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Rhetoric in Reasoning with Evidence

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Rhetoric in Reasoning with Evidence

ABSTRACT

With the resurgence of rhetoric in legal practice, scholars have begun to explore how rhetoric can play a role in reasoning with evidence. In the "Story Model Theory," rhetoric plays a role as a narrative method, providing multiple story evaluation criteria from a psychological perspective, but it also has problems such as unclear relationship between evidence and story, selective storytelling and so on. Under the framework of the New Rhetoric, rhetoric is not limited to causal narrative, but rather all argumentative discourse that influences the audience's adherence of mind, and judicial proof should include three parts: justify oneself, compare with opponents, and persuade the audience. From the "structure-method" aspects of reasoning with evidence, on the one hand, in conjunction with the Toulmin model, rhetoric aims to influence the audience's judgment of warrant, including decisive conflict and degree contest. On the other hand, for other methods of reasoning with evidence such as argumentation, narrative, matching, analogy, and explanation, rhetoric can provide complementary reasons and for aspects not covered by these methods, while offering reinforcing perspectives for those aspects already in play.

KEY WORDS: Rhetoric; Narrative method; New rhetoric; Toulmin model; Reasoning with evidence

1. Introduction

Judicial activities consist of two main parts: reasoning with evidence and legal reasoning. Methods of reasoning with evidence are "as essential a part of legal method as legal analysis and reasoning about questions of law." (Anderson et al. 2005, Preface, xvii) Currently, reasoning with evidence mainly includes two types of methods: argumentative and narrative. Wigmore, Twining, Anderson and his colleagues consider the latter to be a rhetorical device (Twining 1999; Anderson, et al. 2005, p.113, note), while Bex and Verheij believed that the story served more than just a rhetorical purpose (Bex & Verheij 2012). Unlike efforts to defend the story, this paper attempts to shift the perspective to the rhetoric. "Rhetoric, viewed as the study of persuasive discourse, was a central part of the humanistic tradition of Western learning", it was concerned with reasoning and persuasion in regard

to disputes about facts (Twining 2006, p.5). This paper also aims to respond to a legacy task: "The rhetorical role of both arguments and stories, while interesting, has not been explored in the work on the hybrid theory." (Bex & Verheij 2012)

However, the development of rhetoric has been quite bumpy. Since its birth in Greece in the fifth century BC, it has been accompanied by debates between truth and soul, episteme and doxa, rationality and personality (Barilli, 1979 pp.6-13). People question whether rhetoric is a "science" or a "discipline." What are the positive and negative effects of rhetoric? Rhetoric has long been denigrated because it has been labeled as "sophistry" and by the time of Kant, it had reached its lowest point. This situation may not have improved until Perelman proposed the New Rhetoric.

Since the late 20th century, academic discussions have begun regarding the role of rhetoric in reasoning with evidence, with more mature viewpoints primarily based on the "Story Model Theory" proposed by Pennington and Hastie (Pennington & Hastie 1993). However, the problem lies in whether rhetoric can only influence reasoning with evidence through narrative. How does rhetoric influence reasoning with evidence? What kinds of influence can rhetoric have on reasoning with evidence? The reason for this is that the theory fails to establish a theoretical connection with the New Rhetoric that revived rhetoric, the basic structure of reasoning with evidence (the Toulmin model), and other methods of reasoning with evidence. Furthermore, the theory itself has problems.

Therefore, this paper first reflects the theoretical forms of rhetoric in reasoning with evidence, briefly describes the basic viewpoints of the story model theory, and points out its existing problems and shortcomings; secondly, within the theoretical framework of the New Rhetoric, reshaping the role of rhetoric in reasoning with evidence and its insights for judicial proof, and, in conjunction with the Toulmin model, identifies its specific points of application; finally, exploring rhetoric’s connection with other methods of reasoning with evidence such as argumentation, narrative, matching, analogy, and explanation.

2. Rhetorical approach in reasoning with evidence

For rhetoricians, the effectiveness of an argument depends on the standards upheld by a particular community; if an argument gains the approval of its audience, they will consider it acceptable. Rhetoric is audience-oriented, identifying the persuasive parts of a discourse and listing argumentation techniques deemed effective based on the knowledge and beliefs of particular audience. The emphasis

of rhetoric is explaining the effectiveness of various argumentation patterns to different types of audiences and studying how style and other phenomena contribute to people changing their minds in a certain context (Eemeren & Grootendorst 2016, pp.5-6). Narrative, as a vessel for various rhetoric (and narrative itself is a form of rhetoric), naturally attracts the attention of rhetoricians. At the same time, scholars of evidence law also acknowledge that "both narrative and explicit argument are almost bound to have a place in any prescriptive theory about arguing towards, arriving at, justifying and evaluating adjudicative decisions on disputed questions of fact". (Twining 2006, p.311) Therefore, narrative is a common focus of rhetoric and evidence law, and research on the role of rhetoric in reasoning with evidence also takes story as its starting point.

2.1 Rhetoric as the narrative method

In their 1981 book, *Reconstructing Reality in the Courtroom*, Bennett W. Lance and Martha Feldman point out that criminal trials in the United States are organized around narrative, "stories organize information in ways that help the listener to perform three interpretive operations": locate the central action in a story, construct the relationships between the surrounding and the central action, and evaluate the story as a whole (Bennett & Feldman 1981, Preface ix, p.41). Although their descriptions of the criteria for evaluating stories and the relationship between evidence and story are unclear, they challenge the absolute status of argumentative approach in reasoning with evidence and open up a narrative approach. Pennington and Hastie built upon the work of the two authors to propose the "Story Model Theory," which is based on the fusion of two knowledge systems—Narrative Psychology and the Inference to the Best Explanation .

