":

Boethius's *the Topicis Diferentiis*, Book III, 1199A30-36, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 68; *Notes To Book III*, 38, p. 133.

⁵²⁷Boethius's *Topicis Diferentiis*, Book III, 1199A (in fact B) 5-6, Translated, with Notes and Essays on The Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 69.

⁵²⁸Boethius's *Topicis Diferentiis*, Book III, 1199A (in fact B) 11-12, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 69.

- a) what will be reputed good for the biggest thing, shall be reputed good for the smallest one.⁵²⁹
- b) what will be reputed good for the smallest thing, shall be reputed good for the biggest one;⁵³⁰
- c) with regard to equal things, the proposition shall be the same and only one.⁵³¹

Possibility (*status coniecturae*)⁵³²

RULE: When the problem or the proposed solution may not even happen,⁵³³ it is not necessary to deliberate, to prepare either the prescriptive speech or the persuasive one. He who shall notice the impossibility, shall see beyond between parentheses the others.

If the bill were enacted and published, it would not contain legal prescriptions applicable to all, being that the impossible thing does not oblige, not even in any of the cases described above, since such prescriptions would represent mere pious desires, which would not achieve the purpose sought by the legislator at the time he established them. An old example of impossibility of application is to have punished those who committed adultery with the deprivation of sight in a case in which the accused was a blind person.

⁵²⁹Boethius's *Topicis Differentiis*, Book III, 1199A (in fact B) 22-23, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, p. 69.

⁵³⁰Boethius's *Topicis Differentiis*, Book III, 1199A (en realidad B) 32-33 Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 69.

⁵³¹Boethius's *Topicis Differentiis*, Book III, 1199A (really B) 39-40, Translated, with Notes and Essays on the Text by Eleonore Stump, Cornell University Press, Ithaca and London, 1978, p. 69.

⁵³²On *Status coniecturae* in the rhetorical tradition, see:

Aristotle, *Rhetoric*, Book II, 19, 1392a-b.

Aristotle, *Rhetoric*, II, 19, 1392a-b, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2217-2219.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro II, 1392a-b, Editorial Gredos, Madrid, 1990, p. 395; n. 219, pp. 396-400.

Aristote, *Rhétorique*, Livre II, 19, 1392a-b, Texte Établi et Traduit par Médéric Dufour, Société d'Édition "Les Belles Lettres", Tome Deuxième, Paris, pp. 100-101.

Aristotele, *Retorica*, II, XIX, 1392a-b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 127-130.

Quintilian, *The Institutio Oratoria of Quintilian*, Book III, viii, 16.

Quintilian, *The Institutio Oratoria of Quintilian*, Book III, viii, 16, with an English Translation by H.E. Butler in Four Volumes, Volume I, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons, New York, 1921, pp. 486-487.

Quintilien, *Institution Oratoire*, Livre III, 8, 16, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome IV, Paris, 1976, p. 200.

Heinrich Lausberg, *Manual de Retórica Literaria. Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik. Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 231, pp. 206-207.

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation for Literary Study*, Translated by Matthew T. Bliss, Annemiek Jansen, David Norton, Edited by David Orton & R. Dean Anderson, Brill, Leiden, Boston, Köln, 1998, number 231, pp. 98-99

⁵³³Hermogenes, *Progymnasmata*, 27.

Hermógenes, *Ejercicios de Retórica*, 27, en Teón, Hermógenes, Aftonio, Introducción, Traducción y Notas de Ma. Dolores Reche Martínez, *Ejercicios de Retórica*, Editorial Gredos, Madrid, 1991, p. 199.

Feasibility

RULE: If norms were very difficult to apply, they shall be equated to impossible ones.

To have ordered not to lie in a public square is another old example, in this case of the assimilation of the impracticable to the impossible thing.⁵³⁴

Probability

RULE: If the problems to be resolved by means of legislation are possible, but highly improbable, no legislation shall be enacted either, since it shall fall short of contemplating all the things likely to happen some day; it will be enough to legislate on the things that happen ordinarily.⁵³⁵

It would be possible, but improbable, for example, to establish stringent earthquake-proof rules in a zone that has never suffered from either earthquakes or earth tremors and is far away from areas exposed to these dangers, according to the unanimous opinion of the experts in the matter.

Necessity

RULE: A bill shall be necessary when it answers a social request, provided always that the contemplated result may be obtained not by means of other available, political or juridical instruments, but by means of a law.⁵³⁶

Opportunity

A bill may have been convenient or inconvenient yesterday and stop being so today or tomorrow; the prudence of a legislator, like that of a navigator or a medical doctor, in addition to the knowledge of the rules of their respective arts, requires the ability to identify the propitious moment for the action or abstention, an ability that turns very difficult to teach and learn.⁵³⁷

⁵³⁴For the previous example of the blind person and this one, see:

Aelius Théon *Progymnasmata*, 131-132, *Texte Établi et Traduit par Michel Patillon avec l'Assistance pour l'Arménien de Giancarlo Bolognesi, Société d'Édition "Les Belles Lettres"*, Paris, 1997, pp. 99-100.

⁵³⁵Digest, 1.3.10.

Digesta 1.3.10, *Corpus Iuris Civilis, Editio Steriotipa Octava, Volumen Primum Digesta, Recognovit, Theodorus Mommsen, apud Weidemanns, Berolini*, 1899, p. 6.

Digesto 1.3.10, *El Digesto del Emperador Justiniano, Traducido y Publicado por el Licenciado don Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos Más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Tomo I, Madrid, 1872, p. 42.*

⁵³⁶Both Thibaut and Savigny wanted certain, just civil laws, and the unity of the nation and of the scientific efforts towards the same target, but the former first asked for a Code, whereas the latter sought for an organic and progressive science of the law that could be common to the whole nation: Savigny, "De la Vocación de Nuestra Época para la Legislación y la Ciencia del Derecho" (1814), in Thibaut y Savigny, *la Codificación, una Controversia Programática Basada en sus Obras sobre La necesidad de un Derecho Civil General para Alemania y de la Vocación de Nuestra Época para la Legislación y la Ciencia del Derecho, con Adiciones de sus Autores y Juicios de sus Contemporáneos, Introducción y Selección de Textos de Jacques Stern, Traducción del Alemán de José Díaz García, Aguilar, Madrid, 1970, pp. 168-169.*

⁵³⁷Isocrates, *Against the Sophists*, 13; *Helen*, 11; *Panegyricus*, 9.

RULE: A project will be opportune if promoted in the propitious time for its approval; inopportune, if promoted in the propitious time for its rejection, unless rejection has been looked for.

Merit

RULE: Rewards and punishments shall be established in accordance with the merit of the respective conducts, and they shall be neither insufficient nor excessive.⁵³⁸

Justice

Justice⁵³⁹ shall consist in the virtue of producing or distributing equality,⁵⁴⁰ that is to say, in the constant and perpetual will to give each one what is his,⁵⁴¹ so that, there shall be injustice in the cases of inequality.

Isocrates with an English translation by George Norlin, Volume I, Panegyricus, 9, William Heineman Ltd., London, G.P.Putnam's Sons, New York, 1928, pp. 124-125; Volume II, Against the Sophists, 13, 1929, pp. 170-171; Volume III, with an English translation by Larue Van Hook, Helen, 11, First Printed 1945, Reprinted 1954, 1961, pp. 66-67.

Isócrates Discursos, Introducción Traducción y Notas de Juan Manuel Guzmán Hermida, Editorial Gredos, Tomo I, Contra los Sofistas, 13, Madrid, 1979, p. 162; Elogio de Helena, 11, p. 169; Tomo II, Panegírico, 9, p. 202.

Isocrate Discours, Texte Établi et Traduit par Georges Mathieu et Émile Brémond, Société d'Édition "Les Belles Lettres", Tome I, Contre Les Sophistes, Paris, 1928, pp. 147-148; Éloge d'Hélène, 11, p. 166; Tome II, Cinquième Tirage Revu et Corrigé, Panégyrique, 9, Paris, 1967, p. 16.

Aristotle, Magna Moralia, Book I, 1196a38; Nicomachean Ethics, Book II, 1104a5.

Aristotle, Magna Moralia, Book I, 1196a38; Nicomachean Ethics, II, 1104a5, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 1894; p. 1744.

Aristóteles Ética a Nicómaco, II, 1104a5, Edición Bilingüe y Traducción por María Araujo y Julián Marías, Introducción y Notas por Julián Marías, Centro de Estudios Constitucionales, 1a. Edición 1949, 2a. Edición 1970, 3a. Edición 1981, Madrid, 1981, pp. 20-21.

Pierre Aubenque, La Prudence Chez Aristote, PUF, Paris, 1re Édition 1963, 2a. Édition 1976, pp. 95-105, p. 102.

⁵³⁸Theon, Progymnasmata, 132.

Aelius Théon, Progymnasmata, 132, Texte Établi et Traduit par Michel Patillon avec l'Assistance pour l'Arménien de Giancarlo Bolognesi, Société d'Édition "Les Belles Lettres", Paris, 1997, p. 101.

On the principle of proportionality between crime and punishment, and on the universal silence of the legislation at that time, see:

Beccaria e il Diritto Penale, Saggio di Cesare Cantú, G. Barbera Editore, Appendice, Dei Delitti e Delle Pene XXII, Firenze, 1862, p. 461 (Come si Prevengono i Delitti. Ricompense), pp. 430-432 (Proporzione fra Delitti e le Pene).

Cesare Beccaria, De los Delitos y de las Penas, Edición Crítica Bilingüe y Estudio Preliminar por Francisco P. Laplaza, Ediciones Arayú, Buenos Aires, 1955, p. 305 (XLIV Recompensas) y p. 453 (XLI Come si Prevengono i Delitti); pp. 192-195 (VI Proporción Entre los Delitos y Las Penas), pp. 397-402 (XXIII Proporzione Fra Delitti e le Pene).

⁵³⁹Demosthenes, XX Against Leptines, 94.

Demosthenes, XX Speech Against Leptines, 94, in Demosthenes with an English Translation by J. H. Vince, The Loeb Classical Library William Heinemann Ltd, London, G. P. Putnam's Sons, New York, 1930, pp. 552-554.

Demóstenes, XX Contra Leptines, 94, Introducción, Traducción y Notas de A. López Eire, en Demóstenes, Discursos Políticos, Editorial Gredos, Tomo II, Madrid, 1985, pp. 219-220.

⁵⁴⁰Aristotle, Topics, VI, 5, 143b15-16.

Expediency

Expediency shall consist in utility or profit, so that there shall be unsuitability in the cases of uselessness, of harmfulness, or of both simultaneously.

RULE: The approval of a bill shall be suitable if it shall preserve the current advantages and add new ones, if it shall get rid of current disadvantages and not create new ones.

Juridical security⁵⁴²

Juridical security shall consist in the predictability of the juridical consequences of human actions, so that the subjects under the law may rely on such result and direct their respective conducts with the guarantee of the law.⁵⁴³

Harmonization of justice, expediency and juridical security

Experience indicates that the best laws harmonize the requirements of justice, expediency and juridical security, and reveal the secular process of the enhancement of the wisdom and eloquence that supports them, irrespective of the historical circumstances in which the political tensions in every society are overcome. When any of the requirements exceeds certain limits, whether in the short, medium or long term, the laws shall not be spontaneously complied with and, irrespective of how much coercion may be inflicted, they shall finally be no longer applied.⁵⁴⁴

Topics, VI, 5, 143b15-16, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 241.

Aristóteles, Tópicos, VI, 5, 143b16-17, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 235. Aristotle,

Aristotele, Topici, VI, 5, 143b 16-17, *Organon, a Cura di Giorgio Colli, Adelphi, Edizioni, Milano, 2003, p. 563.*

⁵⁴¹Digest I.1.10.

D. I. 1. 10, *Corpus Iuris Civilis, Editio Stereotipa Octava, Volumen Primum Digesta, Recognovit, Theodorus Mommsen, Apud Weidemanos, Berolini, 1899, p. 1.*

D. I. 1. 10, *El Digesto del Emperador Justiniano, Traducido y Publicado por el Licenciado don Agustín Rodríguez de Fonseca, Nueva Edición Aumentada con la Traducción de Los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Tomo I, Madrid, 1872, p. 33.*

⁵⁴²In general, see a selection of the works presented in the Third Congress of Philosophy of the Law and Juridical Sociology, held in Rome, 1937-1938, in:

Le Fur, Delos, Radbruch, Carlyle, *Los Fines del Derecho, Bien Común, Justicia, Seguridad*, traducción de Daniel Kuri Breña, Universidad Autónoma de México, Segunda Edición, Imprenta de la Universidad, 1958 (primera edición en español, Editorial Jus, S.A., 1944), México, 1958, 163 pp.

Especialmente, see:

Sebastián Soler, *Las Palabras de la Ley*, Fondo de Cultura Económica, México, 1969, pp. 181-190.

Paul Roubier, *Théorie Général du Droit*, 2e. édition revue et augmentée (1re. édition, 1947), Librairie du Recueil Sirey, Paris, 1951, pp. 317-334.

⁵⁴³Paul Roubier, *Théorie Général du Droit*, 2e. édition revue et augmentée (1re. édition, 1947), Librairie du Recueil Sirey, Paris, 1951, p. 324.

⁵⁴⁴In relation to the conflict between justice and juridical security, to which expediency may be added: "It is possible that order reigns in an unjustly organized society where the power will manage to impose it perhaps momentarily; but the apparent peace founded on fear, and the order imposed by force, will have a very ephemeral life. The conflict between justice and juridical security always happens within certain limits very close to one another. When an arbitrary power tries to penetrate them, and create a security

RULE: A prudent legislator shall harmonize the requirements of justice, expediency and juridical security, whenever possible.

After having obtained the acceptable things to say, the things to say acceptable only in appearance (sophisms), the last item of the prompuary will be dealt with next.

6. Sophisms

Here follows a discussion over sophisms in general and, in particular, over legislative sophisms in the wide sense (deliberative sophisms and legislative sophisms in the strict sense).

a. Sophisms in general

The things to say or already said, acceptable only in appearance, are called sophisms, because they were used in ancient Greece times by certain itinerant teachers of rhetoric, the sophists, who, in exchange for money, promised to teach the art of winning any discussion (eristics), both with acceptable things and with things acceptable only in appearance, since they and their disciples preferred to appear as wise persons without being so, rather than to be wise persons without appearing as such, according to the interpretation of Plato⁵⁴⁵ and Aristotle⁵⁴⁶ about the sophists. They are also called

state on the foundations of a completely unjust law, security disappears, the bad law is violated, and resistance is organized, to culminate, in extreme cases, with a revolution and the violent rupture of an unbearable situation. What was said as regards the whole juridical system, may be said as regards any norm in isolation. The authority is capable of applying coactively an unjust law; but if the injustice of the precept goes beyond certain limit, its recipients refuse to comply with it, and violate it systematically." Translation from Spanish to English by the author of this book.

"Es posible que en una sociedad injustamente organizada impere el orden; el poder logrará quizás imponerlo momentáneamente; pero la paz aparente, fundada en el temor, y el orden impuesto por la fuerza, tendrán vida muy efímera. El conflicto entre justicia y seguridad jurídica se da siempre dentro de ciertos límites, muy cercanos entre sí. Cuando un poder arbitrario intente traspasarlos, y crear un estado de seguridad sobre los cimientos de un derecho completamente injusto, la seguridad desaparece, la ley mala es violada, y la resistencia se organiza, para culminar, en casos extremos, con la revolución y la ruptura violenta de una situación insostenible. Lo que se afirma en relación con todo un sistema jurídico, puede decirse en relación con cualquier norma aislada. La autoridad es capaz de aplicar coactivamente una ley injusta; pero si la injusticia del precepto va mas allá de cierto límite, sus destinatarios se resisten a cumplirla, y lo violan sistemáticamente."

Eduardo García Maynez, *El Problema Filosófico-Jurídico de la Validez del Derecho*, Imprenta Mundial, México, 1935, p. 85.

⁵⁴⁵Plato, *The Sophist*, 268c.

Platon, *Le Sophiste*, 268c, dans *Oeuvres Complètes de Platon*, Traduction Nouvelle et Notes par Léon Robin avec la collaboration de M.J. Moreau, Bibliothèque de la Pléiade, T. II, pp. 337-338.

⁵⁴⁶Aristotle, *On Fallacies*, 1, 165a20-30.

Aristotle on Fallacies, or the Sophistici Elenchi, I., with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 5.

Aristotle, *On Fallacies*, 1, 165a 20-30, in *The Complete Works of Aristotle*, The Revised Oxford Translation. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 279.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 1, 165a20-30, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 310-311.

Aristotele, *Confutazione Sofistiche*, 1, 165a 20-30, da *Organon a Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, pp. 648-649.

fallacies, because the Latin word *fallacia* means “deceit”⁵⁴⁷ and because it comes from the Greek *sphal*, "cause of the fall", related to the struggle, but also used to express "cause of the fall due to argument".⁵⁴⁸

The things to say or already said, acceptable in appearance only (sophisms), conceal defects that, if noticed, would make them unacceptable. They must be studied to avoid deceit, not to teach how to cause them, like poisons are studied in medicine: to treat illnesses or to discover crimes, not to teach how illness may be worsened or injuries and murders committed. Thus, potentially cheated individuals will be able to know in advance the diagnosis and therapy applicable to sophisms, whether they be provoked by involuntary errors (of their own or of third parties) or voluntarily by third parties (simulations and dissimulations).

PRINCIPLE: Sophisms shall to be studied in order to refute them, not to commit them.

PRINCIPLE: Legislators and advisers shall not let themselves be deceived by sophisms, shall not cheat others, and shall prevent others from deceiving themselves or from cheating others.⁵⁴⁹

The target of Aristotle's attacks would not be the sophists of the first generation (Protagoras, Gorgias, Hippias, etc.), but the Megarians.

Aristóteles, *Les réfutations sophistiques*, 1, 165a 20-30, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, Introduction, pp. 52-53; 111-112; pp. 120-121.

Without having to determine if the target there were two generations of sophists, only the first one, or only the second one, it is not possible to forget the Megarians, a Socratic school of philosophy founded by Euclides of Megara (c 450-380 B.C.), since:

1) in the discussions they were attacking, generally with questions, not the premises, but the conclusions of the adversary, leading him to contradict these:

Anton Dumitriu, *History of Logic*, Revised, updated and enlarged translation of the second edition of the single volume Roumanian work, *Istoria Logicii*, by Anton Dumitriu, published by Editura Didactica, Bucarest, 1975, Translated by Duiliu Zamfirescu, Dinu Giurcaneanu, Doina Doneaud; translation edited by the staff of Abacus Press, England, printed in Roumania, Volume I, pp. 130-131;

2) "megarian questions" was the nickname given to sophistry:

The *Oxford Classical Dictionary*, Third Edition, Edited by Simon Hornblower and Antony Spawforth, Oxford University Press, New York, 1996, megarian school, p. 951;

3) Eubulides of Miletus, disciple of Eucleides of Megara, was Aristotle's enemy and often criticized him: Diogène Laercè, *Vie, Doctrines et Sentences des Philosophes Illustres*, Traduction, notice et notes par Robert Genaille, Garnier-Flamarion, Vol. I, Paris, 1965, p. 143.

⁵⁴⁷ Félix Gaffiot, *Dictionnaire Illustré Latin Français*, Librairie Hachette, Paris, 1967, p. 651.

⁵⁴⁸ Douglas Walton, *A Pragmatic Theory of Fallacy*, The University of Alabama Press, Tuscaloosa and London, 1995, p. 250.

⁵⁴⁹ Aristóteles, *On Fallacies*, 1, 165a24-25.

Aristotle on Fallacies, or the *Sophistici Elenchi*, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, I, pp. 4-5.

Aristotle, *Sophistical Refutations*, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, 1, 165a 24-25, p. 279.

Aristóteles, *Sobre las Refutaciones Sofísticas*, en *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, 1, 165 a 24-25, p. 311.

Aristotele, *Confutazione Sofistiche*, *Organon a Cura di Giorgio Colli*, Einaudi, 1995, *Adelphi*, 2003, 1, 165 24-25, pp. 648-649.

Aristote, *Les réfutations sophistiques*, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, 1, 165a 24-25, p. 120.

The study of sophisms in certain opinions acceptable only in appearance, will begin with the Colours of Good and Evil, dealt with in the book *Of the Dignity and Advancement of Learning* (*De Dignitate et Augmentis Scientiarum*), of Francis Bacon.⁵⁵⁰ The study of the sophisms in general will be based on Aristotle's *Sophistical Refutations*.⁵⁵¹ Neither of these works will be exposed completely, nor will the study of sophisms be reduced to them; they will be just the starting point.

Refutations may be normal or pathological. Normal refutations contradict the sayings of others with arguments. *Sophistical Refutations* belong to the genre of the occult pathological arguments: they are apparent refutations.

It has already been said, when dealing with the integral parts of the *Promptuary*, that opinions may paint themselves up with the colors of good and evil to motivate conducts and, also, to pretend acceptability and conceal defects (sophisms). Bacon wrote a set of twelve examples of sophisms in the opinions, with their corresponding "answers" (refutations), of which only two will be transcribed, the first and the fifth ones, as a genuine sample of the aforesaid set.

EXAMPLES:

"Examples of the Colours of Good and Evil, both Simple and Comparative.

"SOPHISM

1. *What men praise and honour is good; what they dispraise and condemn is evil.*

ANSWER.

This Sophism deceives in four ways; by reason of ignorance, of bad faith, of party spirit and factions, of the natural dispositions of those who praise and blame. By reason of ignorance; for what is popular judgment worth as a test of good and evil? Better was Phocion's inference, who when the people applauded him more than usual, asked whether he had done wrong.¹ By reason of bad faith, because in praising and blaming, men are commonly thinking of their own business, and not speaking what they think.

Laudat venales, qui vult extrudere, merces.²

And again; "It is naught, it is naught (says de buyer); but when he is gone his way, he will vaunt."³ By reason of factions; for any man may see that men are wont to exalt those of

⁵⁵⁰[Bacon], *The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of the Philosophical Works, Vol. I, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, New Edition, Longman & Co., etc, London, 1883, pp. 458-472.*

⁵⁵¹Aristotle on Fallacies, or the *Sophistici Elenchi*, VI, with a Translation and Notes by Edward Poste, Macmillan and Co., 1866, 252 pp.

Aristotle, *Sophistical Refutations*, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, pp. 278-314.

Aristóteles, *Sobre las Refutaciones Sofísticas*, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 307-382.

Aristotele, *Confutazione Sofistiche*, da *Organon a Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, Milano, pp. 647-725; pp. 1007-1030.

Aristote, *Les réfutations sophistiques*, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, X pp; 476 pp.

Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University Of New York Press, New York 2003, XV pp; 248 pp.

their own party with immoderate praises, and depress below their desert those of the contrary. By reason of natural disposition; for some men are by nature formed and composed for servile adulation, while others on the contrary are crabbed and captious; so that in praising and blaming they do but gratify their own dispositions, with little regard for truth.

1 Plutarch, in Phocion, c. 8.

2 Hor. Ep. ii 2. 11. [The merchant praises what he wants to sell.]

3 Proverbs, xx. 14.⁵⁵²

"SOPHISM.

5. *That which the other parties or sects agree in giving the second place (each putting itself first) seems to be the best; for it seems that in taking the first place they are moved by zeal and partiality, but in bestowing the second by truth and merit.*

So Cicero argues that the sect of the Academics, which maintained the impossibility of comprehending truth, was the best of the philosophies. "For (said he) ask the Stoic which is the best philosophy, and he will prefer his own to the rest; then ask him which is the next best, and he will acknowledge the Academic. So again the Epicurean (who will hardly deign to look at a Stoic), after he has placed his own philosophy at the head, will place the Academic next." In like manner, when a place is vacant, if the prince ask to each candidate whom he would most recommended next to himself, it is probable that their second votes would meet in the most able and deserving man.

ANSWER.

This sophism deceives by reason of envy. For next to themselves and their own party, men generally incline to those who are weakest and least formidable, and have given them least trouble; in despite of those who have most insulted or inconvenienced them.

1. Cf. the fragment of the Academ. ad Verr. preserved by St. Augustine.⁵⁵³

In classical tradition, the examples of sophisms are usually taken from the dialogue Euthydemus or The Disputant, by Plato⁵⁵⁴ and the systematic method, with its rules, from the work On the Sophistical Refutations (*Sophistici Elenchi*, in Latin transliteration), by Aristotle.⁵⁵⁵ The words *elenchi* and *sophistici* in the title, whether

⁵⁵²Bacon, The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, New Edition, Longman & Co., etc, London, 1883, p. 459.

⁵⁵³Bacon, The Works of Francis Bacon, Collected and Edited by James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, Vol. IV, Translation of The Philosophical Works, Vol. I, Of the Dignity and Advancement of Learning, The Sixth Book, Chap. III, New Edition, Longman & Co., etc, London, 1883, pp. 461-462.

⁵⁵⁴Euthydème ou le Disputeur, dans Oeuvres Complètes de Platon, Traduction Nouvelle et Notes par Léon Robin avec la Collaboration de M. J. Moreau, Bibliothèque De La Pléiade, Édition de la Nouvelle Revue Française, Paris, 1950, Paris, T. I, pp. 559-611, notes, pp. 1295-1303.

"[...] the most famous thesaurus of sophisms in Greek literature is Plato's Euthydemus."

Sten Ebbesen, Commentators and Commentaries on Aristotle's Sophistici Elenchi, A Study of Post-Aristotelian Ancient and Medieval Writings on Fallacies, Volume I, The Greek Tradition, E.J. Brill, Leiden, 1981, p. 15,

⁵⁵⁵Aristotle on Fallacies, or the Sophistici Elenchi, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, pp. 1-95, n. 97-172.

Aristotle, Sophistical Refutations, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 278-314.

included by the author, its publishers or commentators, provide a good synthesis of the main content of the work.

Refutation was the most important of five targets enunciated by Aristotle to gain discussions; it is in the title because it is the main topic (twenty-five out of thirty four Chapters), which eclipses the others four targets, which are briefly discussed (to make the adversary incur in: paradoxes, falsities, solecisms and mechanical repetitions of the same words).⁵⁵⁶ *Elenchus* is a transliteration to Latin of a Greek term,⁵⁵⁷ which, among other meanings, means "refutation", but also "catalog".⁵⁵⁸ In addition to being used as a transliteration, in Latin, one of its two meanings is "appendix of a book".⁵⁵⁹ The translation "Sophistical Refutations" indicates that they are of a special type, different from dialectical refutations in general and from those of Socrates and Plato in particular. Sophistical Refutations is not an independent work, but a part of the Topics, not only because the author himself⁵⁶⁰ and several of his commentators⁵⁶¹ say so, but also because, the author does so. In the Topics he presents

Aristóteles, Sobre las Refutaciones Sofísticas, en *Tratados De Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 307-384.

Aristotele, *Confutazione Sofistiche*, da *Organon a Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, pp. 645-725, n. pp. 1005-1030.

For a comparison between the Eutidemo and the Sophistical Refutations, see:

Les réfutations sophistiques, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, pp. 91-104.

⁵⁵⁶Ebbesen, Commentators and Commentaries on Aristotle's Sophistici Elenchi, A Study of Post-Aristotelian Ancient And Medieval Writings on Fallacies, Volume I, The Greek Tradition, E.J. Brill, Leiden, 1981, p. 6.

Aristote, Les réfutations sophistiques, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, pp. 23-24.

⁵⁵⁷It mentions that "elenchus" is a transliteration of the Greek word that Aristotle uses as "refutation", and which Boecio translates from the Latin word "redargutio":

William of Sherwood's, Introduction to Logic, translated with introduction and notes by Norman Kretzmann, University of Minnesota Press, Minneapolis, 1966, p. 155, n. 129.

⁵⁵⁸Henry George Liddel and Robert Scott, A Greek-English Lexicon, a New Edition Revised and Augmented Throughout by Sir Henry Stuart Jones, with the assistance of Roderick Mckenzie, and with the cooperation of many scholars, At The Clarendon Press, New (ninth) Edition completed 1940, reprinted 1948, 1951, 1953, Oxford, p. 531.

⁵⁵⁹Félix Gaffiot, Dictionnaire Illustré Latin Français, Librairie Hachette, "elenchus, i, m... appendice d'un livre", Paris, 1934, p. 581.

⁵⁶⁰Aristóteles, Sophistical Refutations, 34, 183b10.

Aristotle on Fallacies, or the Sophistici Elenchi, XXXIV, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 93.

Aristotle, Sophistical Refutations, 34, 183b10, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 313.

Aristóteles, Sobre las Refutaciones Sofísticas, 34, 183b 10, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 381.

Aristotele, *Confutazione Sofistiche*, 34, 183b10, *Organon a Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 723.

Aristote, Les réfutations sophistiques, 34, 163b10, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 202.

⁵⁶¹"[...] On Sophistical Refutations, an addendum to the Topics.", in:

a "catalog" of acceptable arguments (topic places) and the way to find them; and in *Sophistical Refutations*, a "catalog" of arguments acceptable in appearance only (sophistic places) and the way to refute them. These two catalogs differ in their content, but are identical as to the taxonomic method and the purpose sought: to facilitate the finding of really acceptable normal arguments and refutations, to be used (*Topics*); and of pathological arguments and the apparent refutations, sophisms, which deceive about their acceptability, to facilitate the corresponding diagnosis and therapy (*Sophistical Refutations*).

The taxonomic method consists in the description of certain entities by means of a systematic classification and a transparent nomenclature (that facilitates visualization of the described entity) and concise (that facilitates memorizing), to "store" data about the respective entities and "to recover them" as information when it will be desirable to use them. Further examples of certain objects of study and their respective taxonomic disciplines are: the animal kingdom and zoology; the vegetable kingdom and botany; human health and medicine; law and juridical dogmatic. Under the taxonomic method two fundamental operations are clearly distinguished: the inclusion of a new entity as a species in the classification and the determination of a concrete specimen as belonging to some of the classified species; the rule for these operations is usually expressed with the following formula: species are classified, specimens are determined. The classification of sophisms species and the determination of their specimens may not be an easy task,⁵⁶² but they should be regarded as two different operations. If a previous classification of the species did not exist, the concrete specimens could not be determined as belonging to any of them. But, if it turns out impossible to determine, then a new species will be created in the classification to include it in the catalog, in the corresponding place and with the appropriate nomenclature.

In the *Topics*, the taxonomic method allows to prepare a catalog of the species of really acceptable arguments and refutations, to facilitate their generation and use in speeches. The taxonomic method, in the *Sophistical Refutations*, makes it possible to

Robin Smith, *Aristotle Topics. Books I and VIII with excerpts from related texts*, Translated with a Commentary, Clarendon Press, Oxford, 1977, Introduction, p. xvi.

"Some of the fallacies discussed here are to be treated in *Sophistical Refutations*, which is an appendix to *Aristotle Topics*.", in:

Aristotle on Rhetoric, A Theory of Civic Discourse, Newly translated with Introduction, Notes, and Appendices by George A. Kennedy, Oxford University Press, New York, Oxford, 1995, p. 205.

"[...] des Réfutations sophistiques, comme celles des Topiques don elles sont une sorte d'appendice [...]", dans:

Aristote, *Les réfutations sophistiques*, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, Préface, p. IV; p. 25, n. 3.

⁵⁶²Aristotle, *Sophistical Refutations*, 33, 182b30.

Aristotle on Fallacies, or the Sophistici Elenchi, XXXIII, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 89.

Aristotle, *Sophistical Refutations*, 33, 182b30, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 312.

Aristóteles, *Sobre Las Refutaciones Sofísticas*, 33, 182b30, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 378.

Aristotele, *Confutazione Sofistiche*, 33, 182b30, da *Organon, A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 720.

Aristote, *Les réfutations sophistiques*, 33, 182b30, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 199.

catalog such arguments and refutations as are acceptable in appearance only, due to their defects or secret pathologies (sophisms),⁵⁶³ to facilitate the corresponding diagnosis and therapy.⁵⁶⁴ The diagnosis, which consists in determining the presence of some specimen of the species of sophisms in a speech, is facilitated because the catalog describes both the causes of the appearance of acceptability and the secret defects that they endure.⁵⁶⁵ The therapy is facilitated because suitable answers are described for every species in the catalog. Aristotle, who foresaw the difficulty of detecting and resolving sophisms in the heat of a debate,⁵⁶⁶ dedicated nine chapters of his *Sophistical Refutations* to indications to recognize (diagnosis) the sophisms (apparent normality and secret pathology), and fifteen chapters to prepare answers intended to resolve them

⁵⁶³“A catalogue of the varieties of apparent evidence which are not real evidence, is an enumeration of Fallacies.”

John Stuart Mill, *System of Logic Rationative and Inductive*, in two volumes, Longmans, Green, Reader, and Dyerr, Vol. II, London, 1872, p. 300.

⁵⁶⁴The plan of exposition in the *Sophistical Refutations* or *On Fallacies* is not given by the division of the Chapters as the point of view of the one that asks about (1-15) and of the one that answers (Chapters 16-34), but from the point of view only of the one that answers: a description of the pathological symptoms of the respective sophisms (4-11), to facilitate the diagnosis to him; and a description of the corresponding recommended treatment (16-33), to facilitate the therapy to him. Works of medicine always describe the symptoms of the illnesses and the treatments recommended from the point of view of the medical doctor, who must diagnose and recommend the therapy, although the symptoms are endured - and even sometimes reported- by the patients.

⁵⁶⁵Aristotle, *Sophistical Refutations*, 33, 182b5.

Aristotle on Fallacies, or the *Sophistici Elenchi*, XXXIII, with a Translation and Notes by Edward Poste, Macmillan and Co., 1866, p. 89.

Aristotle, *Sophistical Refutations*, 33, 182b5, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 311.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 33, 182b 5, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 376-377.

Aristotele, *Confutazione Sofistiche*, 33, 182b5, da *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 719.

Aristote, *Les réfutations sophistiques*, 33, 182b5, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 197.

Saint Thomas d-Aquin, *Sur les tromperies, á quelques nobles artistes*, traduction par Yvan Pelletier, Chapitre IV, #645, dans: www.profs.fr.ulaval.ca/YPelletier/site_yp/Textes/trad/Tromperies.pdf, p. 8; de Divi Thomae Aquinatis, "Opuscula Philosophica", Cura et studio P. Fr. Raymundi M. Spiazzo, O.P., Torino, Marietti, 1954. pp. 223-240, según e@mail del profesor Pelletier de fecha 23/08/04.

Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University Of New York Press, New York 2003, p. 81.

⁵⁶⁶Aristotle, *Sophistical Refutations*, 16, 175a20.

Aristotle on Fallacies, or the *Sophistici Elenchi*, XVI, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 53.

Aristotle, *Sophistical Refutations*, 16, 175a20, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 297.

Aristóteles, *Sobre Las Refutaciones Sofísticas*, 16, 175a20, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 348.

Aristotele, *Confutazione Sofistiche*, 16, 175a20, da *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 688.

Aristote, *Les réfutations sophistiques*, 16, 175a20, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, pp. 161-162.

when the occasion arises (recommended therapy).⁵⁶⁷ Many of the works that deal with sophisms fail to include the above mentioned answers in the catalog, and leave the therapy freed at random to the improvisation, that is to say, out of the art of refutation.

In the Topics, the acceptability is based on the maxims that guarantee it, such as "what is attributed to the genre, is also attributed to the species". Topical maxims are distinguished and denominated for the differences that they present between themselves: genre, species, whole, part, etc.

The topical maxim of the genre allows arguing: "if Socrates is a man, then he is mortal".⁵⁶⁸ The sophistic maxim of the species: "what is attributed to the species is also attributed to the genre", does not allow to be argued validly: "if Socrates is mortal, then he is a mortal", because there are mortal beings that are not men, like animals, since the maxim could refer, for example, to a pet called "Socrates". Topical maxims and acceptable premises are usually omitted on account of their obviousness, and make room for enthymemes. Sophistic maxims and unacceptable premises also are omitted, but for different reasons, not because of their obviousness, but because if they were explicit they would stop cheating, since the secret defect in the argumentation or refutation would become clear; this is why sophisms are apparent –not real– enthymemes. In the example of Socrates, the relation between genre and species, valid in the topical maxim and invalid in the sophistic maxim, is the cause of the apparent acceptability, since the sophistic maxim remains secret and the topical maxim appears in implicit form, due the relation between genre and species, but without the valid logic relation being distinguished from the invalid one, thus provoking deceit through confusion.

The method of the Sophistical Refutations, like that of the Topics, consists in the anticipated preparation of a catalog, which also integrates the Promptuary.

RULE: The catalog of sophisms shall contain the taxonomy of their species, as if it were a vademecum of pathological medicine,⁵⁶⁹ and shall make explicit:

a) both the causes for the apparent acceptability and the pathologies or secret defects endured by every sophism species, to facilitate the determination of the specimens that will appear in the speeches (diagnosis);

⁵⁶⁷ Aristotle, *Sophistical Refutations*, Chapters 1,4-11; and 16-30, respectively.

Aristotle, *Sophistical Refutations*, 1,4-11; 16-30, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 278, 280-292; pp. 297-310.

Aristotle on Fallacies, or the *Sophistici Elenchi*, I, IV-XI; XVI-XXXIII, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, pp. 2-5, 7-41; 50-85.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 1,4-11; 16-30, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 309, 312-339; pp.348-373.

Aristotele, *Confutazione Sofistiche*, 1, 4-11; 16-30, da *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 647-648, 650-677; pp. 687-716.

Aristote, *Les Réfutations Sophistiques*, 1, 4-11; 16-30, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, pp. 119-121, 124-150; pp. 161-192.

⁵⁶⁸ Saint Thomas d'Aquin, *Sur les tromperies, á quelques nobles artistes*, traduction par Yvan Pelletier, Chapitre 4, #644, en www.profs.fr.ulaval.ca/YPelletier/site_yp/Textes/trad/Tromperies.pdf, pp. 7-8; de Divi Thomae Aquinatis, "*Opuscula Philosophica*", Cura et studio P. Fr. Raymundi M. Spiazzo, O.P., Torino, Marietti, 1954. pp. 223-240, según correo electrónico del profesor Pelletier, de fecha 23/08/04.

⁵⁶⁹ Brunschwig qualifies Aristotle's Topics as a "vademecum of the perfect dialecticalician", Aristotle *Topiques*, Tome I, Livres I - IV, Texte Établi et Traduit par Jacques Brunschwig, Société d'Édition "Les Belles Lettres", Paris, 1967, p. IX.

- b) the abstract refutations applicable towards every sophism species, to facilitate the opportune concrete refutations of the sophism specimens determined in the speeches, without having to improvise the refutations (recommended therapy);
- c) the inclusion of the respective sophism species of in an explanatory order based on the distinction between those that only depend and those that do not only depend on language to cause deceit (basic division), which facilitates the comprehension and memorization of the catalog;
- d) the denominations of sophism species: transparent, to visualize the concepts; and concise, to memorize them.

RULE: Whenever in any speech the existence of a specimen of any of the sophism species in the catalog is determined (diagnosis), then it shall be possible to remember or to consult also the adequate answer for its opportune refutation, without having to improvise the latter (recommended therapy).

RULE: Whenever in the analysis of any speech both the cause of the apparent acceptability and the secret defect are made explicit, but it is impossible to determine as a specimen of any of the species in the catalog of sophisms (diagnosis), then a new sophism species will be classified, to which end:

- a) it will be included in the catalog, as dependent on or independent from language, as the case may be;
- b) it will be named in a transparent and concise way;
- c) the adequate answer shall be indicated (recommended therapy) for the opportune refutation of another specimen, without having to improvise it.

Sophisms are usually ordained on the basis of the distinction between those that only depend and those that do not depend on language only to cause deceit.⁵⁷⁰ Although it is true that all sophisms depend on language to be expressed, some of them, also, depend only on language to cause deceit. Aristotle, the origin of the aforesaid order, enumerates thirteen sophisms species; six that only depend on language: homonymy, amphibology, combination, division, accentuation and form of expression; and seven that do not depend on language only to cause deceive: accident, absolute and not absolute sense, consequent, petition of principle (*petitio principii*), cause that is not a cause, several questions in one, and ignorance of the refutation (*ignoratio elenchi*),⁵⁷¹ but he thinks

⁵⁷⁰ Aristotle, *Sophistical Refutations*, 4, 165b20.

Aristotle on Fallacies, or the Sophistici Elenchi, IV, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 7.

Aristotle, *Sophistical Refutations*, 4, 165b20-25, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 280.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 4, 165b20, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 312-313.

Aristotele, *Confutazione Sofistiche*, 4, 165b 20-25, *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 650-680; p. 650.

Aristote, *Les réfutations sophistiques*, 4, 165b23-25, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 124.

⁵⁷¹ Aristotle, *Sophistical Refutations*, 4, 165b25; 166b20.

Aristotle on Fallacies, or the Sophistici Elenchi, IV; V, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 7; p. 11.

that all the species may come down to only one: ignorance of the refutation.⁵⁷²

Excessive vagueness is added by the author of the present book as the seventh sophism that depends on language to cause deceit.

Next, under the concise style of a vademecum, the catalog of the sophisms will be exposed, divided into two parts: those that only depend and those that do not depend on language only to cause deceit.

Sophisms that depend on language only to cause deceit

Sophism of excessive vagueness⁵⁷³

diagnosis:

apparent normality: a word or phrase is used as if it had a precise field of application;

secret pathology: the field of application of the word or phrase is so doubtful that it exceeds the area of admissible half-light (excessive vagueness);

recommended therapy: to reduce the excessive vagueness: in quantitative concepts, use numbers; and in qualitative concepts, enunciate all the species (*divisio*), all the parts (*partitio*), or replace them with quantitative

Aristotle, *Sophistical Refutations*, 4, 165b25; 166b20, in *The Complete Works of Aristotle, The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 280; p. 281.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 4, 165b25; 166b20, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 313; p. 317.

Aristotele, *Confutazione Sofistiche*, 4, 165b25; 166b20, *Organon, A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 650; p. 654.

Aristote, *Les Réfutations Sophistiques*, 4, 165b25; 166b20, *Introduction, Traduction et Commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 124; p. 127.*

⁵⁷²Aristotle, *Sophistical Refutations*, 6, 168a15-20.

Aristotle on Fallacies or the Sophistici Elenchi, VI, with a Translation and Notes, by Edward Poste, Macmillan and Co., 1866, p. 19.

Aristotle, *Sophistical Refutations*, 6, 168a15-20, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 284.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 6, 168a15-20, en *Tratados de Lógica, Organon, I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 322.

Aristotele, *Confutazione Sofistiche*, 6, 168a 15-20, *Organon, A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 659.

Aristote, *Les Réfutations Sophistiques*, 4, 168a 17-20, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 133.*

Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University of New York Press, New York 2003, for it it supports that are twelve sophisms, Preface, p. xiii. 3, and n. 13, p. 192. In the pp. 72-74; p. 80; pp. 90-92; 206 n. 18, implicitly reduce them to eleven, since he believes that two sophisms, composition and division, are two different descriptions of the same sophism, as he interprets Aristotle to have considered in *Rhetoric II*, 24.

⁵⁷³Aristotle does not distinguish vagueness from homonymy.

concepts

example of vagueness:	if in towns life is calmer than in cities and XX is a town, then life in XX is calmer;
diagnosis:	
apparent normality:	the words "towns" and "cities" are used as if the difference between them was precise;
secret pathology:	"towns" and "cities" are words that endure an excessive ambiguity because, in many cases, it is not known when to apply one or the other: Is XX a town or a city?;
recommended therapy:	if life is calmer where there are less than one hundred thousand inhabitants and XX has less than one hundred thousand inhabitants, then life is calmer in XX.

RULE: Whenever a word or phrase is used as if it had a precise field of application (apparent normality), but the latter is so doubtful that it exceeds the area of admissible half-light (secret pathology), then the sophism of the excessive ambiguity shall be incurred in (diagnosis).

RULE: The therapy recommended for excessive vagueness sophisms shall consist, when concepts are:

- a) quantitative, in the use numbers;
- b) qualitative, in the expression of all the species (*divisio*), or of all the parts (*partitio*) or in their replacement by quantitative concepts.

