**Rhetoric in Law – Are We Talking About the Same Thing?**

The bond between law and rhetoric is as old as the subjects themselves. Speechwriters composed procedures in the courts of Athens, and it was at the schools of rhetorics in Rome that budding lawyers were taught. Today rhetoric is a part of the curriculum at a number of law schools, typically integrated into clinical courses such as legal writing but also in the training of students for the international moot courts.

Especially the ancient works on legal rhetoric afford a too narrowdepiction of the interaction between law and rhetoric. In the majority of the classical works (but also in many modern handbooks, textbooks and periodicals) legal rhetoric is represented as a purely instrumental discipline of communication in court. Or as the American attorney Franklin R. Weiss puts it: *"Rhetoric is an instrument, a tool, and is one of the very few tools available to an attorney in his daily life of advocacy."[[1]](#footnote-1)*

This narrow understanding of legal rhetoric has in modern times been challenged. You will find today a series of contributions that merge the two subjects, law and rhetoric, in a novel way. Lavine & Saunders, for example, see the contributions of rhetoric in law as a matter of learning and thinking: *"Thinking like a rhetor offers students the key to thinking like a lawyer."[[2]](#footnote-2)* Here, legal rhetoric is shifted from being a communicative discipline in the courtroom, to being a cognitive discipline at law school. While White, to provide another example, sees law as rhetorically produced, making law and rhetoric two sides of the same coin: *"... I shall suggest that law is most usefully seen [...] as a branch of rhetoric."* Here, the role of rhetoric in law is shifted from being instrumental to being constitutive.*[[3]](#footnote-3)*

So the challenge today is the opposite of the case with the classical contributions: It is not to narrow, but rather broad and diffuse. Behind the superficially similar concepts – 'legal rhetoric' and 'rhetoric in law' etc. – lies a plurality of meanings and levels: Where legal rhetoric in one context denotes practical instructions on legal communication and argument in court, it is in other contexts viewed as a didactic discipline to be exploited for systematizing doctrinal legal knowledge. While in yet other contexts rhetoric is applied to challenge the ontological status of law. Here, legal rhetoric is neither a practical nor a methodical discipline, but part of a greater discussion of legal philosophy.

In an interesting article from 2009, legal linguist Peter M. Tiersma argues that the field called – with an umbrella term – 'Law and language' is both in growth and fragmented: *"Obviously, the problem here is not a lack of interest. Rather, it is that there are a number of different groups producing work in the area, often with different backgrounds and interests."[[4]](#footnote-4)* The same seems to be the case with the field of legal rhetoric (classified by Tiersma as one of the subgenres of ‘Law and language'). Contributions that treat legal rhetoric and rhetoric in law are found in a wide range of periodicals and books: popular books on being a persuasive lawyer, textbooks on legal writing, legal periodicals, journals on legal education, rhetorical journals, journals on argumentation, journals on semiotics of law and journals concerning legal philosophy.

Plurality in a field is not problematic in itself, but requires knowledge of the different rationales underlying the various approaches. The underlying rationales and levels are thus the focal point of this paper. On the basis of established literature in the field, I will discuss the various interpretations of legal rhetoric and rhetoric in law. What sort of frameworks characterize the field? What is the link between law and rhetoric, given the various frameworks?

Reading across the many contributions, the outlines of three distinct conceptual frameworks emerge: I call them respectively the *communicative*, *methodological* and *philosophical* frameworks. In my paper I outline the three frameworks and invite to a discussion of their adequacy and relevance. Are there any levels missing? Is it meaningful to consider the field in contrived rationales? And to what extent are the frameworks I have expressed a result of my addressing the borderland between law and rhetoric from the viewpoint of rhetorics?

1. Weiss, Franklin R.: ’How the Lawyer Uses Rhetoric’, *Today´s Speech*, vol. 7, 1959. [↑](#footnote-ref-1)
2. Levine, Linda & Kurt M. Saunders: ‘Thinking Like a Rhetor’, *Journal of Legal Education* 43, 1993. [↑](#footnote-ref-2)
3. White, James Boyd: ’Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life’, *The University of Chicago Law Review*, Vol. 52, 1985. [↑](#footnote-ref-3)
4. Tiersma, Peter: ’What is Language and Law? And Does Anyone Care?’, Loyola-LA Legal Studies paper No. 2009-11. [↑](#footnote-ref-4)