Narrative psychology aims to analyze the psychological processes and models readers use when reading stories.[1] In 1975, Rumelhart proposed "story grammar," arguing that stories, like sentences, have an internal structure, composed of syntactic and semantic rules. The former generates the structural components of a story, such as setting, event, reaction, actions, and consequence, while the latter determines the semantic representation of the story, including initiate, result, reason, and enable (Rumelhart 1975). The story model theory combines syntactic and semantic rules, pointing out that the structure and logic of a story unfold as follows: physical states is the background before the events occur, the initiating events initiate a change in the actor's psychological states, the change in

[1] Mark Riedl, *An Introduction to AI Story Generation*, https://mark-riedl.medium.com/an-introduction-to-ai-story-generation-7f99a450f615, (March 25, 2026 accessed).

psychological states initiate a certain goal, the goals (or the psychological states directly) reason actions, and the actions result the consequences (Pennington & Hastie 1993).

The concept of Inference to the Best Explanation (IBE) was first proposed by Harman in 1965. Its core idea is that if a hypothesis provides a "better" explanation for the evidence than any other hypothesis, then that hypothesis is probably true (Harman 1965). The key is how to choose the best explanation. In response, Harman, Thagard, Lipton, and others have proposed different standards, such as simpler, more probable, more consistent, or more lovely (Harman 1965; Thagard 1978; Lipton 2004). The story model theory adopts the idea of IBE that "what is best is determined by comparison," proposing three evaluation criteria: coverage, coherence, and uniqueness. Coverage refers to the amount of evidence covered by the story, thus establishing a connection between the story and the evidence. Coherence includes consistency, plausibility, and completeness. Consistency means that the story's explanation of the evidence is not internally contradictory. Plausibility means that the story aligns with the jurors' understanding and perception of similar typical events. Completeness means that the story possesses all the components of its structure. When multiple stories are considered coherent, they lack uniqueness, and the confidence level in any one of them decreases (Pennington & Hastie 1993).

Admittedly, Pennington and Hastie viewed the story model theory as the result of serious psychological experiments, and did not consider themselves rhetoricians. As Perelman might understand informal logic, however, "the study of reasoning is concerned not only, nor even mainly, with the rational force of argument, but rather with all aspects of reasoning; thus conceived, logic is a largely pragmatic, mainly psychosociological investigation." (Horovitz 1972, p.106) Rhetoric encompasses the study of audience psychology. The story model theory aims to explore the impact of story structure on jurors' internal identification (are good stories more believable?), and it holds the position that the structure and characteristics of a story determine the relevance and credibility of evidence. This is clearly not a discussion of formal argumentation based on evidence, but rather the influence of narrative on the audience. It is reasonable for Twining, Bex, and others to view the story model theory as an exploration of the role of rhetoric in reasoning with evidence.

2.2 Problems with the Story Model Theory

Rhetoric, as the narrative method, plays a notable role in reasoning with evidence. In the case of

Qi's alleged rape of minor girls, *Qi* was accused of repeatedly molesting victims *A* and *B* during his tenure as a homeroom teacher, taking advantage of opportunities such as lunch breaks, evening self-study sessions, and dormitory checks. He allegedly took girl *A* home under the pretext of taking her to see a doctor, and then raped her. He denied the accusation. There were no eyewitnesses or biological evidence left by the defendant in this case. The defense also pointed out that witnesses testified that the girl *A* first claimed she was molested by *Qi* and then claimed she was raped, indicating inconsistencies in the victim's statements.[2] The story model theory can provide a natural overview of the ins and outs of a case and its objective background, focusing on the extent to which the story covers the evidence and providing standards of consistency, plausibility, and completeness to judge whether the story is coherent. However, we can also find the following problems with the story model theory.

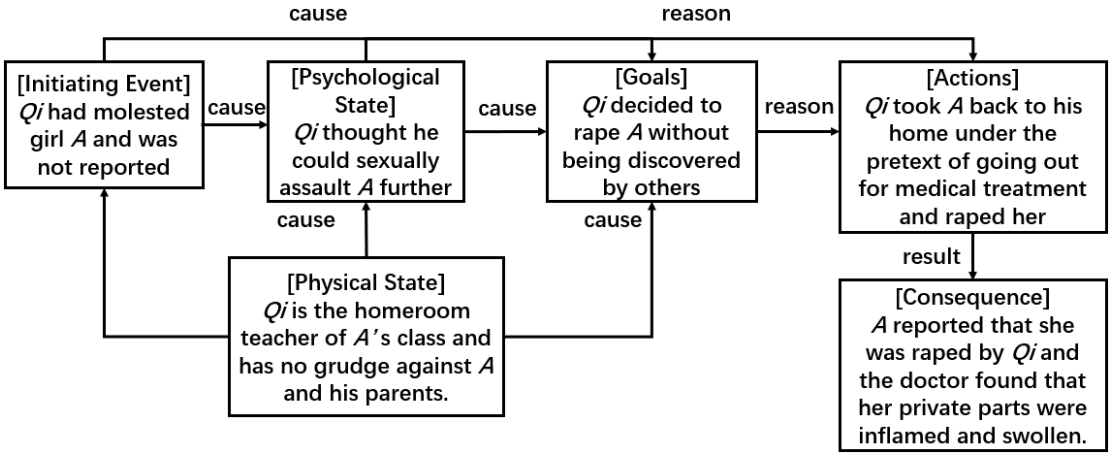


Figure 1. Story Model Theory (Adapted from Pennington N. & Hastie R., 1993, p. 197)

First, the relationship between the story and the evidence is unclear. The prosecution's story covers evidence such as victim statements, expert testimonies, and investigation records, but it is vague what part of the story each piece of evidence proves and how the jump from evidence to event occurs.