Sophism of semantic ambiguity (homonymy)

diagnosis:	
apparent normality:	a phrase is used as if it had only one meaning;
secret pathology:	semantic ambiguity of the word (homonymy);
recommended therapy:	to eliminate semantic ambiguity by substituting homonymous words by unequivocal ones, to formulate definitions, or make homonymy explicit;
example of homonymy:	if eagles are hunted and this is an eagle specimen, ⁵⁷⁴ then this specimen is hunted;

⁵⁷⁴The word "eagle", as an example of homonymy in fallacies, but without it being used as such, may be found in:

Edward Poste, Aristotle o Fallacies o The Sophistici Elenchi, VI, with a Translation and Notes, Macmillan and Co., 1866, p. 19.

Aristotle, Sophistical Refutations, 6, 168a 15-20, in The Complete Works Of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 284.

diagnosis	
apparent normality:	the word "eagles" is used as if referred to an animals species only;
secret pathology:	"eagles" may refer both to certain birds and to certain fish;
recommended therapy:	make the homonymy of the word "eagles" explicit and transform the sophism into an acceptable argument: if birds are hunted and fish are fished, and word "eagles" is used to refer both to birds and to fish, then "eagles" that are birds are hunted and "eagles" that are fish are fished;

RULE: Whenever a word is used as if had only one meaning (apparent normality), but with more than one meaning (secret pathology), then the sophism of semantic ambiguity shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of semantic ambiguity (homonymy) shall consist in replacing homonymous words for unequivocal others, in defining them, or in making homonymy explicit.

Sophism of syntactic ambiguity (amphibology)

diagnosis:	
apparent normality:	a phrase is used as if it had only one meaning;
secret pathology:	syntactic ambiguity of the phrase (amphibology);
recommended therapy:	to eliminate the syntactic ambiguity (amphibology), change words order or join them with other grammatical particles, or make amphibology explicit;
example of amphibology:	if Aristotle's books are good and this is an Aristotle's book, then this book is good;
diagnosis:	
apparent normality:	the formula "Aristotle's books" ⁵⁷⁵ is used as if

Aristóteles, *Sobre Las Refutaciones Sofísticas*, 6, 168a 15-20, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 322.

Aristotele, *Confutazione Sofistiche*, 6, 168a 15-20, *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 659.

Aristote, *Les Réfutations Sophistiques*, 4, 168a 17-20, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 133.

⁵⁷⁵For "Aristotle's book" in singular, as an example of an ambiguous phrase, see:

Sur les tromperies, á quelques nobles artistes, par saint Thomas d'Aquin, traduction par Yvan Pelletier, Chapitre 7, #652, en www.profs.fr.ulaval.ca/YPelletier/site_yp/Textes/trad/Tromperies.pdf, p. 11; de Divi

secret pathology: if it had only one meaning;
it may be interpreted that it means "books the property of which belong to Aristotle", "books the authorship of which belong to Aristotle" or "books the property and authorship of which belong to Aristotle";

recommended therapy: make the amphibology of the phrase "Aristotle's books" explicit and transform the sophism into an acceptable argument:

if the books the property of which belong to Aristotle are good and this book is Aristotle's Property, then this book is good;

if the books the author of which is Aristotle are good and this book is of Aristotle's authorship, then this book is good;

if the books the property and authorship of which belong to Aristotle are good and this book is of Aristotle's property and authorship, then this book is good.

RULE: When a phrase is used as if it had only one meaning (apparent normality), but with more than one meaning due to its syntactic ambiguity (secret pathology), then the sophism of syntactic ambiguity or amphibology shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of syntactic ambiguity (amphibology) shall consist in changing the words orders, in joining words with other unequivocal grammatical particles in the respective context, or in making the amphibology explicit.

Sophism of combination (or composition)⁵⁷⁶

diagnosis:

apparent normality: as they are pronounced,⁵⁷⁷ the terms of an initial expression that was divided, are combined as if the resulting meaning does not change;

Thomae Aquinatis, "Opuscula Philosophica", Cura et studio P. Fr. Raymundi M. Spiazzo, O.P., Torino, Marietti, 1954. pp. 223-240, according to Professor Pelletier email of 08/23/2004.

⁵⁷⁶It uses "combination":

Aristotle, *Sophistical Refutations*, 7, 169a25, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 286.

They use "composition":

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VII with a Translation and Notes, Macmillan and Co., 1866, p. 25. Aristóteles, *Sobre las Refutaciones Sofísticas*, 20, 177b20, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas De Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 358.

⁵⁷⁷William of Sherwood's, *Introduction to Logic*, translated with introduction and notes by Norman Kretzmann, University of Minnesota Press, Minneapolis, 1966, 3.1.3., pp. 140-141, 141, n. 52.

secret pathology:	although it is true that often the combination of the terms of an expression does not change the resulting meaning, sometimes it does; ⁵⁷⁸
recommended therapy:	to divide expressions combined later as they were before, to make explicit the difference of the meaning of both expressions (divided and combined), to ratify that only the (true) divided expression and not the (false) combined expression was accepted;
example of combination:	is it true to say now you_have_been born? ("now" divided from "you have been born") -Yes. -Then now_you_have_been born. ("now" combined with "you have been born") ⁵⁷⁹
diagnosis:	
apparent normality:	it is assumed that: "to say now you_have_been-born", and "to say now_you_have_been-born" have the same meaning;
secret pathology:	divided, it is a true expression: ("It is true to say now you_have_been-born"); combined, it turns out to be a different

⁵⁷⁸ Aristotle, *Sophistical Refutations*, 7, 169a25;

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VII with a Translation and Notes, Macmillan and Co., 1866, p. 25.

Aristotle, *Sophistical Refutations*, 7, 169a25, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 286.

Aristotele, *Confutazione Sofistiche*, 7, 169a25, *Organon, A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 664.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 4, 169a25, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas De Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 326.

Aristote, *Les Réfutations Sophistiques*, 7, 166a25, Introduction, Traduction et Commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 137.

⁵⁷⁹ Aristotle, *Sophistical Refutations*, 20, 177b20;

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XX, with a Translation and Notes, Macmillan and Co., 1866, p. 63.

Aristotle, *Sophistical Refutations*, 20, 177b20, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 302.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 20, 177b20, en *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas De Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 358.

Aristotele, *Confutazione Sofistiche*, 20, 177b20, *Organon, A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 698.

Aristote, *Les Réfutations Sophistiques*, 20, 177b20, Introduction, Traduction et Commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 173.

expression, which is false:
("To say now_you_have_been-born");

recommended therapy: to divide "It is true to say now_you_have_been-born", which is a false expression, to explain that it is not the same to say "It Is true to say now_you_have_been-born", which is a true expression, and the only one that was accepted.

RULE: When, as it is pronounced an initially divided expression is combined as if this combination does not change the resulting meaning (apparent normality), but the meaning changes, the sophism of combination shall be incurred in (diagnosis).

RULE: The therapy recommended for the sophism of combination shall consist in dividing the expression combined later, as it was at the beginning (divided); in making explicit the difference of the meaning of both expressions (divided and combined); in confirming that only the divided expression, as it was at the beginning (true), not the expression combined later (false) was accepted.

Sophism of division

diagnosis:

apparent normality: as they are pronounced,⁵⁸⁰ the terms of an initially combined expression are divided, as if this does not change the resulting meaning;

secret pathology: although it is true that often the division of the terms of an expression does not change the resulting meaning, sometimes it does;⁵⁸¹

recommended therapy: to combine expressions divided later as they were before, to make explicit the difference of the meaning of both expressions (combined and divided), to ratify that only the (true) combined expression, not the (false) divided expression was accepted;

⁵⁸⁰William of Sherwood's, *Introduction to Logic*, translated with introduction and notes by Norman Kretzmann, University of Minnesota Press, Minneapolis, 1966, 3.1.3., pp. 140-141, 141, n. 52.

⁵⁸¹Aristotle, *Sophistical Refutations*, 7, 169a25;

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VII with a Translation and Notes, Macmillan and Co., 1866, p. 25.

Aristotle, *Sophistical Refutations*, 7, 169a25, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 286.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 4, 169a25, en *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas De Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 326. Aristotele, *Confutazione Sofistiche*, 7, 169a25, *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 664.

Aristote, *Les Réfutations Sophistiques*, 7, 166a25, Introduction, Traduction et Commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 137.

example of division:	<p>–May a number be simultaneously a pair and an odd? –No. –But isn't five two_and_three? –Yes. –And are not two and three respectively a pair and an odd number? –Yes. –Then five is a pair and an odd number;⁵⁸²</p>
diagnosis:	
apparent normality:	it is assumed that “two_and_three and “two and three” have the same meaning;
secret pathology:	“two_and_three” (combined) are five “two and three” (divided) are a pair and an odd
recommended therapy:	to divide “two_and_three are a pair and an odd”, which is a false expression, to explain that this not the same expression as “two and three are five”, which is a true expression and the only one that was accepted.

RULE: Whenever, as it is pronounced an initially combined expression was combined, as if this does not change the resulting meaning (apparent normality), but the meaning does change, the sophism of division shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of division shall consist in combining the expression later divided, as it was at the beginning (combined); to make explicit the difference of the meaning of both expressions (combined and divided); to confirm that only the (true) combined expression, as it were at the beginning, not the expression divided later (false) was accepted

Sophism of accentuation (more properly, "ambiguity" only in the written speech with regard to the oral speech)

diagnosis:	
apparent normality:	a word or phrase is used in the written speech as

⁵⁸²Aristotle, *Sophistical Refutations*, 4, 166a33-35.

Aristotle on Fallacies, or the *Sophistici Elenchi*, IV, Edward Poste, with a Translation and Notes, Macmillan and Co., 1866, p. 11.

Aristotle, *Sophistical Refutations*, 4, 166a33-36, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 281.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 4, 166a33-35, en *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 314.

Aristotele, *Confutazione Sofistiche*, 4, 166a30-35b, *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 652-653.

Aristote, *Les Réfutations Sophistiques*, 4, 166a33-35, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 126.

secret pathology:	if it had only one meaning; a word or phrase is used in an ambiguous way only in the written speech (it is written in like manner but may be given more than one meaning), ⁵⁸³ despite the fact that in the oral speech it does not suffer from any ambiguity whatsoever (different pronunciation, according to the respective meaning); ⁵⁸⁴
recommended therapy:	to eliminate the ambiguity of the written speech with signs of accentuation and punctuation to express, to the largest extent possible, the wealth and the tones of the voice and the gesture proper of oral speech;
example:	in a Greek oral speech the word "ou" with a grave accent and a soft aspiration means "no" and, with a circumflex and inhaled accent, it means "where"; ⁵⁸⁵ before the widespread use of accentuation and punctuation signs, this case of ambiguity could appear only in the written speech;
diagnosis:	
apparent normality:	– the place <i>ou</i> you inhabit it is obviously a house? –Yes. –And " <i>ou</i> you live:" is not the denial of "inhabit"? –Yes. –But you have said that <i>ou</i> you inhabit is a house. –Yes. –Then a house is a denial.
secret pathology:	in certain historic period the Greek pronunciations of denial (<i>ou=no</i>) and place (<i>ou=where</i>) adverbs were written in the same manner, which could provoke an ambiguity sophism in the written speech, although there

⁵⁸³Scott G. Schreiber, Aristotle on False Reasoning, Language and the World in The Sophistical Refutations, 20, State University of New York Press, New York 2003, pp. 59-60.

⁵⁸⁴Augustus de Morgan, Formal Logic or the Calculus of Inference Necessary and Probable, Taylor and Walton, London, 1847, Elibron Replica Edition, Adamant Media Corporation, 2003, considers that the fallacy of accent and that of prosody are the same and only one, p. 248 and that when a person quotes another one and omits or adds the signs that show the *animus* of the original meaning, irony, sarcasm, emphasis, etc., as well as when in this way he enhances his own assertions to imply more than he might say openly, he incurs in a "fallacia accentus", p. 249.

⁵⁸⁵Edward Poste, Aristotle on Fallacies, or the Sophistici Elenchi, with a Translation and Notes, Macmillan and Co., 1866, XXI, p. 65.

Aristóteles, Sobre las Refutaciones Sofísticas, 6, 168a15-20, en Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 359, n. 81.

was not any ambiguity in the oral speech;

recommended therapy: to eliminate the ambiguity of the written Greek word "ou":

- the place *hoû* (where) you live is obviously a house?
- Yes.
- And it is not true that "ou you do not live" is a denial of "inhabit"?
- Yes.
- But you have said that the place *hoû* (where) you live is a house.
- Yes.
- Then a house is not a denial.

RULE: Whenever a word or phrase is used in the written speech as if it had only one meaning (apparent normality), but two or more meanings are distinguished in the oral speech by means of pronunciation (secret pathology), the sophism of accentuation shall be incurred in (diagnosis).

RULE The therapy recommended for sophisms of accentuation shall consist in using the appropriate accentuation and punctuation orthographic signs to express the unequivocal oral speech.

Sophism of the form of expression (or word figure)⁵⁸⁶

diagnosis:

apparent normality: an equal form of expression is used as if it were the explanation that the things to which it refers will also be equal;⁵⁸⁷

secret pathology: an equal form of expression may refer to different grammatical categories (a masculine expression referred to a feminine thing, or vice versa, etc.), or to different categories of things (a qualitative expression referred to quality, or vice versa, etc.);⁵⁸⁸ this being the reason why

⁵⁸⁶Peter of Spain, *Language in Dispute, An English Translation of Peter of Spain Tractatus Called Afterwords Summulae Logicales*, VII, 88, word-figure (*figura dictionis*), Translated by Francis P. Dinnen, John Benjamins Publishing Company, Amsterdam/Philadelphia, p. 115.

⁵⁸⁷Aristotle, *Sophistical Refutations*, 4, 166b10.

Aristotele, *Confutazione Sofistiche*, 4, 166b10, *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 653.

Aristote, *Les Réfutations Sophistiques*, 4, 166b10, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 126.

⁵⁸⁸Aristotle, *Sophistical Refutations*, 4, 166b10-15.

Aristotle on Fallacies, or the *Sophistici Elenchi*, IV, Edward Poste, with a Translation and Notes, Macmillan and Co., 1866, p. 11.

Aristotle, *Sophistical Refutations*, 4, 166b10-15, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 281.

deceit is produced as the equality of the things referred to is inferred from the equality of the form of expression, without any further arguments;

recommended therapy: to differentiate the things to which reference is made in equal forms of expression, using grammatical categories (feminine and masculine genres, active and passive voice, etc.) or a category of things (action and passion, quality and quantity, etc.)⁵⁸⁹ to warn about the absence, or partial or total concordance, between language, thought and reality;

example: "—it is perhaps possible that a passion be an action?
—No.
—Then the expressions: it is chopped, it is burned, it is affected by a sensitive object, are not perhaps similar in their form, and not all of them indicate a passion? On the other hand, the expressions: to say [*dire*], to run [*correre*], to see [*vedere*], are similar to one another to the form. Nevertheless, it is true that seeing is to be impressed by sensitive objects, and [,] therefore seeing will be a passion and an action at the same time."⁵⁹⁰

Aristóteles, *Sobre las Refutaciones Sofísticas*, 4, 166b10-15, en *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas* de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 316.

Aristotele, *Confutazione Sofistiche*, 4, 166b10-15, *Organon*, A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 653-654.

Aristote, *Les Réfutations Sophistiques*, 4, 166b10-15, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 126.

⁵⁸⁹ Aristóteles, *Refutaciones Sofísticas*, 22, 178a5;

Aristóteles, *Sobre las Refutaciones Sofísticas*, 22, 178a5, en *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas* de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 359.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXII, with a Translation and Notes, Macmillan and Co., 1866, p. 65.

Aristotle, *Sophistical Refutations*, 22, 178a 5, in *The Complete Works of Aristotle, The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 303.

Aristotele, *Confutazione Sofistiche*, 22, 178a 5, *Organon* A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 700.

Aristóteles, *Les réfutations sophistiques*, 22, 178a 5, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses De L'Université Laval, Canada-France, France, 1995, p. 175.

⁵⁹⁰ Aristóteles, *Refutaciones Sofísticas*, 22, 178a 10;

Aristóteles, *Sobre Las Refutaciones Sofísticas*, 22, 178a 10, *Tratados De Lógica (Organon)*, I, *Categorías, Tópicos, Sobre Las Refutaciones Sofísticas, Introducciones, Traducciones y Notas* de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 360.

Edward Poste, *Aristotle On Fallacies, or the Sophistici Elenchi*, XXII, with a Translation and Notes, Macmillan and Co., 1866, p. 65.

diagnosis:	
apparent normality:	to "say" [<i>dire</i>], to "run"[<i>correre</i>] and to "see" [<i>vedere</i>], are words with the same form of expression (the termination), this being the reason why all of them refer to actions; "it is burned", "it is chopped" and it is "affected" have the same form of expression "it is (...)ed", this being the reason why all the aforesaid forms of expression would refer to passions;
secret pathology:	like the remaining senses (hearing, touch, taste and smell), sight, the capacity of seeing, is a passion ("to be affected by a sensitive object"); this being the reason why deceit is produced as the equality of the thing referred to is inferred from the equality of the form of expression, without any further argument;
recommended therapy:	the apparent incompatibility between action and passion disappears if it is not taken for granted that seeing is an action and it is assumed that it is a passion (<i>res</i>), in spite of the form in which the word finishes (<i>verba</i>); ⁵⁹¹ in which case, there would not be any refutation.

RULE: Whenever an equal form of expression is considered as if it were the explanation that the things to which it refers shall also be equal (apparent normality), but the equality of the things referred will not necessary follow the equality of the form of expression, without any further arguments (secret pathology), then the sophism of the form of expression shall be incurred in (diagnosis).

Aristotle, *Sophistical Refutations*, 22, 178a 10, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 303.

It has been used for the translation into English that appears in the main text between quotation marks:

Aristotele, *Confutazione Sofistiche*, 22, 178a 10, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 700.

Aristóteles, *Les réfutations sophistiques*, 22, 178a 10, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses De L'Université Laval, Canada-France, France, 1995, p. 175.

⁵⁹¹ Aristotle, *Sophistical Refutations*, 178th 15-25.

Edward Poste, *Aristotle On Fallacies, or the Sophistici Elenchi*, XXII, with a Translation and Notes, Macmillan and Co., 1866, pp. 65-66.

Aristotle, *Sophistical Refutations*, 22, 178a 10, in *The Complete Works of Aristotle, The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 303.

Aristóteles, *Sobre Las Refutaciones Sofísticas*, 22, 178a 10, *Tratados De Lógica (Organon)*, I, Categorías, Tópicos, Sobre Las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 360.

Aristotele, *Confutazione Sofistiche*, 22, 178a 10, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 700.

Aristote, *Les Réfutations Sophistiques*, 22, 178a 10, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses De L'Université Laval, Canada-France, France, 1995, p. 175-176.

RULE: The therapy recommended for sophisms of the form of expression shall consist in differentiating the objects to which reference is made in equal form of expression, for which purpose grammatical categories (feminine and masculine genres, active and passive voice, etc.) or categories of things (action and passion, quality and quantity, etc.) shall be used, to warn about the absence partial or total congruity between language, thought and reality.

The general therapy for the sophisms which depends on language only to cause deceit;⁵⁹² described above, may be formulated in this way:

PRINCIPLE: The therapy recommended for any sophism that depends on language only to cause deceit, shall consist in supporting an admissible interpretation, opposite to the secret pathology chosen to produce the sophism and in interpreting:

- a) the excessive vagueness of the significant, with a meaning opposite to the meaning chosen in the sophism;
- b) the semantic or syntactic ambiguity, with an opposite meaning admitted by the meaning chosen in the sophism;
- c) the composition chosen in the sophism, with the division and the division chosen in the sophism, with the composition;
- d) the grave accent chosen in the sophism, with the acute accent and the acute accent chosen in the sophism, with the grave accent;
- e) the form of expression chosen in the sophism, with the form of the opposite expression.

Sophisms that do not depend on language only to cause deceit

It has been said before that it is true that all sophisms express themselves by means of language, although some of them depend on language only to cause deceive and others not. Here follows a description of the latter, namely: sophisms of the accident, of the absolute and not absolute sense, of begging the question, of the consequent, of a cause that is not a cause, of several questions in only one, and of ignorance of the refutation.

Sophism of the accident

diagnosis:

apparent normality:

it is upheld that "[...] an attribute whatsoever is considered to belongs in the same way to the subject and to the accident";⁵⁹³

⁵⁹²Aristotle, *Sophistical Refutations*, 23, 179a11.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXIII, with a Translation and Notes, Macmillan and Co., 1866, pp. 70-71.

Aristotle, *Sophistical Refutations*, 23, 179a11-25, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 305.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 23, 179a11-25, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, pp. 363-364.

Aristotele, *Confutazione Sofistiche*, 23, 179a11-25, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, pp. 704-705.

Aristote, *Les réfutations sophistiques*, 23, 179a11-25, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses De L'Université Laval, Canada-France, France, 1995, p. 179.

secret pathology:	"[...] as the same subject receives numerous accidents, it is not necessary that all the same attributes belong simultaneously to all predicates and to the subject with regard to which they are predicated."; ⁵⁹⁴
recommended therapy:	to show with a counter example that the conclusion does not necessarily follow from the premises; ⁵⁹⁵
example:	if a triangle has angles equal to two <i>recta</i> and a triangle is a figure,

⁵⁹³ Aristotle, *Sophistical Refutations*, 5, 166b28.

"[...] un attribut quelconque est considéré appartenir de la même façon au sujet et à l'accident.":

Aristote, *Les Réfutations Sophistiques*, 5, 166b28, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 128. Translation from French to English by the author of this book.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 13. Translation from french to english by the author of this book.

Aristotle, *Sophistical Refutations*, 5, 166b30, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 281.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 166b28, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 317.

Aristotele, *Confutazione Sofistiche*, 5, 166b30, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 654.

⁵⁹⁴ Aristotle, *Sophistical Refutations*, 5, 166b30.

"[...] comme le même sujet reçoit de nombreux accidents, il n'est pas nécessaire que tous les mêmes attributs appartiennent à la fois à tous les prédicats et au sujet dont ils sont prédiqués.":

Aristote, *Les Réfutations Sophistiques*, 5, 166b30, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 128. Translation from French to English by the author of this book.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 13.

Aristotle, *Sophistical Refutations*, 5, 166b30, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 281.

Aristotele, *Confutazione Sofistiche*, 5, 166b30, *Organon, A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 654.

Aristóteles, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 317.

⁵⁹⁵ Aristotle, *Sophistical Refutations*, 24, 179a30.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXIV, with a Translation and Notes, Macmillan and Co., 1866, p. 73.

Aristotle, *Sophistical Refutations*, 24, 179a30, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 305.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 24, 179a30, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 364. Aristotele, *Confutazione Sofistiche*, 24, 179a30, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, pp. 705-706.

Aristote, *Les Réfutations Sophistiques*, 24, 179a30, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de l'Université Laval, Canada-France, France, 1995, p. 180.

then a figure has angles equal to two *recta*;⁵⁹⁶

diagnosis:

apparent normality:

since the form of the sophism is similar to that of a valid syllogism (antecedent: if a triangle has angles equal to two *recta* and a triangle is a figure) and the two propositions integrating the purported precedent are true, it turns out easy to make believe that the purported consequent necessarily follows and is also true, when it is actually false;⁵⁹⁷

secret pathology:

the second proposition integrating the purported antecedent, although as true as the first one, is predicated as an accident,⁵⁹⁸ which does not allow for convertibility with the respective subject (all triangles are figures but not all figures are triangles), since for a figure it is an "accident" to be a triangle, which prevents the purported conclusion to be validly inferred (all the figures

⁵⁹⁶Aristotle, *Sophistical Refutations*, 6, 168a40.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VI, with a Translation and Notes, Macmillan and Co., 1866, p. 21.

Aristotle, *Sophistical Refutations*, 6, 168a40, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 285.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 6, 168a40, *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 323.

Aristotele, *Confutazione Sofistiche*, 6, 168a40, *Organon A* Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 661.

Aristote, *Les Réfutations Sophistiques*, 6, 168a40, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 134.

⁵⁹⁷John Buridan, *Summulae de Dialectica*, an annotated translation, with philosophical introduction by Gyula Klima, Yale University Press, New Haven / London, 7.4.1 The fallacy of accident, pp. 548-549.

⁵⁹⁸Aristotle, *Posterior Analytics*, I, 4, 73a35-b24.

Aristotle, *Posterior Analytics*, I, 4, 73a35-b24, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 118-119.

Aristóteles, *Analíticos Segundos*, I, 4, 73a35-b24, en *Aristóteles, Tratados de Lógica (Organon)*, II, *Sobre la Interpretación*, *Analíticos Primeros*, *Analíticos Segundos*, Introducciones, Traducciones y Notas por Miguel Candel Sanmartín, Editorial Gredos, Madrid, Primera Edición 1988, Primera Rimpresión, 1995, pp. 322-323.

Aristotele, *Secondi Analitici*, I, 4, 73a35-b24, da Aristotele, *Organon*, A cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 287-288.

“In case of the accident, the absence of logic consists in assuming that what is said about the subject is also said about the predicates of this subject, and vice versa.” (“Dans le cas de l'accident la faute de logique consiste à assumer que ce qui se dit du sujet se dit aussi des prédicats de ce sujet, et viceversa”):

Aristote, *Les Réfutations Sophistiques*, 6, 168a40, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 71.

John Buridan, *Summulae de Dialectica*, an annotated translation, with philosophical introduction by Gyula Klima, Yale University Press, New Haven / London, 7.4.1, The fallacy of accident, p. 550.

have angles equal to two *recta*), since the angles are equal to *recta* because the figure is a triangle, not merely a figure;⁵⁹⁹

recommended therapy: to mention at least a geometric figure with angles not equal to two *recta* like, for example, a square.

RULE: Whenever an attribute is considered to belong in the same way to the subject and to the accident (apparent normality), but it were a predicate by accident, which shall not allow for convertibility between subject and predicate (secret pathology), the sophism of the accident shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of the accident shall consist in mentioning at least one counter example, to prove that the purported conclusion shall not necessarily follow from the purported premises.

Sophism of the absolute and not absolute sense

diagnosis:

apparent normality: what is said to a certain extent (relative) is considered as if it had been said without any restriction (absolute);⁶⁰⁰

secret pathology: the deduction of a contradiction does not exist because there are restrictions related to the object, aspect, place, manner or relation;⁶⁰¹

⁵⁹⁹ Aristotle, *Sophistical Refutations*, 6, 168a40.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VI, with a Translation and Notes, Macmillan and Co., 1866, p. 21.

Aristotle, *Sophistical Refutations*, 6, 168a40, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 285.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 6, 168a40, *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, *Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 323.

Aristotele, *Confutazione Sofistiche*, 6, 168a40, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 661.

Aristote, *Les Réfutations Sophistiques*, 6, 168a40, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 134.

⁶⁰⁰ Aristotle, *Sophistical Refutations*, 5, 167a.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 13.

Aristotle, *Sophistical Refutations*, 5, 166b-167a, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 282.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167a, *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, *Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 317.

Aristotele, *Confutazione Sofistiche*, 5, 166b-167a, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 655.

Aristote, *Les Réfutations Sophistiques*, 5, 166b-167a, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 128.

recommended therapy:	to examine the conclusion in the light of its purported contradictory one and to verify whether they deal with the same thing, in the same manner or in the same relation; ⁶⁰²
example:	If an Ethiopian is black and his teeth are white, then he is black and not black; ⁶⁰³
diagnosis:	
apparent normality:	it would seem that it is the same to affirm that an Ethiopian is black, without qualification, and that an Ethiopian is of black skin, with qualification;

⁶⁰¹ Aristotle, *Sophistical Refutations*, 25, 185a23.

“[...] an expression that it is not used legitimately without a restriction (be it of object, aspect, place, manner or relation), that is to say not to be used purely and simply [...]” (“[...] une expression qui ne s’emploie légitimement qu’avec une restriction (que ce soit d’objet, d’aspect, de lieu, de manière ou de relation), c’est-à-dire qui ne s’emploie pas pure et simplement [...]”, dans:

Aristote, *Les Réfutations Sophistiques*, 25, 180a23, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L’Université Laval, Canada-France, France, 1995, p. 184. Translation from french to english by the author of this book.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXV, with a Translation and Notes, Macmillan and Co., 1866, p. 77.

Aristotle, *Sophistical Refutations*, 25, 180a23, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 307.

Aristotele, *Confutazione Sofistiche*, 25, 180a23, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 709.

⁶⁰² Aristotle, *Sophistical Refutations*, 25, 180a25.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXV, with a Translation and Notes, Macmillan and Co., 1866, p. 77.

Aristotle, *Sophistical Refutations*, 25, 180a25, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 307.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 25, 180a25, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 367.

Aristotele, *Confutazione Sofistiche*, 25, 180a25, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 709.

Aristote, *Les Réfutations Sophistiques*, 25, 180a25, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L’Université Laval, Canada-France, France, 1995, p. 128.

⁶⁰³ Aristotle, *Sophistical Refutations*, 5, 167a10.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 13.

Aristotle, *Sophistical Refutations*, 5, 167a10, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 282.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167a10, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 318.

Aristotele, *Confutazione Sofistiche*, 5, 167a10, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 655.

Aristote, *Les Réfutations Sophistiques*, 5, 166b-167a, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L’Université Laval, Canada-France, France, 1995, p. 129.

secret pathology: this is not the case of an absolute term (an Ethiopian), despite the fact that it is presented without qualification, but of a relative term (the skin of the Ethiopian) opposed to other relative term (the Ethiopian's teeth) and, as both refer to different things that can have different colors, there is no valid deduction of a contradiction between the first proposition of the purported antecedent and the purported conclusion, so that there is no a valid refutation either;

recommended therapy: to examine the purported conclusion in the light of its apparent contradictory proposition and to show that it does not necessarily follow from the propositions integrating the purported precedent, since it does not refer to the same thing (the Ethiopian) without qualification (absolute sense), but to two different colors (black and white) of two different things belonging to the Ethiopian (his skin and his teeth) and, because they are not the same thing, there is not deduction and, because they are not contradictory with regard to the same thing (the Ethiopian), there is not refutation either.

RULE: Whenever what was said to a certain extent (relatively), is considered to have been said without restriction (absolutely), or vice versa (apparent normality), but not with regard to the same thing, manner or relation (secret pathology), the sophism of the absolute and not absolute sense shall be incurred in (diagnosis).

RULE: The therapy recommended for the sophisms of the absolute and not absolute sense shall consist in examining the purported conclusion in view of its purported contradictory proposition, to verify if reference is made to the same thing, in the same manner, in the same relation.

Sophism of begging the question

diagnosis:

apparent normality: that which started the discussion is petitioned, obtained and assumed as if it were a premise⁶⁰⁴ or a

⁶⁰⁴Aristotle, *Sophistical Refutations*, 5, 167a37.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 15.

Aristotle, *Sophistical Refutations*, 5, 167a37, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167a37, *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 319.

valid conclusion

- secret pathology: the conclusion is not proved, because it is difficult to notice when the premise⁶⁰⁵ is equal to the point in issue to be proved or because the conclusion has been assumed;
- recommended therapy: if the maneuver were clear, the premise should not be granted; had it been granted, deny that the conclusion has been proved, having the point at issue been assumed in the premise⁶⁰⁶ or in the conclusion;
- example: “–Banker: who can give your references?
–Client: my friend Jones can give them.
–Banker: how do we know that Jones may be reliable?
–Client: I assure you that Jones may be reliable”;⁶⁰⁷

Aristotele, *Confutazione Sofistiche*, 5, 167a37, *Organon A* Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 656-657.

Aristote, *Les Réfutations Sophistiques*, 5, 167a37, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.

⁶⁰⁵ Aristotle, *Sophistical Refutations*, 5, 167a37.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 15.

Aristotle, *Sophistical Refutations*, 5, 167a37, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167a37, *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 319.

Aristotele, *Confutazione Sofistiche*, 5, 167a37, *Organon A* Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 656-657.

Aristote, *Les Réfutations Sophistiques*, 5, 167a37, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.

⁶⁰⁶ Aristotle, *Sophistical Refutations*, 27, 181a15.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXV, with a Translation and Notes, Macmillan and Co., 1866, p. 81.

Aristotle, *Sophistical Refutations*, 27, 181a15, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 309.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 27, 181a15, *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 371.

Aristotele, *Confutazione Sofistiche*, 27, 181a15, *Organon A* Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 713.

Aristote, *Les Réfutations Sophistiques*, 27, 181a15, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 188.

⁶⁰⁷ Black, Max, *Critical Thinking: An Introduction to Logic and Scientific Method* (1946), Second Edition, Englewood Cliffs, N. J., Prentice-Hall, 1952, p. 236, cited in Hamblin, C. L., *Fallacies*, Methuen & Co. Ltd., London, 1970, p. 34.

diagnosis:	
apparent normality:	the client's credibility based on the credibility of the person giving references is assumed as if it were a valid conclusion;
secret pathology:	the banker asked for references because he needed to prove the client's credibility on the basis of the statement of a third party, not of the client, whose credibility had to be proved;
recommended therapy:	the banker will have to ask for references from a third party whose credibility does not depend on the client's statements.

RULE: Whenever something equivalent to that which started the discussion is petitioned, obtained and assumed as if it were a valid premise, because the incapacity of the one who shall have granted it to distinguish the identical from the different (apparent normality), but the conclusion was postulated (secret pathology), then the sophism of begging the question shall be incurred in (diagnosis).

RULE: The therapy recommended for the sophisms of begging the question shall consist, should the maneuver be clear, in not granting the purported premise and, had it been granted, in denying that the conclusion has been proved, because the point at issue is assumed in the purported premise.

Sophism of the consequent

diagnosis:	
apparent normality:	the relation between antecedent and consequent is regarded convertible, so that if the consequent happens the antecedent necessarily happens; ⁶⁰⁸
secret pathology:	the relation between antecedent and consequent is not convertible, so that if the consequent happens, the antecedent does not necessarily happen; ⁶⁰⁹

⁶⁰⁸ Aristotle, *Sophistical Refutations*, 5, 167b1-3.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 15.

Aristotle, *Sophistical Refutations*, 5, 167b1-3, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167b1-3, *Tratados de Lógica (Organon)*, I, Categorías, Tópicos, *Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 319. Aristotele, *Confutazione Sofistiche*, 5, 167b1-3, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 657.

Aristote, *Les Réfutations Sophistiques*, 5, 167b1-3, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.

⁶⁰⁹ Aristotle, *Sophistical Refutations*, 5, 167b1-3.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 15.

recommended therapy:	to give at least one counter example;
example:	if, after raining, the land remains drenched and now the land remains drenched, then it has rained; ⁶¹⁰
diagnosis:	
apparent normality:	the land soaked by water makes us assume that it has rained, which is the most frequent thing;
secret pathology:	land may be soaked by water due to a cause different from rain;
recommended therapy:	to mention as counter example the land soaked by a flood caused by the opening of the floodgates of a dam during a drought.

RULE: Whenever it is considered that the relation between antecedent and consequent is convertible in such a way that if the consequent happens the antecedent will necessarily happen (apparent normality), but the relation between the antecedent and consequent were not convertible (secret pathology), then the sophism of the consequent shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of the consequent shall consist in mentioning at least one counter example, to prove that the consequent does not necessarily follow from the antecedent.

Aristotle, *Sophistical Refutations*, 5, 167b1-3, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167b1-3, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 319.

Aristotele, *Confutazione Sofistiche*, 5, 167b1-3, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 657.

Aristote, *Les Réfutations Sophistiques*, 5, 167b1-3, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.*

⁶¹⁰ Aristóteles, *Refutaciones Sofísticas*, 5, 167b1-3.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi, V, with a Translation and Notes*, Macmillan and Co., 1866, p. 15.

Aristotle, *Sophistical Refutations*, 5, 167b6, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167b6, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 319.

Aristotele, *Confutazione Sofistiche*, 5, 167b6, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 657.

Aristote, *Les Réfutations Sophistiques*, 5, 167b6, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.*

Sophism of a cause that is not a cause

diagnosis:

apparent normality: something is added to the speech as if it were the cause of the absurd conclusion;⁶¹¹

secret pathology: the thing added (a cause that is not a cause) to the speech does not make the absurd⁶¹² conclusion necessarily follow;

recommended therapy: to suppress what was added in the speech as the cause of the absurd conclusion and to verify that the absurd conclusion remains, but necessarily follows from a different cause;⁶¹³

⁶¹¹Aristotle, *Sophistical Refutations*, 5, 167b21.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 17.

Aristotle, *Sophistical Refutations*, 5, 167b21, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167b21, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 320.

Aristotele, *Confutazione Sofistiche*, 5, 167b21, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 658;.

Aristote, *Les Réfutations Sophistiques*, 5, 167b6, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.

⁶¹²Aristotle, *Sophistical Refutations*, 5, 167b21.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, V, with a Translation and Notes, Macmillan and Co., 1866, p. 17.

Aristotle, *Sophistical Refutations*, 5, 167b21, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 283.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 5, 167b6, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 320.

Aristotele, *Confutazione Sofistiche*, 5, 167b21, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 658.

Aristote, *Les Réfutations Sophistiques*, 5, 167b6, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.

⁶¹³Aristotle, *Sophistical Refutations*, 29, 181a32.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXIX, with a Translation and Notes, Macmillan and Co., 1866, p. 83.

Aristotle, *Sophistical Refutations*, 29, 181a32, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 309.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 29, 181a32, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas*, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 372.

Aristotele, *Confutazione Sofistiche*, 29, 181a32, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 714.

Aristote, *Les Réfutations Sophistiques*, 29, 181a32, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 190.

example:	if soul and life are the same thing, and generation is opposite to corruption, and a certain generation is the opposite to a certain corruption; and death is certain corruption opposite to life; then life is generation [change of a non-existent substance for a new substance ⁶¹⁴] and living [process of change of a substance that persists during the process ⁶¹⁵] is to be generated (impossible conclusion); this being the reason why the statement that soul and the life are the same thing is refuted on the basis of absurdity;
diagnosis:	
apparent normality:	it turns out impossible that what has been generated (something previously non-existent) and life (process of change of a substance that persists during the process) which are species of mutually exclusive changes, are equal (impossible conclusion); and on having presented it as if it had necessarily followed from the statement that “life and soul are the same thing”, it would seem that this statement was refuted on the basis of absurdity;
secret pathology:	“life is generation and living is to be generated” (impossible conclusion) does not necessarily follow from the statement that “life and soul are the same thing” (a cause that is not a cause);
recommended therapy:	to suppress “life and soul there are the same thing” (a cause that is not a cause) and to verify that “life is generation and living is to be generated” (impossible conclusion) also necessarily follows, but for a different cause;

RULE: Whenever something is added in a speech as if it were the cause of the conclusion (apparent normality), but the conclusion did not necessarily follow from such addition (secret pathology), then the sophism of a cause that is not a cause shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of a cause that is not a cause shall consist in suppressing what has been added and in verifying that the same conclusion will necessarily follow, but for a different cause.

Sophism of several questions in only one

diagnosis:	
apparent normality:	several questions are formulated as if they were only one ⁶¹⁶ calling for only one answer;

⁶¹⁴In Aristotle's conception, Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University Of New York Press, New York 2003, p. 108.

⁶¹⁵In Aristotle's conception, Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University Of New York Press, New York 2003, p. 108.

secret pathology:	it is ignored that a premise needs only one predicate for only one subject; ⁶¹⁷
recommended therapy:	to distinguish the several questions from the beginning; ⁶¹⁸
example:	<p>–JOHN: if A is a good thing and B is a bad thing: are A and B good or bad?</p> <p>–PETER: A and B are neither good nor bad, because A is not bad and B is not good;</p> <p>–JOHN: then the same thing is at the same time good and bad, and neither good nor bad!;</p>

⁶¹⁶ Aristotle, *Sophistical Refutations*, 30, 181a36-37.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXX, with to Translation and Notes, Macmillan and Co., 1866, p. 83.

Aristotle, *Sophistical Refutations*, 30, 181a36-37, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 309.

Aristotle, *On the Sophistical Refutations*, 30, 181a36-37, *Treaties of Logic (Organon), I, Categories, Topics, Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 372.

Aristotele, *Confutazione Sofistiche*, 30, 181a36-37, *Organon A Priest I gave Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 714.

Aristote, *They Réfutations Sophistiques*, 30, 181a36-37, *Introduction, traduction et commentaire pair Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 191.*

⁶¹⁷ Aristotle, *Sophistical Refutations*, 6, 169a15-16.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VI, with a Translation and Notes, Macmillan and Co., 1866, p. 23.

Aristotle, *Sophistical Refutations*, 6, 169a15-16, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 286.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 6, 169a15-16, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 325.

Aristotele, *Confutazione Sofistiche*, 6, 169a15-16, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 663-664;.

Aristote, *Les Réfutations Sophistiques*, 5, 167b6, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 130.*

⁶¹⁸ Aristotle, *Sophistical Refutations*, 30, 181a36-37.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, XXX, with a Translation and Notes, Macmillan and Co., 1866, p. 83.

Aristotle, *Sophistical Refutations*, 30, 181a36-37, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 309.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 30, 181a36-37, *Tratados de Lógica (Organon), I, Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 372.

Aristotele, *Confutazione Sofistiche*, 30, 181a36-37, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, Adelphi, 2003, p. 714.

Aristote, *Les Réfutations Sophistiques*, 30, 181a36-37, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 191.*

diagnosis:	
apparent normality:	as “good thing” and “bad thing” are two contradictory attributes presented as if they were predicates of the two subjects "A" and "B", “then the same thing is at the same time good and bad, and neither good nor bad” seems to necessarily follow;
secret pathology:	"A" and “B“ are “good things” with regard to "A" and bad things” with regard to "B", not in an absolute manner (“the same good and bad thing, and neither good nor bad”);
recommended therapy:	to distinguish the relative sense from the beginning: good thing with regard to A and a bad thing with regard to B, so that the apparent contradictory conclusion will not take place.

RULE: Whenever several questions are formulated as if they were only one requiring only one answer (apparent normality), but the rule that a premise needs only one predicate for only one subject is ignored (secret pathology), then the sophism of different questions in only one shall be incurred in (diagnosis).

RULE: The therapy recommended for sophisms of different questions in only one shall consist in distinguishing the different questions from the beginning.

Sophism of the ignorance of the refutation

diagnosis:	
apparent normality:	the purported contradictory conclusion appears as if it had satisfied all the requisites demanded by the definition of refutation;
secret pathology:	not all the requisites demanded by the definition of refutation have been satisfied. “A refutation is in effect the contradiction of a single and identical attribute, not of a word but of a thing, and not of a synonymous word but of the same one; it necessarily follows from the premises granted (not taking into consideration as a premise that what is at the beginning [of the discussion and to be proved]) [except in the case of reasoning via absurdity] and it is carried out according to the same point of view, with regard to the same thing, in the same manner and in the same time.”; ⁶¹⁹

⁶¹⁹ Aristotle, *Sophistical Refutations*, 5, 167a23-28.

“Une réfutation est en effet la contradiction d’un attribut unique et identique, non pas d’un mot mais d’une chose, et non pas d’un mot synonyme mais du même; elle découle avec nécessité des prémisses concédées (en ne prenant pas en compte ce qui est au début) et elle s’effectue selon le même point de vue, par rapport à la même chose, de la même manière, et dans le même temps.”

Aristote, *Les Réfutations Sophistiques*, 5, 167a23-28, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L’Université

recommended therapy: to examine the purported conclusion in the light of its apparent contradictory proposition and to show that it does not satisfy the requisites of the definition of refutation;

example: like other sophisms contained in the present vade mecum they do not satisfy some or a number of the requisites of the definition of refutation,⁶²⁰ its respective examples are also examples of the present sophism of ignorance of the refutation, which, by definition, is the unit to which the multiplicity of all other sophisms may be reduced.

RULE: All sophisms contained in this vade mecum are species of sophisms that ignore the requisites of the definition of refutation.