Second, it ignores evidence that contradicts the story. The coverage criterion of story model theory emphasizes that the more evidence covered, the better, and the consistency criterion requires that the story has no internal contradictions. However, how should we evaluate the uncovered evidence that contradicts the story? The story model theory carries the risk of "selectively ignoring" evidence. For example, Lord Denning's assessment of *Miller v. Jackson* suffers from selective ignoring: "cricket is the delight of everyone" ignores the Millers' objections, fails to mention that the Millers had an infant, and that the Millers was not the only one to file an injunction (Twining 2006, p.285, note 6).

[2] See Guiding Case No. 42 of the Supreme People's Procuratorate of the People's Republic of China.

Third, the concept of "similar typical events" is unclear. In the plausibility criterion of the story model theory, does "similar typical event" refer to a type of events or a similar case? To what level of abstraction should "similar typical event" meet the requirements of criminal proof and persuasion of fact-finders? If it's too abstract, then any story involving rape can fit into the framework of "the defendant decides to rape - the defendant commits the rape - the victim reports the crime," thus lacking comparative significance. If it's very specific, a real case, then it involves judging the relative importance of the similarities and differences between the story and the reference case.

Fourth, strictly meeting the completeness standard may be unreasonable. On the one hand, some crimes do not require goals; the act of committing the crime is sufficient to constitute a crime, such as the sexual intercourse with a minor in this case. On the other hand, some criminal acts may not have an initiate event or motive. In this case, *Qi* may have acted purely out of ethic, without motive.

3. Rhetoric in the New Rhetoric

Beyond the inherent issues of the story model theory, the theory raises a question: can rhetoric function in reasoning with evidence solely through the form of narrative? One external issue regarding the story model theory's exploration of rhetoric in reasoning with evidence is that it confines its scope to narrative, failing to tap into the value of rhetoric within a broader theoretical framework. In the 1950s, Toulmin and Perelman sought to propose an alternative to formal logic that was better suited for analyzing daily argumentation; taking the rational procedures of legal reasoning as their starting point, they respectively developed the Toulmin model and the New Rhetoric. The former is widely employed by scholars of the "New Evidence Scholarship" as a structure for reasoning with evidence and will be discussed in Part IV. The latter provides a theoretical framework for rhetoric aimed at persuading audience's adherence of mind—helping us move beyond the narrow perspective of narrative—and will be discussed below.

3.1 Rhetoric as the argumentative discourse

Persuasion, audience, and argumentative discourse constitute the research network of the New Rhetoric. The goal of argumentation is to persuade the audience. Perelman and his colleague point out that argumentation and discussion regarding controversial issues begin with certain propositions that have gained general acceptance, with the aim of persuading others or convincing them (Perelman & Olbrechts-Tyteca 1969, pp.1-3). Although Immanuel Kant questioned the validity of persuasion noting

that it depends on the particularities of the subject, holds true only for the individual, and is not communicable (Kant 1998, p.685). However, if certain rhetoric are persuasive to particular rational individuals—or to all of them—and can influence their judgment, then they satisfy the criterion of objective sufficiency proposed by Kant himself. Furthermore, once these rhetoric are categorized into various *argumentative schemes*, they can be communicable. This is precisely Perelman and his colleague's main contribution.

The audience's adherence of mind serves as the benchmark for argumentation. The nature of the audience determines the direction and characteristics of the argument, as well as the importance attached to it. Perelman and his colleague identify three types of audiences: the *universal audience* composed of all normal adults; the *interlocutor* who engages in dialogue with the speaker; and the *subject himself*, when deliberating or giving himself reasons for his actions. In judicial adjudication, the audiences whom the reasoner seeks to persuade include the parties, superior courts, and enlightened public opinion (Perelman & Olbrechts-Tyteca 1969, p.30, 151).

Last but not the least, the New Rhetoric aims to identify all forms of argumentative discourse capable of influencing the audience's adherence of mind, thereby establishing a network of persuasive dialogue (Arnold 1986). These argumentative discourses include, but are not limited to, Causal link, Probabilities, Pragmatic, Reciprocity, Comparison, Incompatibility, Inclusion, Authority, Analogy, Severance, Symbolism, Waste, Model, etc. Based on the characteristics of the process of argumentation, Perelman classifies argumentative discourses into two categories: associative and dissociative (Perelman & Olbrechts-Tyteca 1969, p.190).