There shall only be a refutation,⁶²¹ when:

- a) what must be proved shall not appear as a premise, except in the argumentations via absurdity;
- b) the conclusion shall necessarily follow from the premises;
- c) the conclusion shall deny the same predicate affirmed by the answerer;
- d) the predicate will deny:
 - 1) the signified thing, not only the name;
 - 2) the signified thing meant by the same name assigned by the answerer;
 - 3) the thing qualified precisely in the same manner as it was affirmed by the answerer.

Laval, Canada-France, France, 1995, p. 129. Source of the main text (translation from french to english and aggregations between square brackets belong to the author of this book).

Edward Poste, Aristotle on Fallacies, or the Sophistici Elenchi, V, with a Translation and Notes, Macmillan and Co., 1866, p. 15.

Aristotle, Sophistical Refutations, 5, 167a23-28, The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 282.

Aristotele, Confutazione Sofistiche, 5, 167a24-29., Organon A Cura di Giorgio Colli, Einaudi, 1995, Adelphi, 2003, p. 656.

Aristóteles, Sobre las Refutaciones Sofísticas, 5, 167a23-28, Tratados de Lógica (Órganon), Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, p. 319.

⁶²⁰ Aristotle, Sophistical Refutations, 6.

Edward Poste, Aristotle on Fallacies, or the Sophistici Elenchi, VI, with to Translation and Notes, Macmillan and Co., 1866, pp. 23-25.

Aristotle, Sophistical Refutations, 6, The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 284-286.

Aristóteles, Sobre las Refutaciones Sofísticas, 6, 167a23-28, Tratados de Lógica (Órganon), Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín, Editorial Gredos, Madrid, 1982, pp. 322-326.

Aristotele, Confutazione Sofistiche, 6, Organon A Priest I gave Giorgio Colli, Einaudi, 1995, Adelphi, 2003, pp. 659 - 664.

Aristote, Les Réfutations Sophistiques, 6, Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, pp. 133-136.

⁶²¹ Scott G. Schreiber, Aristotle on False Reasoning, Language and the World in The Sophistical Refutations, State University Of New York Press, New York 2003, p. 88.

Out of the seven sophisms that depend on language only to cause deceit, the excessive ambiguity ignores the requisite of “c” (the conclusion does not deny the same predicate affirmed by the answerer); the semantic ambiguity (homonymy), the syntactic ambiguity (amphibology) and the form of expression, they ignore the requisite of “d,” paragraph 1 (the predicate does not deny the signified thing, only the name), while the others three: the sophisms of composition and division, and of the accentuation violate so the requisite of “d,” paragraph 1 as well that of paragraph 2 (the predicate does not deny “the signified thing meant by the same name assigned by the answerer “).⁶²² Out of the seven sophisms that do not depend on the language only to cause deceit, if that of the ignorance of refutation is excluded, six remain: that of begging the question and that of the absolute and not absolute sense, which ignore the requisite of “d,” paragraph 3 (“the thing qualified precisely in the same way as it was affirmed by the answerer”); and the sophisms of the accident, of the consequent, of a cause that is not a cause, of begging the question and of several questions in only one, which ignore the requisite of “b” (“the conclusion shall necessarily follow from the premise”).⁶²³ That is to say, all sophisms in the vade mecum may be reduced to the unit of the sophism of ignorance of the refutation.⁶²⁴

b. Legislative sophisms in the wide sense

It has been said that the history of sophisms is the political history of the human race⁶²⁵ and that the main sophisms should be taught in schools to such youngsters as may wish to hold public offices.⁶²⁶ Nevertheless, not all politicians use sophisms, but no politician should allow that they are used against him or against others. The main sophisms should be taught in schools to young people at large, not only to those who aspire to govern, but also to those who will be governed, to those who may cheat and those who may be cheated, so that they lose their character of secret knowledge,⁶²⁷ a privilege of the few ones initiated in their mysteries.

⁶²²Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University Of New York Press, New York 2003, p. 90.

⁶²³Scott G. Schreiber, *Aristotle on False Reasoning, Language and the World in The Sophistical Refutations*, State University Of New York Press, New York 2003, p. 97.

⁶²⁴Aristotle, *Sophistical Refutations*, 6, 168a20.

Edward Poste, *Aristotle on Fallacies, or the Sophistici Elenchi*, VI, with a Translation and Notes, Macmillan and Co., 1866, p. 19.

Aristotle, *Sophistical Refutations*, 6, *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume One, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 284.

Aristóteles, *Sobre las Refutaciones Sofísticas*, 6, 168a20, *Tratados de Lógica (Organon)*, I, *Categorías, Tópicos, Sobre las Refutaciones Sofísticas, Introducciones, Traducciones y Notas de Miguel Candel Sanmartín*, Editorial Gredos, Madrid, 1982, p. 322.

Aristotele, *Confutazione Sofistiche*, 6, 168a20, *Organon A Cura di Giorgio Colli*, Einaudi, 1995, *Adelphi*, 2003, p. 659.

Aristote, *Les Réfutations Sophistiques*, 6, 168a20, *Introduction, traduction et commentaire par Louis-André Dorion, Préface de Jacques Brunschwig*, Librairie Philosophique J. Vrin, Presses de L'Université Laval, Canada-France, France, 1995, p. 133.

⁶²⁵Baron de Reiffenberg, *Principes de Logique Suivies de l'histoire et de la Bibliographie de cette Science*, Lois Hauman et Compagnie, Éditeurs, Bruxelles, 1833, num. 210, p. 106.

⁶²⁶Wilfred Châteaulair, *The Young Seigneur; Or Nation-Making*, Wm. Drysdale & Co., Publishers, Montreal, 1888, Chapter XXVI, *The Ideal State*, p. 128.

⁶²⁷On politics as a secret or as a secret knowledge, see:

All arts hide certain secrets only kept by teachers, who seldom discovered them by themselves, like geniuses and who most times obtained them when, still as disciples, their respective teachers decided to initiate them in such occult knowledge.

Political sophisms are part of the “secrets of power” (*arcana imperii*).⁶²⁸ But “political sophisms” is too wide a denomination for “legislative sophisms”, although both of them happen to be appropriate if the former is used for the genre and the latter for the species. In the treatment of legislative sophisms in the wide sense, as a genre, the denomination “deliberative sophisms” has been preferred for one of its two species, because it reveals the matter treated (discussion of the laws) more properly and is more clearly opposed to the denomination of the other species, namely “legislative sophisms in the strict sense” (laws as sophisms).⁶²⁹ The study of deliberative sophisms will be based on the “Treaty of the Political Sophisms” (French version) or on “The Book of Fallacies” (English version), both by Bentham⁶³⁰ and, that of legislative sophisms in the strict sense, on Book VI (IV), Chapter 13 of “The Politics” by Aristotle.⁶³¹

Deliberative sophisms

Deliberative sophisms affirm without arguing, or affirm with apparent arguments, intended to postpone the respective legislative debates (dilatatory sophisms), for the

Peter S. Donaldson, Machiavelli and Mystery of State, Cambridge University Press, First Published 1988, First Paperback Edition, New York, 1992, pp. 111-140.

Michel Senellart, Les Arts de Gouverner. Du Regimen médiéval au Concept de Gouvernement, Éditions du Seuil, Paris, 1995, pp. 206-277.

⁶²⁸Arnoldi Clapmarii, De Arcanis Rerumpublicarum Libri Sex, ed. Johannes Clapmarius, Bremen, 1605 (the first edition, posthumous).

Arn. Clapmarii, De Arcanis Rerumpublicarum Libri Sex, apud Ludovicum Elzevirium, Amsterodami, 1641, Arcana imperii, Lib. I, Cap. II, pp. 4-6; Lib. II, Cap. 1-23, pp. 57-113.

⁶²⁹Bentham, The Book of Fallacies, Edited by a Friend [Peregrine Binham], 1824, in The Complete Works of Jeremy Bentham, Published Under the Superintendence of his Executor, John Bowring, Volume II, Simpkin Marshall, & Co., London, 1848:

Bentham, Introduction, Section IV, “POLITICAL FALLACIES THE SUBJECT OF THIS BOOK”, p.380.

[Peregrine Bingham], PREFACE BY THE EDITOR OF THE ORIGINAL EDITION [1824], [...] the subject of which, indeed, -Fallacies employed in debate,[...]”, p. 376.

⁶³⁰Jérémie Bentham, Traité des Sophismes Politiques, dans Oeuvres de Jérémie Bentham, par Ét.

Dumont, Société Belge de Librairie, Hauman et Cie., Bruxelles, 1840, Tome Premier, pp. 435-504.

Jeremías Bentham, Tratado de los Sofismas Políticos, Prólogo y Traducción [from french] de Francisco Ayala, Editorial Rosario, Rosario, 1944, Palabras del Editor pp. V-IX; Prólogo, pp. XXI-XIII.; 223 pp. e Índice.

Bentham, The Book of Fallacies, Edited by a Friend [Peregrine Binham], 1824, in The Complete Works of Jeremy Bentham, Published Under the Superintendence of his Executor, John Bowring, Volume II, Simpkin Marshall, & Co., London, 1848.

Jeremías Bentham, Falacias Polísticas, Estudio Preliminar de Benigno Pendas, Traducción [from english] de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, pp. 109.

⁶³¹Aristotle, Politics, VI (IV), 13

Aristotle, Politics, IV, 13, in The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2059-2060.

Aristotle, Politics, VI (IV), 13, in The Politics of Aristotle, Translated with Introduction, Analysis and Notes, by Peter L. Phillips Simpson, The University of North Carolina Press, Chappel Hill and London, 1997, pp.194-196.

Aristóteles, Política, Libro VI (IV), Cap. 13, Edición Bilingüe y Traducción por María Araujo, Introducción y Notas por Julián Marías, Instituto de Estudios Políticos, Madrid, 1970, pp. 191-193.

purpose of avoiding them and, when it is no longer possible to avoid them, to confuse the use of reason (confusionist sophisms) or to prevent it (impedimental sophisms).⁶³²

Sophisms intended to postpone the debate (dilatory)

Six species of dilatory sophisms shall be included: those of the quietist, of false consolation, of the most opportune future, of gradualism, of the distraction maneuver and, finally, of the danger.

Sophism of the quietist

diagnosis

apparent normality: since no complaints have been raised on the alleged problems that the proposed bill would resolve, then it would not be necessary to debate it,⁶³³ least of all approve it;

secret pathology: the fact that no complaints have been raised –perhaps for fear, uselessness of previous complaints, economic or bureaucratic difficulties, etc. – does not mean that the problems do not exist or will not probably exist and that a prudent legislator should not propose now a bill meant to resolve or prevent them;⁶³⁴

recommended therapy: to show that the evils that the proposed bill is

⁶³²On dilatory political sophisms, see:

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 461.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, Palabras del Editor pp. 69-109

For the dilatory political fallacies, to see:

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 430.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, pp. 107-121.

⁶³³Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 430.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, pp. 109.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 461.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 73.

⁶³⁴Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 430-431.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 110.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 462.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 74.

intended to remedy exist at present or will probably exist in an immediate future; to excite the fear of suffering damages and the hope to avoid them with the measures adopted, this being the reasons why it will be necessary to debate and approve the proposed bill as soon as possible;

example:

"The measure is unnecessary; nobody complains of disorder in that shape in which it is the aim of your measure to propose a remedy to it: even when no cause of complaint has been found to exist, especially under governments which admit of complains, men have in general not been slow to complain; much less where any just cause of complaint has existed."⁶³⁵

For these reasons, since the measure is unnecessary, it turns out unsuitable to waste the resources of the State in idle debates;⁶³⁶

counter example:

Although it is true that men in general have been slow to complain, this slowness is not due to the nonexistence of problems, but to inertia, fear, uselessness of previous complaints, economic or bureaucratic difficulties, etc. Be that problems exist at present, or that they will probably arise in the immediate future, a prudent legislator will avoid the possibility that the people suffer from serious losses, by repairing or preventing them.

For these reasons, and for the specific and concrete motives exposed upon the introduction of the bill, it turns out opportune and expedient to invest the resources of the State in the debate and approval of a bill so necessary and prudent as the one proposed.⁶³⁷

Sophism of the false consolation

diagnosis:

apparent normality:

consolation is given to the people of the country where a bill was proposed to remedy certain abuses, remembering them that the people of other countries suffer from the same particular abuses and, also,

⁶³⁵Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 430.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p.109.

⁶³⁶Paragraph added by the author of this book.

⁶³⁷Counter example by the author of this book.

they are.
secret pathology:

from other general abuses, but are not so happy as the people of the country where a bill was proposed to remedy certain abuses, instead of resigning themselves with the false consolation that the people of other countries suffer from the same particular abuses and, also, from other general abuses, but are not so happy as they are, would not have to keep on bearing the abuses, but should demand that the bill proposed to remedy should be debated and approved as soon as possible;

example:

“What is the matter with you?” “What would you have?” Look at the people there, and there: think how much better off you are than *they* are. Your prosperity and liberty are objects of envy to them;—your institutions are the models which they endeavour to imitate.”⁶³⁸
Remember the ancient saying: “Other’ evils provide—or give—consolation”⁶³⁹, and be aware that there is not need to debate the proposed bill.⁶⁴⁰

counter example:

Although it is true that our people are in a much better condition than the people of other countries, that we enjoy prosperity and freedom, and that our institutions are models that other countries try to imitate, it is not less true that our people should not resign themselves with the false consolation that the people of others countries suffer from the same particular abuses and, also, from other general abuses, but they are not so happy as we are.
Remember the ancient saying: "Other’ evils are no consolation for ours”⁶⁴¹ and be aware that we have need to debate and approve the proposed bill as soon as possible.

⁶³⁸Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 431.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 111.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 464. Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 81.

⁶³⁹“Mal ajeno, hace –o presta- consuelo”).

Francisco Rodríguez Marín, *Más de 2.100 Refranes Castellanos*, no Contenidos en la Colección del Maestro Gonzalo Correas, Tip. de la Revista de Archivos, Madrid, 1930, p. 193.

⁶⁴⁰Paragraph added by the author of this book.

⁶⁴¹“Mal ajeno, para el nuestro no es consuelo”).

Francisco Rodríguez Marín, *12.600 Refranes Más no Contenidos en la Colección del Maestro Gonzalo Correas*, Tipográfica de la Revista de Archivos, Madrid, 1930, p. 193.

Sophism of the most opportune future

diagnosis:

apparent normality:

it is affirmed that the most opportune future has not come yet, and that it is necessary to wait a little longer to deliberate on the proposed bill;

secret pathology:

neither is an argument given to support that “the most opportune future has not come yet”, nor is a reasonable term fixed to wait for it, all of which allows to suppose that what is really wanted is to avoid not only the debate but also the approval of the proposed bill, without anticipating an opinion against it, since the objection lies in the will, not in the judgment;⁶⁴²

example:

A legislator, like a medical doctor, must wait for the propitious moment to apply the remedy that will cure a sick patient. The same remedy, applied at the wrong time, not only fails to cure the sick patient but may even damage his health, whether the patient be a human being or the social body.

For these reasons, it will be necessary to wait until a More favorable opportunity arises to debate the proposed bill, being it inconvenient at the present time to give an opinion on its advantages or disadvantages.

counter example:

It is true that a legislator, like a medical doctor, has to wait for the propitious moment to apply the remedy that will cure a sick patient, and that the same remedy, applied at the wrong time, not only fails to cure the sick patient but may even damage his health, whether such patient be a human being or the social body.

Nevertheless, if legislators, as well as medical doctors are prudent as they address free men like us, they should persuade us by explaining the reasons why this is not the propitious moment, what requisites should be fulfilled and within what probable term will the opportunity arise, instead of formulating mere affirmations without reasonable

⁶⁴²Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 432.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p..

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 462.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 75.

arguments supporting them.

For these reasons, there is no motive why we should wait for an opportunity more favorable than the present one to debate and approve the proposed bill, being that such opportunity and its advantages have been sufficiently explained in its exposition of motives.

Sophism of the gradualism

diagnosis

apparent normality: upon the emergence of a complex problem needing the adoption of several measures, coordinated in a concurrent or successive form, within brief periods, the arguments go: "one thing at a time", "not so fast", "slow but safer form", as if the gradual debate and approval a set of measures coordinated in the proposed bill were a more prudent action;⁶⁴³

secret pathology: complex problems need the adoption of several measures, coordinated in a concurrent or successive form, within brief periods to be effective and, even when they could be executed gradually, partially or within longer periods, they will always delay the achievement of the results sought, a delay that turns out unacceptable when no reasonable arguments justifying it are given;

example: The proposed bill implements a set of measures that it would be more prudent to debate and approve gradually, one at a time, not so fast, in a slow but safer form.

⁶⁴³Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 433.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 115.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 463. Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 77.

counter example: Real prudence resolves complex problems with a set of measures coordinated in a concurrent or successive form within brief periods to be effective. Even if it was possible to debate, approve and execute them gradually without losing efficacy, it would be highly imprudent to accept the resulting delays, without demanding such reasonable arguments as may justify them.

Sophism of the distraction maneuver

diagnosis

apparent normality: another bill that turns out more attractive to debate is proposed;⁶⁴⁴

secret pathology: this it is the case of a distraction maneuver, because there is not intention of presenting the bill immediately and such presentation shall be postponed with the excuse that there are more urgent matters to debate and, if the bill is debated and approved, the author of the initiative will try to take charge of its execution, to keep on delaying the same.⁶⁴⁵

example:

I cannot but acknowledge the usefulness of the bill to debate, but I wonder: why this bill and not this other one?, which, considering the limited time available, is much more important and deserves all the attention that we may focus on.

⁶⁴⁴Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 435.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 120.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 470.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 107.

⁶⁴⁵Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 435.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 121.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 471.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 108.

counter example:

I cannot but acknowledge the importance of the new bill proposed either, but I cannot but warn that its treatment turns out not to be incompatible with the other bill on debate, which, in addition, has the advantage of having overcome the stage of mere initiatives and is a concrete bill, ready to be debated, approved and executed immediately, capitalizing all the time already spent, while the other proposal, because of its importance, will need a greater investment of the available time, for the preparation of the concrete bill as well as for its later debate, approval and execution.

Sophism of the danger

diagnosis:

apparent normality:

it is affirmed that the proposed bill is so bad that it should not be even debated, be it for the nastiness or inconsistency with the positions previously assumed by those who initiated it and now support it, without it being known what they hide behind; or be it because any innovation is dangerous;⁶⁴⁶

secret pathology:

the mere affirmations of nastiness or inconsistency of the positions previously assumed by those who initiated the bill and support it, without it being known what they hide behind; or be it because any innovation is dangerous, both affirmed without any evidence, do not contradict the advantages of the bill described in the speech that accompanied it, and it does not even necessarily follow from such mere affirmations that the bill is so bad that it should not be debated, least of all approved;

⁶⁴⁶Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 413-430.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 73-106.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 465-468
Jeremías Bentham, *Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 85-99.

example: If those who took the initiative and those who now support the proposed bill have a bad intention or, an evil character, act for a bad motive, have fallen in inconsistencies with their previous positions criticizing similar bills and supporting the opposite ones; are intimate friends or, at least, hold frequent meetings with certain persons with dangerous intentions and dangerous principles like John Smith and James Jones, or share some or all their opinions, without it being known what they hide behind,⁶⁴⁷ or because any innovation is dangerous; then the proposed bill is so bad that it should not be debated, least of all approved.

counter example: It is argued that the bill is so bad that it should not be debated, least of all approved, affirming that those who took the initiative and those who now support the above mentioned bill have a bad intention or an evil character; act for a bad motive; have fallen in inconsistencies with their previous positions, criticizing similar bills and supporting the opposite ones; are intimate friends or, at least, hold frequent meetings with certain persons with dangerous intentions and principles, like John Smith and James Jones and share some or all their opinions without it being known what they hide behind; or because any innovation is dangerous. These serious charges are mere insulting affirmations In the absence of relevant evidence supporting them, and do not contradict the reasons exposed in the message that accompanies the proposed bill on the advantages that it will bring about if approved. In addition to sinning against logic and the constitutional right of the presumption of innocence and to falling in the prejudice of believing that any innovation is bad, even if proved, this would be not the first or the last time in which villains make something good, which does not redeem them but at

⁶⁴⁷Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 414.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 75.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 465.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 85.

least provides a benefit to others worthy of protection, a benefit which no legislator should deprive them of, because it would be unjust and imprudent.

For all these reasons, the proposed bill should be debated and approved as soon as possible.

Sophisms intended to confuse the debates (confusionist)

Confusionist sophisms spread deep darkness on the matter dealt with, with the expectation that the approval or rejection of a bill be thus avoided, in the middle of the resulting darkness for the uses of reason,⁶⁴⁸ in such debates as may no longer be avoided. Twelve species of sophisms will be included as confusionist ones: that of the only word, of the impostor term, of vague generalities, of allegorical idols, of popular corruption, of the antithinkers, of paradoxical affirmations, of the confusion of the obstacle with the cause, of the partiality, of the end that justifies the means, of the universal opponent and, finally, of the rejection instead of the modification.

Sophism of the only word that implies approval or rejection (epithet)

diagnosis:

apparent normality:	only one word is used as if it were neutral with regard to the approval or rejection of the bill on debate, without adding any reasonable argument to support the approval or rejection of the aforesaid bill;
secret pathology:	this single word, used as seemingly neutral, in fact, implicitly means the approval (praise) or rejection (condemnation) of the bill on debate, without any reasonable argument to support it, thus surreptitiously introducing the sophism of begging the question; ⁶⁴⁹

⁶⁴⁸Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 474.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 113.

⁶⁴⁹Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 436-438.

Jeremías Bentham, *Falacias Polísticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, pp. 125-126.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 481.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 145-146.

examples: The bill on debate improves⁶⁵⁰ the current law avoiding the current disadvantages. This is the reason why the approval of the aforesaid bill is requested.

The bill under debate worsens the current law, aggravating the current disadvantages. This is the reason why the rejection of the aforesaid bill is requested.

counter example: The mere use of a word of praise ("improves") or of condemnation ("worsens") without any reasonable arguments to support it may not replace the debate, which consists in an exchange of ideas, not in the exchange of sentences where the prevailing word has an implicit meaning of approval or of rejection. This is the reason why I am begging the distinguished orators that preceded me to add such reasonable arguments as will support their respective positions.
After having listened to them attentively, we will be in better conditions to continue with the present debate.
Nothing further, Mr. President.

Sophism of the impostor term (euphemism)

diagnosis:

apparent normality:

a seemingly acceptable term is used to name something;

secret pathology:

the seemingly acceptable term is used to substitute another one which, although proper, turns out unacceptable;⁶⁵¹

⁶⁵⁰The examples and the counter example belong to the author of this book; the word "improves" is taken from:

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 437.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 128.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 482.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 148.

⁶⁵¹Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 138.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 130.

example: The bill on debate regulates, with suitable zeal, the exercise of the freedom of cults established in our Constitution.

counter example: The bill on debate, with an apparent zeal to regulate the exercise of the freedom of cults established in our Constitution, actually restores the religious persecution of those who do not belong to the official cult.⁶⁵²

Sophism of vague generalities

diagnosis:

apparent normality: an expression more generic and undetermined than an specific and determined one, which would be grammatically proper, is used ;

secret pathology: the expression may mean something good or something bad, depending on the circumstances;⁶⁵³

example: The utility to and need of the government, the law, the moral and the religion have been always respected in this honorable place and this orator will not be the one to subvert them.

counter example: The bill on debate preserves the utility and need of the good government, the good law, the good moral and the good religion, because it avoids determined

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 484-485.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 157-158.

⁶⁵²The composition of the example and of the counter example belongs to the author of this book; the terms "zeal" and "persecution" are taken from Bentham:

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 438.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 130.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 484|.

Jeremías Bentham. *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 157.

⁶⁵³The composition of the example and of the counter example belongs to the author of this book; the expressions "law", "government", "moral" and "religion", are taken from Bentham.

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 440.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 134

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 483.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 153

evils, as it is indicated in full detail in its exposition of motives, the attentive reading of which will clear such implicit doubts as could have been left by the insinuations of the orator who has preceded me, who does not distinguish between the good thing that we must preserve and the bad thing that we must fight against in the present circumstances and in those that will probably emerge in the near future.

Sophism of allegorical idols

diagnosis:

apparent normality: a person who holds a public office is denominated with the name of the institution;

secret pathology: the institution generally implies the attribute of excellence; but the one who holds a public office may have had a good or a bad performance in the fulfillment of his duties;⁶⁵⁴ this is the reason why this sophism has also been denominated “sophism that protects official prevaricators”;⁶⁵⁵

example:

The purported abuses, the description of which is enjoyed by some opponents, are not reasonable critics to the performance of some officers. To attack us is to attack the Government.
They want to destabilize us!

counter example:

Without analyzing, for the time being, whether the abuses denounced by the opposition have been committed or not, it is necessary to point out that the officers charged may have had a good or a bad performance in the fulfillment of their respective duties, but they neither may nor must be identified with the Government to avoid control over their conducts by public opinion and the others Powers of the State authorized to do so, by surreptitiously seeking protection in the prestige of the institution to the excellence of which they should contribute.⁶⁵⁶

⁶⁵⁴Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 448.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 150.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 483.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 153.

⁶⁵⁵Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 490.

Sophism of popular corruption

diagnosis:

apparent normality: the corruption of the people is alleged to avoid the introduction of political reforms;

secret pathology: in fact the term “corruption“ is used to discredit the people in an undetermined form or attributing it a bad moral nature or mental frame, confusing the ideas, since true and concrete corruption is that of the rulers who bribe one another sacrificing the common interest to obtain their own profit;⁶⁵⁷

example:

“[...]The source of that corruption to which the honorable member alludes is in the minds of the people; so rank and extensive is that corruption, that no political reform can have any effect in removing it. Instead of reforming others – instead of reforming the State, the Constitution, and everything that is most excellent, let each man reform himself! let him look at home, he will find there enough to do without looking abroad and aiming at what is out of his power [Loud cheers.]”⁶⁵⁸

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 175.

⁶⁵⁶The example and the counter example belong to the author of this book; inspired in the expressions “You are an enemy to government” and “Your endeavour is to destroy government!” (equivalent to the more updated “they want to destabilize us!”), that belong to Bentham, according to the editions by Dumont and Bowring, respectively: Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 448.

Jeremías Bentham, *Falacias Poláticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 151.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 483.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 153

⁶⁵⁷Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 453. Jeremías Bentham, *Falacias Poláticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 161.

⁶⁵⁸Fallacies of Antireformers, A review of “The Book of Fallacies: from Unfinished Papers of Jeremy Bentham, by a Friend. London, 1824”, *Edinburgh Review*, 42 (1825), pp. 367-389, p. 388.

It is a fragment corresponding to this fallacy, of the famous “Noodle's Oration” of Sydney Smith (1771-1845), the “Friend” author of the aforesaid review that, in the end, composed a speech covered in which it threaded, with certain irony, successive proper examples of the fallacies described by Bentham.

counter example: It is not necessary to confuse ideas and things by attributing to the people, in an undetermined and apparent form, a bad moral nature on which any reform would depend, exhorting each one to reform himself, since the real corruption, the concrete and actual corruption takes place between the rulers who bribe one another, sacrificing the common interest to obtain their own profit.

The sophism of the antithinkers

diagnosis:
apparent normality: the measures on debate are discredited by means of epithets and set phrases, as if the exercise of thinking in itself were incompatible with a useful and successful practice;
secret pathology: discredit arises in the absence of reasonable arguments to reject such measures as impair the defended interests;⁶⁵⁹

example: The proposed measures are mere theoretical, romantic, fantastic and utopist speculations . They may seem good in theory, but, beyond any doubt they will turn out bad in practice. If someone dares thinking that the measures are good, it would be necessary to warn him that they are too good to be practicable. The proposed measures should be rejected, due to Their confusion between the ideal level of thought and the concrete reality of the problems to be resolved.

counter example: The prudent man, who is characterized for thinking before acting, cannot despise the exercise of thought, which distinguishes him from the irrational beings. A debate is an exchange of ideas, not of mere epithets and set phrases to discredit to the thought of others. This latter resource is typical of those who try to defend the interests impaired by the

⁶⁵⁹Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 457.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 170.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 474.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 123

measures on debate, when they lack reasonable arguments to oppose them.⁶⁶⁰

Sophism of paradoxical affirmations

diagnosis:

apparent normality: the denomination of the debated question is attacked with vehemence, as if it was the question itself;
secret pathology: as the debated question turns out unassailable with reasonable arguments, the attack is directed towards the denomination with which it is known, confusing the denomination of what is debated with the debated question, so that the rejection of the denomination provokes the rejection of debated question itself;⁶⁶¹

example:

Not always the lack of interest of an officer proves praiseworthy, since sometimes it is a sign of corruption, for example, when he gives up collecting his compensation, which makes it reasonable to presume that he hopes to gain much more with what he will receive in unofficial form!

counterexample:

When an officer gives up collecting his compensation, one should presume that his lack of interest is a sign of corruption, since it should not be forgotten that in addition to those interested in money there are also those who seek honors, this being the name with which ancient Romans denominated the civil service: a “career of honors” (*cursus honorum*).⁶⁶²

⁶⁶⁰The composition of the example and the counter example belong to the author of this book. Bentham refers to the abuse of the following words: “speculative“, “theoretical“, “chimerical“, “utopian“ and to the phrases: “Good theoretically, villain in practice”, “too good to be practicable”.

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 457-462.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 170-179.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 474-477.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 123-132.

⁶⁶¹Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 462.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 180.

⁶⁶²The composition of the example and of the counter example belong to the author of this book. Bentham quotes a speech by Edmond Burke on the Official Economy Bill in which Burke supports that the resignation of official emoluments is “a mark of the basest profigacy”; the distinction between love for wealth and love for reputation belongs to Bentham.

Sophism of the confusion of the obstacle with the cause

diagnosis:

apparent normality: after praising an excellent system, one of its parts is also praised, as if it were the cause of excellence;

secret pathology: the praised parts as if it were the cause of excellence, is in fact, an obstacle for the system, but an obstacle the preservation of which is sought due to the interests it favors;⁶⁶³

example:

“In virtue and knowledge-in every feature of felicity, the empire of Montezuma outshines, as everybody knows, all the surrounding states, even the commonwealth of Tlascala not excepted. Where (said an inquirer once, to the high priest of the Temple of Vitzliputzli,) is it that we are to look for the true cause of so glorious a pre-eminence? “Look for it!”, answered the holy pontiff-where shouldst thou look for it, blind sceptic, but in the copiousness of the stream in which the sweet and precious blood of innocents flows daily down the altars of the great God?”

“Yes,” answered in full convocation and full chorus the archbishops, bishops, deans, canons, and prebends of the religion of Vitzliputzli:

–“Yes answered in semi-chorus the vice chancellor, with all the doctors, both the proctors and masters regent and non-regent of the us yet uncatholiced university of Mexico:

–“Yes, in the copiousness of the stream in which the sweet and precious blood of the innocents flows daily down the altars of the great God.”⁶⁶⁴

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 464-465.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 183.

⁶⁶³ Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 133

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 476.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 187..

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 466.

⁶⁶⁴ Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 468, text reproduced above.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 190.

counter example: A current historian may recognize the persuasive value of such answers at that time, but should not allow to be deceived by accepting that the cause of the preeminence of Moctezuma's empire was the practice of human sacrifices, one of its most objectionable aspects.
The reasonable arguments of a current historian will distinguish between the real causes for the preeminence of Moctezuma's empire over its neighbouring peoples, and its objectionable and indifferent aspects.

Sophism of the partiality

diagnosis:
apparent normality: bad parts are omitted as if the whole was good; or are considered as if they were less than the good ones;⁶⁶⁵ because the abuse it is not a valid argument against the use;

secret pathology: whether the bad parts are omitted or presumed less than the good ones, bad parts should be neither omitted nor presumed, but weighted together with the real good ones, to judge them later;

example: In spite of the efforts that I have made I have not been able to find any bad part in the law the reform of which is sought. Moreover, I am persuaded that even in the hypothetical case that some defects are found, they will always be less in relation to the virtues that the current law has proved to possess. For these reasons, I request that the amendment bill On debate is rejected.

counter example: No reasonable legislator, either of the government party or of the opposition, could deny merits to the current law.
However, we are not debating its abrogation, but an amendment bill, because we cannot remain impassive in the light of such defects as are described in full detail in the Message, if we want to preserve immaculate the undeniable virtues that the law in force has proved to possess, by adapting it to

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 478

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp 134-135.

⁶⁶⁵Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 469.

the current reality.
For these reasons, I request that the amendment bill
in debate is approved.⁶⁶⁶

Sophism of the end that justifies the means

diagnosis:

apparent normality: arguments for the measures are given as if the end sought by them justified the means used to obtain it;
secret pathology: for the end to really justify the means used to obtain it, it is required that such end be good, that the means be also good in themselves or that the evil inherent to them be less than the goodness of the end, and that the evil be less than other means that could be used to obtain the same end;⁶⁶⁷

example:

It is true that some of the proposed measures are not completely good, if they are considered in themselves, but one should not forget that the end justifies the means.
For these reasons, I request that the bill on debate is approved.

counter example:

The end justifies the means is an old maxim, which has been much criticized, because it established the separation between morality and politics.
Those who go so far as to admit it dare not support it in absolute form, but submit it to certain requirements: that the end be good, that the means be good in themselves or that the evil inherent to them be less than the goodness of the end, and that the evil be less than other means that could be used to obtain the same end.
For these reasons, I request that the bill on debate is rejected.⁶⁶⁸

Sophism of the universal opponent

diagnosis:

apparent normality: it is argued that the measures, not the men, or that the men, not the measures, are important to obtain the

⁶⁶⁶Both the example and the counterexample belongs to the author of this book.

⁶⁶⁷Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 469-470.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 191.

⁶⁶⁸The composition of the example and of the counter example both belong to the author of this book, based on Bentham.

secret pathology:	end; ⁶⁶⁹ both the measures proposed and the men entrusted with their execution, are important to obtain the end;
examples:	Although it is true that the proposed measures seem reasonable, regrettably it is not possible to affirm the same of the persons entrusted with their execution, this being the reason why, much to my sorrow, I am inclined to vote against the bill on debate. Although it is true that the proposed measures are perfectible, the men entrusted with their execution undoubtedly fit from the moral as well as from the intellectual viewpoint, this being the reason why I am inclined to vote for the bill on debate.
counter example:	It turns out inadmissible that arguments are given against the bill on debate considering only the measures or the men entrusted with the execution, as if it were not indispensable to consider both arguments at the same time!

Sophism of the rejection instead of the modification

diagnosis:	
apparent normality:	objections are raised as if they were sufficient to reject the proposed measures;
secret pathology:	objections are really not preponderant or irremediable and, therefore, the former may be ignored and the latter, or both, may be rectified through the mere amendment of the bill; ⁶⁷⁰
example:	The political party that I represent is opposed to the creation of a new bureaucratic organism, for economic reasons and because it means another example of the ambition for power of the authorities in office.

⁶⁶⁹Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall and Co., London, 1843, Volume II, pp. 470-471.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas. Madrid, 1960, pp. 192-193.

⁶⁷⁰Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 471-472.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 194.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 478.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 137-138.

counter example:

Instead of using well known universal objections, over and over again, let's focus the debate on the need, opportunity and expediency of the bill with reasonable arguments. Then, let's see if the budget of the new organism is too bulky and if too many powers are granted to the officers and, in the affirmative, let's introduce appropriate modifications. Let's not fall in the pitfall of rejecting the bill with objections that are neither preponderant nor irremediable, when we are able to ignore the former and the latter or when both of them may be rectified through the mere amendment of a bill of great utility, rather than through its rejection.⁶⁷¹

Sophisms intended to prevent the debate (impedimental)

Impedimental sophisms are mere arguments of authority, intended to substitute and prevent the use of reason in already inevitable debates. Four species of impedimental sophisms will be included: those of the wisdom of our ancestors, of the absence of precedents, of irrevocable laws and of laudatory personalities.⁶⁷²

Sophism of the wisdom of our ancestors

diagnosis

apparent normality:

one affirms the purported repugnance of the proposed bill based on the opinion of those who long ago lived in the country of those who now deliberate, by merely quoting the opinion of some writer, or laws or institutions existing at that time, as sufficient reason to justify the rejection of the aforesaid bill;⁶⁷³

secret pathology:

if: "Experience is the mother of wisdom", between contemporary persons, the older ones are wiser, because of their greater experience; while between generations, the more recent ones are wiser, because of their greater experience, since they add their own to that of the previous ones;⁶⁷⁴

⁶⁷¹The composition of the example and of the counter example they belong to the author of this book.

⁶⁷²Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 447. Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 11-12.

⁶⁷³Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 398.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 41.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 447.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 25.

example:

“What would our ancestors say to this, Sir? How this measure tally with their institutions? How does it agree with their experience? Are we to put the wisdom of yesterday in competition with the wisdom of centuries ?

[Hear! Hear] is beard less youth to show no respect for the decisions of mature age (Lout cries of hear! hear!)”⁶⁷⁵

Our wise ancestors, the prudence of ours parents, the good sense of old times, the venerable antiquity are sufficient reasons for the rejection of the proposed bill and the closing of the debate.⁶⁷⁶

counter example:

Our ancestors could not say anything because neither the problem nor the solution existed in their times.

Why should it be taken into account whether the measure is consistent with their institutions? The mesure must be consistent with ours institutions, with the current ones, not with those then existing.

If: "Experience is the mother of wisdom", unlike contemporary persons, between whom the older ones are wiser, because of their larger experience, between generations, the current ones are wiser, because they add their own experience to that of the previous ones.

Mere affirmations about our wise ancestors, the prudence of our parents, the good sense of the old times, the venerable antiquity, in addition to trying to replace the use of reason, do not refute the advantages of the proposed bill, the fundamentals of which have been sufficiently explained in its exposition of motives.

For these motives, if no reasonable arguments are raised against it, the proposed bill must be approved without any further debate.⁶⁷⁷

⁶⁷⁴Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 398-399.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 41-44.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 447.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 25-26.

⁶⁷⁵Fallacies of Antireformers, A review of “The Book of Fallacies: from Unfinished Papers of Jeremy Bentham, by a Friend. London, 1824”, *Edinburgh Review*, 42 (1825), p. 367-389, p. 386.

This is a fragment corresponding to this fallacy in the famous "Noodle's Oration", by Sydney Smith (1771-1845), the "Friend" author of the aforesaid review that, in the end, composed a fluent speech in which he inserted, with certain irony, successive proper examples of the fallacies described by Bentham.

⁶⁷⁶Added by the author of this book.

⁶⁷⁷Counter example of the author of this book.

Sophism of the absence of precedents

diagnosis

- apparent normality: the absence of precedents is affirmed without any relevant evidence, as if it were sufficient reason to justify the rejection of the proposed bill;⁶⁷⁸
- secret pathology: whenever it is not possible to use the sophism of “the wisdom of our ancestors” because they do not exist or because there are neither previous opinions to be quoted, nor previous laws or institutions, the sophism of “the absence of precedents” is resorted to; proved or not, there is not motive why this sophism should hinder the use of reason to deliberate on the advantages and disadvantages of the proposed bill, least of all serve as sufficient reason for its rejection;

example:

“The proposition is new and of an unprecedented nature: this is, not doubt, the first time that any such thing was ever heard of in this House. [...] Deliberate well before you act, as you have not precedent to direct your course.”⁶⁷⁹

“If this measure be right, would it have escaped the wisdom of those Saxon progenitors to whom we are indebted for so many of our best political institutions? Would the Dane have passed it over? Would the Norman have rejected it? Would such notable discovery have been reserved for these modern and degenerate times?”⁶⁸⁰

⁶⁷⁸ Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 33.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 449.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 65-66.

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 410.

⁶⁷⁹ Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 410.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 65-66.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 449.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 33.

⁶⁸⁰ Review of “The Book of Fallacies: from Unfinished Papers of Jeremy Bentham, by a Friend. London, 1824”, by Sydney Smith (1771-1845) in *Edinburgh Review*, 42 (1825), pp. 367-389, pp.386-387.

No! Mr. President of this Honorable Chamber: the absence of precedents in itself constitutes sufficient reason for the rejection of the proposed bill and for the closing of the debate.⁶⁸¹

counter example:

The distinguished member of the opposition who preceded me in taking the floor, has wondered: "If this measure be right, would it have escaped the wisdom of those saxon progenitors to whom we are indebted for so many of our best institutions? Would the Dane have passed it over? Would the Norman have rejected it? Would such notable discovery have been reserved for these modern and degenerate times?"

Yes!, Mr. President of this Honorable Chamber: the absence of precedents usually stems from different causes, among which I cannot set aside the permanent influence exercised by the powerful, everlasting interests, which have been adversely affected by the measures, or from the fact that neither the problem to be resolved nor the proposed solutions existed at the times of our wise ancestors.⁶⁸²

Furthermore, the absence of precedents, in itself, does not constitutes sufficient reason for the rejection of the proposed bill and for the closing of the debate. For these motives, if no reasonable arguments are Raised against it, the proposed bill must be approved as soon as possible.⁶⁸³

Sophism of irrevocable laws

diagnosis

apparent normality:

once enacted, laws are irrevocable, whethe they are regarded as founded on a contract or on a solemn oath;⁶⁸⁴

It is a fragment corresponding to this fallacy of the famous "Noodle's Oration", of the aforesaid review that, in the end, includes a speech in which, with certain irony, successive proper examples of the fallacies described by Bentham are given.

⁶⁸¹ Paragraph added by the author of this book.

⁶⁸² Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 401.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 49.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 449-450.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 34-35.

⁶⁸³ Counter example by the author of this book.

secret pathology: unless enacted as temporary, laws are permanent, but this principle is confused with their perpetual nature and its consequence, irrevocability, taking the argument based on “the wisdom of our ancestors” to an extreme, also forgetting that “perpetual“ is not a synonymous for irrevocable, when both the circumstances and the reasons on which laws are founded are altered;⁶⁸⁵

example: “If this were an ordinary measure, I should not oppose it opposition with so much vehemence; but, Sir, it calls in question the wisdom of an irrevocable law.” It was enacted in the memorable period of the founding fathers of our Homeland, at the beginning of our national organization: What right do we have to demolish this firm column on which the great men that preceded us stamped their eternal wisdom?⁶⁸⁶ No, Sir, the proposed bill deserves to be immediately rejected just because it cast doubts on the eternal wisdom of our more glorious ancestors!⁶⁸⁷

counter example: Mr. President of this Honorable Chamber: the proposed bill, like the laws enacted by the founders of our Homeland, maintains the same spirit of those times with regard to the promotion of the well-being of the people without distinctions, as those founders did and as we must do now.
In the world of nature, the validity of laws lies in the

⁶⁸⁴Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 401-402.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 49-50.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 451-452.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, pp. 41-42.

⁶⁸⁵Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 407.

Jeremías Bentham, *Falacias Políticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 59.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 455.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 52.

⁶⁸⁶Review of “*The Book of Fallacies: from Unfinished Papers of Jeremy Bentham*, by a Friend. London, 1824”, by Sydney Smith, *Edinburgh Review*, 42 (1825), pp. 367-389, p. 387.

This is a fragment corresponding to this fallacy in the famous “Noodle’s Oration” by Sydney Smith (1771-1843), the “Friend” author of the aforesaid review that, in the end, composed a fluent speech in which he inserted, with certain irony, successive examples proper of the fallacies described by Bentham. The text between quotation marks reproduces the original, the rest is an adaptation by the author of this book.

⁶⁸⁷Paragraph added by the author of this book

maintenance of the experimental conditions in which they were verified, while in the legal world, the validity of laws lies in the maintenance of the circumstances and reasons on which they were founded upon their enactment. Neither the current circumstances are the same that our glorious ancestors lived, nor the reasons that they had upon the enactment of the law, the amendment of which is now proposed, are applicable now. Nevertheless, the proposed bill is imbued with the same spirit promoting the well-being of the people and is also based on the same unyielding will of the founders of our Homeland.