Obviously, the narrative (causal link) occupies merely a small corner of the vast universe of rhetoric. Many other forms can also play a role in reasoning with evidence. This raises the question: by what standard do we distinguish between rhetoric that influence reasoning with evidence and those that do not—serving instead to reinforce the negative impression that (rhetoric is merely) "a branch of flattery... they are not considered at all"? (Plato 1925, p.323) A viable standard is to refer to the "balance rule" used in the evidence law to determine the relevance of evidence—namely, rhetoric is relevant if it has any tendency to make a fact more or less probable than it would be without the rhetoric; and the fact is of consequence in determining the action. [3]

[3] See *Federal Rules of Evidence*, Rule 401. Test for Relevant Evidence.

The theory of "narrative construction of fact-finding", proposed by Chinese scholars and rooted in legal linguistics, may well provide some negative examples regarding this standard. They argue that the facts as judged by the court exist in the form of narratives constructed through rhetoric; rhetorical strategies include the story construction, character construction, setting construction, and events selection. Character construction entails categorizing and positioning key figures in the case based on standards of good and evil within the context of social moral norms. Setting construction involves placing evidentiary information within a specific context and situating the facts of the case against the backdrop of the prevailing social environment. Events selection refers to the deliberate omission of events that are unfavorable to one's own position.[4]

Setting aside the fact that this theory treats the problem with the "story model theory"—namely, selective ignorance—as a rhetorical strategy (which clearly underestimates the case-file transfer systems and the judges' objective obligations and investigative authority found in China and civil law jurisdictions), this paper acknowledges that evidentiary information should be understood within its context. However, if the theory further posits that the facts of the case supposed to be viewed against a broader social backdrop, one is compelled to ask: what bearing does the notion that "Yao Jiaxin stabbed the victim to death after striking her with his car by accidence was a tragedy of family and social upbringing" have on the question of whether he committed intentional homicide? The character construction valued by the theory also faces a question: is the glorious or down-on-his-luck image of Cui Yingjie portrayed by the defense attorney important to the judge? Do they really care? This theory didn’t conduct any empirical research with controlled trials. On the contrary, in evidence law, the defendant's character evidence is often excluded due to irrelevance.[5]

3.2 Judicial insights from the New Rhetoric

Besides categorizing various rhetoric, the New Rhetoric also offers unexpected insights into judicial proof, particularly regarding persuading audiences and the types of audiences. The reasoner himself is the first audience he seeks to persuade, and justify oneself or "hold water" is the primary task of reasoning with evidence. In real life, we might say "he/she can justify himself/herself" when evaluating an academic paper. A hold-water article should have a sound logical structure, be supported

[4] See Liu Yan, *Narrative and Characterization in Judicial Process: Observation on the CuiYing-jie Case*, Law and Social Development, Vol. 86, 2009, p.152-160; Hou Xueyong, Zheng Hongyan, *Rhetoric Construction of the Case Fact*, Zhejiang Social Sciences, 2015, No.9, p.60-69; Wang Bin, *On the Narrative Construction of Judicial Fact*, Humanities & Social Sciences Journal of Hainan University, Vol. 31, 2013, p. 85-92.

[5] See *Federal Rules of Evidence*, Rule 401 (a). Character Evidence.

by arguments and previous viewpoints, conform to common sense and ethics, and its viewpoints should be consistent without contradictions or fatal weaknesses, etc. Similarly, reasoning with evidence which can justify itself should meet similar requirements. However, reasoning with evidence is not academic publishing; it is not enough to simply present a self-justified argument. A self-justified factual claim is not equivalent to the proof of the facts of the case.

On the one hand, the people who determine the facts of a case is not the one who makes the factual claims, but rather the fact-finders. Some theories of reasoning with evidence are designed to guide the reasoner on how to conduct "self-justification," which is a kind of internal perspective. For example, the modified Wigmore's chart method explicitly states that it provides lawyers with a systematic and procedural protocols for pre-trial preparation (Anderson et al. 2005, pp.124-134). Although Anderson and his colleagues' seven-step protocols describe the process of listing and arranging the evidence, generalizations and factual claims from two parties, it is only an "imaginary debate" taking place before the real face-to-face confrontation. One way to supplement the insufficiency of justify oneself is to place the factual claims within the framework of argumentative comparison—proving one's own viewpoint and rebutting other alternative viewpoints in academic communication. Argumentation rules can regulate argumentative communication, while story comparison can eliminate alternative stories with obvious flaws and shortcomings. This is how a hybrid theory combining argumentative and narrative methods was proposed (Bex 2011, p.86).

But in reality, on the other hand, there are two situations: both parties can also justify themselves or both parties have their own shortcomings. When both parties place their self-justified stories within the hybrid theory, the superiority or inferiority of each party is apparent when one party's story meets all criteria while the other party's story does not at all; However, when both parties' stories meet these criteria to varying degrees and in different quantities—for example, one's story covers more evidence while the others is more coherent—the "self-justification + argumentative comparison" framework of proof can no longer provide further guidance when faced with incomparability in quantity and degree.

The modified Wigmore chart method and the story model theory only describe and regulate "the reasoner in relation to himself" and "the reasoner in relation to his opponents". The New rhetoric reminds us that there is still "the reasoner in relation to his audiences"—academic communication is not purely about proving one's own viewpoint and rebutting others, but also about gaining the

adherence of the target audience through this process—thus forming a gradient structure of "self-justification - argumentative comparison - audience persuading". Even judges, as the fact-finders, cannot avoid the need to consider whether their reasoning in their judgments can convince the parties, superior courts, and enlightened public.

4. Rhetoric and the Toulmin Model

The study of "rhetoric in reasoning with evidence" encompasses two propositions: "rhetoric" and "reasoning with evidence". After exploring narrative, rhetoric, and the New Rhetoric, the next two parts aim to enter the perspective of evidence law or "New Evidence Scholarship" to achieve a connection between rhetoric and reasoning with evidence. Before clarifying the structure and methods of reasoning with evidence, it is unwise to throw rhetoric into discussions about it. Where does rhetoric apply to reasoning with evidence? What effect does it have? This is the second problem with existing research on "rhetoric in reasoning with evidence".

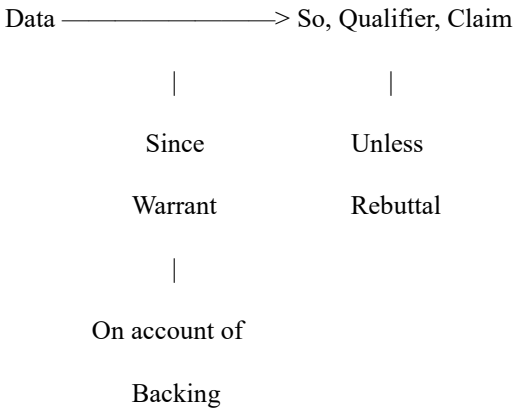
4.1 The Toulmin Model as the structure of reasoning with evidence

Wigmore, a giant in evidence law, made at least two contributions to the study of legal logic that evidence law scholars can be proud of. First, he summarized four forms of argumentation: assertion (presenting evidence to prove a specific conclusion or probandum); explanation (weakening the probative value of the original fact by showing the existence and possibility of other hypotheses); denial (refusing to acknowledge the existence of evidence presented by the opponents); and rivalry (refuting the opponents' probandum by introducing new evidence to form competing argument) (Wigmore 1913, p.25). This is similar to Hart's concept of defeasible (Hart 1948), and even proposed 35 years earlier. Second, a chart method is proposed, which structures the argumentation into a hierarchy consisting of the ultmate probandum, penultimate probanda, interim probanda, and evidence. In this framework, the connections between evidence and interim probanda—as well as those between probanda at different levels of the hierarchy—are "implicitly based upon an understood law or generalization, and is thus capable of being expressed in the deductive or syllogistic form" (Wigmore 1913, p.17).

Regrettably, perhaps because his ideas were too far ahead of their time, Wigmore's theory failed to attract attention when it was first proposed; it was not rediscovered until the 1980s by the "New Evidence Scholarship". In the interim, Toulmin introduced a more sophisticated model comprising

elements such as data, warrants, backing, qualifiers, rebuttals, and claims, which superseded the simpler "evidence - generalization - probandum" structure. This model gained such prominence that when the "New Evidence Scholarship" introduced Wigmore's chart method, they found it necessary to clarify the parallels between the two—for instance, by noting that Wigmore's "generalizations" correspond to Toulmin's "warrants".

This model describes the procedural form of argumentation. In this framework, data refers to the factual grounds invoked to support a claim. However, in the practice of argumentation, people do not merely ask, "What evidence do you have?", but also question the validity of the leap from that data to the claim. *Warrant* serves as a general assumption that acts as a bridge between the data and the claim. Different types of warrants confer varying degrees of force upon the transition from evidence to a claim; such terms, which denote the strength of this transition, are known as *qualifiers*. Since the authorization provided by a warrant is qualified, there inevitably exist rebuttals that can invalidate its general application. Furthermore, warrants are typically underpinned by additional evidence that establishes their authority and validity, which are referred to as *backings*.



This formal structure is independent of the subject matter of an argument; the steps and elements of any argument remain the same, and it is therefore field-independent. However, when it comes to the evaluation of an argument, its reliability does not primarily depend on its form, but rather on the extent to which the backing renders the warrant acceptable. Since the content of the backing relates to the subject matter of the argument, it is field-dependent (Toulmin 2003, p.96). For instance, the backing for the warrant "frogs are amphibians" is derived from zoological classification; the backing for "a person born in China is Chinese" is based on legal provisions; and the backing for the claim that "Cantonese do not eat spicy food" is grounded in statistical data.

4.2 Rhetoric acting on the judgment of generalizations

Rhetoric act on the warrant (generalization) that connects evidence to a claim (probandum). According to Frans H. van Eemeren and his colleagues, "if one takes a rhetorical interpretation of the model the argumentational schemata of Perelman and Olbrechts-Tyteca can be considered to be descriptions of various sorts of warrant" (Eemeren et al. 1987, p.267). Reaching this conclusion is not difficult; since both parties are presented with the same evidence, the reason they arrive at different conclusions can only lie in their respective generalizations. In many cases, such generalizations remain unsettled—they must withstand the test of alternative competition and critical scrutiny. As Sidgwick puts it: "Since, then, our inferences from fact to fact depend upon our belief in general rules of connection between fact and fact,—generalisations about the way things happen in Nature,—the work of criticising inferences resolves itself into that of criticising generalisations" (Sidgwick 1893, p.9).