For these reasons, and for the considerations that arise from the Report of the Commission of [...] of this Honorable Chamber, which has accompanied the bill Now on debate, if the opposition does not raise any reasonable arguments for its rejection, the bill should be approved as soon as possible.⁶⁸⁸

Sophism of laudatory personalities

diagnosis

apparent normality:

a person who enjoys certain high position confesses, with ironic modesty, that he cannot render an opinion on the proposed bill because he does not understand it, to underestimate it without having to judge it; or tries that a majority trusts his negative judgment, without analyzing the purported inconveniences that it would have, through a self praise about the purity of the motives that guide him and the integrity of his life;⁶⁸⁹

secret pathology:

be it for ironic modesty or for the self-proclaimed authority, the secret pathology consists in rejecting the bill without any reasonable arguments against it.⁶⁹⁰

⁶⁸⁸Counter example by the author of this book.

⁶⁸⁹Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 459.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 64.

Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 412.

Jeremías Bentham, *Falacias Polísticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 69.

⁶⁹⁰Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, pp. 412-413.

Jeremías Bentham, *Falacias Polísticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 69-70.

- example: Mr. President of this Honorable Chamber, I must confess that I do not understand the proposed bill, in spite of my long lasting parliamentary experience, this being the reason why I am not able to render my opinion about its approval or rejection.
- counter example: Mr. President of this Honorable Chamber: I must acknowledge that it would have been very useful to rely on the authorized opinion of the distinguished parliamentarian who preceded me in taking the floor, but, because of the time spent in the study of the topic now on debate, we must deprive ourselves of his illustrated judgment, so as not to delay the enactment of a law of such an importance to the happiness of the people and the greatness of the Nation.
If no reasonable arguments are raised against the bill, we should approve it without any further delay.
- example: Mr. President of this Honorable Chamber: the purity of the motives that have always guided me and the integrity I have demonstrated in many years of honest parliamentary life, in the government party as well as in the opposition, impose on me the moral and political duty to move for the rejection of the proposed bill without any further debate.
- counter example: Mr. President of this Honorable Chamber: nobody can deny the parliamentary experience, the purity of the motives and the integrity demonstrated in many years of honest parliamentary life, so in government party as well as in the opposition, of the distinguished member of this High Body who has preceded me in taking the floor. However, since character is demonstrated by conduct and not conduct by character,⁶⁹¹ I invite him, with the

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, pp. 451-45.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 66.

⁶⁹¹Jeremy Bentham, *The Book of Fallacies*, in *The Works of Jeremy Bentham*, Published Under the Superintendence of his Executor, John Bowring, Simpkin, Marshall & Co., London, 1843, Volume II, p. 413.

Jeremías Bentham, *Falacias Polísticas*, Estudio Preliminar de Benigno Pendas, Traducción de Javier Ballarín, Centro de Estudios Constitucionales, Madrid, 1960, p. 70.

Jérémie Bentham, *Traité des Sofismes Politiques*, dans *Oeuvres de Jérémie Bentham*, Société Belge de Librairie, Hauman et Ce., Bruxelles, 1840, Tome Premier, p. 459.

Jeremías Bentham, *Tratado de los Sofismas Políticos*, Prólogo y Traducción de Francisco Ayala, Editorial Rosario, Rosario, 1944, p. 67.

utmost cordially respect, to let us know in detailed his authorized opinion about the purported specific inconveniences of the bill on debate that have led him to move for its rejection without any further debate. If neither he, nor any other member of his political party, or of other political parties, is able to illustrate us about the rejection of the bill with reasonable arguments, then I will move for its immediate approval, on the basis of the considerations contained in the Report of the Commission of [...] that has accompanied it.⁶⁹²

b. Legislative sophisms in the strict sense

Deliberative sophisms, although also applicable to many other political debates not about laws, take the discussion of the laws as a model. Legislative sophisms in the strict sense are those incurred by the law itself;

diagnosis:

apparent normality:

the law grants exemptions to certain persons for the optional exercise of certain activity, as if this would benefit them, and imposes sanctions on other persons who fail to exercise the above mentioned activity, as if this would damage them;

secret pathology:

in fact, since the purported beneficiaries will not exercise the optional exercise that the law granted to them, because they will not be fined for being exempted or, since when a fine is established on the the enrolled citizens who fail to exercise the aforesaid activity, they will not register themselves for fear of being fined, in any of two cases the ones purportedly damaged are those actually benefited with the exclusive exercise of the activity thus regulated.

Examples:

Sophism of the oligarchy⁶⁹³

Due to the little participation of the citizens in Assemblies of the People, the magistratures and the administration of justice, it turns out necessary,

⁶⁹²Both the example and the counter example belong to the author of this book.

⁶⁹³Aristotle, *Política*, Book IV, Cap. 13, 1297a15-25.

Aristotle, *Politics*, IV, 13, 1297a15-23, in *The Complete Works of Aristotle. The Revised Oxford Translation*. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2059.

Aristotle, *Politics*, VI, 13, 1297a14-25, in *The Politics of Aristotle, Translated with Introduction, Analysis and Notes*, by Peter L. Phillips Simpson, The University of North Caroline Press, Chappel Hill and London, 1997, p.195.

Aristóteles, *Política*, Libro VI (IV), Cap. 13, 1297a15-25, Edición Bilingüe y Traducción por María Araujo, Introducción y Notas por Julián Marías, Instituto de Estudios Políticos, Madrid, 1970, p. 191.

opportune and expedient to encourage them to participate.

Therefore,

THE ASSEMBLY OF THE PEOPLE
DOES HEREBY ENACT
THE FOLLOWING LAW:

ARTICLE 1: The citizens with an annual income equivalent to or higher than [...] drachmas who have failed to participate in the Assemblies of the People, or in the administration of justice, or who have resigned from their offices in the magistratures, shall, in any of the aforesaid cases, pay a fines amounting to [...] drachmas for each day of absence.

ARTICLE 2: The citizens with an income lower than [...] drachmas will be entitled to participate in the Assemblies of the People, the administration of Justice and the magistratures. They will remain exempt from the imposition of fines if they fail to participate in the former cases or resign their offices in the later case.

ALTERNATIVE ARTICLE 1 and 2: The citizens who shall register in a special record will be entitled to participate in the Assemblies of the People, the administration of justice and the magistratures. The citizens registered in the aforesaid special record who not participate in the Assemblies of the People or in the administration of justice, or who shall resign their offices in the magistratures, shall pay a fine amounting to [...] drachmas, for each day of absence.

ARTICLE...: On the relevant formalities.

Sophism of the ochlocracia⁶⁹⁴

Due to the little participation of the citizens in the Assemblies of the People, the administration of justice and the magistratures, it turns out necessary, opportune and expedient to encourage them to participate.

⁶⁹⁴Aristotle, Politics, Book IV, Cap. 13, 1297a35.

Aristotle, Politics, IV, 13, 1297a35, in The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2060.

Aristotle, Politics, VI, 13, 1297a34, in The Politics of Aristotle, Translated with Introduction, Analysis and Notes, by Peter L. Phillips Simpson, The University of North Caroline Press, Chappel Hill and London, 1997, p. 195.

Aristóteles, Política, Libro VI (IV), Cap. 13, 1297a35, Edición Bilingüe y Traducción por María Araujo, Introducción y Notas por Julián Marías, Instituto de Estudios Políticos, Madrid, 1970, p. 192.

Therefore,

THE ASSEMBLY OF THE PEOPLE
DOES HEREBY ENACT
THE FOLLOWING LAW:

ARTICLE 1: The citizens with an income higher than [...] drachmas, will be entitled to participate in the Assemblies of the People, the administration of justice and the magistratures. They shall remain exempted from the imposition of fines if they fail to participate in the former cases or resign their offices in the latter case.

ARTICLE 2: The citizens with an annual income equivalent to or lower than [...] drachmas, will be entitled to participate in the Assemblies of the People, the administration of justice and the magistratures. They shall receive a subsidy of [...] drachmas for each day of participation.

ARTICLE 3: On the relevant formalities.

counter example:

Refutation of two previous sophisms⁶⁹⁵

Due to the little participation of the citizens in the Assemblies of the People, the administration of justice and the magistratures, it turns out necessary, opportune, expedient and fair, to encourage them to participate.

Therefore,

THE ASSEMBLY OF THE PEOPLE
DOES HEREBY ENACT
THE FOLLOWING LAW:

ARTICLE 1: The citizens who, without any Reasonable justification, shall not participate in the Assemblies of the People, the administration of justice, or who shall resign their offices in the magistratures, in any of the aforesaid cases, shall pay a fine equivalent to [...] % of their annual income, for each day of absence.

ARTICLE 2: The citizens with an income equivalent to or lower than [...] drachmas, shall

⁶⁹⁵ Aristotle, *Politics*, Book IV, Cap. 13, 1297a15-25.

Aristotle, *Politics*, IV, 13, 1297a15-23, in *The Complete Works of Aristotle*. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2059.

Aristotle, *Politics*, VI, 13, 1297a14-25, in *The Politics of Aristotle*, Translated with Introduction, Analysis and Notes, by Peter L. Phillips Simpson, The University of North Caroline Press, Chappel Hill and London, 1997, p. 195.

Aristóteles, *Política*, Libro VI (IV), Cap. 13, 1297a15-25, Edición Bilingüe y Traducción por María Araujo, Introducción y Notas por Julián Marías, Instituto de Estudios Políticos, Madrid, 1970, p. 191.

receive a subsidy of [...] drachmas for each day of participation in the Assemblies of the People, the administration of justice or the magistratures.

ARTICLE 3: On the relevant formalities.

Those willing to enlarge their knowledge on political sophisms in general and on legislative sophisms in the wide sense (deliberative and legislative in the strict sense), may look for inspiration in Tacitus (55 - c. 117 A.D.)⁶⁹⁶, who narrated some historical examples of “secrets of the power” (“*arcana imperii*”);⁶⁹⁷ in Arnoldus Clapmarius (1574-1604), who included Aristotle’s “political fallacies” in the “*arcana imperii*” from Tacitus, and systematized the whole subject matter with numerous cites of them both and of other classical authors;⁶⁹⁸ in William Gerard Hamilton (1729-1796), who detailed a large number of observations and rules from and for an astute parliamentarian,⁶⁹⁹ and in George Junkin (1790-1868), who wrote about the false assumptions and the refutations of the fallacies incurred with regard to the civil war in the United States of America.⁷⁰⁰

The things to say that were found will have to be chosen once weighted and selected by means of previous reflection, by using the Instruments. Although it is true that there is nothing more fertile than a spirit cultivated by studying, it is not less true that, as well as fecund lands produce good grains and also bad grasses that damage the grains, the Promptuary registers in a systematical form not only the good things to say, but also the bad, the weak or the useless ones⁷⁰¹ to compose and criticize, to counsel and discounsel

⁶⁹⁶The Oxford Companion to Classical Literature, Compiled and Edited by Sir Paul Harvey, Oxford University Press, First Published October 1937, Reprinted with Corrections 1940, 1946, Oxford, p. 413.

⁶⁹⁷Tacitus, *Annals* II, 36.

The *Annals of Tacitus*, II.xxvi, in *Tacitus II, Annals, Books I-III, The Annals with an English Translation* by John Jackson, The Loeb Classical Library, William Heinemann Ltd., Harvard University Press, First Printing 1931, Reprinted 1943, 1951, 1956, pp. 436-438.

Tácito, *Anales* II, 36, en Cayo Cornelio Tácito, *Obras Completas, Traducción, Introducción y Notas*, Obra Publicada Bajo la Dirección de Vicente Blanco y García, Aguilar, Madrid, 1957, pp. 146-147.

⁶⁹⁸Arn. Clapmarii, *De Arcanis Rerumpublicarum Libri Sex*, ed. Johannes Clapmarius, Bremen, 1605 (primera edición, póstuma).

Arn. Clapmarii, *De Arcanis Rerumpublicarum Libri Sex*, apud Ludovicum Elzevirium, Amsterodami, 1641, *Arcana imperii*, pp. 73-113 (the cites correspond to this edition).

⁶⁹⁹William Gerard Hamilton, *Parliamentary Logick, To which plows Subjoined Two Speeches Delivered in the House of Commons of Ireland, and other Pieces, With an Appendix, Containing Considerations on the Corn Laws*, by Samuel Johnson, Never Before Printed, Printed by C. And B. Baldwin, London, for Thomas Payne, Pall-Mall, 1808, Preface xlvi pp.; 1-100 pp.

Guillermo Gerardo Hamilton, *Logical Parliamentarian, The Modern Spain*, Madrid, s.f., 96 pp.

⁷⁰⁰George Junkin, *Political Fallacies: An Examination of the False Assumptions, and Refutation of the Sophistical Reasoning, which have Brought on this Civil War*, Charles Scribner, New York, 1863, 325 pp.

⁷⁰¹With regard to the topics especially:

Cicerón, *El Orador*, 15, 47-49.

Marco Tulio Cicerón, *El Orador*, (M. Tulli Ciceronis Orator), 15, 47-49, *Texto Revisado y Traducido por Antonio Tovar y Aurelio Bujaldón*, Ediciones Alma Mater S.A., Barcelona, 1967, pp. 20-21.

Cicéron, *L'Orateur* (M. Tulli Ciceronis Orator ad M. Brutus), XV, 47-49, *Texte Établi et Traduit par Albert Yon*, Société d'Édition "Les Belles Lettres", Paris, 1964, p. 18.

the corresponding prescriptive and persuasive speeches, since before they are used it is necessary to value them with regard to every particular occasion.

RULE: Before beginning with the Systematics stage, it shall be verified that all the parts of the Promptuary (Form, Double reasons, Colors of Good and Evil, Topics and Sophisms) have been considered, like a check list, but not all the things to say that have been found shall be used without previous reflection, through the employment of the Instruments, about their respective utility to compose and criticize, to counsel and discounsel, in each occasion, the corresponding persuasive and prescriptive speeches.

The things to say that were found and chosen in the Investigation stage will be distributed in accordance with the explanatory plan to be adopted, this being the second of the three stages of the algorithm established for the drafting of a bill, which will be developed in the following Chapter, dedicated to Systematics.

Chapter VI Systematics

The rhetorical algorithm that will result in a written, prescriptive or persuasive speech, connects the previous stage, investigation, which provided the things to say (*res*), with the following one, style, which will state them (*verba*). After going out of one and before entering into the other one, it is necessary to arrange the content in a suitable form (*taxis, dispositio*), in accordance with a systematics, also known as *order, method, plan, disposition* or *economy*.

RULE: The systematics shall be suitable when it facilitates distributing, finding, understanding and remembering the contents of the speech, as well as its internal and external references. It will vary depending on whether the speech is prescriptive or persuasive.

1. Prescriptive speeches

Systematics has been one of the most studied topics by Romanist scholars as they criticized the Institutes of Gaius, the Digest and the Institutes of Justinian, and by Civil Law scholars, as they examined the respective codes and compared them with Napoleon's Code (1804), the German Civil Code (1900), and the Italian Civil and Commercial Code (1942). It has also been one of the most studied topics in the works on the art of legislation, both in the Civil Law and Common Law, but, curiously, it has not been related to the *taxis* or *dispositio* of the rhetorical tradition.

The order, method, plan, disposition, economy or systematics of legislation is of the utmost importance both in the composition and criticism of the general juridical norms, and in their interpretation, approval, application and amendment, since it determines the explicit context, what is stated, and also determines the implicit context,⁷⁰² what is not stated, but assumed: the idea of a juridical system.

a. Natural order

The juridical system has a classificatory structure already given to legislators like a pre-existing natural order (*ordo naturalis*), that they will follow under normal circumstances.⁷⁰³ This structure consists in the relationship of logical inclusion between

⁷⁰² "The context of the law shall serve to illustrate the sense of each of its parts, so that between all of them there is a proper correspondence and harmony.

The obscure passages of a law may be illustrated by means of other laws, particularly if they are about the same matter."

"El contexto de la ley servirá para ilustrar el sentido de cada una de sus partes, de manera que haya entre todas ellas la debida correspondencia y armonía.

Los pasajes oscuros de una ley pueden ser ilustrados por medio de otras leyes, particularmente si versan sobre el mismo asunto."

Código Civil de la República de Chile, Edición Autorizada por el Supremo Gobierno, Imprenta Chilena, Santiago de Chile, Julio de 1858, art. 22, p. 3.

⁷⁰³ It is the *ordo naturalis* of the rhetorical tradition, which is already given, does not depend on the orator and is followed under normal circumstances:

Heinrich Lausberg, Handbook of Literary Rhetoric, A Foundation for Literary Studies, Foreword by George A. Kennedy, Translated from Handbuch der Literarischen Rhetorik, Eine Grundlegung der

the sets of norms, institutions, branches, the internal juridical orders, and the international juridical order, all of them founded on the respective levels of principles (normative, institutional, proper of each branch, internal, international, general of the law and of civilized nations). It denotes the close link between the relevant differences and similarities that join together all the integral elements of a juridical system, reducing to a unity the multiplicity of materials originated in the sources of law (legislation, custom, case law, and juristic writings).

RULE: The things to say found and chosen at the investigation stage, shall be shown in accordance with the systematics that will determine the explicit context of the speech, following, under normal circumstances, the classificatory structure of the implicit context (juridical system), so that it will facilitate distributing, finding, understanding and remembering the content of the speech, as well as its internal and external references, for its opportune interpretation, approval, application and amendment.

A set of separated materials is not the same as those materials combined in a house constructed with them. Members just smelt, are not the same as joined in the statue for which they were destined.

RULE: The systematics order shall be natural, when it makes its integral parts so tightly cohesive that its sutures are not noticeable, forming a single body, instead of members only joined with each other.⁷⁰⁴

b. Artificial order

If the speech is like a body, a good cook will cut it by its natural joints, trying not to break any part, like an inept cook would.⁷⁰⁵

PRINCIPLE: Divisions shall follow the natural order, but if special circumstances indicate the conveniency or utility of a separation (*ordo artificialis*), others may be used,⁷⁰⁶ as long as, in accordance with the principle of just tolerance, they do not

Literaturwissenschaft, Max Hueber Verlag, München, 1960, Second Edition, 1973, by Matthew T. Bliss, Annemiek Jansen, David Orton, Edited by David E. Orton and R. Dean Anderson, Brill, Leyden, Boston, Köln, 1998, numbers 447-448, p. 213.

Heinrich Lausberg, Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura, Traducción de José Pérez Riesco del original alemán Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, numbers 447-448, p. 373.

⁷⁰⁴ Quintilian, The Institutio Oratoria, III, VII, Preface, 1-2; VII.10.16.

Quintilian, The Institutio Oratoria of Quintilian, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book VII, Preface, 1-2, London, 1921, pp. 2-5, VII.x.16, pp. 170-171.

Quintilien, Institution Oratoire, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Tome IV, Livre VII, Avant-propos, 1-2, Paris, 1977, p. 106, 7.10.16.

⁷⁰⁵ Plato, Phaedrus, 265d-e.

Platon, Phédre, 265e, dans Platon Oeuvres Complètes, Traduction Nouvelle et Notes par Léon Robin, avec la Colaboration de M.J. Moreau, Bibliothèque de la Pléiade, Tome II, Paris, 1942, p. 62.

Platón, Fedro, 265d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, pp. 61-62.

⁷⁰⁶ It is the *ordo artificialis* or *ordo artificiosus* of the rhetorical tradition, which consciously sacrifices the natural order (artistically), on account of special requirements of the cause (*utilitas*).

destroy the real unity of the institutions, nor assemble heterogeneous elements, nor distort their harmony, and nor alter their truly essential features, thus obscuring the matter and becoming an obstacle to distributing, understanding,⁷⁰⁷ finding and remembering the speech, as well as internal and external references, for their opportune interpretation, approval, application and amendment.

The systematics facilitates the understanding of a speech, since the context enables to omit words without generating reasonable interpretive doubts, like, for example, when the Spanish word *gato* (meaning “cat” and “jack”) “cat” is used to refer to the domestic animal in an animal protection law, or when it is used to refer to the device in a law establishing the rights of import of hardware, since nobody will find any ambiguity in their respective contexts.

RULE: When the provisions are grouped in accordance with their similarities and differences, it shall be easier to:

- a) find those with the same topic, because they are together;
- b) remember them, because of the association of ideas;
- c) refer to them, mentioning the respective systematic units.

RULE: The audience of a bill is not a single one, since it is integrated, successively, by those who shall put it forward, approve it, publish it, spread the knowledge of it, fulfill it and apply it. They are all its addressees, who shall previously interpret it. For this reason, the addressees shall have to be borne especially taken into account by the legislator and his advisers, since they form a multiple audience.

In the past, owing to the imperfect distribution of the matters, especially in Justinian's Digest, the explicit context and the descriptors that had to indicate the content did not have much weight in the interpretation, whether with the argument *pro subjecta materia*, or, to lesser degree, with the argument *a rubrica*.⁷⁰⁸ Nowadays, the

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation for Literary Studies*, Foreword by George A. Kennedy, Translated from *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Second Edition, 1973, by Matthew T. Bliss, Annemiek Jansen, David Orton, Edited by David E. Orton & R. Dean Anderson, Brill, Leiden, Boston, Köln, 1998, number 452, p. 214.

Heinreich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 452, pp. 375-376.

⁷⁰⁷ F.C. Savigny established the principle of “just tolerance” in the scientific exposition, which does not establish indifference in the event of an imperfection, but pays homage to the independence of the human spirit in its individual development.

F. C. Savigny, *Traité de Droit Romain*, Traduit de l'Allemand par Ch. Guenoux, Librairie de Firmin Didot Frères, Paris, 1855, Tome Premier, Chapitre I, LIX Des Divers Systèmes de Classification du Droit, pp. 395-396.

This principle also applies, according to the author of the present work, to legislative exposition.

⁷⁰⁸ The forceful value of the argument *a rubrica* was still a controversial matter at the beginning of XX century.

La Logique Judiciaire et l'Art de Juger par P. Fabregettes, Librairie Générale de Droit & de Jurisprudence, Paris, 1914, pp. 384, 391-392.

place of the norm in the legislative text, its explicit context, provides a hint for its systematical interpretation.⁷⁰⁹

PRINCIPLE: The legislator shall maintain the coherence, completeness and economy of the classificatory system, in the juridical system (*macro*) and in the respective bill (*micro*), avoiding antinomies, gaps and redundancies, in such a way that in the prescriptive speech, there will be a place for every-thing and every-thing will be in its place.

Parts of the speech

The parts stressed next appear in any prescriptive speech. They are natural insofar as they arise from their prescriptive nature, but they also are artificial,⁷¹⁰ because they belong to the art of legislation that perfects them with its rules.

RULE: The body of any prescriptive speech shall have two essential parts:

- a) the first part may have one or more sections and, in the event of many sections, it will be preceded by one or more Preliminary Titles or a General Part,⁷¹¹ followed by the most important divisions, grouped in a Special Part, if there is a General Part;
- b) the second part may limit itself to the last section (on the relevant formalities), or also include complementary provisions, provisions approving anexes, and transitory and repealing provisions.

RULE: The provisions may be:

- a) complementary, if they may neither be included in the existing divisions, nor form a homogeneous class justifying another division;
- b) approving of anexes or a set of information, generally with technical contents, which will serve to interpret and apply the law, except in the case of the systematic legislation, usually enacted as an annex to the law that approved its text;

⁷⁰⁹ Giorgio Lazzaro, *L'Interpretazione Sistematica della Legge*, Università di Torino, Memorie dall'Istituto Giuridico, Serie II, Memorie CXXII, Torino, 1965, pp. 121-122.

⁷¹⁰ [Cicero] *Rhetorica ad Herennium*, III, IX, 17.

[Cicero] *Rhetorica ad Herennium*, With an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, III, ix, 17, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 184-187.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro III, IX, Barcelona, 1991, pp. 196-197.

Cicerón, *Obras Completas de Marco Tulio Cicerón*, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Tomo I, *Retórica a Cayo Herennio*, Libro III, Madrid, 1879, p. 154.

[Cicéron] *Rhétorique a Herennius*. Ouvrage Longtemps Attribué a Ciceron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre III, IX, 17, Paris, p. 123.

⁷¹¹ The provisions of the General Part apply to all the topics in the Special Part.

R. Saleilles, *Introduction a l'Étude du Droit Civil Allemand*, 1904, p. 105.

After the division into a General Part and a Special Part of the German Civil Code of 1900, this systematic was not used again in the Swiss Civil Code of 1912, or in the Italian Civil Code of 1942, and it gave rise to an interesting debate in the French Civil Code Reform Commission.

Code Civil Suisse, *Exposé des Motives de l'Avant-Projet du Département Fédéral de Justice et Police*, Tome Premier, Introduction, Droit des Personnes et de la Famille, Berne, 1901, pp. 18-21.

Travaux de la Commission de Reforme du Code Civil, Année 1945-1946, Librairie du Recueil Sirey, Paris, 1947, pp. 159-161. Année 1946-1947, Paris, 1948, p. 14-110, 229-277.

- c) transitory, if they establish exceptions to the principles governing the publication, entry into force, and existence of the law;
- d) repealing, if they render other norms partially ineffective;
- e) abrogative, if they render other norms completely ineffective, without replacing them.

RULE: Complementary provisions shall precede transitory ones and transitory provisions shall precede repealing ones. Transitory and repealing provisions shall follow complementary ones, since both will be exhausted upon their respective fulfillment.

RULE: The section on relevant formalities shall be at the end, because, in addition to its prescriptive content, which shall also will be exhausted, it shall indicate -in implicit form- that it is the last section of the prescriptive speech.

RULE: Any division shall contain more than one section. Should there be only one section, a marginal rubric will suffice.

RULE: When the change to be introduced to modify a law consists in adding a concept, it shall be advisable to subdivide an existing systematic unit,⁷¹² rather than to create a new one, of equal or higher status, provided that the resulting text preserves the homogeneity of the prescriptive speech.

Although today it seems obvious, the numbering of the laws was one of the ideals pursued in the XVII century, as it may be seen in Leibniz.⁷¹³ It has been a great advance, because it has facilitated references, but also a source of technical gaps, due to the possible errors or omissions in the amending legislation.

RULE: Any legislative change shall be preceded and accompanied by the explicit control written in specific charts, of the crossed references in the bill itself and in relation to the current law, before and after the proposed changes, to avoid errors and technical gaps.

Elaboration of the expository plan

RULE: When the matters are distributed to two antithetic members of the set, tension shall be underlined; when they are distributed to three members, completeness shall be underlined.⁷¹⁴

⁷¹² Jack Stark, *The Art of the Statute*, Fred B. Rothman, Littleton, 1996, p. 47.

⁷¹³ Gottfried Wilhelm Leibniz, *Philosophischen Schriften*, Herausgegeben von der Preussischen Akademie der Wissenschaften, Erster Band 1663-1672, Otto Reischl Verlag Darmstadt, Nova Methodus Discendae Doceandaeque Jurisprudentiae, Herbst 1667, Druck C. (Frankfurt 1667), "Catalogus Desideratum Hic Esto: Ad perficiendam Jurisprudentiam fiant, [...] (20) Leges Numeratae", Berlin, 1930, p. 364, desarrollado en el párrafo 61, pp. 334-335.

⁷¹⁴ Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation for Literary Studies*, Foreword by George A. Kennedy, Translated from *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Second Edition, 1973, by Matthew T. Bliss, Annemiek Jansen, David Orton, Edited by David E. Orton & R. Dean Anderson, Brill, Leiden, Boston, Köln, 1998, number 443, p. 209.

Heinrich Lausberg, *Manual de Retórica Literaria. Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine*

RULE: Systematic criteria go from the simple to the complex, from general to special, from the abstract to the concrete, from the universal to the particular, from the highest to the lowest, from cause to effect and from precedent to consequent.

RULE: In elaborating an expository plan, it shall be practical to start by concisely describing the topics to be developed in each systematical unit, starting with sections,⁷¹⁵ in the case of simple laws, or with higher units, like Chapters, Titles, Parts and Books, in the complex ones, to group or to separate them later on, in accordance with the noticed relevant similarities and differences between them.

RULE: The marginal rubrics⁷¹⁶ of sections, like the denominations of Chapters, Titles, Parts, Books, Special Part, General Part, or of the prescriptive speech as a whole, shall be understood as headings or descriptors giving an idea of the topic dealt with, not as summaries of their content.

RULE: Descriptors shall be grouped in homogeneous classes, in accordance with their relevant similarities and differences. Those repetitively used may indicate the need to form a General Part, with its respective subdivisions. The descriptors of the Special Part shall indicate the content of Books, Parts, Titles, Chapters and Sections.

RULE: Complex systematical units shall be divided into simple systematical units, beginning with Sections.

RULE: To facilitate the debate and the voting, sections shall be subdivided into subsections and paragraphs, so that it may be possible to discuss, approve or reject them separately.⁷¹⁷

No Section should exceed one hundred words, or else it becomes difficult to understand. The French Civil Code of 1804, an example of legislative clarity, does not contain any section exceeding a hundred words.

RULE: Sections shall not exceed one hundred words, to facilitate the understanding of their respective meanings.

Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1966, T. I, número 443, p. 368.

In relation to the Roman jurist's tendency to use symbolic numbers and artificial symmetries, number 3 is remembered as an odd number bringing good luck; divine power, as in the Hindu mythology Vishnu, Siva and Brahma and the Christian Trinity; representation of the beginning, middle and end of everything and also of the space dimensions in Pythagoras, Plato and the neoplatonists; finally, the modern superstition of the English saying "The third time is the lucky one" or the German "Aller gutten sollen drei sein".

Henry Goudy, Artificiality of Roman Juristic Classifications, Studi in Onore di Carlo Fadda, T. V., Napoli, 1906, pp. 210-211.

⁷¹⁵ R.M.M. King, Manual on Legislative Drafting, Commonwealth Secretariat, London, 1976, p. 5.

⁷¹⁶ Thus called because the epigraphs or signs of the ancient books used to be written in red ink.

Diccionario de la Lengua Española, Decimonovena Edición, Real Academia Española, rúbrica, acepción 3, Madrid, 1970, pp. 1161.

⁷¹⁷ For the division of the very complicated original proposals, which allows for partial rejections, see: Bentham, Oeuvres de Jérémie Bentham, Ét. Dumont, Troisième Édition, Société Belge de Librairie, Tome Premier, Tactique des Assemblées Politiques Délibérantes, Chapitre XXI Des Amendements, Société Belge de Librairie, Bruxelles, 1840, p. 393.

Care should be taken with the terminology of legislative systematics in comparative law, since, in Civil Law countries, *Secciones* (Parts) may precede *Títulos* (Titles), like in the Argentine Civil Code, or appear later, before the *Capítulos* (Chapters), as in the Argentine Code of Commerce and in the Civil Code of Brazil; Common Law Sections are denominated *Artículos*,⁷¹⁸ a Division is a *Capítulo* (a set of Sections), a Subsection is an *Inciso*, which is named *Paragraphe* in French, while an English Paragraph is equivalent to a French *Alinéa*.⁷¹⁹ The latter systematical category begins to the left of the line, with a capital letter according to an interpretation, and ends with a period (Council of the State, General Secretariat of the Government and, in general, the administrative services); according to another interpretation, it also begins to the left, but it ends on the following line (services of the parliamentary assemblies).⁷²⁰

RULE: To write the marginal notes of Sections and rubrics of the other systematical units, as well as the whole prescriptive speech, the terminology used shall be transparent, to bring its meaning to mind, and also concise, to facilitate its memorization.

2. Persuasive speeches

From Corax, active in Syracuse after democracy was restored (467 B.C.) and the author of the first handbook on Greek rhetoric, persuasive speeches have been split into three systematical parts: exordium, *agon* or struggles (of ideas, in this case) and epilogue.⁷²¹

RULE: Persuasive speeches shall be split into three parts: exordium, *agon* and epilogue.

a. Exordium

The persuasive speech precedes the prescriptive speech, takes it as its object, and serves as an exordium or preface to it in preambles, whereas, exposition of motives, messages and reports. These species of exordiums, as well as the footnotes, notes inserted at the end and epilogues, which also are persuasive speeches, considered in themselves as whole speeches, may have an exordium or preface the purpose of which,

⁷¹⁸ For the Brazilian Civil Code and the equivalence between the Spanish *Artículo* and *Sección*, see: Hésio Fernandes Pinheiro, *Técnica Legislativa, Constituições e Atos Constitucionais do Brasil*, 2.a Edição, Livraria Freitas Bastos S/A, Rio De Janeiro, São Paulo, 1962, p. 111, text and n. 60.

⁷¹⁹ In addition to the equivalence between *Article* in Civil Law and *Section* in Common Law, for other remarks, see:

Louis-Philippe Pigeon, *Rédaction et Interprétation des Lois*, Cours Donné en 1965 Aux Conseillers Juridiques du Gouvernement du Quebec, 1965, pp. 18-19.

⁷²⁰ Dominique Rémy, *Légistique. L'Art de Faire les Lois*, Éditions Romillat, Paris, 1994, p. 180.

⁷²¹ George Kennedy, *The Art of Persuasion in Greece*, Princeton University Press, Princeton, New Jersey, First Edition 1963, Sixth Printing, 1974, p. 59.

Among the first authors of handbooks Tisias is also usually mentioned, but they are apparently the same person, since "Corax", which means crow in Greek, was allegedly his nickname.

George A. Kennedy, *A New History of Classical Rhetoric*, Princeton University Press, Princeton, New Jersey, 1994, p. 34 y n. 10, con cita de Cole, Thomas, *Who was Corax?*, Illinois Classical Studies 16 (1991), pp. 65-84.

as in the preambles, expositions of motives, messages and reports, is to obtain the attention, docility and benevolence from the audience.⁷²²

RULE: In persuasive speeches, as in any speech, the exordium shall try to obtain the attention, docility and benevolence from the audience.

RULE: The exordium may be omitted in honest bills, which are those that coincide with the feelings of the public opinion, given the absence of prejudices against the legislator, the bills or the regulated matter.

RULE: When the exordium is omitted, the speech shall begin with the proposition, which is a summary of the problem to be solved, which will facilitate the understanding and approval of the solutions. The proposition may be supplemented by a division of the topics, so that those unfamiliar with the issue may understand the exposition throughout, postponing to obtain the attention, docility and benevolence from the audience.⁷²³

There are two exordiums species: the direct ones, which clearly, immediately and openly try to obtain the attention, docility and benevolence from the audience; and the indirect ones, which mediately, secretly, subtly or by insinuation, pierce through the soul of the audience.⁷²⁴

Direct exordiums

RULE: In honest bills, an exordium shall show why it coincides with the feelings of the public opinion, or announce the topics to be developed,⁷²⁵ to reinforce sympathetic feelings or to serve as an expository plan.

⁷²² [Cicero], *De Inventione*, I, XV, 20.

Cicéron, *De l'Invention (De Inventione)*, I, XV, 20, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Paris, 1932, pp. 30-31.

⁷²³ [Aristotle] *Rhetoric to Alexander*, 29, 1436a35; 1437b34.

[Aristotle] *Rhetoric to Alexander*, Translation E. S. Forster, *The Complete Works of Aristotle*, The Revised Oxford Translation Edited by Jonathan Barnes, 29, 1436a 35, 1437b34, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, pp. 2296-2297, 2299.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, iv, 6, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 12-13.

[Cicéron] *Rhétorique a Herennius*, *Ouvrage Longtemps Attribué a Cicéron*, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, IV, 6, Paris, 1932, pp. 8-9.

⁷²⁴ [Cicero] *Rhetorica ad Herennium*, I, IV, 6.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, iv, 6, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 10-13.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmio, *Textos Bilingües*, Editorial Bosch, Libro I, IV, Barcelona, 1991, p. 68.

[Cicéron] *Rhétorique a Herennius*, *Ouvrage Longtemps Attribué a Cicéron*, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, IV, 6, Paris, 1932, pp. 6-7.

Cicéron, *de L'Invention (De Inventione)*, I, 20.

Cicéron, *de l'Invention (De Inventione)*, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, I, 20, Paris, 1932, pp. 30-31.

⁷²⁵ [Cicero] *Rhetorica ad Herennium*, I, IV, 6.

RULE: In humble bills, which are those about problems of minor importance, the exordium shall try to emphasize the obtaining the attention⁷²⁶ of the audience of persuasive and prescriptive speeches, to which end, such attention shall be directly requested⁷²⁷ or arguing that the problem:

- a) although not important at present, if not dealt with and if a solution is not adopted, important damages will be caused in the future;
- b) does not register precedents, or requires innovative solutions;
- c) does not affect the interest of the government only, but also of the State in general and the audience in particular.

RULE: In obscure bills, the exordium shall try to emphasize the obtaining of the docility of the addressees of persuasive⁷²⁸ and prescriptive speeches. Docility consists in enabling the addressees to better understand such speeches, providing them a summary of their contents so that they may follow the exposition more easily.⁷²⁹

RULE: In doubtful bills, which combine easy assumptions for their honesty with difficult ones for their awkwardness, being it impossible to establish the resulting strength or weakness, the exordium shall try to emphasize the benevolence, in such a way that the awkwardness will not be harmful to the legislator.⁷³⁰

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, iv, 6, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 12-13.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, IV, Barcelona, 1991, pp. 68-69.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, IV, 6, Paris, 1932, pp. 8-9.

⁷²⁶ [Cicero] *Rhetorica ad Herennium*, I, IV, 6.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, iv, 6, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 12-13.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, IV, Barcelona, 1991, pp. 68-69.

[Cicéron] *Rhétorique to Herennius*, Ouvrage Longtemps Attribué to Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, IV, 6, Paris, 1932, pp. 8-9.

⁷²⁷ Octave Navarre, *Essai sur la Rhétorique Grecque avant Aristote*, Librairie Hachette et Cie., Paris, 1900, pp. 215-216.

⁷²⁸ Octave Navarre, *Essai sur la Rhétorique Grecque avant Aristote*, Librairie Hachette et Cie., Paris, 1900, p. 214, n.1.

⁷²⁹ [Aristotle], *Rethoric to Alexander*, 29, 1436a35.

[Aristotle] *Rhetoric to Alexander*, Translation E. S. Forster, *The Complete Works of Aristotle*, The Revised Oxford Translation Edited by Jonathan Barnes, 29, 1436a35, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, pp. 2296-2297.

⁷³⁰ [Cicero] *Rhetorica ad Herennium*, I, IV, 6.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, iv, 6, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 12-13.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, IV, Barcelona, 1991, pp. 68-69.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, IV, 6, Paris, 1932, pp. 8-9.

To ensure benevolence it is necessary to consider whether the addressees will be well disposed, bad disposed, or indifferent towards the bill.⁷³¹

RULE: When the addressees of the bill are well disposed, this state of mind may be briefly remembered in the exordium, to maintain or increase their benevolence.

EXAMPLE:

To have to show my just attitude towards public matters, for which invariably I preferred personal sacrifices instead of reaping any advantage at the expense of the State; to have to show that I always had the best intentions and that my bills turned out to be profitable laws for all; it does not seem necessary to say it, because it is of public knowledge. My efforts will go to show the merits of the law I now propose, which, as in the previous occasions, I hope will achieve the same results.

RULE: When the addressees of the bill are indifferent towards it, the exordium shall try to obtain their benevolence, pleasing them with the modesty oratory of the legislator and alleging the benefits that all of them will obtain with the approval of the bill.

EXAMPLE:

It is appropriate and convenient to listen favorably to those who have not yet proved their legislative prudence, if, as it is habitual among the addressees of the bill, they are regarded objectively and sensitively. The present initiative does not pretend to obtain credibility by the oratorical skills of the person who proposes it, since he has not such skills, and they are not even necessary in this case, in the light of the evident benefits that everybody will obtain if the bill is debated, passed, interpreted and applied in accordance with its purpose: the common good.

The addressees of the bill may be bad disposed against it due to prejudices against the legislator, the matter legislated, or the prescriptive speech in itself.

RULE: When the addressees of the project are bad disposed against it due to prejudices against the legislator, the exordium shall capture their benevolence, refuting in advance the most frequent prejudices:

- a) imputation of crimes not judged, with the accusers' lack of interest in prosecute the criminal proceedings, the defendant's presumption of innocence and the objective assessment of the bill;
- b) judged and punished crimes, including the irregular nature of criminal proceedings, and the fact that the convict has served the imposed sentence;
- c) youth, with the early interest, the updated knowledge, the successful experiences, the new problems to resolve, and the absence of experts (who have not been sufficiently trained yet);

⁷³¹ [Aristotle] Rhetoric to Alexander, 29, 1436b35.

With some changes, it follows:

[Aristotle] Rhetoric to Alexander, Translation E. S. Forster, The Complete Works of Aristotle, The Revised Oxford Translation Edited by Jonathan Barnes, 29, 1436a35, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, pp 2296-2297.

d) old age, with the deep knowledge, long experience of the concrete problems to be solved, a lucid memory of undisclosed reasons, and the absence of experts (who are no longer available).

EXAMPLES:

This legislator knows very well, perhaps too well, that he has to face prejudice against him, but it will be immediately proven that such prejudice lacks any foundation, in the case of:

a) imputation of crimes not judged:

Those who have pressed the charges have no interest in the proceedings, but are afraid of them, since the falsity of the accusations would be demonstrated and they should answer for their statements. For this reason they pose all kinds of obstacles to his efforts to enable trial to take place, which would prove his innocence, since any accused would do nothing to go ahead with the proceedings if he were guilty. It should also be borne in mind that any accused is presumed innocent until found guilty; hence, he is waiting for the court judgment with confidence.

Finally, those who shall decide whether this bill is to be discussed, approved or rejected, should not let themselves be carried away by prejudice against its author, but they should carefully and dispassionately analyze the bill in itself, to make a just and convenient decision, which will bring happiness to everyone.

b) crimes judged and punished:

The charges are false, since [...] The proceedings are irregular, since [...] Finally, although he has been condemned, he has already paid his price to society, and nobody should any longer be discredited on account of the same fact, since this is the case of a settled account.

c) youth:

The author of the present bill doesn't ignore that young people who promote bills face prejudices on account of their inexperience. The matter regulated, which is new, has interested and been studied by him from a very early age. Besides, the author has successfully applied his knowledge on many occasions.

Finally, it should be remembered that now there is a shortage of experts available to enlighten us with their advice and, since the deliberation can't take place on other opportunity, it would be imprudent not to treat or approve a just and convenient bill on the basis of a mere prejudice, like the youth of the person who proposes it.

d) old age:

This legislator knows very well that elderly people who promote bills face prejudices on account of their age, because it is thought that they should cease to do so. Since now there are no other experts available to enlighten us with their advice, and since the deliberation can't take other opportunity, it would be imprudent not to treat or approve a bill promoted by someone with deep knowledge and long experience in the matter.

Finally, it should be added, in his favor, that he knows the underlying reasons for the successes and defeats related to these matters, which are not always known by the public at large, because he has read about some and has lived through others during his lifetime, and is still lucid enough to tell younger people about them. A just and convenient bill should not be rejected on the basis of a mere prejudice, like the ripe old age of the person who proposes it.

RULE: When the addressees of the bill are bad disposed against it due to prejudices against the matter legislated, the exordium shall try to obtain their benevolence, quelling the fears for affecting powerful interests or debating controversial matters.

EXAMPLES:

a) When powerful interests are affected:

Fears will always exist when powerful interests are affected, but nothing will be more powerful than the truth revealed and the common interest.

b) When controversial matters are debated:

It is true that one should not legislate on controversial matters, but it is not less true that, when the absence of uniform solutions makes the resulting uncertainty unbearable, it is necessary and opportune to put an end to that situation, implementing the most just and convenient solutions from the possible alternatives, as in the bill that we have the honour of submitting for your consideration.

RULE: When the addressees of the bill will be bad disposed against it because the prescriptive speech is:

a) very long, one shall allege the complexity of the problems and the precision required by the solutions adopted;

b) of a very old fashioned style, one shall allege that it is a question of traditional formulae, which everybody knows how to interpret and apply;

c) slightly convincing, one shall allege that all the fundamental reasons will be given in the persuasive speech.

EXAMPLES:

a) If it is said to be very long:

The bill is long, but not for an unnecessary verbosity, but because it is so required by the complexity of the problems and the precision of the solutions to be adopted.

b) If it is said to be of a very old fashioned style:

It is true that at first sight the style of the bill seems very old fashioned, but this is due to the existence of traditional formulae associated to the matter involved, which everybody knows how to interpret and apply, and it is not advisable to introduce, in addition to changes of content, formal innovations that would only generate confusion, despite any possible aesthetic achievement.

c) If it is said to be slightly convincing:

The prescriptive speech might not sound convincing at first sight, and that's why it is preceded by this persuasive speech, which contains the reasons of the former, as it will be proved next.