Bex et al. outline four ways to attack a generalization: First, attacking the defeasible derivation from the source by pointing out that this inferential process relies on specific conditions (e.g., while it is a general knowledge that "having one's business stolen can trigger a murderous intent," this might only apply when one's entire livelihood is cut off). Second, attacking application of the generalization in the given circumstances by identifying exceptions (e.g., while it is a general knowledge that "having one's business stolen can trigger a murderous intent," the defendant in a given case may have already intended to cease operations). Third, attacking the validity of the source of the generalization by arguing that the source does not constitute general knowledge (e.g., asserting that the idea that "having one's business stolen can trigger a murderous intent" is not general knowledge). Fourth, Attacking the generalization itself by refuting the proposition entirely (e.g., arguing that not only is the statement that "having one's business stolen can trigger a murderous intent" not general knowledge, but no one would ever harbor murderous intent for such a reason) (Bex et al. 2003).

The latter two ways of attack implicitly involve two types of conflict: *decisive conflict* (0 or 1; "is the generalization completely wrong?") and *degree contest* (0 to 1; "is the source of generalzation insufficiently general?"). The first two ways essentially open a new battleground—determining whether the defeasible inference meets specific conditions or whether the case constitutes an exception—yet ultimately, these must still be reduced to the two aforementioned type. The status of argumentation between challenged or under-attacked generalizations "depends on the degree of belief we have in the

generalization that justifies the inference." Although our degree of belief in such generalizations is difficult to quantify numerically, it can be assessed through relative comparison (Bex 2011, p.43). The very purpose of rhetoric is to influence the audience's adherence of mind of a generalization.

Decisive conflicts between generalizations are common in civil cases. For instance, in the *Peng Yu* case[6], both the proposition that "someone who pays for another's medical expenses as a kind-hearted person" and the proposition that "someone who pays for another's medical expenses as the party responsible for the incident" find plausible support in experience; thus, which of these should serve as the generalization in an argument becomes a matter of dispute. At this point, the argument of pragmatic[7] (Perelman & Olbrechts-Tyteca 1969, p.266), a concept from the New Rhetoric, exerts a rhetorical force that influences the audience to perceive "someone who pays for another's medical expenses as a kind-hearted person":

"If the prevailing opinion is that someone who pays for another's medical expenses must be the one who caused the accident, then no one will ever dare to act as a kind-hearted person anymore!"

Degree contest between competing generalizations is a common phenomenon. Such generalizations typically take the conditional form: "If... then...". In cases involving an adult woman accusing her superior of sexual assault, a young girl accusing her teacher of sexual assault, and an underage daughter accusing her father of sexual assault, the generalization follows the conditional structure: "If *p* claims to have been sexually assaulted by *q*, then *q* [possibly, very possibly, or almost certainly] sexually assaulted *p*". The specific qualifier varies from case to case. Applying the argument of comparison[8] (Perelman & Olbrechts-Tyteca 1969, p.242) from the New Rhetoric—using the likelihood of a false accusation as the criterion—if the qualifier for an adult woman accusing her superior of sexual assault is "possibly," then the qualifiers for the latter two scenarios escalate, respectively, to "very possibly" and "almost certainly."

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[6] Civil Judgment of the People's Court of Gulou District, Nanjing (2007) Gulou, Civil, First Instance, No. 212.
[7] Argument of pragmatic is one that evaluates an action or event based on its favorable or unfavorable consequences.
[8] Argument of comparison refers to evaluating arguments by considering the relationships between multiple objects, and expressing the concept of measurement with a certain standard.

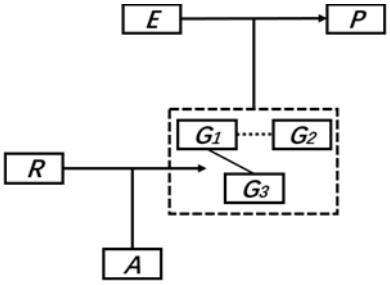


Figure 2. Rhetoric acting on the judgment of generalizations in reasoning with evidence

(Note: *E* is Evidence, *P* is probandum; *R* is Rhetoric, *A* is agreement; *G* is Generalization; dashed lines indicate decisive conflict, while diagonal lines indicate degree contest.)

5. Rhetoric and other methods of reasoning with evidence

At this point, we can undertake the task—"the rhetorical role of both arguments and stories, while interesting, has not been explored in the work on the hybrid theory". This task carries the implicit assumption that rhetoric is subordinate to both arguments and story. However, after getting rid of the psychological burden of narrative being the "only straw" of rhetoric in reasoning with evidence, and clarifying the unique theoretical framework, nature, types, position and effects of rhetoric, perhaps rhetoric can be regarded as a separate method of reasoning with evidence, and its connection with other methods of reasoning with evidence can be explored. This is also the third problem with the existing research on "rhetoric in reasoning with evidence".

By traversing the theoretical genealogy of argumentative method and narrative method, they can be refined into five forms of reasoning with different mechanisms: argumentation, narrative, matching, analogy and explanation.[9]Argumentation provides evidence for one's claims based on certain beliefs. Narrative connects events or states together based on causal relationships in the context of a case. Matching assesses whether a story aligns with general patterns of specific behavior about the world. Analogy draws upon similarities between a story and a given case to suggest that the events in the case could plausibly have occurred in the story, or to infer the existence of certain events based on their resemblance to others. Explanation offers an account of why a particular fact, which is accepted as true but not yet understood, has come to be. Within the context of their interactive relationships, rhetoric serves two functions: providing complementary reasons and reinforcing perspectives.

5.1 Rhetoric for complementary reasons

Rhetoric for complementary reasons are those which function not merely as argumentative

[9] Due to constraints of space, this will be discussed in detail in a separate paper.

discourse, but as specific grounds offered to persuade audience. The typical examples of this role are the argument of pragmatic and probabilistic within the New Rhetoric, taking the *Qi*'s case and a Dutch case as examples.

5.1.1 "Two, three, four": the persuasive force of quantity factor

In the *Qi*'s case, two girls reported the same teacher for rape one after another. But imagine if there were not just two girls reporting the same teacher, but five? Or ten? According to the balance rule, if the indicator of the audience's adherence of mind changes with the number of such reports against the same teacher, it indicates a correlation between the two. Clearly, quantity factor can influence an audience's adherence of mind; they serve as a factual ground, and the very existence of a quantitative phenomenon is enough to exert the influence. Such factor is not uncommon in judicial practice. For instance, when three drug addicts each report the same individual for selling them drugs[10], or when a taxi driver is involved in four consecutive collisions at the same location, each time demanding compensation.[11] No matter which other methods of reasoning with evidence is used, it cannot express the influence of the quantities of "two girls", "three addicts", and "four times" on the audience's adherence of mind, because the individuals involved are not eyewitnesses to each other's respective cases, but rather possess probative value only within their respective, individual cases.

Behind the quantity factor lies the logic of *probabilistic* in the New Rhetoric, which summarizes the laws of random events. When an occurrence happens with a frequency or involves a number of individuals that exceeds the norm, it can no longer be dismissed as a mere chance. There must be another reason, namely the cogency of the accusation (Perelman & Olbrechts-Tyteca 1969, p.255). The audience accepts that similar events have occurred, yet they do not understand why. In such a situation, an explanation that provides an account of the phenomenon in holistic will be persuasive to them. For instance, the taxi driver's involvement in four consecutive collisions at the same location and followed by a demand for compensation is no mere coincidence; rather, it is a "crash-for-cash" scheme orchestrated by the driver.

The audience's degree to adherence of the explanation of the non-accidental event increases exponentially with the increase of quantitative factors, but this effect operates by shifting the qualifiers

[10] Criminal Judgment of the First Intermediate People's Court of Beijing (2011) Yizhong, Criminal, First Instance, No. 3647.
[11] See "A Dialogue on the Theory and Practice of Criminal Standards of Proof", https://mp.weixin.qq.com/s/tsQ9RMHoaVXBurcCU3N-lw, last accessed: October 20, 2026.

within the generalization. Consequently, even if a hundred girls were to independently report the same teacher for rape, pushing the qualifiers toward an absolute state, each accusation would still remain defeasible.

The final judgment of a case must still be situated within the framework of "self-justification - argumentative comparison - audience persuading". A verdict cannot be reached based solely on quantitative factors; if reasonable doubt arises during the first two stages of this process, the defendant should be acquitted in accordance with the standard of proof. For example, the defendant in the drug trafficking case was ultimately acquitted because, apart from the lack of eyewitnesses, the absence of the defendant's fingerprints on the drugs, and the fact that no drugs were found at the defendant's possession (evidential gaps), the defendant revealed their respective grievances with three drug addicts.

5.1.2 Indignant Wagenaar and his colleagues: the argument of pragmatic

The argument of pragmatic within the New Rhetoric, which involves reasoning backward from consequences to assess the reasonableness of judgement to given action, just like probabilistic and argument of ridiculous, reflecting the "proof by contradiction" thinking. Within the framework of the IBE, the influence of this thinking is amplified. Wagenaar and his colleagues sharply criticized a case in which a Dutch father was found guilty by two successive levels of court:

"A father is accused of having sexually abused his daughter. Allegedly, this happened six years ago, when the girl was 15 years old. Now she is living with her boyfriend, to whom she finally confessed what had happened. The boyfriend urges her to go to the police. The father, however, denies the accusation, saying his daughter may be seeking revenge because he tried to stop her leaving the parental home. They had a terrible row about this and now his daughter fabricated this accusation to get back at him. The Dutch law of criminal procedure says that the statement by a single witness is not sufficient to convict. Corroborating evidence is required and was indeed offered by the prosecution. First there was a doctor's expert testimony that the girl was no longer a virgin. Next there was the father's admission that, in the relevant period, he sometimes had been alone in the house with his daughter."

Wagenaar and others point out that the two additional pieces of information "do not prove anything at all": the fact that the woman is no longer a virgin does not mean this state resulted from the alleged sexual assault; and while the defendant was indeed alone at home with her during the period in

question, what father does not live with his 15-year-old daughter? (Wagenaar et al. 1993, p.3)

The latter assessment employs a rhetorical technique known as the "reductio ad absurdum", the argument of ridiculous. This technique involves provisionally accepting a statement that contradicts the position one intends to defend, deriving consequences from it, and demonstrating that these consequences are incompatible with other, generally accepted premises; this, in turn, serves to establish the truth of the original proposition being defended (Perelman & Olbrechts-Tyteca 1969, p.207). While the fact that the defendant was alone at home with the victim during the period when she allegedly suffered sexual assault (at age 15) certainly establishes that the defendant had the chance to commit the crime, the guilty verdicts from both levels of the judiciary go significantly further—concluding that this fact demonstrates the defendant's intent to commit sexual assault, or at the very least, his harboring of improper motives—to the point of meeting the threshold for a criminal conviction. In their assessment, Wagenaar and his colleagues provisionally accept this underlying premise, only to then derive from it the conclusion that "a father being alone at home with his minor daughter is inherently malicious." Pointing out that such a conclusion is clearly incompatible with the generally accepted nature of the father-daughter relationship, they use this to argue that it is entirely normal for a father to be alone at home with his daughter during her minority—the very period in which she alleges the sexual assault took place.