RULE: In awkward or shameful bills, direct exordiums shall not be used.

Indirect exordiums

RULE: The attention, docility and benevolence of the addressees, which should be maintained throughout the speech, shall be obtained at the beginning by a direct exordium. Should any inconvenience arise it shall be obtained by an indirect exordium or by insinuation.⁷³²

RULE: An indirect exordium, which tries to obtain the attention, docility and benevolence of the addressees by insinuation, mediately, secretly, and subtly, shall be used when the direct one is not convenient,⁷³³ because the bill:

- a) implies something awkward or shameful, opposed by the public opinion;
- b) is preceded by other bills that were supported by or tired public opinion out.

RULE: When the bill implies something awkward or shameful, the legislator⁷³⁴ shall state that:

- a) there are other persons, things, or circumstances related to the bill, so that they may attract sympathy;

⁷³² [[Cicero] Rhetorica ad Herennium, I, VII, 10.

[Cicero] Rhetorica ad Herennium, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, vii, 10, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 20-21.

[Cicerón] Retórica a Herenio, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, VII, Barcelona, 1991, pp. 74-75.

[Cicéron] Rhétorique a Herennius, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, VII, 11, Paris, 1932, pp. 14-15.

⁷³³ [Cicero] Rhetorica ad Herennium, I, VI, 9.

[Cicero] Rhetorica ad Herennium, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, vi, 9, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 16-17.

[Cicerón] Retórica a Herenio, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, VI, Barcelona, 1991, pp. 72-73.

[Cicéron] Rhétorique a Herennius, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, VI, 9, Paris, 1932, pp. 10-11.

⁷³⁴ In general, see:

[Cicero] Rhetorica ad Herennium, I, VI, 9.

[Cicero] Rhetorica ad Herennium, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, vi, 9, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 16-19.

[Cicerón] Retórica a Herenio, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, VI, Barcelona, 1991, pp. 72-73.

[Cicéron] Rhétorique a Herennius, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, VI, 9, Paris, 1932, pp. 10-13.

Cicerón, De la Invención, I, XVII, 24.

Cicéron de l'Invention (De Inventione), Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, I, XVII, 24, Paris, 1932, pp. 36-37.

- b) he would share the indignation that the bill has caused, if the causes were real;
- c) even if these causes were real, they are totally unrelated to him, or to the opportunity and nature of the bill proposed;
- d) he will quote the opinions of other prestigious legislators in bills of equal, higher or lower importance that have set valuable precedents, and he will gradually show its analogy to the opportunity and nature of the bill proposed;
- e) he does not intend to criticize those who have criticized without reason, whether in good faith or not, and that he will not even bring to attention other matters, but that he will make the respective references to arouse the relevant antipathies.

Virtues and vices of the exordium

RULE: The exordium will be virtuous if it obtains the attention, docility and benevolence of the addressees. Vicious,⁷³⁵ if it distracts, hinders understanding, or turn bad disposed the addressees. A exordium shall be vicious, among other things, when it:

- a) contains unusual vocabulary, a style too high, or verbose, due to its lack of spontaneity;
- b) may be applied to many bills, whether due to its vulgarity or to its dangerous application to other bills proposed;
- c) is not closely related to the statement of the facts (narration), or to the summary of the problem and the solution adopted in the prescriptive speech (proposition), in such a way that it does not look like a member of the same body, on account of its lack of naturalness.

RULE: The legislator shall try to make the exordium encourage its addresses to read the bill, just as an architect tries to make the foyer encourage visitors to enter the building.⁷³⁶

b. *Agon*

The nucleus of a persuasive speech is the *agon*, the struggle between ideas, an anticipated debate.

RULES: The *agon* shall comprise three main parts: *narration*, *confirmation* and *refutation*; and three accessory parts: *digression*, *proposition*, and *division*.

⁷³⁵ [Cicero] *Rhetorica ad Herennium*, I, VII, 11.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, vii, 11, Cambridge, Massachusetts, London England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 20-21.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, VII, Barcelona, 1991, pp. 74-75.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, VII, 11, Paris, 1932, p. 14-15.

Cicerón, *De inventione*, I, XVII, 26.

Cicéron de *l'Invention (De Inventione)*, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, I, XVIII, 26, Paris, 1932 ?, p. 38-41.

⁷³⁶ Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [25], pp. 144-145.

Narration

RULE: In the narration the facts shall be stated,⁷³⁷ with all the useful circumstances⁷³⁸ that may facilitate the approval of the bill. It may include the facts causing such problems as may make solutions arise in the spirit of the legislator (*occasio legis*),⁷³⁹ insofar as they contribute to the best understanding of the purpose sought, provided always that they coincide with the foundation of the bill (*ratio legis*) and the drafting of the prescriptive speech.

RULE: The narration may be avoided in brief bills. Simple topics shall be started by the proposition.

RULE: The narration states important facts of the past, presents the current ones, and predicts those that will happen in the future,⁷⁴⁰ by way of reasons for the changes to be introduced in the juridical system, to achieve the results desired for the social system.

RULE: The virtues of the narration are its *clarity, concision and verisimilitude*, which shall facilitate the understanding, memorization and proof, respectively.⁷⁴¹

RULE: For a clear narration, an appropriate vocabulary, usual between its addressees shall be used, and the facts shall be presented in chronological order.⁷⁴²

⁷³⁷ [Cicero] *Rhetorica ad Herennium*, I, VII, 11-12.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, I, vii, 11-12, Cambridge, Massachusetts, London England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 22-23.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro I, VII, Barcelona, 1991, pp. 76-77.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre I, VII, 12, Paris, 1932, p. 14-15.

Cicerón, *De inventione*, I, XX, 28.

Cicéron de *l'Invention (De Inventione)*, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, I, XVIII, 26, Paris, 1932, pp. 42-43.

⁷³⁸ Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [26], pp. 164-165.

⁷³⁹ A.F.J. Thibaut, *Teoria dell'Interpretazione Logica del Diritto in Generale e del Diritto Romano in Particolare* (Theorie der Logischen Auslegung des Römischen Rechts, Altona, 1799, 1806), Trad. Donatantonio de Marinis, Giuseppe Marghieri editores, Napoli, 1872, pp. 53.

Hortensius de Saint-Albin, *Logique Judiciaire, ou Traité des Arguments Légaux*, Joubert, Libraire-Editeur, Seconde Edition, Paris, 1841, 143, pp. 118.

⁷⁴⁰ [Aristotle] *Rhetoric to Alexander*, 30, 1438a4-6.

[Aristotle] *Rhetoric to Alexander*, 30, 1438a4-6, Translation E. S. Forster, *Works of Aristotle*, The Revised Oxford Translation Edited by Jonathan Barnes, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, p. 2299.

⁷⁴¹ [Aristotle] *Rhetoric to Alexander*, 30, 1438a20.

[Aristotle] *Rhetoric to Alexander*, 30, 1438a20, Translation E. S. Forster, *The Complete Works of Aristotle*, The Revised Oxford Translation Edited by Jonathan Barnes, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, p. 2300.

Cicero, *De Inventione*, I, XX, 28.

Cicéron, *De l'Invention (De Inventione)*, I, XX, 28, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp 42-43.

⁷⁴² Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [26], pp. 166-167.

RULE: For a concise narration, it shall begin and end with the relevant events, without useless digressions, with the words necessary for a restricted speech,⁷⁴³ without harming its clarity and verisimilitude.

RULE: For the verisimilitude of the narration, the past, present or future circumstances, shall agree with persons and things, times and places, causes, the nature of things and men, usages and common sense, so that what is said appears as it usually happen.⁷⁴⁴

RULE: The narration shall try to avoid the following vices: obscurity, verbosity and improbability.

Digression, proposition and division

RULE: The *agon* may include:

- a) matters unrelated to the problems to solve (digressions), if they make the approval of the bill more acceptable, or allow a better knowledge of what will be stated in the confirmation and refutation. When digressions are omitted, the proposition should be made in such a way that it arises spontaneously from the narration itself;⁷⁴⁵
- b) a summary of the problem and the solution instrumented in the prescriptive speech, to facilitate the understanding and approval of the bill (proposition). When the narration, the public opinion and the opposition all agree, the proposition may be omitted or simplified. When they partially agree, a distinction shall be drawn between the coincidences and the dissents with the public opinion or with the opposition⁷⁴⁶ that will remain controversial, for its opportune confirmation or refutation.
- c) the topics and the order in which they will be presented (division or partition), in a concise way, in three or four parts at the most,⁷⁴⁷ so that the speech may be easily followed, turning the addressees well disposed. It may be omitted when the topics are simple and the speeches are brief, except when is desirable to amplify the speech.

Confirmation

RULE: In the confirmation, which shall be the nucleus of the *agon*, the arguments to counsel the approval of the bill proposed shall be stated, while, in the refutation the arguments to discourse the maintenance of the juridical system unchanged or the introduction of changes different from those of the bill proposed shall be stated.

RULE: The confirmation shall argue on:

- a) the verisimilitude of the narration, since from the knowledge of the nature, meaning and effects of things, it arises that it is a question of ordinary facts, which usually

⁷⁴³ Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [26], pp. 166-167, quien se refiere a la brevedad.

⁷⁴⁴ Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [26], pp. 166-167.

⁷⁴⁵ Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [27], pp. 176-177.

⁷⁴⁶ He refers only to the adversary:

Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [28], pp. 178-179.

⁷⁴⁷ Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [29], pp. 180-181.

happen,⁷⁴⁸ or of extraordinary ones, which, although they do not usually happen, contain no falsity affecting their verisimilitude;
b) the justice, convenience or utility of the bill, with a special emphasis on the latter, for the benefits it will produce or the damages it will avoid (*sympheron, utilitas*),⁷⁴⁹ and the safety it will grant.

RULE: To confirm the verisimilitude of the narration, the topic of probability shall be used, owing to the congruity of the real past, present or future circumstances, with the persons, things, times, nature of things and men, usages, customs and common sense, in such a way that what is said appears as usually happens.

RULE: To confirm the justice and convenience or utility of the bill, the arguments may deal with the following topics:

⁷⁴⁸ Quintilian, *The Institutio Oratoria* of Quintilian V, 10,15.

Quintilian, *The Institutio Oratoria* of Quintilian, with an English Translation by H.E. Butler In Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume II, Book V, x, 15, London, 1921, pp. 208-209.

Quintilien, *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société D'Édition "Les Belles Lettres", Tome III, Livre V, 10, 15, Paris, 1976, p. 131.

Digest, 1.3.10.

El Digesto del Emperador Justiniano, Traducido y Publicado por el Licenciado Don Agustín Rodríguez De Fonseca, 1.3.10, Nueva Edición Aumentada con la Traducción de los Proemios, Completada y Revisada con Arreglo a los Textos más Autorizados de las Ediciones Modernas, Imprenta de Ramón Vicente, Tomo I, Madrid, 1872, p. 42.

Corpus Iuris Civilis, Editio Steriotipa Octava, Volumen Primum Digesta, Recognovit, Theodorus Mommsen, 1.3.10, Apud Weidemanns, Berolini, 1899, p. 6.

⁷⁴⁹ In Greek *sympheron*, in Latin *utilitas*, which would be the eminent purpose that should reach by the persuasive speech, according to Aristotle, since nobody would confess that he advises harmful things or dissuades convenient things.

Aristotle on Rhetoric, I, 3, 1358b.

Expedience, harmfulness:

The Complete Works of Aristotle. The Revised Oxford Translation. Edited by Jonathan Barnes, Volume Two, Rhetoric, I, 3, 1358b, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2160.

Advantageous, harmful:

Aristotle on Rhetoric. A Theory of Civic Discourse, Newly Translated with Introduction, Notes, an Appendixes by George A. Kennedy, Oxford University Press, I, 3, 1358 b, New York, Oxford, 1991, p. 49 y n. 81.

Conveniente (convenient), *perjudicial* (detrimental):

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro I, 3.2., 1358 b, Editorial Gredos, Madrid, 1990, p. 195.

Utile, nuisible

Aristote, *Rhétorique*, Texte Établi et Traduit par Médéric Dufour, Société d'Édition les Belles Lettres, Tome Premier, Livre I, 3, 1358b, Paris, 1932, p. 84.

Utile (useful), *nocivo* (detrimental):

Aristotele, *Retorica*. A cura di Armando Plebe, I, III, 1358b, Editore Laterza, Bari, 1961, p. 15.

Rhetórica ad Herennium, III, II, 3.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by

Harry Caplan, Loeb Classical Library, Harvard University Press, III, ii, 3, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 160-161.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro III, II, Barcelona, 1991, pp. 178-179. [Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre III, II, 3, Paris, 1932, pp. 104-105.

- a) formal and material legality, since it was the initiative of a competent organ, following valid procedures (formal legality), and is consistent with the content of norms of a highest rank (material legality);
- b) possibility and practicability, due to the existence of circumstances that facilitate the achievement of things, because, in the absence of such circumstances the achievements of things would be impracticable,⁷⁵⁰ since one does not legislate on the impossible, and the impracticable is equated to the impossible;
- c) probability, due to the frequency of events, since laws are enacted only on what usually happens,⁷⁵¹ unless they rule extraordinary, seen or foreseen facts, requiring emergency solutions;
- d) necessity, because of the problems existing in the social or juridical system requiring satisfactory legislative solutions;
- e) opportunity, because of the favorable occasion to introduce legislative changes which should not be delayed;
- f) justice, prudence, temperance and courage of those who propose the bill, of the bill itself, and as stimulus of these virtues to the addressees;
- g) honesty,⁷⁵² equality and concord promoted⁷⁵³ among the audience;
- h) systematicity, due to its easy interpretation, application and insertion in the juridical system; and for the consistency, completeness and economy of the bill itself and with regard to the rest of the juridical system, except for the inconsistencies wanted by the legislator in implicit or explicit repealing norms;
- i) the stability of the harmonic balance between the requirements of justice, juridical security and convenience, which any mature juridical system should satisfy.

⁷⁵⁰ Cicero, *De Inventione*, I, XXVII, 41.

Cicéron, *De l'Invention (De Inventione)*, I, XXVII, 41, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 60-61.

⁷⁵¹ Cicero, *De Inventione*, I, XXIX, 46.

Cicéron, *De l'Invention (De Inventione)*, I, XXIX, 46, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 64-65.

⁷⁵² [Cicero] *Rhetorica ad Herennium*, III, II, 3.

[Cicero] *Rhetorica ad Herennium*, with an English Translation By Harry Caplan, Loeb Classical Library, Harvard University Press, III, ii, 3, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 162-163.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro III, II, Barcelona, 1991, pp. 180-181.

[Cicero] *Rhetorica ad Herennium*, with an English Translation By Harry Caplan, Loeb Classical Library, Harvard University Press, III, ii, 3, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 162-163.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre III, II, 3, Paris, 1932 ?, pp. 104-107.

Cicerón, De Inventione, II, LIII, 159.

Cicéron, *De l'Invention (De Inventione)*, II, LIII, 159, Texte Revu et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnier Frères, Paris, pp. 256-257.

⁷⁵³ [Aristotle] *Rhetoric to Alexander*, 2, 1424b 15-20.

[Aristotle] *Rhetoric to Alexander*, 2, 1424b 15-20, Translation E. S. Forster, *The Complete Works of Aristotle*, The Revised Oxford Translation Edited by Jonathan Barnes, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, pp. 2277.

Refutation

RULE: Both the criticism of the bill proposed and other positions adopted (not supporting legislative changes to the juridical system or advising changes different from those introduced by the bill) may be refuted.

Refutation of the criticism to the bill proposed

RULE: In the refutation of the probable or formulated criticism to the bill proposed, when the arguments:

- a) of the confirmation were stronger, a single refutation shall be opposed against each single criticism;⁷⁵⁴
- b) of the confirmation were weaker, several refutations shall be opposed against each single criticism (amplification of the refutation), or a single refutation shall be opposed to several criticism (attenuation of the criticism);⁷⁵⁵
- c) of the accessory criticism depend on the main criticism, as the links of the same chain, only the main criticism shall be refuted.⁷⁵⁶

Refutation of other positions

RULE: In the refutation of other positions (not supporting legislative changes to the juridical system or advising changes different from those introduced by the bill proposed), the arguments may deal with the following topics:

- a) improbability of the narrations;
- b) injustice and inconvenience or uselessness of introducing changes different from those introduced by the bill proposed;
- c) harmful resulting from not changing the juridical system, or from approving changes different to those of the bill proposed.

RULE: To refute the verisimilitude of other narrations, the topic of probability shall be used, owing to the congruity of the real past, present or future circumstances, with persons, things, times, the nature of things and men, the usages, custom and common sense, in such a way that what is said will not appear as usually happens.

RULE: To refute the justice and convenience or utility of introducing legislative changes different from those of the bill proposed, the arguments may be deal with the following topics:

⁷⁵⁴ [Aristotle] *Rhetoric to Alexander*, 33, 1439b14.

[Aristotle] *Rhetoric to Alexander*, 33, 1439b14, Translation E. S. Forster, in *The Complete Works of Aristotle, The Revised Oxford Translation* Edited by Jonathan Barnes, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, p. 2302.

⁷⁵⁵ Although it does not state anything on the weakness of the arguments of the confirmation, that might be implied because the refutation of the arguments one by one is recommended when the confirmation arguments are stronger, see:

[Aristotle] *Rhetoric to Alexander*, 33, 1439b4-14.

[Aristotle] *Rhetoric to Alexander*, 33, 1439b4-14, Translation E. S. Forster, in *The Complete Works of Aristotle, The Revised Oxford Translation* Edited by Jonathan Barnes, Volume Two, Princeton University Press, Second Printing, New Jersey, 1985, p. 2302.

⁷⁵⁶ Giambattista Vico, *Institutiones Oratoriae, Testo Critico Versione e Comento di Giuliano Crifò*, Istituto Suor Orsola Benincasa, Napoli, 1989, [32], pp. 220-221.

- a) formal and material illegality, since it was not the initiative of a competent organ, following valid procedures (formal illegality), and is not consistent with the content of norms of a higher rank (material illegality);
- b) impossibility and impracticability, due to the non-existence of circumstances that facilitate the achievement of things, because, in the absence of such circumstances the achievements of things would be impracticable, since one does not legislate on the impossible, and the impracticable is equated to the impossible;
- c) improbability, due to the infrequency of events, since laws are enacted only on what usually happens, unless they rule extraordinary, seen or foreseen facts, requiring emergency solutions;
- d) unnecessary solutions, because of the non-existence of problems in the social or juridical system; or if such problems do exist, because the legislative solutions proposed will not solve them satisfactorily;
- e) absence of opportunity, because of the non-existence of a favorable occasion to introduce such legislative changes.
- f) injustice, imprudence, intemperance and cowardice of those proposing the bill, of the bill itself, and of its lack of stimulus to the justice, prudence, temperance and fortitude of the addressees;
- g) dishonesty, discrimination, and discord promoted among the audience;
- h) unsystematicity, for its difficult insertion in the juridical system; and for the inconsistency, incompleteness and lack of economy in the bill itself and with regard to the rest of the juridical system, except for the inconsistencies wanted by the legislator in implicit or explicit repeals.
- i) instability of the harmonic balance between the requirements of justice, juridical security and convenience, which any mature juridical system should satisfy.

RULE: To refute the harmful caused for not supporting legislative changes to the juridical system and for advising changes different from those introduced by the bill proposed, it may be argued that the problems narrated will not be solved by the mere course of time, or through other sources of law, but, much on the contrary, they will at best remain the same, and, at worst, they will worsen, in accordance with the nature and imminence of the predicted harm.

RULE: In the confirmation and the refutation,⁷⁵⁷ the arguments shall be placed as follows:

- a) at the beginning and at the end, the strongest ones, since, after the narration the addressees expects evidence confirming it, and the last thing said is better remembered; after the confirmation the addressees expects evidence refuting what has been said, and the last thing refuted is better remembered;
- b) in the middle, those of medium-sized force and those that, albeit neither useless nor essential for the proof, but weak if considered separated or individually, become strong and plausible when joined with others.

⁷⁵⁷ [Cicero] *Rhetorica ad Herennium*, III, X, 18.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, III, x, 18, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 188-189.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro III, X, Barcelona, 1991, pp. 198-201.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre III, X, 18, Paris, 1932, pp. 122-125.

c. Epilogue

RULE: The last division of the speech, namely, the epilogue (in Greek *epilogos*) or peroration (in Latin *peroratio*), shall be subdivided into two parts: the enumeration of the arguments (*enumeratio argumentorum*) and the motion of affections (*affectuum commotio*)⁷⁵⁸ or emotional appeals.

Enumeration of the arguments

RULE: In the enumeration of the arguments, the topics announced in the partition or division shall be said to have been proven, summing up the content of the confirmation and the refutation, in the respective order used in these two, to refresh the memory of the addressees of the persuasive speech.⁷⁵⁹

Emotional appeals

RULE: The most suitable parts of the persuasive speech to give it color, exciting or calming the emotions of the addressees (*pathos*), shall be the exordium, which tries to obtain their attention, docility and benevolence from the beginning, and even more the epilogue, the last opportunity offered by the persuasive speech to obtain the decisions needed by the legislator, where the intelligence, the feelings and the will of the addressees are captured.

EXAMPLE:

"To make me believe, it is enough to show me that things are so; to make me act, it is necessary to show me that the action will answer some end. That can never be an end to me which gratifies no passion or affection in my nature. You assure me, "It is for my Honour." Now you solicit my pride, without which I had never been able to understand the word. You say, "It is for my interest." Now you bespeak my self-love. "It is for the public good." Now you rouse my patriotism. "It will relieve the miserable." Now you touch my pity."⁷⁶⁰

⁷⁵⁸ Giambatista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [33], pp. 222-223.

Cicero, *Partitiones oratoriae*, XV, 52.

Cicerón, *Obras Completas de Marco Tulio Cicerón*, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Tomo I, *Particiones Oratorias*, XV, Madrid, 1879, pp. 251-252.

Cicéron, *Divisions de L'Art Oratoire*, Topique, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition les Belles Lettres, Paris, 1960, *Divisions de L'Art Oratoire*, *amplificationem, enumerationem*, XV, 52, p. 21.

⁷⁵⁹ [Cicero] *Rhetorica ad Herennium*, I, XXX, 47.

[Cicero] *Rhetorica ad Herennium*, with an English Translation by Harry Caplan, Loeb Classical Library, Harvard University Press, III, xxx, 47, Cambridge, Massachusetts, London, England, First Published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 147-144.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro II, XXX, Barcelona, 1991, pp. 168-169.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revu et Traduit par Henri Bornecque, Librairie Garnier Frères, Livre II, XXX, 47, Paris, 1932, pp. 94-95.

⁷⁶⁰ George Campbell, *The Philosophy of Rhetoric*, a New Edition, Harper & Brothers, Publishers, New York, Book I, Chapter VII, Section IV, pp. 99-100.

RULE: The arguments shall aim at the intelligence so that the reasons adduced are understood. They shall be dressed in the colors of hope and fear, to stir up emotions and induce the will of the legislators to approve the bill, and so that the enacted law shall be interpreted and applied in accordance with its spirit, procuring its spontaneous fulfillment.

Hope and fear

Hope is the believable possibility of obtaining awards or other benefits and of avoiding punishment or other damages, if the bill is approved. Fear is the believable possibility of not obtaining the awards or other benefits and of suffering serious and irreparable, past, present or imminent damages, if the bill is not approved.

RULE: To excite hope in the addressees, they shall be persuaded to believe that what they wish will happen. To calm fear, they shall be persuaded to believe that what they do not wish will not happen, or that, if it happens, it will not be so imminent or serious.

RULE: The legislator shall capture the addressees' will by motivating them by his own character (*pathos*), by emotions (*pathos*) and reasonings (*logos*), in such a way that:

- a) they shall experience hope and fear at the same time, so that they will judge the reasons facilitating and hindering the fulfillment of their wishes.⁷⁶¹
- b) they will judge the existence of a connection between the gratification of hope or the evanescence of fear, on the one hand, and the required actions, on the other. The actions required are the approval of the bill proposed and the rejection to maintain the juridical system unchanged, with non-legislative changes, or with legislative changes different from those contained in the bill proposed, so that the enacted law shall be interpreted and applied in accordance with its spirit, procuring its spontaneous fulfillment.⁷⁶²

Amplification and attenuation

RULE: To increase the credibility of the arguments, they shall be amplified; to diminish it, they shall be attenuated.

It has been written that in the amplification and the attenuation lies all the orator's power.⁷⁶³ Whether the use of these rhetorical instruments is blamed or praised, their importance to obtain persuasion cannot be denied, whether it is about the emotions of the addressees (*pathos*), about the character of the legislator (*ethos*), or about the

⁷⁶¹ Descartes, Oeuvres de Descartes Publiées par Charles Adams & Paul Tannery, Léopold Cerf, Imprimeur-Editeur, Tome XI, Les Passions de L'Ame, Article CLXV, Paris, 1909, p. 456.

⁷⁶² "[...] in order to persuade, there are two things which must be carefully studied by the orator. The first is, to excite some desire or passion in the hearers; the second is, to satisfy their judgement that there is a connexion between the action to which you should persuade them, and the gratification of the desire or passion which he excites."

George Campbell, The Philosophy of Rhetoric, a New Edition, Harper & Brothers, Publishers, New York, Book I, Chapter VII, Section IV, p. 100.

⁷⁶³ Quintilian, The Institutio Oratoria of Quintilian VII, 3, 89.

Quintilian, The Institutio Oratoria of Quintilian, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book VII, iii, 89, London, 1921, pp. 260-263.

Quintillien, Institution Oratoire, Tome V, Livres VIII et IX, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres, Livre VIII, 3, 89, Paris, 1978, p. 85.

reasonable arguments (*logos*), so much so that paraphrasing a famous proverb that goes "say to me with whom you walk and I will say to you who you are", it might be said "say to me what argument you amplify or attenuate, how and with which emotions, and I will say to you what class of legislator you are."

RULE: In the motion of the affections or emotional appeals of the epilogue, the most important favorable arguments shall be amplified, and the most important unavoidable critical arguments that could not be refuted shall be attenuated. For this purpose:

a) emotions shall be excited or calmed, or the existing excitement or calmness shall be increased or diminished;⁷⁶⁴

b) hope shall increase to become illusion, and fear to become horror, under extraordinary circumstances;⁷⁶⁵ or illusion shall be diminished to become hope, if it is not possible to eliminate it, and the horror to become fear, if it is not possible to eliminate it.

RULE: To calm unfavorable emotions, try to eliminate or diminish the object producing them, or excite another passion to counter it; taking into consideration that hope and fear are passions that dominate the others and are countered by each other. Fear of the bill proposed and hope for maintaining the juridical system unchanged, with non-legislative changes, or with legislative changes different from those contained in the bill proposed, are considered very unfavorable emotions.

RULE: For the amplification or the attenuation, the following may be used:⁷⁶⁶

a) only words: superlative or diminutive, repetition, increase or decrease in the force in an enumeration of synonyms;

b) only things: increase or decrease in their quantity, or ascent and descent in their hierarchy; confrontation, to emphasize the biggest or the smallest ones; syllogism, to reveal even more of what was previously exaggerated; enumeration of many things, so that they will seem bigger or smaller; enumeration of many acts under the same virtue or vice, to reinforce the feeling of love or hate, admiration or disdain;

c) words and things: expression of the same thing with different words, so that it will seem different, in such a way that it enables to emphasize or minimize, clarify and inculcate an important argument into the mind and heart of the addressees (exhaustion).

Before going on to the following stage, the style, it should be verified whether the persuasive speech includes a minimum content.

⁷⁶⁴ Cicero, *Topica*, XXVI.

Cicerón, *Obras Completas de Marco Tulio Cicerón*, Traducidas del Latín por Marcelino Menéndez Pelayo, Biblioteca Clásica Tomo XIV, Tomo I, Tópicos a Cayo Trebacio, XXVI, Madrid, 1879, p. 235.

Cicéron, *Divisions de l'Art Oratoire*. *Topique*, Texte Établi et Traduit par Henri Bornecque, Deuxième Édition, Société d'Édition Les Belles Lettres, Paris, 1960, *Topique*, XXVI, 98, p. 100.

Benedetto Riposati, *Studi sui "Topica" di Cicerone*, Società Editrice "Vita e Pensiero", Milano, 1947, pp. 282-283.

⁷⁶⁵ Vico maintains that the motion of affections shall not limit itself that the hope and fear born, but, shall also to incite to the audacity and to feel the horror among decision makers. He does not state that it shall be under extraordinary circumstances.

Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [33], pp. 224-225,

⁷⁶⁶ With some differences:

Giambattista Vico, *Institutiones Oratoriae*, Testo Critico Versione e Comento di Giuliano Crifò, Istituto Suor Orsola Benincasa, Napoli, 1989, [31], pp. 210-217.

RULE: The persuasive speech shall include, at least, the following:⁷⁶⁷

- a) the purpose, which shall indicate exactly what the bill intends to achieve;
- b) the reasons for which it is thought that the purpose will be achieved by the bill, and why the bill is necessary to achieve such purpose;
- c) the mention of the effects expected of the law, including costs and collateral effects, and the reasons that make these effects acceptable;
- d) the reports with recommendations, had they been received;
- e) the explanation of the reasons that make it desirable or necessary to depart from the recommendations and from the solutions of the general laws, had they not been followed;
- f) the legality of the bill and the reasons that clear up any doubt in that regard;
- g) the explanation of each unclear sections.⁷⁶⁸

The ideas arranged in accordance with the respective systematics shall be expressed by means of the language, the third stage in the making of the bill, which will be developed in the following Chapter, dedicated to Style.

⁷⁶⁷ Kees Waaldijk, *Motiveringsplichten Van de Wetgever*, Lelystad: Koninklijke Vermande 1994 (The Legislature's Duties to Give Reasons, Doctoral Thesis, Defended at the University of Masstricht), Summary, pp. 398-399.

http://openaccess.leidenuniv.nl/bitstream/1887/3592/1/170_01.pdf.

⁷⁶⁸ It does not distinguish between clear Sections or not:

Kees Waaldijk, *Motiveringsplichten Van de Wetgever*, Lelystad: Koninklijke Vermande 1994 (The Legislature's Duties to Give Reasons, Doctoral Thesis, Defended at the University of Masstricht), Summary, p. 399.

http://openaccess.leidenuniv.nl/bitstream/1887/3592/1/170_01.pdf.

Chapter VII Style

The rhetorical algorithm that ends up in oral speech consists of five stages: *investigation, systematics, style, memory* and *action*. In written speeches, like, generally, the laws are, only the first three stages turn out to be indispensable: the things found and chosen in the investigation (what to say) are checked and arranged in the systematics (where to say), to be expressed in writing, in the style, *lexis* or *elocutio*⁷⁶⁹ (how to say), the topic of this Chapter. Absent a linguistic expression, there is no speech, but if there is no things to saying, in an orderly manner, there is no speech either. Nevertheless, out of the five stages of the rhetorical algorithm proper to oral speech, under the influence of Petrus Ramus (1515-1572),⁷⁷⁰ an author who had related investigation and systematics to logic, omitted memory and respected action, when oratory declined and literature rose, rhetoric ended up being identified with style.⁷⁷¹ The art of legislation has also been identified with style, whether from the active point of view (composition) or from the passive one (criticism) in Common Law system, or has been limited to mere literary criticism of legislative expressions, in the Civil Law system.

Style comprises two major topics: virtues and genres.⁷⁷²

1. Virtues

The classical virtues of style are four: purity (*latinitas, puritas*), which is grammatical, and three truly rhetorical ones: clarity (*perspicuitas*), ornament (*ornatum*), and aptitude (*aptum*).⁷⁷³

⁷⁶⁹ It is named Style due to the awl with which the ancient people wrote on waxed boards, Diccionario de la Lengua Española, Decimonovena Edición, Real Academia Española, vocablo estilo, Madrid, 1970, p. 583.

⁷⁷⁰ George A. Kennedy, *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times*, The University of North Carolina Press, Chapel Hill, 1980, p. 210.

⁷⁷¹ Edward P. J. Corbett and Robert J. Connors, *Classical Rhetoric for the Modern Student*, Oxford University Press, New York - Oxford, 1999, p. 504.

Charles Waddington, *Ramus (Pierre de la Ramée), Sa Vie, ses Écrits et ses Opinions*, Librairie de Ch. Meyrueis et Ce, Éditeurs, Paris, 1855, 480 pp., it is the classic work on this important author, who influenced juridical systematics with his dialectics, as can be seen, among others, in Riccardo Orestano, *Introduzione allo Studio Storico del Diritto Romano*, G. Giappichelli, Editore, Prima Edizione 1958, Seconda Edizione 1961, Ristampa della Seconda Edizione, Torino, 1963, pp. 66-67.

⁷⁷² Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, from the Second German Edition, Max Hueber Verlag, Ismaining Bei München, 1973, Brill, Leyden, Boston, Köln, 1998, numbers 458-1077, pp. 216-471, numbers 1078-1082, pp. 471-478. Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, números 458-1077, pp. 11-391, y números 1078-1082, pp. 391-401.

⁷⁷³ The Four virtues have been preserved and transmitted in rhetorical tradition, according to the systematization originated in Theophrastus.

George Kennedy, *The Art of Persuasion In Greece*, Princeton University Press, Princeton, New Jersey, 1963, Sixth Printing, 1974, p. 275.

For the distinction between purity as a grammatical virtue and clarity, ornament and aptitude as rhetorical virtues, and the order in which they are enunciated, see:

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David

a. Purity

Correct language, in accordance with polite people's use, constitutes the purity of style,⁷⁷⁴ which should not be confused with "purity" as a demand for excluding "[...] everything that is not the pure and simple expression of the legislator's will [...]", about which Bentham wrote.⁷⁷⁵

RULE: The most frequent vices against purity are:

- a) by defect, the "barbarisms" in vocabulary (foreign words, archaisms, and neologisms) and the "solecisms"⁷⁷⁶ in syntax (concordance, government and construction⁷⁷⁷);
- b) by excess, the purism as affectation.⁷⁷⁸

E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaing Bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 460, p. 216.

Heinrich Lausberg, Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura, Traducción de José Pérez Riesco del Original Alemán Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, número 460, p. 11.

⁷⁷⁴ Quintilian, *Institutio Oratoria*, I, VI, 45.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume I, Book I, I,vi,45, London,1921, pp. 132-133.

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome I, Livre I, VI, 45, Paris, 1975, pp. 116-117.

⁷⁷⁵ "I call purity in the composition of a body of law the absence of any heterogeneous matter, of any strange miscellany, of everything that is not the pure and simple expression of the legislator's will."

"J'appelle pureté dans le composition d'un corps de droit, l'absence de tout matière hétérogène, of tout mélange étranger, de tout se qui n'est pas l'expression pure et simple de la volonté du législateur."

Jérémie Bentham, *Vue Générale d'un Corps Complet de Législation*, Chapitre XXXII De the Pureté dans la Composition d'un Corps de Droit, dans *Oeuvres de Jérémie Bentham*, Ét. Dumont, Troisième Édition, Société Belge de Librairie, Tome Premier, Société Belge de Librairie, Bruxelles, 1840, p. 339, text translated and quoted above.

⁷⁷⁶ "Barbarism" comes from "barbarians", who for the Greeks were others, for the Romans who were neither Greeks nor Latins, that they were corrupting the words; for Nebrija, also they were others, excepted Greeks and Latins, but it was including those of its own language, if they were committing some vice in the use of Spanish. "Solecism" comes of *Soli*, the city of Cilicia that Solon populated, mixing other peculiar nations, which began to corrupt the Greek language in the union and the order of the parts of the sentence.

Nebrija, *Gramática sobre la Lengua Castellana que Hizo el Maestro Antonio de Lebrija*, Salamanca, 1492, g.i., y g.i. vuelta, Edición en Facsímil, Espasa Calpe-Argentina, S.A., Madrid, 1976.

⁷⁷⁷ Andrés Santa María y Augusto Cuartas, *Diccionario de Correcciones y Particularidades del lenguaje*, Segunda Edición Corregida y Aumentada, Editorial Paranifo, Madrid, 1967, p. 50.

⁷⁷⁸ Tyrtamus, who had been born in Eresus, was so eloquent that was called Theophrastus by Aristotle, for the divine character of its speech.

Diogenes Laertius, *The Lives of the Philosophers*, 5.36; 5.38); *Name and Manner of Speaking*, 5A (Strabo, *Geography*, 13.2.4), 5B (Cicero, *Orator* 62), in *Theophrastus of Eresus, Sources for his Life, Writings Thought and Influence*, Edited and Translated by William W. Fortenbaugh, et al., Part One, *Life, Writings, Various Reports, Logic, Physics, Metaphysics Theology, Mathematics*, E.J. Brill, Biography, 1, Leyden, New York, Köln, 1992, pp. 21, 53, 55.

Nevertheless, only one word said by Theophrastus was sufficient so that an Athenian woman, already brought in years, was speaking to him calling it foreign, and when he asked how she realized, told that it seemed to her that it was using a too much attic language.

Quintilian, *Institutio Oratoria*, VIII, I, 2.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London,

Without going into matters proper to grammar, given that legislation is aimed at governing human behavior, few comments are required about verbs, the part of the sentence with which actions are expressed.

RULE: Active voice is preferable to passive voice, to avoid ambiguities about whom the subject is. The subject must always be determined explicitly, in case of doubts.

Nevertheless, sometimes, the passive voice is the best or the only practical form; for example, when the prescriptive speech refers to itself (This law..., The present law...), in establishing its coming into effect, including a fiction, a definition, etc.⁷⁷⁹

RULE: When the prescriptive speech refers to itself, the passive voice is the best or the only practical form.

RULE: In English the present tense of the indicative mood is now preferable to the traditional practice of the future tense of the subjunctive mood (e.g. "shall..."), because "often enunciates the law more simply and clearly".⁷⁸⁰

Nevertheless, when the prescriptive speech establishes a fiction, the subjunctive mood is better than the indicative (e.g. "as though he were a citizen instead of as if he is a citizen").⁷⁸¹

RULE: When the prescriptive speech establishes a fiction, the subjunctive mood is more simple and clear.

RULE: In Spanish the future imperfect tense of the subjunctive mood, "which other Romance languages do not have", except Portuguese and Valaco,⁷⁸² is preferable to the

G.P. Putnam Sons's, New York, Volume III, Book VIII, i, 2, London, 1921, pp. 196-197.

Quintilien. Institution Oratoire, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre VIII, I, 2, Paris, 1978, p. 53.

⁷⁷⁹ Elmer A. Driedger, The Composition of Legislation, Chapter V Verbs, Edmond Cloutier, Queen's Printer and Controller of Stationery, Ottawa, 1957, pp. 36-41, p. 36.

Elmer A. Driedger, The Composition of Legislation, Chapter II The Verb in Legislation, Second Edition Revised, Published by The Department of Justice, Ottawa, 1976, pp. 7-17, p. 7.

⁷⁸⁰ Driedger holds that it is necessary to use the present, because it is supposed that the law is always spoken.

Elmer A. Driedger, The Composition of Legislation, Chapter V Verbs, Edmond Cloutier, Queen's Printer and Controller of Stationery, Ottawa, 1957, pp. 36-41, p. 37.

Elmer A. Driedger, The Composition of Legislation, Chapter II The Verb in Legislation, Second Edition Revised, Published by The Department of Justice, Ottawa, 1976, pp. 7-17, p. 8.

V.C.R.A.C. CRABBE, Legislative Drafting, Cavendish Publishing Limited, London, 1993, First edition 1992, Reprinted 1994, p. 144, text reproduced above.

⁷⁸¹ V.C.R.A.C. CRABBE, Legislative Drafting, Cavendish Publishing Limited, London, 1993, First edition 1992, Reprinted 1994, p. 144, text reproduced above.

⁷⁸² "73 (n. 470). Not only in Spanish has the future hypothetical subjunctive mood been kept, but it also exists in Portuguese and in Valaco."

Andrés Bello, Gramática de la Lengua Castellana destinada al Uso de los Americanos, Vigésima Edición Hecha sobre la Última del Autor con Extensas Notas y Copiosos Índices Alfabéticos de Rufino José Cuervo, R. Roger y F. Chernoviz, Editores, París, 1921, pp. 124-125, Rufino José Cuervo, nota 73 (n. 470), p. 75.

present indicative, according to traditional practice, to avoid “the danger of a rapid disappearance of this verbal form”.⁷⁸³

The future tense in subjunctive mood is preferred in Spanish, also because any juridical norm, from a logical point of view, has two parts, the factual assumption and the consequence attributed to it. From a grammatical perspective, this is a conditional sentence, in which its protasis, in the subjunctive mood, expresses the assumption, and its apodosis, in indicative mood, the consequence.⁷⁸⁴ The future imperfect tense is

⁷⁸³ “[...] this future imperfect of the subjunctive, a beautiful patrimony which other Romance languages do not have which we can kiss goodbye if we do not react soon against to the nonchalance gradually expressed from the top downwards by the so-called cultured classes as far as good speech is concerned. Anybody who wants to see the danger of a rapid disappearance of this verbal form should compare any current legal text of our days with the Civil Code, for example.”

“[...] ese futuro imperfecto del subjuntivo, precioso patrimonio de que carecen otras lenguas romances, y del cual nos podremos ir despidiendo si no se reacciona pronto contra la despreocupación, que en materia de bien hablar, van infiltrando de arriba abajo las clases que llamamos cultas. El que quiera apreciar el peligro de rápida desaparición en que se halla esta forma verbal, compare cualquier texto legal de nuestros días con el Código Civil, por ejemplo”, text reproduced above.

Julio Casares, Nuevo Concepto del Diccionario de la Lengua y otros Problemas de Lexicografía y Gramática, Segunda Parte Gramática, I Gramáticas Oficiales, III, Espasa-Calpe, S.A., Madrid, 1941, p. 222.

⁷⁸⁴ “469 (221). It is necessary to recognize two different subjunctive moods: the so-called common subjunctive, because it covers a wide variety of cases, and the so-called HYPOTHETICAL subjunctive, due to its conditional or hypothetical meaning, that now we discuss.

470 (a). This mood is peculiar to Spanish conjugation since it did not exist in Latin, as it does not exist in any Romance dialect; it has only two forms of its own, the simple one (*cantare, trabajar, partiere*), and the compound one, which derives from the former (*hubiere cantado, hubiere trabajado, hubiere partido*)*

* [...] it should be pointed out that notable writers sometimes mistake the common subjunctive mood, ending in *-ara, -ese, -era*, of the common subjunctive mood, for the hypothetical one, ending in *-ere, -are*, saying, for example: *si alguien llamase, le abrirás; si llegase a tiempo, le convidaré*. The difference that I spot here does not depend on any theory, because it is the practice of the best times of the language, and the ordinary one among those who speak and write correctly nowadays.

We can give to the least educated readership a rule that will preserve them from becoming confused with moods and tenses, which is happening more and more frequently, especially among Americans:

“Whenever the form ending in *-ara, -ase, -ese* may be replaced with a form ending in *-are, -ere* (there is not room for error here among Spanish native speakers), we may be certain that the latter form is correct.”

“73 (n. 470). Not only in Spanish has the future hypothetical subjunctive mood been kept, but it also exists in Portuguese and in Valaco.”

“469 (221). Es preciso reconocer dos subjuntivos diversos: el que llamamos común, porque se extiende a una gran variedad de casos, y el de que ahora tratamos a[1] que por su constante significado de condición o hipótesis damos el nombre de HIPOTÉTICO.

470(a). Este modo es peculiar de la conjugación castellana pues no lo hubo en latín, ni lo hay en ninguno de los otros dialectos romances; y sólo tiene dos formas suyas, la simple (*cantare, trajere, partiere*), y la compuesta que nace de ella (*hubiere cantado, hubiere traído, hubiere partido*)*.

* [...] obsérvese que en muy estimables escritores se confunde a veces la forma en *ara, ese, era*, del subjuntivo común, con la *ere, are*, del hipotético, diciendo, por ejemplo: *Si alguien llamase, le abrirás; Si llegase a tiempo, le convidaré*. La diferencia que yo en este punto señalo no depende de ninguna teoría, porque es la práctica de los mejores tiempos de la lengua, y la ordinaria entre los que hablan y escriben correctamente en el día.

Podemos dar a los lectores menos instruidos una regla que los preservará de caer en una confusión de modos y tiempos, que va cundiendo, sobre todo entre los americanos:

“Siempre que a la forma en *ara, ase, ese*, vemos que consiente la lengua sustituir la forma en *are, ere* (acerca de lo cual no cabe error en los que tengan por lengua nativa la castellana), podemos estar seguros de que esta segunda es la forma propia.”

preferred because, when prescriptive speeches conform a bill, it contains political decisions to be made and, when it becomes law, and comes into effect, it at first does not apply retroactively, since it works like counsel to the addressees about the behaviors to be followed and to be avoided.

In addition to norms, the juridical system is integrated by institutions, branches and orders, with their respective principles, which are also elements of the juridical system. The elements of prescriptive speech (subsection, section, division, etc.), whether grouped or not in special and general parts, are linguistic entities. An element of the juridical system may be expressed by only one element of the prescriptive speech (that is, a norm in only one article), but this is not always the case, since an element of the juridical system is, more often than not, expressed by more than one element of the prescriptive speech (that is, a norm in more than one article), without which a technical gap would be created.

RULE: If an element of the juridical system requires more than one element of the prescriptive speech, none of the prescriptive speech elements should be missing, to avoid technical gaps.

When the law develops to some extent, prescriptive speech is expressed by descriptive language,⁷⁸⁵ since the elements of the juridical system used to regulate behaviors, the implicit context, already exist in practice, in other laws, in case law, or in juristic writings, and they are seldom exclusively created by the new legislator.

b. Clarity

Clarity (*perspicuitas*) consists of making speech more easily comprehensible, intelligible.⁷⁸⁶ It is a fundamental virtue, since in its absence, the speech could not

"73 (núm. 470). No sólo en castellano se ha conservado el futuro del subjuntivo hipotético; existe también en el portugués y en valaco.")

Andrés Bello, Gramática de la Lengua Castellana destinada al Uso de los Americanos, Vigésima Edición Hecha sobre la Última del Autor con Extensas Notas y Copiosos Índices Alfabéticos de Rufino José Cuervo, R. Roger y F. Chernoviz, Editores, París, 1921, pp. 124-125, y para la nota 73, Notas, p. 75.

Bello was a notable grammarian and, also, author of the Civil Code of the Republic of Chile Código Civil de la República de Chile, Edición Autorizada por el Supremo Gobierno, Imprenta Chilena, Santiago de Chile, Julio de 1858, 418 pp., Mensaje del Ejecutivo al Congreso IX pp., Índice, pp. 419-426. "In the apodoses of conditional sentences, the indicative mood, rather than the subjunctive, is used."

"En las oraciones condicionales no se usará el subjuntivo en las apódosis, sino el indicativo."

Gramática de la Lengua Española, Real Academia Española, Nueva Edición Reformada, de 1931, Madrid, 1962, números. 302 y 434, c), pp. 275 y 393.

⁷⁸⁵ For some other interesting remarks on this matter, see:

Jean Ray, Essai sur la Structure Logique du Code Civil Français, Librairie Félix Alcan, Première Partie, La Règle, Chapitre Premier, Du Fait que les Dispositions du Code Civil se Présentent Très Souvent Sous la Forme Énonciative et non sous la Forme Impérative, Paris, 1926, pp. 41-49.

Georg Henrik Von Wright, Norm and Action, A Logical Enquiry, Routledge and Kegan Paul, VI, Norms, Language, and Truth, London, 1963, pp. 93-106.

⁷⁸⁶ Explanatio, for [Cicero] Rethorica ad Herennium, IV, XII, 17.

[Cicero] Rhetorica ad Herennium, IV, xii, 17, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 268-271.

[Cicerón] Retórica a Herenio, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, XII, Barcelona, 1991, pp. 260-261.

fulfill its symbolic function of conveying meaning,⁷⁸⁷ to communicate. Clarity and the purity (*latinitas*) constitute elegance (*elegantia*).⁷⁸⁸

RULE: To obtain clarity in speech, common and proper words shall be chosen.⁷⁸⁹

[Cicéron] Rhétorique a Herennius, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et Traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre IV, XII, 17, Paris, pp. 180-183.

It is not enough for the language of the law to be understood: it must be easily understood.

David Mellinkoff, *The Language of The Law*, Little, Brown and Company, Boston, Toronto, First Printing, 1963, Third Printing, Paperback Edition, 1978, pp. 415-416.

⁷⁸⁷ Aristotle, *Rhetoric*, Book III, 1404b.

Aristotle, *Rhetoric*, III, 1404b, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2239.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 1404b, Editorial Gredos, Madrid, 1990, p. 395 y n. 219; p. 396-398.

Aristote, *Rhétorique*, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Livre III, 1404b, Paris, p. 41.

Aristotele, *Retorica*, A cura di Armando Plebe, III, 1404b, Editore Laterza, Bari, 1961, p. 170.

For the French clarity from the perspective of the rhetorical tradition, see:

Daniel Mornet, *Histoire de la Clarté Française, Ses Origines, Son Evolution, Sa Valeur*, Payot, Paris, 1929, 358 pp.

⁷⁸⁸ [Cicero] *Rhetorica ad Herennium*, IV, XII, 17.

[Cicero] *Rhetorica ad Herennium*, IV, xii, 17, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 268-271.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, XII, Barcelona, 1991, pp. 260-261.

[Cicéron] *Rhétorique to Hérennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre IV, XII, 17, Paris, pp. 180-183.

⁷⁸⁹ [Cicero] *Rhetorica ad Herennium*, IV, XII, 17.

[Cicero] *Rhetorica ad Herennium*, IV, xii, 17, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 268-271.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, XII, Barcelona, 1991, pp. 260-261.

[Cicéron] *Rhétorique to Hérennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre IV, XII, 17, Paris, pp. 180-183.

The German Civil Code of 1900 is the classic example of the use of a rigorous technical language; for its characteristics, see:

R. Saleilles, *Introduction a l'Étude du Code Civil Allemand*, 1904, pp. 110-117.

The Swiss Civil Code of 1912 is the typical representative of the use of a common language, since:

"III. The language of the bill and its economy. [...] 1. As for the language, the dominant idea is that the bill, as has been stated above, should be intelligible to all; we have tried to attain this goal choosing simple and clear expressions."

"III. La langue du projet et son économie. [...] 1. En ce qui concerne la langue, l'idée dominant est que le projet, comme on l'a dit plus haut, devrait être intelligible à tous; nous avons cherché à atteindre ce but en choisissant des expressions simples et claires."

Civil Code Suisse, *Exposé des Motives de l'Avant-Projet du Département Fédéral de Justice et Police*, Tome Premier, Introduction, *Droit des Personnes et de la Famille*, Berne, 1901, p. 12.

For a summary compararison of the opinions on the drafting of the German, Swiss and French Civil Codes, see:

Jean Ray, *Essai sur la Structure Logique du Code Civil Français*, Librairie Félix Alcan, Complément A, Paris, 1926, pp. 261-263,

Common words

Unlike poetry, which arouses admiration through the use of unusual words, the rhetorical prose uses common vocabulary,⁷⁹⁰ so that everybody will understand. Except in the early times of law making, when poetry prevailed, the prescriptive speech has always been rhetorical prose. It requires not only *bona fide* people to comprehend it; but also avoidig people in bad faith may misinterpret it,⁷⁹¹ against the purpose sought by the legislator.

RULE: For clarity, facilitating *bona fide* people's understanding shall not suffice; also, requires avoiding people in bad faith may misinterpret it, against the purpose sought by the legislator.

Certain matters in everyday life belong to private law, hence called *droit commun* in Civil Law systems, which regulations use more often usual language than juridical vocabulary. This vocabulary consist of common words, with a technical meaning (contract, marriage, etc.) and other specific words of the law (mortgages, antichreses, etc.) for precision and economy reasons, avoid giving definitions too often, and because, the denomination (*nomen iuris*) alone is sufficient to evoke the desired meaning. But when the behavior refers to facts, acts or activities of great social importance, which requires higher technical precision, as is the case with death and organ transplants, medical vocabulary cannot be avoided. Also the multiple addressees of the speech should be taken into account.

RULE: To obtain clarity in prescriptive speech, provided that the resulting text remains intelligible to its different addressees, words shall be chosen:

- a) common, with their usual meanings, for the addressees at large;
- b) technical of the matter regulated, for the related addressees and experts;
- c) juridical technical, for legal advisors;
- d) juridical technical and technical of the matter regulated, for the judges and law enforcement authorities

It should be pointed out that there are two classes of terminology or sets of words of a specialty: transparent ones, which let see concepts, which enable to easily understand the meaning evoked by words; and opaque ones, in which the concepts must be looked up in their respective definitions. Both in prescriptive and persuasive speech, a transparent terminology is preferable, to facilitate both understanding and memorizing, since transparent denominations are remembered better than opaques ones.

⁷⁹⁰ Isocrates, Evagoras, 9-10.

Isocrates, Evagoras, 9-10, in Isocrates with an English Translation by George Norlin, Volume III, with an English Translation by Larue Van Hook, William Heinemann Ltd, London, Harvard University Press, Cambridge, Massachussets, First Printed 1945, Reprinted 1954, 1961, pp. 8-9.

Isócrates, Evágoras, 9-10, en Isócrates Discursos, Introducción, Traducción y Notas de Juan Manuel Guzmán Hermida, Editorial Gredos, Tomo I, Madrid, 1979, pp. 305-306.

Isocrate, Evagoras, 9-10, dans Isocrate Discours, Texte Établi et Traduit par Georges Mathieu et Émile Brémond, Société d'Édition "Belles Lettres", Tome II, 1re Édition 1938, Cinquième Tirage Revu et Corrigé, Paris, 1967, p. 148.

⁷⁹¹ Charles de Martens, Le Guide Diplomatique, Cinquième Édition, Entièrement Refondue par M.F.H. Geffeken, Tome Second, Première Partie, Du Style des Compositions Diplomatiques, Observations Générales, F.A. Brockhaus, Leipzig, 1866, p. 2.

RULE: Transparent denominations are preferable to opaque ones, to facilitate both the comprehension of their meanings and their memorizing.

Proper words

Words that are effective in conveying the ideas meant are proper, because those who coined them are supposed to have "appropriated them."⁷⁹²

RULE: Words shall be chosen in such a way, that the meaning conveyed reflects the exact thought of the legislator (proper)⁷⁹³ calling things by their name, to avoid extensive or restrictive interpretations, to eliminate ambiguities and to reduce vagueness, in accordance with the precision demanded by the relevant branch of law.

Sometimes, the words are common and proper, their respective meanings are clear, there is not semantic ambiguity and, nevertheless, the sentence turns out obscure. This is so because there is syntactic ambiguity, which arises from the grammatical relation between the words in the sentence, in such a way that it is difficult to immediately ascertain the meaning.

The consistent use of the same words, phrases and sentences to express the same ideas, without homonymous or synonymous, in the same formula, contributes to the clarity of the speech and avoids unnecessary interpretative doubts.⁷⁹⁴

PRINCIPLE: To avoid unnecessary interpretive doubts and to contribute to speech clarity, when the same ideas are expressed, the same words, phrases, and sentences shall always be chosen and used in the same formula.

RULE: Style is precise when there are rigorous concision and accuracy.⁷⁹⁵

RULE: Concision exists whenever only the sufficient is said for the understanding of the speech.

⁷⁹² Gregorio Mayans I Siscar, *Rhetorica de don Gregorio Mayans I Siscar*, Segunda Edición, Valencia, 1776, Tomo II, p. 45.

⁷⁹³ Quintilian, *Institutio Oratoria*, VIII, I, 2.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book VIII, ii, 1, London, 1921, pp. 196-197.

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre VIII, II, 1, Paris, 1978, p. 54.

⁷⁹⁴ "4th. Same ideas, same words" ("4th. Mêmes idées, mêmes paroles").

Jérémie Bentham, *Vue Générale d'un Corps Complet de Législation*, Chapitre XXXIII Du Style give Lois, Société Belge of Librairie, dans *Oeuvres de Jérémie Bentham*, Ét. Dumont, Troisième Édition, Société Belge De Librairie, Tome Premier, Bruxelles, 1840, p. 341.

Expressive consistency is a "golden rule" of legislative drafting, see:

Reed Dickerson, *The Fundamentals of Legal Drafting*, Published for The American Bar Association by Little, Brown And Company, with a quote of Piesse and Smith, *The Elements of Drafting* 32 (2d. ed. 1958), Boston, Toronto, 1965, p. 12 and n.9.

Rather than a rule, although a golden one, on account of its generality, it seems a principle of style, the counterstrophe of the interpretative apothegm that affirms: where the law does not distinguish, we must not distinguish (*ubi lex non distinguit, nec nos distinguere debemus*).

⁷⁹⁵ *Diccionario de la Lengua Española*, Decimonovena Edición, Real Academia Española, Madrid, 1970, p. vocablo precisión, acepción 3, p. 1057.

Concision was considered to be a fifth virtue by the Stoics.⁷⁹⁶ It is true that the fewer words, the easier it is to memorize speech,⁷⁹⁷ but many a time word number comes into conflict with clarity, in which case the latter must prevail. Clarity not only requires easy understanding, but also leaving no room for interpretations contrary to the legislator's purpose.

RULE: Concision helps memorize speech, but if come into conflict with clarity, the latter shall prevail.

Concision, the virtue of avoiding the vice of verbosity, should not be confused with brevity, since the speech must be neither too long nor too short, but of a justifiably length, as taught by Prodicus.⁷⁹⁸ Brevity is justified as a stylistic ideal in military orders, where there is no time for long exchanges in the middle of a battle, hence the current reminiscence of Spartans when one speaks about laconicism. But the law refers to recurrent problems that must be answered, and solutions take time to be expressed, comprehended and remembered. Although laws are no longer considered of absolute permanence, as in the classical doctrine, they are usually of prolonged transitoriness, which gives them a relative permanence.

RULE: Both tedious verbosity and haughty brevity shall be avoided, using enough wisdom to moderate the speech according to the occasion and the matter⁷⁹⁹ to be ruled by the bill.

RULE: Rigorous accuracy, which illuminates partially the area of half-light of vague meaning, should not be confused with property, which is related to the nucleus of the meaning, to avoid ambiguity. In calling things by their name, so that they will correspond to the thoughts of the legislator, it will be avoided to sin for defect or for excess, which may give rise to future extensive or restrictive interpretations, as the case may be.

In the branches of the Law which norms have to be restrictively interpreted, regardless of the fact that the legislator has sinned for defect or excess, such as criminal law and tax law, rigorous accuracy results from a requirement imposed by the nature of

⁷⁹⁶ Diogène Laërce, *Vie, Doctrine et Sentences des Philosophes Illustres*, Traduction, Notice et Notes par Robert Genaille, Garnier-Flammarion, Zénon, Paris, 1965, T. II, p. 70.

⁷⁹⁷ "2. The law must be concise, in order that she fix easily on memory. Clarity, brevity, are therefore the two essential qualities."

"2. Que la loi soit concise, afin qu'elle fixe aisément dans the memoire. Clarté, brièveté, voilà donc les deux qualités essentielles."

Jérémie Bentham, *Vue Générale d'un Corps Complet of Législation*, Chapitre XXXIII Du Style des Lois, dans *Oeuvres de Jérémie Bentham*, Ét. Dumont, Troisième Édition, Société Belge of Librairie, Tome Premier, Société Belge of Librairie, Bruxelles, 1840, p. 339.

⁷⁹⁸ Plato, *Phaedrus*, 267b

Platón, *Fedro*, 267c-d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, p. 64.

Platon, *Phèdre*, 267b, *Platon, Oeuvres Complètes*, Tome IV, 3e Partie, *Phèdre*, Texte Traduit par Léon Robin, Société d'Édition "Les Belles Lettres", Paris, 1933, p. 74.

Platon, *Phèdre*, 267b, dans *Platon, Oeuvres Complètes*, Traduction Nouvelle et Notes par Léon Robin, avec la Colaboration of M.J. Moreau, Bibliothèque de la Pléiade, Tome II, Paris, 1942, p. 64.

⁷⁹⁹ *Oculus Pastoralis*, anonymous work c 1222, quote and italian translation by Galletti.

Alfredo Galletti, *Storia dei Generi Letterari Italiani, L'Eloquenza (Dalle Origine the XVIth Secolo)*, Casa Editrice Dottor Francesco Vallardi, Milan, 1904-1918, p. 462.

the respective matter. But in other matters, owing to probable changing circumstances, legislators can turn to more flexible formulas, through a deliberate decision, rather than by technical error. On the one hand, there is the legal definition of crimes, which requires maximum certainty; on the other hand, the juridical standard⁸⁰⁰ the average correct social conduct, for example, under civil law, the formula deliberately vague: "the diligence of a good father of family". Crime definitions in the law privileges certainty; the juridical standard, the adaptability⁸⁰¹ to the circumstances. Both instruments are available, and must be used in accordance with the rigorousness demanded by the branch of the Law and the prudence of rulers and advisors.

RULE: In matters of restrictive interpretation, a rigorous accuracy must be procured, in matters that allow an extensive interpretation, juridical standard technique may be resorted to.

c. Ornament

The correct (pure) and easily understandable (clear) use of language enables to convey ideas, to teach (*docere*), but it is not enough to delight (*delectare*), to stir emotions, to motivate (*movere*), which require another virtue of speech: ornament (*ornatus*). Ornament consists in force to move and beauty to delight, either of thoughts (*res*) or of linguistic expressions (*verba*).⁸⁰²

Under the classical rhetorical tradition it was not argued about the admissibility of the ornament, but about the extent to which it was suitable for each genre of speech.⁸⁰³

RULE: The ornament must assist, rather than interfere with, obstruct or replace the purpose of the speech.

It is surprising that any human product, whether handmade or industrial, is expected not only to be useful, but also to possess esthetic qualities that may make it more acceptable in the market, while one of the most useful intellectual products, laws, is designed irrespective of beauty for better conception, systematization, expression, enactment, publication, dissemination, memorizing, interpretation, and application, as if it were unnecessary to make laws more acceptable to society.⁸⁰⁴

⁸⁰⁰ For the juridical standard, see:

Roscoe Pound, Introduction to the Philosophy of Law, Yale University Press, First Edition 1923, Revised 1953, Seventh Printing, Yale University Press, New Haven and London, 1965, pp. 55-59.

Marcel O. Stati, Le Standard Juridique, Préface de René Demogue, Librairie de Jurisprudence Ancienne et Moderne Edouard Duchemin, L. Chauny et L. Quinsac, Successeurs, Paris, 1927, 398 pp.

⁸⁰¹ Marcel O. Stati, Le Standard Juridique, Préface de René Demogue, Librairie de Jurisprudence Ancienne et Moderne Edouard Duchemin, L. Chauny et L. Quinsac, Successeurs, Paris, 1927, pp. 109-110.

⁸⁰² Heinrich Lausberg, Elementos de Retórica Literaria, Introduction al Estudio de la Filología Clásica, Románica, Inglesa y Alemana, Version Española de Mariano Marín Casero, Editorial Gredos, Madrid, 1975, números 162-164, pp. 89-90, (Elemente Der Literarischen Rhetorik, Max Weber Verlag, München, 1963).

⁸⁰³ Eduard Norden, Die Antike Kunstprosa VI. Jahrhundert a. Chr. bis in die Zeit der Renaissance, 3rd. Ed., B.G. Teubner, Stuttgart, 1915, La Prose d'Arte Antica, Dal Secolo VI B.C. all'Età della Rinascenza, Edizione Italiana a Cura di Benedetta Heinemann Campana, con una Note di Aggiornamento di Gualterio Calboli e una Premessa di Scevola Mariotti, Salerno Editrice, Rome, 1986, Tomo I, p. 18.

⁸⁰⁴ Few authors have written on the beauty in the law, and minor is still the number of the significant contributions as the following ones:

A very frequent use of the same words, phrases and sentences constitutes the vices of poverty and monotony,⁸⁰⁵ since it denotes a poor vocabulary and produces a tedious repetition, as opposed to the literary virtue of elegant variation. Nevertheless, a speaker or drafter should not be afraid of repeating a word somewhat frequently if it helps understand the speech better.⁸⁰⁶ Unlike other literary genres, in prescriptive and persuasive speeches expressing always the same ideas with the same words is a virtue, since it leaves no room for interpretative doubts, while to use synonymous and various turns of phrase, instead of equal formulae, constitutes a vice of the legislative style, which sins against the clarity of the speech.

RULE: In prescriptive and persuasive speeches, elegant variations shall be avoided.

Although, in prescriptive and persuasive speeches elegant variations should be avoided, beauty may be attained through other rhetorical procedures, whether words are considered isolately (*in verbis singulis*), or in groups, in the composition of a literary work (*compositio*).

Election of words, tropes and other figures of speech

The ornament may be achieved by choosing the most beautiful words (*electio verborum*), tropes and other figures of speech.

Words

To choose words, their graphic symbols, sounds and meanings must be considered, from the point of view of the beauty that the legislator may convey to the addressees of the norms. A graphic symbol is considered as the union of the typography and the design of the written page; the sound, as the expression of the legislator's character and the creation of impressions and arousal of emotions, rather than as the representation of

R. Von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur la 3e. Édition Avec l'Autorisation de l'Auteur Par O. De Meulenaere, Liv. II Ie. Part. Titre III Technique, Chap. I. Sect. 2. B. 3. Construction. § 46. 3. La loi du beau juridique (3.The law of the juridical beautiful thing), A. Maresq, Ainé, Éditeur, Paris, F. Clemm, Gand, 1877, pp. 69-72.

Gustav Radbruch, *Introducción a la Filosofía del Derecho*, Traducción de Wenceslao Roces, IX *La Estética del Derecho*, Primera Edición en Español 1951, Fondo de Cultura Económica, México-Buenos Aires, 1955, pp. 134-152. (*Vorschule der Rechtsphilosophie*, 1948).

Giuseppe Maggiore, *Estetica del Diritto*, *Scritti Giuridici in Onore di Francesco Carnelutti*, Volume Primo, *Filosofia e Teoria Generale del Diritto*, CEDA - Casa Editrice Dott. Antonio Milani, Padova, 1950, pp. 275-294.

K.N. Llewellyn, *Belleza y Estilo en el Derecho*, Traducción y Prólogo por José Puig Brutau, Bosch, Casa Editorial, Barcelona, 1953, 80 pp. "[...] it corresponds to one of the lectures that the author gave himself in the University of Chicago during the spring 1941, partially reproduced then in *The University of Chicago Law Review* (1942)."

"[...] corresponde a una de las conferencias que el autor pronunció en la Universidad de Chicago durante la primavera de 1941, parcialmente reproducidas luego en *The University of Chicago Law Review* (1942).", Prólogo, pp. 7-8.

⁸⁰⁵ Gramática de la Lengua Española, Real Academia Española, Nueva Edición Reformada, de 1931, Madrid, 1962, número. 483, pp. 443-445.

⁸⁰⁶ Quintilian, *Institutio Oratoria*, IX, I, 24.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book IX, i, 24, London, 1921, pp. 360-361.

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre IX, I, 24, Paris, 1978, pp. 162-163.

meanings; the meaning, as an emotional or descriptive representation, not only like a persuasive or logical definition.⁸⁰⁷ As an example, the following rule is formulated:

RULE: Words shall be chosen by the beauty of their graphic symbols, sounds and meanings. When the norms permit or reward, words should be chosen to characterize the legislator more favorably and to create impressions and arouse pleasant evocations at the sight, ear and understanding of their addressees. When the norms oblige, prohibit or punish, the worthiest words shall be chosen.

This matter, despite its importance, has not been developed yet, and the author, much to his regret, in the face of the vastness of this work, leaves it for future editions or for other authors.⁸⁰⁸

Tropes

Tropes are extensions of the meaning of words, from the original, direct one, to another derived, indirect, figurative meaning. When these extensions serve to name something without a special name, they are called "catachresis". When they come into habitual use among educated persons, lexicographers enrich the articles of their dictionaries, and it is possible to properly choose from among the different meanings or entries of each word, whether literal or figurative, common or technical, as was the case in the juridical language with some expressions.

EXAMPLES of catachresis:

"*corpus delicti*";
"sources of the law".

RULE: Tropes are more convenient in poetry than in prose and, in legislative prose, more convenient in persuasive speech than in prescriptive speech, which also uses them (metaphors, metonymies and synecdoches).

Metaphors (fictions)

In a metaphor, the extension of the meaning is implicit.

EXAMPLES of metaphors:

"lions", instead of "brave";
"foxes", instead of "crafty".

In an image, the extension of the meaning is explicit.

EXAMPLES of images, similarities or comparisons:

⁸⁰⁷ N.S. Troubetzkoy, *Principes de Phonologie*, Traduits Par J. Cantineau, Reimpression de la 1e. Édition, 1949, Librarie C. Klincksieck, Paris, 1957, *Phonologie et Phonostylistique*, pp. 16-29.

⁸⁰⁸ It would be very interesting that some philologist will study the beauty of the vocabulary in the fragments of the Laws of Solon, who in addition to legislator was a poet in a people as the Athenian so sensitive to the esthetic values.

"bravely as a lion";
"crafty as a fox".

A metaphor might be said to be a brief image, and an image might be said to be an extended metaphor that expresses the comparison.⁸⁰⁹

Juridical fictions,⁸¹⁰ which cover facts not included in a current qualification, to include or to exclude certain consequences,⁸¹¹ without delay, also are metaphors or images, according to whether they are formulated in brief form (x is y) or extended (x is as if it were y). Thus, the reference is concealed, instead of making generic or specific and exhaustive references; to describe the new fact assumption (antecedent) and refer to the consequence; or to regulate both the antecedent and the consequent of the norm. In Roman Law there existed case law fictions, as the treatment of foreigners as citizens so that they could file an action or be prosecuted for theft; juristic fictions, like the continuation of the personality of the decedent's existence to account for successions by descent; legislative fictions, like the *Lex Cornelia de captivis*, which considered a Roman citizen taken captive by the enemies of the Roman People and died in that state, as dead from the time of his capture, in order to consider his testament made before his captivity valid, as if he died a free Roman citizen, without the *capitis deminutio* suffered by the died captive *apud hostes*.

⁸⁰⁹ Aristotle, Rhetoric, III, 1406b20-1407a15.

Aristotle, Rhetoric, III, 1406b20-1407a15, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, pp. 2243-2244.

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 1406b20-1407a15, Editorial Gredos, Madrid, 1990, pp. 501-504.

Aristote, Rhétorique, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Livre III, 1406b20-1407a15, Paris, pp. 49-50.

Aristotele, Retorica, A cura di Armando Plebe, III, 1406b-1407a, Editore Laterza, Bari, 1961, pp. 178-179.

Cicero, De Oratore, XIX, 158.

Cicéron, De l'Orateur, Texte Établi et Traduit par Edmond Courbaud, Livre Troisième, XIX, 158, Société d'Édition "Les Belles Lettres", Paris, 1930, p. 62.

Quintilian, Institutio Oratoria, VIII, 6, 8-9.

Quintilian, The Institutio Oratoria of Quintilian, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book VIII, I saw, 8-9, London, 1921, pp. 304-305.

Quintilien. Institution Oratoire, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre VIII, VI, 8-9, Paris, 1978, pp. 105-106.

⁸¹⁰ Referring to the historical function that has fulfilled the fiction in the law, it points out that it has played severely identically that of the metaphors in the language:

Pierre de Tourtoulon, Les Principes Philosophiques de l'Histoire du Droit, Librairie Payot and Cie, Lausanne, Paris, 1908-1919, p. 451.

⁸¹¹ "If a complicated law often refers to the wheat and a reform wants to extend its norms to the barley, the legislative drafter should trace all the times that the word "wheat" appears and to insert after each of its appearances "and barley". The easy way consists of saying "The word "wheat" includes to the barley", but then one would incur a definition out of the meaning that normally there use the persons to whom there is assigned the law, which would be open to criticism for violating a fundamental principle of the communication. If a legal fiction will be necessary, one advises not to say "The terms "son" and "born" include the foster child", but "A child adopted as any person will be treated as if he will be a son of his own blood", Reed Dickerson, The Fundamentals of Legal Drafting, Published for The American Bar Foundation by Little, Brown And Company, Boston - Toronto, 1965, p. 104.

In the first example, it might say: "The norms established in the present law for the wheat, also will be applied to the barley", instead of the image: "In the present law the barley will be considered as if it will be a wheat."

Irrebuttable legal presumptions (*jure et de jure*), are based on what usually happens, but they do not admit contrary proof, since they are established to avoid doubtful questions or scandalous arguments. They assume certain facts to be true, although such facts are merely possible in reality, like the presumption of fatherhood of the husband who has lived together with his wife and infant's mother during the period of the marriage in which the infant could have been conceived by both. Legal fictions, assumes as true something false, known by everybody to be false, but has certain resemblance to reality that justifies the fiction, it being irrelevant to prove their falsity or truth, since that is not their purpose. They are established to include or to exclude juridical consequences without delay, like hidden references,⁸¹² when legislators are not in situation to regulate with generic or specific and exhaustive references, or with complete norms.⁸¹³ Fictions, on regarding new thing as is were old, close gaps without waiting ideas and formulae to come to fruition, avoiding antinomies and redundancies, suggesting analogies,⁸¹⁴ but voluntarily and obviously altering the meaning of the existing formulae.

PRINCIPLE: Legal fictions are useful as temporary remedy and indicate the point on which the efforts will have to concentrate to find definitive solutions. They⁸¹⁵ became dangerous if they cause delay or the abandonment of efforts to find definitive solutions, or if they end up being taken as true and conclusions are drawn beyond the justice-related reasons that first warranted their introduction.

Private civil law, which is a developed branch, is full of fictions: succession representation, conditions deemed unwritten, declaratory partition, putative marriage, etc. With all the more reason, there are fictions in international law, a less developed branch, but nobody lets himself be taken in by its concepts and artificial terminology,

⁸¹² Hidden references, created to assign certain juridical consequences, are distinguished from hidden limitations, created to exclude the current consequences assigned, by:

Karl Larenz, *Metodología de la Ciencia del Derecho*, Traducción de Enrique Gimbernat Ordeig de *Methodenlehre der Rechtswissenschaft*, Springer Verlag OHC, Berlin, Göttingen, Heidelberg, 1960, Ediciones Ariel, Barcelona, 1966, pp. 181-182,

⁸¹³ "[...] the Romans' general attitude of clinging to traditional things, without remaining tied to them if they no longer answered to a new dominant popular opinion, was conspicuous. Therefore, the Roman Law History always shows, up to the classic period, a gradual, completely organic development. If a new juridical form arises, it is directly related to a previous form still in force, which makes the new one as firm and developed as the previous one. This is where the concept of legal fiction comes into play, since it is extremely important to the development of Roman Law and often ridiculously unknown by modern scholars [...]"

"[...] era visible el carácter general de los romanos de aferrarse a lo tradicional, sin quedar atados por ello, si es que lo tradicional no respondía ya a una nueva opinión popular dominante. Por ello, la historia del Derecho romano muestra en todas partes, hasta la época clásica, un desarrollo paulatino, completamente orgánico. Si surge una forma jurídica nueva, es enlazándola directamente con una forma vieja subsistente, con lo cual toma la firmeza y el perfeccionamiento de la misma. Aquí entra en juego el concepto de ficción, que es sumamente importante para el desarrollo del Derecho romano y a menudo ridículamente desconocido por los modernos [...]"

Federico Carlos Von Savigny, *De la Vocación de Nuestra Época para la Legislación y la Ciencia del Derecho*, en Thibaut y Savigny, *La Codificación, Una Controversia Programática*, Introducción y Selección de Textos de Jacques Stern, Traducción del Alemán de José Díaz García, Editorial Aguilar, Madrid, 1970, pp. 71-72.

⁸¹⁴ Like theoretical models in science, which explain an unknown complex phenomenon, as if it were a system also complex, but well-known, transferring the knowledge of one to other; or hypotheses *ad hoc*, which temporarily avoid changing a traditional theory that scholars wish to keep.

⁸¹⁵ René Dekkers, *La Fiction Juridique*, Librairie du Recueil Sirey, Paris, 1935, pp. 234-235.

arising out of a prodigious ingenuity to avoid susceptibilities, aimed at keeping up appearances in the struggle for preserving world peace, since there is not branch more realistic than international law.⁸¹⁶

Sometimes, figures in common language mislead legislators, as it happened with a Lombard law prohibiting the marriage of any woman who had taken the veil, even if she had not consecrated herself to the veil, on the grounds that, if a husband engaged by a wedding ring could not marry legally somebody else, let alone the wife of God or of the Saint Virgin; the legislator was misled by the rhetorical figure of speech, since it was a metaphor.

PRINCIPLE: In establishing laws, legislators shall reason from reality to reality, rather than from reality to the figure or from the figure to reality.⁸¹⁷

Fictions will not disappear as a technical resource,⁸¹⁸ since they owe their existence to the limitations of legislators, who, for different reasons, are not always in an immediate position to make generic or specific and exhaustive references; to describe the new fact assumption (antecedent) and refer to the consequence; or to regulate both the antecedent and the consequent of the norm, with a terminology that transparent the concepts and a name that indicates the place of the new phenomenon in the explicit context of the law and in the implicit context or juridical system, which is thus conceived as a natural and open classification, covering the new phenomena that appear in the world of the law, in a complete, consistent and economic fashion.

When concepts and terminology come to fruition, perhaps the fictions established by direct regulations might be replaced.

EXAMPLE of traditional fiction:

An conceived child, so that he will be able to acquire some rights,⁸¹⁹

⁸¹⁶ Georges Renard, *Le Droit, la Logique et le Bon Sens*, Société Anonyme du Recueil Sirey, Paris, 1925, pp. 279-85 (fictions politiques), pp. 288 (it calls "rhetorical figures" to the mentioned fictions of the private law); 292-293 (international law).

⁸¹⁷ The example of the Lombard law and the rule belong to Montesquieu.

Montesquieu, *De L'Esprit Des Lois, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc.*, Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Préface, Livre XXIX, Chapitre XVI, Choses à observer dans la composition des lois, p. 534.

See also:

Montesquieu, *De l'Esprit des Loix, Texte Établi et Présenté par Jean Brethe de la Gressaye, Tome IV*, Livre XXIX, Chapitre XVI, Choses à observer dans la composition des lois, Société d'Édition "Les Belles Lettres", Paris, 1961, p. 140.

⁸¹⁸ They might be a consequence of the weakness of the spirit, which, unable to be always creating juridical concepts perfectly adapted to reality, must make things and facts fall within pre-established concepts, which do not adapt exactly.

François Geny, *Science et Technique en Droit Privé Positif, III Troisième Partie, Élaboration Technique du Droit Positif*, Librairie de la Société du Recueil Sirey, Paris, 1921, pp. 378, 426, 431.

Although case law fictions might be justified while there are no legislative solutions, for the purpose of maintaining the apparent continuity of the law, the same is not true with those in juristic writings and of legislative ones, which should strain to be promptly eliminated:

Paul Roubier, *Théorie Générale du Droit, Histoire des Doctrines Juridiques et Philosophie des Valeurs Sociales*, 2e. édition revue et augmentée, Librairie du Recueil Sirey, Paris, 1951, 13. *Style et vocabulaire juridique*, p. 116.

⁸¹⁹ *Infans conceptus pro natur habetur quotiens de commodo ejus agitur* ("An conceived child is considered to have been born whenever there is some utility"):

is considered as if he will have already been born and, if he will be born dead, considered to have never existed;

EXAMPLE of direct regulation:

The Section 31 of the Swiss Civil Code replaced the traditional fiction of the conceived child with the following formula:

“Personality begins upon the birth of a living child; she ends upon death. The conceived child enjoys civil rights, on the condition that he is born alive.”⁸²⁰

RULE: Legal fictions may be used when it is desirable to include or to exclude certain juridical consequences without delay and legislators are not in a position to use generic or specific and exhaustive references, nor direct regulations of factual antecedents and the respective consequents.

Regarding legal fictions as metaphors is not a merely academic exercise, since it enables to use general stylistic requisites,⁸²¹ in special legislative style.

RULE: A legal fiction shall be well done, when the similarity has the following features:

- a) proper (real rather than supposed or equivocal);
- b) luminous (taken from well-known objects, easy to understand and making an impact on the addressees' spirit on account of the precise and real relations shown);
- c) noble (not taken from low and unpleasant objects; if it aimed at something vile and degrading, it will prove worthy and beyond its origin);
- d) natural (not taken from a remote and far-fetched similarity);
- e) coherent (without mutually exclusive terms).

Metonymies (presumptions and alterations)

Any trope causes an extension of meaning. In a metaphor, by reason of the similarity; in a metonymy, by reason of the correspondence to its way of existing or being,⁸²² like referring to the cause instead of the effect, to the instrument instead of the cause, to the effect instead of the cause, to the container instead of the content, etc.

It has already been stated that juridical fictions, such as metaphors or images, are based on a similarity, and that presumptions are based on the verisimilitude about what usually happens, each pursuing different purposes: the inclusion or exclusion of

Digest of Justinian I, 5,7, applied in the French Civil Code, Sections 725, 906 and 961:

Vocabulaire Juridique sous la Direction de Henri Capitant, PUF, Paris, 1936, Adages, p. 10. In Vocabulaire Juridique, Publié sous the Direction of Gérard Cornu, Association Henri Capitant, PUF, Paris, 1987, p. 835, quotes of the Digest and of the French Civil Code are omitted.

⁸²⁰ "La personnalité commence avec naissance accomplie de l'enfant vivante; elle finit par la mort. - L'enfant conçu jouit des droits civils, à la condition qu'il naisse vivant."

René Dekkers, Fiction Juridique, Librairie du Reçueil Sirey, Paris, 1935, pp. 201-202.

⁸²¹ Fontanier refers to the style in general and indicates these requisites for the good metaphor, see: Pierre Fontanier, Manuel Classique pour l'Étude des Tropes ou Éléments de la Science des Mots, 4e. Édition, 1830, dans Fontanier Les Figures du Discours, Introduction par Gérard Genette, Flammarion, Paris, 1977, pp. 103-104.

⁸²² Pierre Fontanier, Manuel Classique pour l'Étude des Tropes ou Éléments de la Science des Mots, 4e. Édition, 1830, dans Fontanier, Les Figures du Discours, Introduction par Gérard Genette, Flammarion, Paris, 1977, p. 79.

consequences, on the one hand, and the simplification or the exclusion of the evidence, on the other hand.

Just as fictions are metaphors, presumptions are metonymies, since proving the existence of the controversial fact depends on the verisimilitude established, on the probable truth (*juris tantum*), or irrefutable truth (*jure et de jure*), which are taken as the cause of such proof.

PRINCIPLE: When an abstract formula, albeit fair in relation to the theoretical idea upon which it is based, is not easily applicable in practice, initial purity shall be altered and the concomitant requisites that usually happen shall be established, which may admit proof into opposite (*juris tantum*) or do not admit proof into opposite (*jure et de jure*), but are more able to be recognized in an easier and safe way.

EXAMPLES:

When a law on legal, political or criminal responsibility,⁸²³ is passed, the basic idea of intellectual maturity must be replaced with a number: age.⁸²⁴

Synecdoches

The extension of meaning in case of a metaphor is based on the similarity; in a metonymy, on the correspondence to the way of existing or of being; in a synecdoche, on a connection in a set by virtue of which the existence or the idea of one is included in the existence or the idea of the other(s), like the whole and the parts, the genre and the species, etc.⁸²⁵

RULE: When it does not affect its purpose or generate difficulties in its interpretation or application, if some word is unacceptable, the word that refers to the whole may be replaced with the one that refers to the part and vice versa; the one that refers to the genre may be replaced with the one that refers to the species and vice versa, etc.

Syllepses

Mixed tropes, or syllepses, consist in using a word in a literal and a figurative sense at the same time, and may be used with metaphors, metonymies or synecdoches.

EXAMPLE of syllepses with a metaphor:

"The day is not purer than the bottom of my heart", physical purity of the day (literal), moral purity of the heart (figurative meaning by similarity)."

⁸²³ R. Von Ihering, *L'Esprit du Droit Romain dans les Diverses Phases de son Développement*, Traduit sur la 3e. Édition Avec l'Autorisation de l'Auteur par O. de Meulenaere, Maresq, Ainé, Éditeur, Paris, F. Clemm, Gand, 1877, Tome Premier, pp. 54-55.

⁸²⁴ For other examples, see:

Jean Dabin, *Technique de l'Élaboration du Droit Positif Spécialement du Droit Privé*, Établissements Émile Bruylant, Bruxelles, Librairie du Recueil Sirey, Paris, pp. 144-156.

⁸²⁵ Pierre Fontanier, *Manuel Classique pour l'Étude des Tropes ou Éléments de la Science des Mots*, 4e. Édition, 1830, dans Fontanier *Les Figures du Discours*, Introduction par Gérard Genette, Flammarion, Paris, 1977, p. 87.

EXAMPLE of syllepses with a metonymy:

"It is not possible to conquer Carthage other than inside Carthage itself",
Carthage population, Carthaginians (figurative meaning by the contents),
Carthage city (literal meaning by the container);

EXAMPLE of syllepses with a synecdoche:

"Punishing, madam, a father is always a father",
father, who punishes (literal meaning by the whole),
father's feeling, the way in which he punishes (figurative meaning by the part).⁸²⁶

Syllepses must not be used in laws, since they would introduce doubts about whether the word has only one sense, literal or figurative, or two, one literal and another figurative, and, in the latter case, about which one is used in a literal sense and which one in a figurative sense.

RULE: In prescriptive and persuasive speeches, syllepses shall not be used.

Other figures of speech

In tropes, there is always a change of meaning, while that is not the case in others figures of speech.⁸²⁷ The Latin word *figura* is the translation of the Greek word *schema*, taken from the theatrical vocabulary, in which it mean the actors' wardrobe and gestures. From there it was taken to rhetoric, because, just as the variety of characters and emotions that want to be depicted determines the election of the appropriated wardrobe and gestures, also speech, following the variety of matters discussed, is dressed up in a certain fashion and enlivened with various gestures.⁸²⁸ The mere expression of thoughts only enables others to know the ideas, but, when figures of speech are used, given that they are like notable and ornate dresses, thoughts become beautiful and forceful enough to ignite imagination and arouse passions. There⁸²⁹ is no more effective method to direct imagination and passion than a suitable use of the figures of speech, since if the forehead, eyes and hands are effective in moving the spirits, more effective is the physiognomy of speech, the aspect of style itself, when is chosen with a view to the effect intended.⁸³⁰

⁸²⁶ Pierre Fontanier, Manuel Classique pour l'Étude des Tropes ou Éléments de la Science des Mots, 4e. Édition, 1830, dans Fontanier les Figures du Discours, Introduction par Gérard Genette, Flammarion, Paris, 1977, pp. 105-108, for the three examples of syllepses.

⁸²⁷ M. Crevier, Rhétorique Française, Chez Saillant et Desaint, Tome Second, Paris, 1767, p. 80.

Fontanier names the tropes "figures of signification":

Pierre Fontanier, Manuel Classique pour l'Étude des Tropes ou Éléments de la Science des Mots, 4e. Édition, 1830, dans Fontanier Les Figures du Discours, Introduction par Gérard Genette, Flammarion, Paris, 1977, p. 77.

⁸²⁸ Gregorio Mayans I Siscar, Rhetorica de Don Gregorio Mayans I Siscar, Segunda Edición, Valencia, 1776, Tomo II, pp. 82-83.

⁸²⁹ Hugh Blair (1718-1800), Lectures on Rhetoric and Belles Lettres, Complete in One Volume, London, 1823 (First Edition 1783), p. 138.

⁸³⁰ Quintilian, Institutio Oratoria, IX, I, 21.

Quintilian, The Institutio Oratoria of Quintilian, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book IX, i, 21, London, 1921, pp. 358-359.

Rhetoric declined in importance between the 19th century and the first half of the 20th century because, in the previous period, out of the five stages for the production of speech –investigation, systematics, style, memory and action–, it had been reduced to style and style had been reduced to figures of speech. One of the sharpest criticisms that such reductionism deserved was expressed by Samuel Butler's (1612-1680) following verses:

"For all a Rhetoricians Rules
Teach nothing but to name his Tools."⁸³¹

With regard to figures of speech, the terminology, the concepts, the classifications and the quantities do not even coincide.⁸³² In classical Latin works, there were 35 in Quintilian, 65 in Herennius, more than 90 in Cicero and up to 200 in a minor Latin rhetorician as Aquila Romanus,⁸³³ while in the Renaissance, although they decreased to 184 in *The Garden of Eloquence*, by Henry Peacham, 1577 edition, they exceeded 200 in a writer as Shakespeare.⁸³⁴ Nevertheless, it does not seem reasonable to deny the utility of a set of figures of speech, like a sort of detailed inventory of one of the available artistic resources that best serve to cause esteem for the legislator's character (*ethos*), to excite or to calm the passions of the addressees (*pathos*), and to safely and conveniently indicate the meaning of certain points (*logos*), thus securing support for the measure proposed in the proper text of the bill.⁸³⁵ Not all figures are usable in prescriptive

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre IX, I, 21, Paris, 1978, p. 162.

⁸³¹ Samuel Butler, *Hudibras*, Part I, song i, 89-90, cited by:

Adam Smith, *Lectures on Rhetoric and Belles Lettres Delivered in The University of Glasgow by Adam Smith Reported by a Student in 1762-1763*, Edited with an Introduction and Notes by John M. Lothian, Foreword by David Potter, Southern Illinois University Press, Carbondale and Edwardsville, Feffer and Simons, Inc, London and Amsterdam, 1971, p. 24, note 1.

Peter Dixon, *Rhetoric*, Methuen, London and New York, first printed 1971, reprinted twice, Reprinted 1984, p. 74.

⁸³² Quintilian, *Institutio Oratoria*, IX, I, 10.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book IX, i, 10, London, 1921, pp. 352-353.

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre IX, I, 10, Paris, 1978, pp. 158-159.

⁸³³ For Aquila Romanus:

James J. Murphy, *A History of Rhetorical Theory From St. Augustine to the Renaissance*, University of California Press, Berkeley, 1974, p. 185.

La Retórica en la Edad Media. Historia de la Teoría de la Retórica Desde San Agustín Hasta el Renacimiento, de James J. Murphy, Traducción de Guillermo Hirata Vaquera, Fondo de Cultura Económico, México, 1986, p. 193.

For additional information, see the following note.

⁸³⁴ For information on Herennius, Peacham and Shakespeare, see:

Edward P.J. Corbett and Robert J. Connors, *Rhetoric for the Modern Student*, Oxford University Press, New York - Oxford, 1999, p. 378.

Cousin counts 35 in Quintilian, about 50 in Herennius, and more than 90 in Cicero:

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles Lettres", Tome V, Livre IX, Notice, Paris, 1978, pp. 141-142.

⁸³⁵ Quintilian, *Institutio Oratoria*, IX, I, 21.

Quintilian, *The Institutio Oratoria of Quintilian*, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, Book IX, i, 21, London, 1921, pp. 358-359.

Quintilien. *Institution Oratoire*, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Belles lettres", Tome V, Livre IX, I, 21, Paris, 1978, p. 162.

speeches, and not all those usable in the prescriptive and persuasive speeches will be discussed here, since that would require a very detailed analysis, which others may conduct better, or perhaps the author of this work may do so in future editions.

There are two species of figures: those of thoughts, connected with the gross materials obtained in the stage of investigation (*inventio*); and those of words, related to the linguistic expression (style, *elocutio*, in restricted sense). In the former ones, the ornament is conceptual and derives from ideas rather than from words; in the latter ones, it is verbal and derives from the “fine polish of the language itself”.⁸³⁶ The latter disappear if the words used change; the former ones will always survive, regardless of the words used to produce the desired effect.⁸³⁷ Nonetheless, it is not always easy to distinguish them and, in fact, the same figures are included in one or another species by different authors, situation that is complicated due to the polemic among the followers of the interpretation of the law according to its letter or to its spirit.⁸³⁸

Figures of words

The following figures of words or diction will be considered: pleonasm, ellipsis, periphrasis, euphemism and antithesis.

A pleonasm adds words for more clarity or energy of expression of a thought, although such words may not be indispensable to understand the meaning of the speech.⁸³⁹ If they did not make the expression clearer or more energetic, they would only constitute a grammatical vice.

As stated above, in prescriptive and persuasive speeches it is inadvisable to use synonymous as elegant variations, now, add no to use pleonasm, since in both cases the expression sins against clarity and concision. Every extra word overloads the memory and rises unnecessary doubts that may lead to interpretations contrary to the legislator's purpose.

RULE: In prescriptive and persuasive speeches, pleonasm shall not be used.

In the passage quoted, it refers to any orator and speech, rather than to a legislator and the law. He also asserts that figures serve to avoid monotony, to use varied language, but as it has already been stated in this work when discussing elegant variation, this general virtue becomes a special vice in prescriptive speech, since it may give rise to interpretative doubts.

⁸³⁶ [Cicero] *Rhetorica ad Herennium*, IV, XII, 18.

[Cicero] *Rhetorica ad Herennium*, IV, xiii, 18, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 274-275.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, XIII, Barcelona, 1991, pp. 264-265.

[Cicéron] *Rhétorique a Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre IV, XIII, 18, Paris, pp. 184-185.

⁸³⁷ Cicero, *De Oratore*, III, LII, 201.

Cicéron, *De l'Orateur*, Texte Établi et Traduit par Edmond Courbaud, Livre Troisième, LII, 201, Société d'Édition "Les Belles lettres", Paris, 1930, p. 83.

⁸³⁸ For the latter traditional topic, with an interesting section on literal interpretation and the writing of the law, see:

Bernard Vonglis, *La Lettre et L'Esprit de la Loi dans Jurisprudence Classique et la Rhétorique*, Sirey, Paris, 1968, 220 pp., pp. 61-69.

⁸³⁹ Pierre Fontanier, *Traité Général des Figures du Discours autres que les Tropes*, 4e. Édition, 1830, dans Fontanier, *Figures du Discours*, Introduction par Gérard Genette, Flammarion, Paris, 1977, pp. 299-300.

In pleonasm, there is a superabundance of words; in ellipses, an elimination.⁸⁴⁰ It is convenient to remember that, if, in an attempt to be brief, the expression turns out to be obscure,⁸⁴¹ clarity should be preferred. Concision is a virtue, unlike brevity or extension of the prescriptive and persuasive speeches, which depends on the circumstances.

RULE: Ellipses shall not be used, if they render the prescriptive and persuasive speeches obscure.⁸⁴²

In a periphrasis or circumlocution an idea that might have been conveyed with few words or only one word is conveyed evasively with several words, but more beautifully, energetically, or skillfully.⁸⁴³

They may be of great utility if they avoid an unnecessary or inopportune discussion, but lengthen speech and, therefore, must be used only when they are indispensable.

RULE: Periphrases or circumlocutions may be used if they avoid unnecessary or inopportune discussions.

In a euphemism, a simple direct expression that would otherwise prove hard or indecorous is replaced with a figurative, softer and proper one, to make it more acceptable.⁸⁴⁴

They are generally used in the prescriptive speech in two situations. First, when there are contrasting evaluations and the legislator wants to arrive at an acceptable commitment solution, like in a French law of 1982, which, instead of using the word "unemployed", used the expression "workers deprived of employment", using a periphrasis, and in the Italian law of 1977, n. 10, Section, 15, which mandated a

⁸⁴⁰ Pierre Fontanier, *Manuel Classique pour L'Étude des Tropes ou Éléments de la Science des Mots*, 4e. Édition, 1830, dans Fontanier, *Figures du Discours*, Introduction par Gérard Genette, Flammarion, Paris, 1977, p. 223.

⁸⁴¹ Cicero, *De Oratore*, I, 41, 187.

Cicéron, *De l'Orateur*, Texte Établi et Traduit par Edmond Courbaud, Livre Premier, Société d'Édition "Les Belles Lettres", Paris, 1930, p. 67.

Boileau, *L'Art Poétique*, dans *Oeuvres de Boileau*, Introduction de André Thérive, Chant I, Firmin Didot et Cie., Paris, 1928, p. 190.

⁸⁴² The rule is obvious to those who consider an ellipsis entails an omission of the words necessary for a grammatical construction rather than of the words that make meaning clear, like the definition of this figure, considered to be grammatical, in: *Diccionario de la Lengua Española*, Decimonovena Edición, Real Academia Española, Madrid, 1970, p. 508.

⁸⁴³ *Diccionario de la Lengua Española*, Madrid, 1970, pp. 583 and 1008.

Pierre Fontanier, *Traité Général give Represent du Discours Autres que les Tropes*, 4e. Édition, 1830, dans Fontanier, *Les Figures du Discours*, Introduction par Gérard Genette, Flammarion, Paris, 1977, p. 361.

⁸⁴⁴ *Dictionary of the Spanish Language*, Nineteenth Edition, the Spanish Royal Academy, Madrid, 1970, p. 591.

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaïning bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 1246, p. 871.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1968, T. III, número 1245, p. 341.

confiscation, but expressed it as a free acquisition, using a metonymy. Second, when social sensibility changes and accordingly, a formerly modest activity is ennobled, like the case of the road sweeper who started to be called "an ecological operator", using a synecdoche.⁸⁴⁵

RULE: When an acceptable commitment solution is sought, or social sensibility changes, euphemisms may be used.

In antitheses of diction or words (*antitheton, contentio*), unlike in antitheses of thought, words are quickly opposed in speech.

Example of antithesis of words:

"You show yourself conciliatory to your enemies, inexorable to your friends."⁸⁴⁶

Figures of thought

Figures of words or diction are born and die in their linguistic formulations; in figures of thought or judgment, it is possible to choose from among several possible linguistic formulations⁸⁴⁷ to express the same conceptual content. In Law it is mandatory to choose the same linguistic formula for each concept, with only one name, as stated when discussing nominal definitions.

Two figures of thought will be considered here: imprecations and antithesis of thoughts.

Imprecations are vehement figures used to provoke fear, through scoldings, complaints and threats.⁸⁴⁸ Although it is true that modern legislators, in principle, avoid excesses, trying to appear moderate and more rational than pathetic, and that complaints are not proper to prescriptive speech, it is equally true that the punishments established by legislators, from a rhetorical point of view, are imprecations that express their desire

⁸⁴⁵ Rodolfo Pagano, *Introducción a la Legística. L'Arte di Preparare le Leggi*, Dott. A. Giuffrè Editore, Milan, 1999, pp. 133-34.

The examples of euphemisms belong to the above mentioned author and the qualifications of the figures used like periphrasis, metonymy and synecdoche, belong to the author of this book.

⁸⁴⁶ [Cicero] *Rhetorica ad Herennium*, IV, XLV, 58.

[Cicero] *Rhetorica ad Herennium*, IV, xlv, 58, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 376-377.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, XLV, Barcelona, 1991, pp. 340-341.

[Cicéron] *Rhétorique to Herennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre IV, XLV, 58, Paris, pp. 250-251.

⁸⁴⁷ Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaing bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 755, p. 335.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, número 755, p. 189.

⁸⁴⁸ Antonio De Campany y De Montpalau, *Filosofía de la Elocuencia*, Segunda Edición, Londres, 1812, pp. 457-465.

to retaliate against the evil of the crime, reprimanding and threatening the criminal with punishment, as it has been held by the juristic writings of the classical school of criminal law.

In the word or diction antitheses, there is a quick opposition of words in the speech, whereas, in the antitheses of thought, there is an opposition of such concepts in the speech, as are compared with each other.⁸⁴⁹

Mixed figures

Mixed figures, which combine figures of word or diction with figures of thought, judgment or idea, produce in speech the same effects as the contrast of colors in painting, or the contrast of tones in music.⁸⁵⁰ Among them, only the antitheses will be mentioned.

Mixed antitheses, double antitheses of words and ideas, are more effective than each of the others two classes,⁸⁵¹ because, if figures of words or diction give splendor and figures of thought or judgment give force, the mixed ones give splendor and force at the same time.

Composition of sentences

The first stage in the search for the ornament was the election of the most beautiful words, tropes and other figures of speech, to gather materials. At this second and last stage of the style, called composition (*compositio*), words, whether or not tropes or other figures of speech, are jointly considered in the construction of the literary work, to be in a transit from thought to language. In the art of speech, like in every art that gathers a variety of materials and produces a work (construction of houses, carpentry, embroidery, etc.), composition is the second stage in the logical order, following selection, but it is the first one in potency, since the best materials are useless if they are not aptly assembled.⁸⁵²

⁸⁴⁹ [Cicero] *Rhetorica ad Herennium*, IV, XLV, 58.

[Cicero] *Rhetorica ad Herennium*, IV, xlv, 58, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 376-377.

[[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, XLV, Barcelona, 1991, pp. 340-341.

[Cicéron] *Rhétorique to Hérennius*, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Livre IV, XLV, 58, Paris, pp. 250-251.

⁸⁵⁰ Pierre Fontanier, *Traité Général des Figures du Discours autres que les Tropes*, 4e. Édition, 1830, dans Fontanier, *Figures du Discours*, Introduction par Gérard Genette, Flammarion, Paris, 1977, p. 379.

⁸⁵¹ [Aristotle] *Rhetoric to Alexander*, 1435b35.

[Aristotle] *Rhetoric to Alexander*, 1435b35, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2296.

[Aristotle] *Rhetorica ad Alexandrum* with an English Translation by H. Rackham, Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, William Heinemann Ltd., London, First Printed 1937, Revised And Reprinted 1957, 1965, 1983, XXVI, 1435 b35, pp. 372-373.

⁸⁵² Dionysius of Halicarnassus, *On Literary Composition*, 2.

Dionisyus Of Halicarnassus, *On Literay Composition*, 2, Dionisyus of Halicarnassus, *The Critical Essays* in two Volumes, with an English Translation by Stephen Usher, The Loeb Classical Library No. 466, Harvard University Press, Cambridge Massachusetts, William Heinemman Ltd., Vol. II, London, 1985, p. 23.

The composition of sentences has two aspects: degrees of elaboration and placement of words.

Degrees of elaboration

A grammatical sentence is usually defined as a set of words “expressing a complete thought.”⁸⁵³ Rhetoric, style and ornament, are interesting in knowing how a set of words completes a thought, for which purpose three degrees of elaboration have been distinguished in sentences: free, coordinated and periodic.⁸⁵⁴

Free sentence

The flowing of thoughts in a sentence may be compared to a race (*cursus*). In a free sentence (*oratio soluta*), it runs cross-country, freely, since there is no path, it makes the path as it goes. In daily speech, in a conversation on everyday matters, thoughts flow freely in sentences, loosely (*oratio soluta*), since syntactic correction is enough to make oneself understood, without rhetoric devices. When a free sentence is imitated, for example in the vulgar dialogues contained in literary works or in ordinary correspondence, there is the first degree of elaboration of the prose of art. The rules of such prose go beyond linguistic correction (*recte dicere*), proper to grammar, since they aspire at good speech (*bene dicere*), proper to rhetoric: in a dialogue, at realism; in the ordinary correspondence, at imitating a conversation between absent people.

RULE: For a simple style, free sentences shall be used.

⁸⁵³ Dionysius Trax (c.170-c. 90 B.C.), quoted by:

R.H. Robins, *A Short History of Linguistic*, Longmans, First Published, London, 1967, p. 33, text reproduced above.

“La oración es la combinación de palabras en prosa que expresa un sentido completo.” Dionisio Tracio, *Gramática*, in *Gramática and Comentarios Antiguos*, Introducción y Notas de Vicente Bécara Botas, Editorial Gredos, Madrid, 11. De La Palabra, p. 50.

Bello still says: "proposition or set of propositions that forms a complete thought" (“proposición o conjunto de proposiciones que forma sentido completo):

Andrés Bello, *Gramática de la Lengua Castellana destinada al Uso de los Americanos*, Vigésima Edición, Hecha Sobre la Última del Autor, con Extensas Notas y Copiosos Índices Alfabéticos de Rufino José Cuervo, R. Roger y F. Chernoviz, Editores, 308(157), Paris, 1921, p. 84.

“The speaker’s intention divides the elocution into units of complete sense themselves called sentences”

"La intención del hablante divide la elocución en unidades de sentido completo en sí mismas llamadas oraciones."

Esbozo de una Nueva Gramática de la Lengua Española, Real Academia Española (Comisión de Gramática), Espasa-Calpe, S.A., Madrid 1973, 3.1.2., p. 349.

For a criticism, see:

Luis Juan Picardo, *El Concepto de Oración*, Universidad de la República, Facultad de Humanidades y Ciencias, Investigaciones y Estudios, Montevideo, 1954, 3.1, pp. 10-12.

⁸⁵⁴ Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaning bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 913, p. 412.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, número 913, pp. 302-303.

Coordinated sentence

In a coordinated or continuous sentence (*oratio perpetua*), thoughts runs on a straight track in which the finish line is not seen until they arrives at it, so the runner easily becomes tired because on the way he does not know how much further ahead the finish line is and, if he reaches it, he arrives breathless and exhausted, since he could not measure and save energy throughout the stages covered. It happens when simple sentences are joined by conjunctions or are juxtaposed, forming a continuum that, although it has a starting point and a route, is devoid of linguistic indicators that enable to see and wait for the termination of the complex sentence, which may end in any of the simple sentences, since the structure is based only on the contents expressed, and not on the linguistic form that expresses it.

Periodic sentence

Thoughts in a free sentence runs cross-country; in a coordinated sentence, on a straight track; in a periodic one (*periodos, circuitus, circumscriptio, comprehensio, continuatio, ambitus*), on a curvey track, circumscribed⁸⁵⁵ by a rising linguistic tension (protasis), which makes the addressee expect for its complement, the falling linguistic distension (apodosis) that provides a meaning and end to the sentence. It does not advance in a straight line, like a coordinated sentence (*oratio perpetua*), but in a circle, making around (*periodos, circuitus, ambitus*), like in a race on the track of an Olympic stadium, where the finishing line is also the starting point, after one or more laps, so the runner may manage his energy, since he knows how much he has run and how much longer he has to go.⁸⁵⁶

In poetry, strophes consist in lines of verse, which in turn consist in hemistichs; in artistic prose, a period, similar to a strophe, is composed of members (*colon*) and elements of members (*comma*).⁸⁵⁷ The members, which are longer, indicate the end of a complete thought, or of a part, which is itself complete, of a bigger thought, like an arm, which is a part that has its own limits and parts, which are also also themselves

⁸⁵⁵ Like locked up in a circle until it stops:

Cicero, Orator, 66, 204.

Cicerón, El Orador, 66, 204, Texto Revisado y Traducido por Antonio Tovar y Aurelio R. Bujaldón, Ediciones Alma mater, S.A., Barcelona, 1967, p. 92.

Cicéron, L'Orateur, Texte Établi et Traduit par Albert Yon, Société d'Édition "Les Belles Lettres", LVI, 204, Paris, 1964, p. 79.

⁸⁵⁶ On the comparison with runners, who run out of breath and become weak in the curves, and do not stop running when the finishing line is in sight, see:

Aristotle, Rhetoric, III, 9, 1409a30-35.

Aristotle, Rhetoric, III, 9, 1409a30-35, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2248.

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 9, 1409a30-35, Editorial Gredos, Madrid, 1990, pp. 523-524.

Aristote, Rhétorique, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Livre III, 1409th 32-35, Paris, p. 59.

Aristotele, Retorica, A cura di Armando Plebe, III, IX, 1409th, Editore Laterza, Bari, 1961, pp. 188-189.

⁸⁵⁷ The following author indicates the triple correspondence; he quotes Cicero, Orator, LXVI, 223, on the verse and the member:

Aldo Scaglione, The Classical Theory of Composition from its Origins to the Present Day, A Historical Survey, The University of North Carolina Press, Chapel Hill, 1972, p. 34.

complete: the forearm and the fingers.⁸⁵⁸ The members have a recognizable rhythmic pattern at the end, a cadence or clause, while the *comma* does not have such pattern and is shorter.⁸⁵⁹

In a free sentence, words form a correct syntactic structure, but, from the rhetorical point of view, they are like a pile of stones. In a coordinated sentence, in addition to a correct syntactic structure, there is a rhetorical structure that organizes the words in members and shorter elements (*comma*), like a road that begins at a certain point and stretches in a straight line, but indefinitely, in which, looking backwards, one can know how much has been covered, but not how much longer one has to go because, since the finish line cannot be seen, counting the members is not enough, since the coordinated sentence can end upon the end of any of them: it has the shape of a semi-straight line.

In a periodic sentence (period), words are supported by each other, they are compact, such like the stones that support a domed roof, in a rising construction (protasis) and falling one (apodosis), with a tension that keeps them together and enables to expect the apodosis from the protasis, but suspending the entire meaning until the end of the sentence. With only one look, enables to cover the set (period) and to count its elements (members –*colon*– or shorter elements –*comma*–), so that the multiplicity is reduced to a unit, with definite numbers that facilitate understanding and memorizing, like verses within a strophe in poetry⁸⁶⁰: it has a rounded shape.⁸⁶¹

The members must not be very short, so that the runner will not stumble over them, in case the period end before expected, or very long, so that he will not late, as if he were running for the exterior side of the track, while the period was running for the interior side.⁸⁶² If it is too long it turns out to be slow; if it is too brief, unstable.⁸⁶³

⁸⁵⁸ Demetrius, *On the Style*, I, 2.

Demetrius, *On Style*, I, 2, With Introduction and English Translation by W. Rhys Roberts, The Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, William Heineman Ltd., London, First Published 1927, Revised and Reprinted 1932, Reprinted 1939, pp. 306-307.

Demetrio, *Sobre el Estilo*, I, 2, Introducción, Traducción y Notas de José García López, Editorial Gredos, Madrid, 1979, pp. 27-28.

⁸⁵⁹ Quintilian, *Institutio Oratoria*, IX, IV, 122-123.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 122-123, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 574-577.

Quintilien. *Institution Oratoire*, Livre IX, IV, 122-123, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles lettres", Tome V, Paris, 1978, p. 265-266.

⁸⁶⁰ Aristotle, *Rhetoric*, III, 9, 1409b5.

Aristotle, *Rhetoric*, III, 9, 1409b4-5, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2248.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 9, 1409b5, Editorial Gredos, Madrid, 1990, p. 524.

Aristote, *Rhétorique*, Livre III, 1409b4-5, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 59.

Aristotele, *Retorica*, III, IX, 1409b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 189.

⁸⁶¹ The idea of comparing the members with a pile of stones, one on another, in a free sentence, and with domed roofs, in the period, belongs to Demetrius.

Demetrius, *On The Style*, I, 12.

Demetrius, *On Style*, I, 12, With Introduction and English Translation by W. Rhys Roberts, The Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, William Heineman Ltd., London, First Published 1927, Revised And Reprinted 1932, Reprinted 1939, pp. 306-307.

Demetrio, *Sobre el Estilo*, I, 12, Introducción, Traducción y Notas de José García López, Editorial Gredos, Madrid, 1979, pp. 32-33.

⁸⁶² Aristotle, *Rhetoric*, III, 9, 1409b15-25.

RULE: When a member is too long, it shall be slow; when it is too brief, it shall be unstable.

RULE: When anybody wishes to verify the quality of a period, he shall read it to himself aloud and fluently, in only one breath.⁸⁶⁴

A period may have one or more members. A simple period, of only one member, requires certain length and a rounded end,⁸⁶⁵ and is also called "single", because it consists in only one member (*colon*), but it must always be integrated of at least by two parts (*comma*), of which the first one constitutes the protasis (or proposition); and the last one, the apodosis (correspondent statement or *redditio*).

EXAMPLE:

"What thieves do not steal, perishes in corners."⁸⁶⁶

RULE: When a period is simple or single, it shall have at least two shorter elements (*comma*), one as protasis and another as apodosis.

A compound period may have as many as six members. If it has more members, it will not be perceived as a unit and completely remembered, due to a limitation of the

Aristotle, Rhetoric, III, 9, 1409b15-25, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2248.

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 9, 1409b15-25, Editorial Gredos, Madrid, 1990, p. 526.

Aristote, Rhétorique, Livre III, 1409b18-30, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 60-61.

Aristotele, Retorica, III, IX, 1409b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 190.

⁸⁶³ Quintilian, Institutio Oratoria, IX, IV, 125.

Quintilian, The Institutio Oratoria of Quintilian, Book IX, iv, 125, with an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 576-579.

Quintilien. Institution Oratoire, Livre IX, IV, 125, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles lettres", Tome V, Paris, 1978, p. 266.

⁸⁶⁴ Aristotle, Rhetoric, III, 9, 1409b15.

Aristotle, Rhetoric, III, 9, 1409b15-16, in The Complete Works of Aristotle, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2248.

Aristóteles, Retórica, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 9, 1409b15, Editorial Gredos, Madrid, 1990, p. 525.

Aristote, Rhétorique, Livre III, 1409b15-16, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 60.

Aristotele, Retorica, III, IX, 1409b, A cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 189.

⁸⁶⁵ Demetrius, On Style, I, 17.

Demetrius, On Style, I, 17, With Introduction and English Translation by W. Rhys Roberts, The Loeb Classical Library, Harvard University Press, Cambridge, Massachusetts, William Heineman Ltd., London, First Published 1927, Revised And Reprinted 1932, Reprinted 1939, pp. 308-309.

Demetrio, Sobre el Estilo, I, 12, Introducción, Traducción y Notas de José García López, Editorial Gredos, Madrid, 1979, p. 34.

⁸⁶⁶ "Lo que no hurtan ladrones, perece en rincones."

Gregorio Mayans I Siscar, Rhetorica de Don Gregorio Mayans I Siscar, Segunda Edición, Valencia, 1776, Volume II, p. 314, sic "parece".

human mind, which is incapable of processing any more units at the same time.⁸⁶⁷ The average number of members recommended by classical rhetorical authors is four.⁸⁶⁸

RULE: Complex periods shall have an average of four members, because, if they had more than six, they would not be perceived like units and completely remembered.

Juridical norms, from a logical point of view, are hypothetical propositions (if A were, B must be); from a grammatical viewpoint, they are conditional sentences (if someone kills another, he shall be imprisoned or subject to forced labor from eight to twenty-five years); and, from a rhetorical one, they are periods (if someone were kills another –protasis of one member– he shall be imprisoned or subject to forced labor from eight to twenty-five years –apodosis of one member–). It is like that, because juridical norms need to be easily understood and remembered, like maxims⁸⁶⁹ and also possess certain dignity and gravity, characteristics of rhetorical periods. It is not casual that the translations of norms of ancient cultures use the rhetorical period, in the form of conditional sentences, in spite of the differences between the source and target languages.

EXAMPLES:

"1. If a man has committed murder, such man shall be killed."
Code Shulgi or of Ur-Nammu (Sumeria, 2112-2095, B.C.).⁸⁷⁰

⁸⁶⁷ George Miller, *The Psychology of Communication*, Basic Books, Inc. Pub., New York - London, Versión Castellana de Maria Inés Dates, Supervisión de Eduardo J. Blackish, Editorial Paidós, 1. Información y Memoria, pp. 11-19, especialmente p. 14 (*Scientific American*, Vol. 195, No. 2. August, 1956, pp. 42-46); 2. El Mágico Número Siete, más o menos Dos; Algunos Límites de Nuestra Capacidad para Procesar Información, pp. 20-43 (*Psychological Review*, Vol. 63, No. 2, March, 1956, pp. 81-96).

⁸⁶⁸ Cicero, *Orator*, 66, 221-222.

Cicerón, *El Orador*, 66, 221-222, Texto Revisado y Traducido por Antonio Tovar y Aurelio R. Bujaldón, Ediciones Alma mater, S.A., Barcelona, 1967, p. 99.

Cicéron, *L'Orateur*, LVI, 221-222, Texte Établi et Traduit par Albert Yon, Société d'Édition "Les Belles Lettres", Paris, 1964, pp. 85-86.

Quintilian, *Institutio Oratoria*, IX, IV, 125.

Quintilian, *Oratorical The Institutio of Quintilian*, Book IX, iv, 125, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 576-579.

Quintilien, *Institution Oratoire*, Livre IX, IV, 125, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Paris, 1978, p. 266.

Aldo Scaglione, *The Classical Theory of Composition from its Origins to The Present Day*, A Historical Survey, The University of North Carolina Press, Chapel Hill, 1972, p. 34.

⁸⁶⁹ [Cicero] *Rhetorica ad Herennium*, IV, XIX, 27.

[Cicero] *Rhetorica ad Herennium*, IV, xix, 27, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 296-297.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmio, Textos Bilingües, Editorial Bosch, Libro IV, XIX, Barcelona, 1991, pp. 280-281.

[Cicéron] *Rhétorique to Herennius*, Livre IV, XIX, 27, Ouvrage Longtemps Attribué a Cicéron, Texte Revue et traduit avec Introduction et Notes par Henri Bornecque, Librairie Garnière Frères, Paris, pp. 198-199.

⁸⁷⁰ "Si un hombre ha cometido un asesinato, se matará a ese hombre."

Los Primeros Códigos de la Humanidad, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado y Federico Lara Peinado González, Editorial Tecnos, Madrid, 1994, p. 60.

Translation from Spanish to English by the autor of this book.

"If a citizen, (who) does not believe in another citizen,
keeps (nevertheless) as a guarantee a slave of (such) citizen,
and if he causes the death of the guarantee (the slave) that he has in his house,
he shall indemnify the slave's owner (with the value) of two slaves."
The Laws of Eshnunna, Section 23 (c 1980 B.C.).⁸⁷¹

"153. If the wife of a gentleman, through the fault of another man,
has caused the death of her husband, such woman shall be impaled."
Code of Hammurabi (1730-1686 B.C., Babylonia).⁸⁷²

All conditional sentences that begin with the structure "if..." are periodic, but not all periods are conditional sentences. The linguistic tension that links the protasis with the apodosis may be generated by antithesis, parallelisms, balances, or symmetries.

RULE: Juridical norms shall be preferably expressed by periodic sentences, to facilitate their understanding and memorizing, and to respect their dignity and gravity.

Placement of words

In the preceding part, three degrees of elaboration of sentences were mentioned: free, coordinated, and periodic. In this part, placement of words in the sentence will be discussed from three points of view: order, junction and rhythm, qualities that, put together, would make the ornament perfect but that rarely concur, since it is often necessary to accept a compromise with the requirements of other virtues of style.⁸⁷³

⁸⁷¹ "Si un citoyen (qui) n'a plus la moindre créance sur un autre citoyen, garde (néanmoins) comme gage l'esclave de (ce) citoyen, et s'il cause la morte du gage (de l'esclave) qu'il détien dans sa maison, il doit indemniser le maitre de l'esclave (de la valeur) de deux esclaves."

Les Lois D'Eshnunna, Transcription, Traduction et Commentaire, par Emile Szlechter, Publications de l'Institut de Droit Romain de l'Université of Paris, XII, Ed. Recueil Sirey, Paris, 1954, p. 21.

Translation from French to English by the autor of this book.

⁸⁷² "153. Si la esposa de un señor, por culpa de otro varón, ha causado la muerte de su marido, esa mujer será empalada."

Código de Hammurabi, Estudio Preliminar, Traducción y Notas de Federico Lara Peinado, Editorial Tecnos, Madrid, 1a. Edición, 1986, 2a. Edición, 1992, p. 26.

⁸⁷³ Quintilian, Institutio Oratoria, IX, IV, 22; 27.

Quintilian, The Institutio Oratoria of Quintilian, Book IX, iv, 22; 27, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 516-517; pp. 520-521.

Quintilien, Institution Oratoire, Livre IX, IV, 125, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Paris, 1978, pp. 237-238., 1967, T. II, números 948-949, pp. 322-323.

Heinrich Lausberg, Handbook of Literary Rhetoric, A Foundation of Literary Style, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaing bei München, 1973, Brill, Leyden, Boston, Köln, 1998, numbers 948-949, p. 425.

Heinrich Lausberg, Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura, Traducción de José Pérez Riesco del Original Alemán Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, números 948-949, pp. 322-323.

Aldo Scaglione, The Classical Theory of Composition from its Origins to the Present Day. A Historical Survey, The University of North Carolina Press, Chapel Hill, 1972, p. 74.

Order

Words, whether considered separately or in groups, should appear in the sentence in an order (*ordo*) with rising force, preventing the strong ones from preceding the weak ones. The successive order "thief", "sacrilegious" is preferable to "sacrilegious", "thieving"; "insolent, bandit" is preferable to "bandit, insolent". That is why Cicero chose: "You, with that throat, those lungs, that strength, that would do credit to a prizefighter, in every limb of your body", since it had lost force beginning⁸⁷⁴ with: "You, with all your body..." There is a natural order imposed by custom, which makes such combinations like "men and women", "day and night", "rising and setting" preferable.⁸⁷⁵

RULE: Words, whether considered separately or in groups, shall appear in the sentence in an order with rising force, preventing the strong ones from preceding the weak ones and following the natural order imposed by custom.

Some words become useless if the successive order is inverted, like for example, "twin siblings", since, if the first word is "twins", it is not necessary to add "siblings"⁸⁷⁶, except when the context does not solve an ambiguity: *gemelos* (meaning "twins", "calf muscles" and "cufflinks" in Spanish).

RULE: The words whose meaning becomes useless upon an inversion of successive order may be eliminated, except when they avoid an ambiguity not resolved by the context.

⁸⁷⁴ Quintilian, *Institutio Oratoria*, IX, IV, 23.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 23, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 518-519, for above english quotations.

Quintilien, *Institution Oratoire*, Livre IX, IV, 23, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Paris, 1978, p. 237.

⁸⁷⁵ Quintilian, *Institutio Oratoria*, IX, IV, 23.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 23, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 518-519, for above english quotations.

Quintilien, *Institution Oratoire*, Livre IX, IV, 23, Texte Établi et Traduit par Jean Cousin, Société d'Édition, "Les Belles Lettres", Paris, 1978, p. 237.

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaning bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 951 a), pp. 425-426.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, número 951 a), pp. 323-324.

Aldo Scaglione, *The Classical Theory of Composition from its Origins to the Present Day. A Historical Survey*, The University of North Carolina Press, Chapel Hill, 1972, pp. 75-76.

⁸⁷⁶ Quintilian, *Institutio Oratoria*, IX, IV, 24.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 24, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 518-519,.

Quintilien, *Institution Oratoire*, Livre IX, IV, 24, Texte Établi et Traduit par Jean Cousin, Société d'Édition, "Les Belles Lettres", T. V, Paris, 1978, pp. 237-238.

The direct successive order of the words in a sentence means that nouns precede the verbs, verbs precede adverbs, and epithets and pronouns follow nouns, but this rule should not be exaggerated, since the inverse order often produces beautiful effects.⁸⁷⁷ When a change is introduced in the successive order in which the words in a simple sentence and simple sentences in compound ones must be placed, the figure of construction is called "hyperbaton."⁸⁷⁸

RULE: In the direct successive order of words in a sentence, unless the language in question formulates other principles for a regular syntax, nouns shall precede verbs and verbs to adverbs; epithets and pronouns shall follow nouns. To avoid ambiguities, to provide force or beauty, a hyperbaton may be used.

Junction

Junctions (*iunctura*) shall be considered with regard to letters, syllables or words.

RULE: Junctions between vowels should be avoided (hiatus).

RULE: The following succession of syllables should be avoided:

- a) several brief ones, due to their similarity to the sound of a rattle (droning);⁸⁷⁹
- b) several long or several brief ones, due to their monotony;
- c) when the last one of a word and the first of the following one forms a bad word.⁸⁸⁰

RULE: The succession of words of equal volume and morphological class should be avoided, owing to the tedium they might provoke.⁸⁸¹

⁸⁷⁷ Quintilian, *Institutio Oratoria*, IX, IV, 24.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 24, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 518-519.

Quintilien, *Institution Oratoire*, Text Établi et Traduit par Jean Cousin, Livre IX, IV, 24, Société d'Édition "Les Belles Lettres", Paris, 1978, pp. 237-238.

⁸⁷⁸ "In addition to the hyperbaton, regular syntax gives other liberties that constitute the figurative syntax, to provide with more energy and elegance, ornament, such as the ellipses, pleonasm, and sylepses.

An elimination of words necessary to complete the grammatical construction, whenever meaning is still understood, when such words would otherwise deprive the sentence of energy and brevity, constitutes an ellipsis. The addition of seemingly redundant words that, however, clear doubts in relation to the meaning and provide more force and coloring to the expression, constitutes a pleonasm. The use of certain words with a concordance different from the grammatical correct one, grounded on what they represents not on what they say, constitutes a sylepsis."

Real Academia Española, *Gramática de la Lengua Española*, Nueva Edición Reformada, de 1931, Madrid, 1962, Capítulo XXVII, De la Sintáxis Figurada, números 471-475, pp. 431-436.

For more figures of construction, see:

Pierre Fontanier, *Traité Général des Figures du Discours Autres que les Tropes*, 4e. Édition, 1830, dans Fontanier, *Figures du Discours*, Introduction par Gérard Genette, Flammarion, Paris, 1977, pp. 481-483.

⁸⁷⁹ Quintilian, *Institutio Oratoria*, IX, IV, 60; 66.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 60; 66, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 540-541; pp. 544-545.

Quintilien, *Institution Oratoire*, Livre IX, IV, 60; 66, Texte Établi et Traduit par Jean Cousin, Société d'Édition "Les Belles Lettres", Paris, 1978, pp. 247-248; pp. 249-250.

⁸⁸⁰ In Spanish: "poca gana."

Gregorio Mayans I Siscar, *Rhetorica de Don Gregorio Mayans I Siscar*, Segunda Edición, Valencia, 1776, Tomo II, p. 284, who remembers that the Greeks were naming it kakemphaton, in Spanish gazafatón.

Rhythm

There are three secret principles in the innermost depths of the art of legislation. The first two, already discussed, establish that rhetorical persuasion, in addition to force, is the foundation of the laws (Chapter I) and that legislative sophisms must be known in order to refute them, not to incur in them (Chapter V). Now the third one, the rhythm in legislative prose, will be discussed.

PRINCIPLE: The use of the rhythm of the prose is a very powerful secret resource to persuade the addressees of the laws.

Musical instruments enable to arouse feelings with admirable potency. The most prodigious musical instrument imaginable, the human voice,⁸⁸² in singing, poetry, free poem and rhythmic prose, in descending order, lets sound stir up emotions in the soul of man.

Most Greek poetry was sung with lyre or flute accompaniment, increasing the intensity of the feelings suggested by the words, instead of subordinating the words to the music, as it is the case in modern opera. When dance was added, the most perfect beauty could be achieved, coordinating body movements (space) and their duration, with the rhythm of the music and of the words (time).⁸⁸³ The classic Greek education aimed at familiarizing the children's bodies and souls with rhythm and harmony, to make them more civilized, felicitously regulated in their movements, balanced, and capable of making themselves be appreciated as orators and men of action, since it was founded on the conviction that the entire human life needed both a well regulated activity and a balance.⁸⁸⁴

Melody is very likely to have originated in spoken language, since the combination of the accents of tone (low or high-pitched) gives it harmony, while those of quantity

⁸⁸¹ Quintilian, *Institutio Oratoria*, IX, IV, 42-43.

Quintilian, *The Institutio Oratoria of Quintilian*, Book IX, iv, 42-43, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume III, London, 1921, pp. 530-531.

Quintilien, *Institution Oratoire*, Livre IX, IV, 42-43, Texte Établi et Traduit par Jean Cousin, Tome V, Société d'Édition "Les Belles Lettres", Paris, 1978, pp. 242-243.

Heinreich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaing bei München, 1973, Brill, Leyden, Boston, Köln, 1998, numbers 956-958, pp. 427-428.

Heinreich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, números 956-958, pp. 326-327.

⁸⁸² Discursos Leídos ante la Real Academia Española en la Recepción Pública del Excmo. Sr. D.

Francisco Asenjo Barbieri, el Día 13 de Marzo de 1892, Imprenta de José M. Ducacal, Madrid, 1892, pp. 7-8 [Discurso de Barbieri].

Also published as: *La Música de la Lengua Española*, *La España Moderna*, 1892, IV, num. 40, quoted by Tomás Navarro, *Estudios de Filología Española*, Siracusa University Press, New York, 1946, p. 110, n., 1.

⁸⁸³ L. Laurand, *Manuel des Études Grecques et Latines*, Éditions Auguste Picard, Paris, 1934, T. I. Grèce, pp. 126-127.

⁸⁸⁴ Plato, Protagoras, 326b.

Platon, Protagoras 326b, dans *Platon Oeuvres Complètes*, Traduction Nouvelle et Notes par Lion Robin, avec la Colaboration of M.J. Moreau, Bibliothèque de la Pléiade, Tome I, Paris, 1950, p. 95.

(long or short), or intensity (strong or weak), mark the rhythm.⁸⁸⁵ Out of the union between harmony and rhythm is born the melody, both in music and in speech.⁸⁸⁶

As for harmony, Gaius Sempronius Gracchus (murdered in 121 B.C.) should be remembered here, because he was the great orator who inflamed Roman citizens with his legislative reforms and used to deliver his speeches with a flautist behind him, who gave the appropriate tones to him.⁸⁸⁷

Rhythm, in accordance with Aristoxenus of Tarentum (born c 370 B.C.) is "the order of the times",⁸⁸⁸ which in classical Greek and Latin was regulated by certain typical combinations of long syllables (one time), symbolized with a long hyphen (—), and short (half a time), symbolized with a semicircle (U). It was accepted that a long syllable was equivalent to two short ones. These combinations were called "feet", because they were used to measure speech. The Romans called the "rhythm" of the Greeks "number".⁸⁸⁹ It was an artistic number of feet selected and placed in an attempt to bring about certain effects, in accordance with certain established rules, rather than a random number produced in speech regardless of such attempt. In any speech the sequences of long and short syllables may be identified, but their combinations may occur at random; on the other hand, when speech is produced grounded on feet, to achieve certain effects, this already is the application of rules of the art of prose, which brings an order to the times, through typical combinations of long and short syllables (feet).

Applying resources of poetry to oratory, Gorgias of Leontini (Sicily, c 485-c 380), in 427 B.C., as the ambassador of his hometown, surprised and seduced the Athenians with his speeches, and, in the following years he was considered the best-known rhetorical personage in Greece, both in the practice and in the teaching of oratory.⁸⁹⁰ The rhythm of prose was invented and used in excess by Thrasymachus of Chalcedon (who flourished c 430-400 B.C.) while, although it is false that it was invented by Isocrates, nobody used it better.⁸⁹¹

⁸⁸⁵ Percy A. Scholes, *Melody*, 2, in *The Oxford Companion to Music*, (First Edition, 1938), Tenth Edition, Revised and Reset 1970, Edited by John Owen Ward, Oxford University Press, Second Impression, London, New York, Toronto, 1970, p. 619.

⁸⁸⁶ Eduard Norden, *Die Antike Kunstprosa VI. Jahrhundert a. Chr. bis in die Zeit der Renaissance*, 3rd. Ed., B.G. Teubner, Stuttgart, 1915, *La Prosa d'Arte Antica, Dal Secolo VI B.C. all'Età della Rinascenza*, Edizione Italiana a Cura di Benedetta Heinemann Campana, con una Nota di Aggiornamento di Gualterio Calboli e una Premessa di Scevola Mariotti, Salerno Editrice, Roma, 1986, Tomo I, p. 60.

⁸⁸⁷ Hugh Blair, *Lectures on Rhetoric and Belles Lettres*, Complete in One Volume, London, 1823, p. 128.

⁸⁸⁸ "est l'ordre des temps":

Salomon Reinach, *Manuel de Philologie Classique*, Deuxième Édition, Librairie Hachette et Cie., Paris, 1907, p. 1294.

"An ordering of times":

Seymour Chatman, *A Theory of Meter*, Mouton and Co., London, The Hague, Paris, 1965, p. 18.

⁸⁸⁹ Cicero, *Orator*, 51, 170.

Cicerón, *El Orador*, 51, 170, *Texto Revisado y Traducido por Antonio y Aurelio R. Bujaldón*, Ediciones Alma mater, S.A., Barcelona, 1967, p. 75.

Cicéron, *L'Orateur*, LI, 170, *Texte Établi et Traduit par Albert Yon*, Société d'Édition "Les Belles Lettres", Paris, 1964, p. 65.

⁸⁹⁰ George A. Kennedy, *The Art of Persuasion in Greece*, Princeton University Press, Princeton, New Jersey, 1963, Sixth Printing, 1974, pp. 61-68.

George A. Kennedy, *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times*, The University of North Carolina Press, Chapel Hill, 1980, pp. 29-31.

George A. Kennedy, *A New History of Classical Rhetoric*, Princeton University Press, Princeton, New Jersey, 1994, pp. 17-21.

⁸⁹¹ Cicero, *Orator*, 52, 175.

The rhythm of prose,⁸⁹² an echo of the soul that it seduces through the ears, is one of the most arduous topics of rhetorical art,⁸⁹³ since it is not easy to perceive, to understand and to explain. It must not be noticed during the speech since, if the addressees become cognizant of the device, they will not be persuaded and become distracted because, instead of paying attention to the contents they will pay attention to the form, trying to anticipate the parts in which a foot will reappear, as if it were poetry.⁸⁹⁴

RULE: In prescriptive and persuasive speeches, the rhythm shall not be noticed, so that it will not sound contrived and will not distract its addressees.

Rhythm is related to physiology, since the "shortest" quantity, the minimal possible length of time of a syllable, the unit which feet are measured, is the pulse of the heart of any average human being. For the unit of a period, breath is generally used, that is to say, inhaling (pause) and exhaling with voice (sound), or the movements of muscular and spiritual tension and distension involved in spoken or writing.⁸⁹⁵ The impact of speech on the listeners' or readers' nervous systems also affects muscular tension and, sometimes, even breathing, as evidenced by the common expressions "breathhtaking" and "catch one's breath", since the body makes a duo with the soul.⁸⁹⁶

When the rhythm adheres to thought, for example, in successful periods, it facilitates the interpretation of the speech, since the sound serves as suitable mount to the meaning.

Whether rhythm is marked by an accent of quantity or by an accent of intensity, the number always puts an end to the indeterminate nature of the prose, thus facilitating its memorizing, like in poetry and maxims. When Jorge Luis Borges

Cicerón, *El Orador*, 52, 175, Texto Revisado y Traducido por Antonio Tovar y Aurelio R. Bujaldón, Ediciones Alma mater, S.A., Barcelona, 1967, p. 78.

Cicéron, *L'Orateur*, LII, 175, Texte Établi et Traduit par Albert Yon, Société d'Édition "Les Belles Lettres", Paris, 1964, p. 67.

⁸⁹² Diplomatics, an auxiliary science of the history that studies ancient diplomas to determine their authors and dates, sorting out forged ones from real ones, takes into consideration the rhythm of the prose recommended in the works of *ars dictaminis* as one of the criteria to determine the authenticity of the medieval documents:

A. Giry, *Manuel de Diplomatique*, Nouvelle Edition, Librairie Felix Alcan, Paris, 1925, p. 4, with a good summary of the *ars dictaminis*, pp. 479-492.

⁸⁹³ Cicero, *Orator*, 53, 179.

Cicerón, *El Orador*, 53, 179, Texto Revisado y Traducido por Antonio Tovar y Aurelio R. Bujaldón, Ediciones Alma mater, S.A., Barcelona, 1967, p. 78.

Cicéron, *L'Orateur*, Texte Établi et Traduit par Albert Yon, Société d'Édition "Les Belles Lettres", LIII, 179, Paris, 1964, p. 67.

⁸⁹⁴ Aristotle, *Rhetoric*, III, 8, 1408b20-25.

Aristotle, *Rhetoric*, III, 8, 1408b21-25, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2246-2247.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 8, 1408b20-25, Editorial Gredos, Madrid, 1990, p. 517-518.

Aristote, *Rhétorique*, Livre III, 8, 1408b21-24, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 57.

Aristotele, *Retorica*, III, VIII, 1408b, a Cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 189.

⁸⁹⁵ RHYTHME/Rythm, Hoeseph Strelka, State University New York:

<http://www.ditl.unilim.fr/ART/rythme.htm>, downloaded on March 31, 2001.

Seymour Chatman, *A Theory of Meter*, Mouton and Co., London, The Hague, Paris, 1965, p. 20; p. 28

⁸⁹⁶ Amado Alonso, *El Ritmo de la Prosa*, in *Materia y Forma en Poesía*, Gredos, Segunda Edición, Madrid, 1960, pp. 240-248.

(1899-1986), the great Argentine writer of world renown, went blind, since he was no longer able to write drafts, he had to stop writing prose and return to poetry, gradually abandoning the free verse, because, as he stated in its Autobiography:

"[...] a rhymed verse is portable. You can walk along the street or travel on the subway while you compose and polish a sonnet, since the rhyme and the meter have mnemonic virtues."⁸⁹⁷

Memorizing maxims turns out to be easy because certain typical rhythmic structures are repeated, dancing on the muscles of the mouth and the larynx, like schemes available to all lips,⁸⁹⁸ proper to the oral style.

Some maxims are heard or read once and will always be remembered:

"Tell me the company you keep, and I'll tell to you who you are."

The same holds true of some legislative provisions, like Section 1382 of Napoleonic Code:

"Any fact of a man that causes damage to another, obliges the person through whose fault the damage was caused to repair it."⁸⁹⁹

The Argentine Civil Code, in the first part of Section 1109, provides as follows:

"Anyone who executes a fact, that through his fault or negligence causes a damage to another, is obliged to repair such damage."⁹⁰⁰

Both the maxim and the section are rhetorical periods in which the tension and distension between their elements facilitates their memorizing as full units of sense. Memorizing the maxim is even facilitated due to the concision of the period.

⁸⁹⁷ "[...] el verso rimado es portátil. Uno puede caminar por la calle o viajar en subterráneo mientras

compone y pule un soneto, ya que la rima y el metro tienen virtudes mnemotécnicas."

Jorge Luis Borges, Autobiografía

Autobiographical Essay, *The New Yorker*, September 19, 1970), Traducción de Marcial Souto y Norman Thomas di Giovanni, El Ateneo, 1999, pp. 127-128.

Retranslated from Spanish to English by the author of this book.

⁸⁹⁸ Marcel Jousse, *Études sur la Psychologie du Geste, Les Rabbis d'Israël, Les Récitatifs Rhythmiques Parallèles, I Genre de la Maxime*, Éditions Spes, Paris, 1929, p. XXIV.

⁸⁹⁹ "Toute fait quelconque d'un homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer."

Anthoine de Saint-Joseph, *Concordance Cogive entre les Codes Civils Étrangers et le Code Napoléon*, Librairie de Conseil d'Etat, Paris, 1856, Tome Premier p. 138.

Translation from French to English by the author of this book.

⁹⁰⁰ "Todo el que ejecuta un hecho, que por su culpa o negligencia ocasiona un daño a otro, está obligado a la reparación del perjuicio." (Modern private editions)

In modern private editions of the Argentinian *Código Civil*, the accents of conjunction "o" and two prepositions ("a") have been eliminated and the word "reparacion" of the Official Edition has been stressed. The Official Edition provides as follows:

"Todo el que ejecuta un hecho, que por su culpa ó negligencia ocasiona un daño á otro, está obligado á la reparacion del perjuicio."

Código Civil de la República Argentina, Edición Oficial, Establecimiento Tipográfico "La Pampa", Buenos Aires, 1883, p. 294.

The section would be easier to remember, if a certain parallelism were added to the missing concision, as follow:

"Anyone who, through his fault causes a damage to another, is obliged to repair such damage to such another."

Laws, so as not to be forgotten, in ancient Greece, before being written, were sung and, in ancient Rome, the Laws of Twelve Tables, based on the Greek laws, even those drafted by Solon, in spite of being written, were learned by heart by the children, a practice abandoned afterwards.⁹⁰¹ Solon, one of the seven Greek wise men included in all the lists and also the first Athenian poet in all the histories of literature, remains like the legislator by antonomasia in the Western memory.⁹⁰² Most of its poetry intended to explain or to defend from criticism his legislative work,⁹⁰³ since poetry was easier to remember than rhythmic prose. Children, from the beginning of their education, learned his poems by heart, and orators, in the courts of justice and in political assemblies, quoting him as the classical expression of the civic soul. For that reason, Solon has been recognized as the creator of the Athenian political culture.⁹⁰⁴

The prose rhythm (*rhythmus*) also serves to excite or calm the addressees' passions (*pathos*) and, hence, it is no wonder that Thrasymachus of Chalcedon, its inventor, was the most skillful artist in the pathetic style.⁹⁰⁵ When a passage of emotional prose is said to be slow or fast, soft or abrupt, these are all references to the suggestion produced by rhythm.⁹⁰⁶

⁹⁰¹ Aristotle affirms that certain songs were still called *nomes*, probably by virtue of those first legislative songs.

Aristotle, *Problems*, XIX, 28, 920a.

Aristotle, *Problems*, XIX, 28, 920a, in *The Complete Works of Aristotle, The Revised Oxford Translation*, Edited By Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 1434.

Cicero remembers that when he was a child, the Law of Twelve Tables was learned by heart, as a obligatory recitation, while nobody did so anymore when he was writing the dialogue, and that the provisions on the decrease in the expenses and on the funeral laments were almost translations of Solon's laws.

Cicero, *Laws*, II, 23, 59.

Cicero, *Laws*, XXIII, 59, in *Cicero, Of Re Publica, Of Legibus*, with an English Translation by Clinton Walker Keyes, The Loeb Classical Library, William Heinemann Ltd., London, Harvard University Press, Cambridge, Massachusetts, 1966, pp. 444-445.

Cicerón, *Las Leyes*, II, 23, 59, *Texto Latino, Traducción, Introducción y Notas* por Álvaro D'Ors, Instituto de Estudios Políticos, Reimpresión de la 1a. Edición de 1953, Madrid, 1970, pp. 180-181.

⁹⁰² B.M.W. Knox, Solon, in *The Cambridge History of Literature, I Greek Literature*, Edited by P.E.

Easterling and B.M.W. Knox, Cambridge University Press, Cambridge, 1985, p. 147.

⁹⁰³ Augusto Rostagni, *Storia della Letteratura Greca*, Edizione Scholastiche Mondadori, XVIII Edizione, 1950, pp. 79-80.

⁹⁰⁴ Werner Jaeger, *Paideia: The Ideals of Greek Culture*, Translated from the Second German Edition by Gilbert Highet, Oxford University Press, New York, 1939, Vol. I, Book One, Chapter 8, Solon: Creator of Athenian Political Culture, p. 134.

⁹⁰⁵ Plato, *Phaedrus*, 267c-d

Platón, *Fedro*, 267c-d, Edición Bilingüe, Traducción, Notas y Estudio Preliminar por Luis Gil Fernández, Instituto de Estudios Políticos, Madrid, 1957, p. 64.

Platon, *Phèdre*, 267c-d, dans *Platon, Oeuvres Complètes*, Tome IV, 3e. Partie, *Phèdre*, Texte Traduit par Léon Robin, Société d'Édition "Les Belles Lettres", Paris, 1933, p. 75.

Platon, *Phèdre*, 267c-d, dans *Platon, Oeuvres Complètes*, Traduction Nouvelle et Notes par Léon Robin, avec la Colaboration of M.J. Moreau, Bibliothèque de La Pléiade, Tome II, Paris, 1942, p. 64.

⁹⁰⁶ Charles Sears Baldwin, *Composition Oral and Written*, Longmans Green and Co., 1909, First Greenwood Reprinting, 1968, p. 305.

In Athens there was the nomic melody, which public officials had to use to promulgate laws to the people, since an improper reading, for example a hardly worthy rhythm, made such laws exposed to contempt.⁹⁰⁷

RULE: The rhythm of the legislative prose shall:

- a) facilitate interpreting and memorizing its meaning (*logos*);
- b) reflect the legislator's wise and eloquent character and avoid contempt (*ethos*);
- c) increase hopes to obtain rewards and fear of suffering punishment; the former in a soft and slow rhythm, and the latter in an abrupt and rapid rhythm (*pathos*).

Thrasymachus of Chalcedon used the foot called "paean" in composing the sentences that were part of his artistic prose. Aristotle recommended for beginnings the paean formed by a long syllable and three short ones (–UUU) and, for ends, the paean of three short ones and a long one (UUU–).⁹⁰⁸

The beginnings of sentences are good places for the prose rhythm because, preceded by a pause, they wake up the attention and cause the first impression, which usually prevails. The ends are better, since they are easier to remember, given that they are the last part heard or read, and even better if there are periods, because they enabled to unload the accumulated tension (distension).

RULE: The beginnings of sentences are good places for the prose rhythm because, preceded by a pause, beginnings catch the attention and cause the first impression, which usually prevails. The ends of sentences are better, because, followed by a pause, which also attracts attention, they are easier to remember, given that they are the last part heard or read and, if they are periods, even better, because they unload the accumulated tension.

To finish this brief analysis of such a broad topic, it is noteworthy to remember Osvaldo Magnasco (1864-1920), a jurist, politician and writer, one of the greatest Argentine orators, evoked by his compatriot Saavedra Lamas, a Nobel Prize, in a conversation held with Ramón Columba, to whom he said:

“[...] He possessed the art of oratory, cultivated in the harmony of the phrase and in the elegance of the gesture –adds my interlocutor –. He rehearse both things in his house,

⁹⁰⁷ The following author refers to the improper tones and does not mention the rhythm, but the nomic melody:

Hugh Blair, *Lectures on Rhetoric and Belles Lettres*, Complete in One Volume, London, 1823, p. 128, (1st. ed. 1783).

Alludes to the unworthy "intonation" and does not mention rhythm:

José Coll y Vehi, *Diálogos Literarios*, 4a. Edición con un Prólogo de Marcelino Menéndez Pelayo y la Biografía del autor por Teodoro Baró, Librería de Antonio J. Bastinos, Editor, Barcelona, 1896, p. 192.

The inclusion of rhythm arises from the nature of things, since it is also possible use it to despise, bearing in mind that rhythm, together with the harmony of tone, integrates the melody. The tone or burlesque rhythm is a very clear example of provoked contempt.

⁹⁰⁸ Aristotle, *Rhetoric*, III, 8, 1409th.

Aristotle, *Rhetoric*, III, 8, 1409a, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2247-2248.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 8, 1409a, *Rhetoric*, Editorial Gredos, Madrid, 1990, p. 520.

Aristote, *Rhétorique*, Livre III, 8, 1409a, *Texte Établi et Traduit par Médéric Dufour et André Wartelle*, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 58.

Aristotele, *Retorica*, III, VIII, 1409a, a Cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 187-188.

in front of a metronome, chronometric pendulum suitable to adjust his word's compass. He had his rules to speak and gave me advise, said: "When you wish to speak with the parliamentarian's rhythm, who must speak seated, rest your back on the backrest of the seat. Thus you' ll see that words takes a singular cadence, which is lost if you inclines on the seat."⁹⁰⁹

In homage to the great orator's memory, such advice is adapted and incorporated into this book, in the form of a rule of the art of legislation.

RULE: To compose or to criticize the rhythm of a speech, it shall be expressed aloud, seated, the back flat rested on the backrest, not lean forward, so that words will take their singular cadence.

d. Aptitude

A speech may feature purity, clarity and ornament, but its style will be defective if he does not have the last of classical rhetorical virtues, the suitable use of available resources: aptitude. It is also called "property" (*prepon, proprietas*),⁹¹⁰ but "aptitude" has been preferred to avoid confusions with grammatical "property", that is the "exact correspondence between the word and the concept that it intends to express."⁹¹¹

In spite of the wide variety of possible circumstances, it is possible to set a principle and to formulate some rules with respect to the aptitude in legislative style.

PRINCIPLE: To achieve the aptitude of legislative style, diplomats' tact when they write their documents shall be taken as a model: just proportion concerning people and circumstances,⁹¹² self-control of passions, aknowledge about the value of the terms used, the means to change them and the usual formulae.⁹¹³

⁹⁰⁹ “[...] Poseía el arte de la oratoria, cultivada en la armonía de la frase y en la elegancia del gesto –añade mi interlocutor–. Ambas cosas las ensayaba en su casa, frente a un metrónomo, péndulo cronométrico al que ajustaba el compás de su palabra. Tenía sus reglas para hablar y me aconsejaba, diciéndome: "Cuando usted quiera exponer con el ritmo que corresponde al parlamentario que tiene que hablar sentado, haga descansar la espalda sobre el respaldo del sillón. Verá usted que la palabra toma una singular cadencia, la que se pierde si usted se inclina sobre la banca.””

Ramón Columba, *El Congreso que yo he Visto*, Texto y Dibujos, Editorial Ramón Columba, Buenos Aires, 1952, p. 178.

⁹¹⁰ *Prepon* (Greek) or *proprietas* (Latin):

George A. Kennedy, *A New History of Classical Rhetoric*, Princeton University Press, Princeton, New Jersey, 1994, p. 85.

Aptum:

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaing bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 1055, p. 460.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco del Original Alemán *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, número 1055, p. 374.

⁹¹¹ “correspondencia exacta entre la palabra y el concepto que se quiere expresar”

Julio Casares, *Diccionario Ideológico de la Lengua Española*, Editorial Gustavo Gili, S.A., Barcelona, the Segunda Edición, Puesta al Día (8a. Tirada), Barcelona, 1977, p. 683.

⁹¹² Cicero, in a concise formula, advises to regulate the elocution considering the people and circumstances:

Cicero, *De Oratore*, III, XV, 54.

The style shall express the legislator's wise and eloquent character,⁹¹⁴ saying neither too little nor too much, because, as expressed by the maxim of one of the seven Greek wise men, inscribed in the temple of Apollo, into the shrine of Delphi: "Nothing in excess". The legislator's must be a moderate spirit. It seemed to Montesquieu that he had done his work only to prove this point, but also warned that:

"Laws always find the legislator's passions and prejudices. Sometimes they go through and are dyed; sometimes they stay there, and are incorporated there."⁹¹⁵

RULE: The style shall express the legislator's wise and eloquent character, with moderation and dignity.

Law bills must respect the style of current legislation, case law, custom and juristic writings on the specific matters and on similar ones, unless there is sufficient reason to change it, other than the style for style itself, since the potential advantages to be

Cicéron, De L'Orateur, Livre Troisième, XV, 54, Texte Établi et Traduit par Edmond Courbaud, Société d'Édition "Les Belles Lettres", Paris, 1930, p. 53.

Quintilian does an extensive, detailed and particular exposition:

Quintilian, *Institutio Oratoria*, XI, I, 1-93.

Quintilian, *The Institutio Oratoria of Quintilian*, Book XI, i, 1-93, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume IV, London, 1922, pp. 154-210.

Quintilien, *Institution Oratoire*, Livre XI, I, 1-93, Texte Établi et Traduit par Jean Cousin, Tome VI, Société d'Édition "Les Belles Lettres", Paris, 1979, pp. 179-206.

Aristotle takes a middle course, since he discussed the matter briefly but substantially:

Aristotle, *Rhetoric*, III, 7, 1408a10-b20.

Aristotle, *Rhetoric*, III, 7, 1408a10-b20, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2245-2247.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 7, 1408a10-b20, Editorial Gredos, Madrid, 1990, pp. 512-517.

Aristote, *Rhétorique*, Livre III, 7, 1408a-b20, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, pp. 54-56.

Aristotele, *Retorica*, III, VII, 1408th, A Cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 184-186.

⁹¹³ H. Meisel, *Cours de Style Diplomatique*, J.P. Aillard, Libraire, Tome Premier, Paris, 1826, p. 25.

⁹¹⁴ Aristotle, *Rhetoric*, III, 7, 1408a25-30.

Aristotle, *Rhetoric*, III, 7, 1408a25-30, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2246.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintín Racionero, Libro III, 7, 1408a25-30, Editorial Gredos, Madrid, 1990, p. 515.

Aristote, *Rhétorique*, Livre III, 7, 1408a25-30, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 55.

Aristotele, *Retorica*, III, VII, 1408th, A Cura di Armando Plebe, Editore Laterza, Bari, 1961, pp. 184-185.

⁹¹⁵ "Les lois rencontrent toujours les passions et les préjugés du législateur. Quelquefois elles passent au travers, et s'y teignent; quelquefois elles y restent, et s'y incorporent."

Montesquieu, *De L'Esprit Des Lois*, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Livre XXIX, Chapitre XIX, p. 538, text reproduced above.

See also:

Montesquieu, *De l'Esprit des Loix*, Texte Établi et Présenté par Jean Brethe de La Gressaye, Tome IV, Livre XXIX, DE LA MANIERE DE COMPOSER LES LOIX, Chapitre XIX, Des législateurs, Société d'Édition "Les Belles Lettres", Paris, 1961, p. 146.

obtained will always be less than the uncertainty generated, which damages the juridical security, since there will not be missing interpreters who will attribute another meaning to such changes. The current style should be imitated, as was advised by an “expert” friend to Cervantes in the Prologue of the Quixote:

"You only have to take advantage of imitation in what you will be writing, because more perfect the imitation is, so much better what your written work will be."⁹¹⁶

RULE: In amending laws, the style of the amended laws shall be imitated, to avoid doubts about their interpretation and application. In bills of systematizing laws, there shall be more leeway, but the current legislation, case law, custom and juristic writings on the specific matters and on similar ones shall still be taken into account, and mere stylistic innovations shall be avoided.

The style shall be proportional to the importance of the regulated matter,⁹¹⁷ so that it will not be above or below⁹¹⁸ the matter in question. If, to legislate about conflicts caused by a leaking gutter between walls dividing neighbors, high-flown words and periods are chosen, as if it were a question of the utmost importance, the style would lack aptitude, since it would be ridiculous.

RULE: The style shall be proportional to the importance of the regulated matter, so that it will not be above or below such matter.

2. Style genres

To find the just proportion between the importance of the matter and the style, it is necessary to consider the thoughts to be conveyed, the words to be chosen, the

⁹¹⁶ “Sólo tiene que aprovecharse de la imitación en lo que fuera escribiendo, que, cuanto ella fuere más perfecta, tanto mejor será lo que se escribiere.”

Miguel de Cervantes Saavedra, *El Ingenioso Hidalgo Don Quijote de La Mancha*, Nueva Edición Crítica, Dispuesta por Francisco Rodríguez Marín, Tomo I, Parte Primera, Prólogo, Madrid, 1947, p. 39.

"Sólo tiene que aprouecharse de la imitación en lo que fuere escriuiendo; que quanto ella fuere más perfecta, tanto mejor será lo que se escriuiere."

Miguel de Cervantes, *Don Quijote de la Mancha*, Edición del Instituto Cervantes, 1605-2005, Dirigida por Francisco Rico, con la Colaboración de Joaquín Forradellas, Galaxia Gutenberg, Círculo de Lectores, Centro para la Edición de los Clásicos Españoles, Primera Parte, Prólogo, Navarra, 2004, pp. 18-19.

"Solo tiene que aprouecharse de la imitación en lo que fuere escriuiendo; que quanto ella fuere más perfecta, tanto mejor sera lo que se escriuiere."

Miguel de Cervantes Saavedra, *Don Quijote de la Mancha*, en *Obras Completas de Miguel de Cervantes Saavedra*, Tomo I, Primera Parte, Prólogo, Edición Publicada por Rodolfo Schevill y Adolfo Bonilla, Gráficas Reunidas, S.A., Madrid, 1928, p. 37, líneas 15-18.

⁹¹⁷ Aristotle, *Rhetoric*, III, 7, 1408a11.

Aristotle, *Rhetoric*, III, 7, 1408a11, in *The Complete Works of Aristotle*, The Revised Oxford Translation, Edited by Jonathan Barnes, Volume Two, Princeton University Press, Princeton, New Jersey, First Edition 1984, Second Printing, 1985, p. 2245.

Aristóteles, *Retórica*, Introducción, Traducción y Notas por Quintin Racionero, Libro III, 7, 1408a11, Editorial Gredos, Madrid, 1990, p. 512.

Aristote, *Rhétorique*, Livre III, 7, 1408a11, Texte Établi et Traduit par Médéric Dufour et André Wartelle, Société d'Édition "Belles Lettres", Tome Troisième, Paris, p. 54.

Aristotele, *Retorica*, III, VII, 1408a, a Cura di Armando Plebe, Editore Laterza, Bari, 1961, p. 184.

⁹¹⁸ Charles de Martens, *Le Guide Diplomatique*, Cinquième Édition, Entièrement Refondue par M.F.H. Geffeken, Tome Second, Première Partie, Du Style des Compositions Diplomatiques, Observations Générales, F.A. Brockhaus, Leipzig, 1866, p. 2.

sentences to be composed and the ornament to be used. For this purpose it is useful a classification of the style genres (*elocutionis genera*),⁹¹⁹ showing their grades, so that it facilitates choosing the appropriate one for each case.⁹²⁰ This classification should not be confused with the classification of speech genres (judicial, deliberative and epideictic), or with that of legislative genres (systematizing and fragmentary), already dealt with.

RULE: Legislators may use three legislative styles that, sometimes regardless of the matter, correspond to orator's duties:

- a) plain to teach;
- b) middle to please,
- c) elevated to touch.⁹²¹

a. Plain Style

The plain or simple style (*subtile, tenue, acutum, summissum, humile*)⁹²² aims mainly at clarity.⁹²³ It is kept at ground level, imitates established uses with simple thoughts, plain words, free composition and a sober ornament, which avoids ostentation.⁹²⁴ It is

⁹¹⁹ Elocutionis genera:

Heinrich Lausberg, *Handbook of Literary Rhetoric, A Foundation of Literary Style*, Foreword by George A. Kennedy, Translated by Matthew T. Bliss, Annemiek Jansen, David E. Orton, Edited by David E. Orton and R. Dean Anderson, From the Second German Edition, Max Hueber Verlag, Ismaning bei München, 1973, Brill, Leyden, Boston, Köln, 1998, number 1078, p. 491.

Heinrich Lausberg, *Manual de Retórica Literaria, Fundamentos de una Ciencia de la Literatura*, Traducción de José Pérez Riesco of the German Original *Handbuch der Literarischen Rhetorik, Eine Grundlegung der Literaturwissenschaft*, Max Hueber Verlag, München, 1960, Editorial Gredos, Madrid, 1967, T. II, número 1078, p. 391.

⁹²⁰ Cicero, *Orator*, 22, 73; 23, 74.

Cicerón, *El Orador*, 22, 73; 23, 74 Texto Revisado y Traducido por Antonio Tovar y Aurelio R. Bujaldón, Ediciones Alma mater, S.A., Barcelona, 1967, pp. 30-31.

Cicéron, *L'Orateur*, XXII, 73; XXIII, 74, Texte Établi et Traduit par Albert Yon, Société d'Édition "Les Belles Lettres", Paris, 1964, p. 27.

⁹²¹ Cicero, *Orator*, 21, 69.

Cicerón, *El Orador*, 21, 69, Texto Revisado y Traducido por Antonio Tovar y Aurelio R. Bujaldón, Ediciones Alma mater, S.A., Barcelona, 1967, p. 28.

Cicéron, *L'Orateur*, XXI, 69; XXIII, 74, Texte Établi et Traduit par Albert Yon, Société d'Édition "Les Belles Lettres", Paris, 1964, p. 25.

⁹²² Benedetto Riposati, *Problemi di Retorica Antica*, in the collective work *Introduzione alla Filologia Classica*, Dott. Carlo Marzorati, Editore, Milan, 1952, p. 768.

⁹²³ Demetrius, *On Style*, IV, 190.

Demetrius, *On Style*, IV, 190, in Aristotle *The Poetics*, "Longinus" *Sublime On The*, Demetrius *On Style*, The Loeb Classical Library, William Heinemann, London, Harvard University Press, Cambridge, Massachusetts, First Published 1927, Revised and Reprinted 1932, Reprinted 1939, Demetrius, *On Style*, With An English Translation by W. Rhys Roberts, pp. 418-419.

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⁹²⁴ Montesquieu, *De L'Esprit Des Lois*, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc., Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Lois par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Préface, Livre XXIX, Chapitre XVI, Choses à observer dans la composition des lois, p. 532.

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The most basic premise of the plain language movement, seems to be that the goal of the text must be the readership's quick and easy comprehension, as explained and criticized by Stark.

easily enjoyable and difficult to imitate,⁹²⁵ and at the same time it does not look like a thin, dry and bloodless body.⁹²⁶ It will not give rise to admiration, but it will not be ridiculous either; without its addressees realizing, the orator achieves his purpose with his speech.⁹²⁷ Lysias' speeches (458/8-c 380 B.C.) are usually taken as paradigms of a simple style.⁹²⁸

In the art of legislation, a simple style is used for matters of minor importance, unless, in a matter of great importance, if it is intended that the laws will be understood by the greatest possible number of their addressees. Thus, in civil codes, in either minor questions (associated to party walls) or major ones (related to family and successions), a plain style is used because, in both cases it is the style apt to didactic works.⁹²⁹

RULE: A plain or simple style, which must aim mainly to clarity, shall:

- a) imitate established uses, with simple thoughts, plain words, a free composition, a sober ornament, and must not look like a thin, dry and bloodless body;
- b) be apt to matters of minor importance or when it is intended that the laws be understood by the greatest possible number of their addressees.

Julius Caesar reported, with a simple style, his own warlike exploits, apparently to put material available to historians, but so superbly that, in fact, he discouraged them from writing those stories.⁹³⁰

Napoleon Bonaparte, who personally took part in the making of the French Civil Code of 1804, a well-known example of a simple style, perhaps had the same secret desire as Caesar, since it is said that, when he knew that Zachariae, a professor in Strasbourg, was writing a commentary, he wanted to imprison him.⁹³¹ He gave up all hope to avoid juristic writings and exclaimed: "My Code is lost!", when Jacques de

Jack Stark, *The Art of the Statute*, Fred B. Rothman and Co, Littleton, Colorado, 1996, pp. 1-3.

⁹²⁵ Cicero, *Orator*, 23, 76.

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⁹²⁶ [Cicero] *Rethorica ad Herennium*, IV, XI, 16.

[Cicerón] *Retórica a Herenio*, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, *Textos Bilingües*, Editorial Bosch, Libro IV, XI, Barcelona, 1991, pp. 258-259.

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⁹²⁷ L. Laurand, *Manuel des Études Grecques et Latines*, Éditions Auguste Picard, Paris, 1933, T. III. Rome, Ap. II-32.-a), p. 69.

⁹²⁸ Dionysius of Halicarnassus, I, 1. *The Ancient Orators, On The Style of Demosthenes*, 2, in *The Critical Essays in Two Volumes, With an English Translation by Stephen Usher*, *The Loeb Classical Library*, LCL 465, William Heinemann, London, Harvard University Press, Cambridge, Massachusetts, 1974, pp. 244-247

⁹²⁹ M. Crevier, *Rhétorique Française*, Chez Saillant, Desaint, Paris, 1797, Tome Second, p. 285

⁹³⁰ Cicero, *Brutus*, LXXV.

Cicéron, *Brutus* LXXV, dans *Brutus et Perfection Oratoire*, *Texte Établi, Traduit et Annoté par François Richard*, Librairie Granier Frères, Paris, 1934, pp. 172-173.

⁹³¹ Hennebiq, *Généralités Abstraites du Droit Economique*, *Intr. A L'étude du Droit Comparé (in honor of Lambert)*, 1938, II - IV, p. 491 quoted in *Derecho Civil de España, Parte General I*, por Federico de Castro y Bravo, Instituto de Estudios Políticos, Madrid, 1955, n. 4, p. 497.

Maleville, who had been the Secretary of the Drafting Commission, published in 1805 his Reasoned Analysis of the Discussion of the Civil Code in the Council of State.⁹³²

The Napoleonic Code did not arise spontaneously or at random, since it imitated examples taken from a long and slow historical evolution, established by the wisdom and eloquence that the simple style had consolidated in the late 18th century, in the formulas of customary law expressed in writing, royal ordinances, laws of the Revolution, and in the works of some jurist writings of the last period of the Monarchy, like d'Aguesseau, Domat, Pothier and Montesquieu.⁹³³

Henri-Mari Beyle (1783-1842) known under the pseudonym of Stendhal, in a letter to Honoré de Balzac (1799-1850), on October 16, 1840, said to him:

"When composing the Charterhouse, to take the tone, I was reading every morning two or three pages of the Civil Code."⁹³⁴

It is the apt style of laws created for the common people, without logical subtleties, for the simple reason of any father of family, as Montesquieu wanted and is now advocated by the plain language movement in the Anglo-Saxon world.⁹³⁵

b. Middle style

The middle style (*medium, modicum, mediocre, temperatum*),⁹³⁶ as its name indicates, is characterized by a thought that is neither simple nor grave; words that are neither plain nor elevated; a free, coordinated, or periodic composition; an ornament that is neither sober nor sublime, but more brilliant than the simple one. Its level is kept to that of the water, like a transparent and calm course, shaded by the green in

⁹³² Jacques de Maleville, *Analyse Raisonnée of Civil Discussion du Code au Conseil d'État*, Vve. Nyon, Paris, An XIII (1805).

⁹³³ François Geny, *Technique Législative dans Codification Civile Moderne (A Propos du Centenaire du Code Civil)*, Him Code Civil, 1804-1904, Livre du Centenaire, Arthur Rousseau, Éditeur, T. II., Paris, 1904, p. 1003, p. 1005.

⁹³⁴ "En composant la Chartreuse, pour prendre le ton, je lisais chaque matin deux ou trois pages du Code Civil."

Stendhal, *Correspondence (1836-1842) X, Établissement du Texte et Préface par Henri Martineau*, Le Divan, Paris, 1934, 1514, p. 282.

In the draft of p. 277, he had written "[...] I used to reading some pages of the Civil Code from time to time." ("[...] je lisais de temps en temps quelques pages du Code civil.")

⁹³⁵ Montesquieu, *De L'Esprit Des Loix, Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc.*, Nouvelle Édition Revue sur les Meilleurs Textes, Suivie De La Défense De L'Esprit Des Loix par L'Auteur, Paris, Garnier Frères, Libraires-Éditeurs, without date, Préface, Livre XXIX, Chapitre XVI, Choses à observer dans la composition des lois, p. 532.

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⁹³⁶ Benedetto Riposati, *Problemi di Retorica Antica*, in the collective work *Introduzione alla Filologia Classica*, Dott. Carlo Marzorati, Editore, Milan, 1952, p. 768.

both banks,⁹³⁷ and it does not look like a flaccid body, without nerves or joints.⁹³⁸ Isocrates (436-338 B.C.) speeches, usually are taken as paradigms of a middle style, among orators.⁹³⁹

It is apt to matters that are neither minor nor of major importance, or when are intended to be specially agreeable to their addressees.⁹⁴⁰

RULE: The middle style shall be apt to matters that are neither minor nor of major importance, or when laws are intended to be specially agreeable to their addressees. In order for the middle style not to be lowered to a plain one, and not to be raised to an elevated one, it shall be characterized by:

- a) neither simple nor grave thoughts;
- b) neither plain nor elevated words;
- c) a free, coordinated or periodic composition;
- d) a neither sober nor sublime ornament, which must not look like a flaccid body.

c. Elevated style

The elevated style (*amplum, magnificum, copiosum, acre, ardens, vehemens*)⁹⁴¹ is characterized by its grave thoughts; elevated words; a free, coordinated or periodic composition; and a sublime ornament. Vehement like a stream that sweeps along stones and floods banks,⁹⁴² without looking like a swollen body,⁹⁴³ Demosthenes's (384-322 B.C.) speeches are usually taken as paradigms of an elevated style, among orators.⁹⁴⁴

⁹³⁷ Quintilian, *Institutio Oratoria*, XII, X, 60.

Quintilian, *The Institutio Oratoria of Quintilian*, Book XII, x, 60, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume IV, London, 1922, pp. 484-485.

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⁹³⁸ [Cicero] *Rethorica ad Herennium*, IV, XI, 16.

[Cicero] *Rhetorica ad Herennium*, IV, xi, 16, with an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 266-267.

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⁹⁴⁰ L. Laurand, *Manuel des Études Grecques et Latines*, Éditions Auguste Picard, Paris, 1933, T. III. Rome, Ap. II-33.-b), p. 69.

⁹⁴¹ Benedetto Riposati, *Problemi di Retorica Antica*, in the collective work *Introduzione alla Filologia Classica*, Dott. Carlo Marzorati, Editore, Milan, 1952, p. 768.

⁹⁴² Quintilian, *Institutio Oratoria*, XII, X, 61.

Quintilian, *The Institutio Oratoria of Quintilian*, Book XII, x, 61, With an English Translation by H.E. Butler in Four Volumes, The Loeb Classical Library, William Heinemann, London, G.P. Putnam Sons's, New York, Volume IV, London, 1922, pp. 484-485.

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⁹⁴³ [Cicero] *Rethorica ad Herennium*, IV, X, 15.

[Cicero] *Rhetorica ad Herennium*, IV, XI, With an English Translation by Harry Caplan, The Loeb Classical Library, Harvard University Press, Cambridge Massachusetts, London, England, First published 1954, Reprinted 1964, 1968, 1977, 1981, 1989, 1999, pp. 264-265.

RULE: The elevated style shall be apt to matters of major importance, or when are intended to excite the fear or the hope, due to its greater oratorical force. It shall be characterized by:

- a) grave thoughts;
- b) elevated words;
- c) a free, coordinated or periodic composition;
- d) a sublime ornament, which must not look like a swollen body.

The author formulates a last rule, previously to the epilogue of this book:

RULE: The style shall be plain or middle for legislation, and elevated for constitutions.

[[Cicerón] Retórica a Herenio, Traducción, Introducción y Notas de Juan Francisco Alcina, Erasmo, Textos Bilingües, Editorial Bosch, Libro IV, X, Barcelona, 1991, pp. 256-257.

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⁹⁴⁴ L. Laurand, Manuel des Études Grecques et Latines, Tome III, Compléments, Atlas, Tables, Editions Auguste Picard, Paris, Ap. II-34.-c), Paris, 1933, pp. 69-70.

Epilogue

Before this book, the legislative activity, despite its importance, has remained freed at random or subjected to the empiricism of mere practice, since it was thought that the art of legislation did not exist as a true doctrine body, because it had not been incorporated into a fundamental system, into an acknowledged methodical base on which a well assembled construction might be erected.

In this book, the legislative activity, according to its importance, is provided with a true art of legislation, that had been lost and is reconstructed here from the classical tradition, which conceives laws as wise and eloquent civic speeches and rhetoric, the art of persuading with wise and eloquent speeches, as its methodical base recognized for almost two thousand and five hundred years. One might object that the method of legislation does not exist; if it exists, it is impossible to find; if it is possible to find, it is impossible to know; if it is possible to know, it is impossible to teach; and, finally, if it is taught, it is impossible to apply. The method of legislation exist in the rhetorical tradition, which is possible to find, to know, to teach and also to apply to any positive law, historical, current or future, previous adaptation to the multiplicity of languages and juridical systems, the knowledge of which is presupposed, as in rhetoric.

After this book, the author hope that the lost art of legislation will be perfected as such, identifying the applicable parts of the rhetorical tradition, developing the insufficient and creating others, since if the rhetorical model of the art of legislation is adopted, the quality of the laws will not depend on occasionally inspired individuals, but on common effort, because it will be possible to rely on a reasonable knowledge, born out of experience, which, transmitted from generation to generation, will allow for the methodical continuity of the struggle to govern and be governed in civilized form, by means of wise and eloquent laws.

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ART OF LEGISLATION

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The works below have been selected from among those that the author of this book consulted and have been published in relation to the family of Western Law. They are arranged according to whether they belong to the Anglo-American system or to the Continental European system, and, within each, according to the cultural area and, in principle, chronologically. Also mentioned are some works that it has not been possible to consult, but whose importance lies in the fact that they are frequently quoted by other authors.

a. Anglo-American system

i. British area

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Proper words (Clarity, Virtues, Style Genres, Chapter VII Style)

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Protagoras (Greece, Ancient history, Chapter II Ancient and Medieval History)

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Purity (Virtues, Style Genres, Chapter VII Style)

Reasonableness of legislative speeches (*logos*) (Topics, Chapter V Investigation)

Refutation (*Agon*, Exordium, Persuasive speeches, Chapter VI Systematics)

Refutation of certain frequent objections (Persuasive speeches, Chapter IV, Legislative Genres)

Refutation of other positions (Refutation, *Agon*, Exordium, Persuasive speeches, Chapter VI Systematics)

Refutation of the criticism to the bill proposed (Refutation, *Agon*, Exordium, Persuasive speeches, Chapter VI Systematics)

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Reunion (Textual amending laws, Amending method, Amending laws, Fragmentary genre, Prescriptive speeches, Chapter IV, Legislative Genres)

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Rhythm (Placement of words, Composition of sentences, Ornament, Chapter VII Style)

Rolandino Passagieri (*Ars dictaminis*, Medieval history, Chapter I Ancient and Medieval History)

Rome (Ancient history, Chapter II Ancient and Medieval History)

Select Bibliography

Seven Wise Men (Greece, Ancient history, Chapter II Ancient and Medieval History)

Similarities (Legislative definitions, Reasonableness of legislative speeches (*logos*), Topics, Chapter V Investigation)

Sophism of a cause that is not a cause (Sophisms that do not depend on the language to cause deceit, Topics, Chapter V Investigation)

Sophism of accentuation (more properly, ambiguity only in the writing speech with regard to the oral speech)

Sophism of combination (Sophisms that depend on the language to cause deceit, Topics, Chapter V Investigation)

Sophism of division (Sophisms that depend on the language to cause deceit, Topics, Chapter V Investigation)

Sophism of excessive vagueness (Sophisms that depend on the language to cause deceit, Topics, Chapter V Investigation)

Sophism of false consolation (Sophisms that intend to postpone the debate (dilatatory), (Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)

Sophism of gradualism (Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)

Sophism of ignorance of the refutation (Sophisms that do not depend on the language to cause deceit, Topics, Chapter V Investigation)

Sophism of semantic ambiguity (homonymy) (Sophisms that depend on the language

- to cause deceit, Topics, Chapter V Investigation)
- Sophism of several questions in only one (Sophisms that do not depend on the language to cause deceit, Topics, Chapter V Investigation)
- Sophism of syntactic ambiguity (amphibology) (Sophisms that depend on the language to cause deceit, Topics, Chapter V Investigation)
- Sophism of the absence of precedents (Sophisms intended to prevent the debate (impedimental), Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)
- Sophism of the absolute and not absolute sense (Sophisms that do not depend on the Language to cause deceit, Topics, Chapter V Investigation)
- Sophism of the accident (Sophisms that do not depend on the language to cause deceit, Topics, Chapter V Investigation)
- Sophism of the Allegorical idols (Sophisms intended to confuse the debate (confusionist), Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)
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- Sophism of the begging the question (Sophisms that do not depend on the language to cause deceit, Topics, Chapter V Investigation)
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- Sophism of the consequent (Sophisms that do not depend on the language to cause deceit, Topics, Chapter V Investigation)
- Sophism of the Danger (Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)
- Sophism of the distraction maneuver (Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)
- Sophism of the end that justifies the means (Sophisms intended to confuse the debate (confusionist), Deliberative sophisms, Legislative sophisms in the wide sense, Sophisms, Chapter V Investigation)
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- Sophism of the irrevocable laws (Sophisms intended to prevent the debate
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- Sophism of the most opportune future (Deliberative sophisms, Legislative sophisms in
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- Sophism of the ochlocracy (Legislative sophisms in the strict sense, Sophisms,
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- Sophism of the rejection instead of the modification (Sophisms intended to confuse the
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- Sophism of the only word that implies approval or rejection (epithet) (Sophisms
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- Sophism of the universal opponent (Sophisms intended to confuse the debate
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