However, viewed through the lens of the argument of pragmatic within the New Rhetoric, this paper may offer a way to step into the shoes of the Dutch District Court and the Courts of Appeal, exploring the reasoning behind their decisions to convict even when "the evidence had indeed been extremely thin". First, consider the consequences for a daughter who accuses her father of sexual assault: if she makes a false accusation but fails to prove it, she could face charges for filing a false accusation. If she makes a false accusation and succeeds, her father will end up in prison—but what does she gain? Perhaps the property left behind? Or the satisfaction of successfully taking revenge on her father for preventing her from running away from home? In this scenario, is there a disproportionate relationship between the goal, the means employed, and the consequences? Why did she choose to report her father's sexual assault to the police even though she knew she didn't have enough evidence (six years had passed and no third party was present)? Could it be that her account is true, and that she is seeking justice, regardless of the potential for failure or how society might judge

her chastity? Therefore, given that making a false accusation yields little benefit and carries significant risks, while making a truthful accusation entails a high likelihood of failure, along with the necessity of exposing one's own traumatic experiences, a daughter accusing her father of sexual assault inevitably leads to adverse consequences for the victim. Only when her account is true can such an accusation yield positive outcomes for the victim, including the opportunity to confront her traumatic past, find solace, prompt moral judgment, and initiate legal proceedings.

Second, if a judge were to acquit the father based on the evidence presented in this case, what kind of social impact would that have? Would it imply that all victims who were sexually assaulted as minors but only reported the crimes after reaching adulthood are effectively barred from seeking justice through the legal system? After all, such cases frequently involve situations where there is little evidence beyond the victim's own account and a significant lapse in time; moreover, it is a widely accepted social norm that it is reasonable for a father to spend time alone with his daughter.

Admittedly, the above represents merely one possible line of reasoning that the two Dutch courts might have followed, viewed here through the lens of the New Rhetoric. This does not alter this paper's assessment of the judgement: that the conviction based on the evidence available was erroneous. Nevertheless, when viewed through a pragmatic perspective, the convictions handed down by the Dutch courts may not be as "unsightly" as Wagenaar and others perceive them to be. In terms of both factual determination and broader social impact, the reasoning carries a certain persuasiveness. In addition, this case also involves the issue of "selective ignorance" mentioned earlier. Although the reason provided by the defendant for the victim's false accusation was "seeking revenge because he tried to stop her leaving the parental home. They had a terrible row about this", why was the daughter so determined to run away? Was she incited by her boyfriend, or was she seeking to escape her father's shadow? And why did the father so vehemently oppose his adult daughter's decision to live independently? Was it an attempt to protect her from being deceived by her boyfriend, or a means to maintain control over her? These are aspects that could be investigated further.

5.2 Rhetoric for reinforcing perspectives

Rhetoric for reinforcing perspectives refer to argumentative discourse that does not add new reasons to support a claim, but instead provides the audience with a special perspective on an existing reason, thereby influencing their adherence of mind.

In the argumentation of *Qi*'s case, the defense sought to undermine the victim's credibility by invoking the generalization G2: "inconsistencies in a minor's successive statements are suspicious". In response, the prosecution countered with the generalization G1: "it is *normal* for a minor to be initially afraid to admit to having been raped". The prosecution challenged the defeasible inference by pointing out that the validity of such an inference depends on specific conditions, namely, that the victim possesses sufficient mental maturity and is free from any apprehensions. However, this way of responding to an attack is akin to setting up a barricade; it merely alerts the audience to the fact that our side has managed to undercut the attack, yet the position remains relatively passive.

In this regard, to shift from a passive to an active stance and to help the audience truly grasp the immense courage required for a victim to overcome the psychological barriers stemming from rape, by adjusting the qualifiers used, the prosecution can develop a more favorable generalization G3: "It is *usual* for a minor to be initially afraid to admit to having been raped", initiating a degree contest between G1 and G3. Based on the agreement shared between the prosecution and the judge or jurors, select persuasive techniques, such as the argument of *reciprocity* and *inclusion* (Perelman & Olbrechts-Tyteca 1969, pp.222, 232-235), to structure argumentative discourse:

"Honorable Court, if we were the victims, could we state what happened to us to others without the slightest hesitation?(reciprocity) In real life, some adults who have been raped are afraid to report the crime or even feel ashamed to admit, let alone the victim, a 10-year-old girl.(inclusion)"

In this passage of persuasive argumentative discourse, rhetoric does not introduce new evidence or beliefs to the argument; instead, it offers the audience special perspectives to persuade them to accept the speaker's reasoning, such as "putting oneself in another's shoes" and "using a weightier case to clarify a lighter one".

6. Conclusion

Judicial adjudication unfolds through the verbal acts of the parties involved in litigation. Yet, precisely because such verbal acts are often taken for granted, one might overlook how rhetoric as argumentative discourse can shape an audience's adherence of factual claims. The presence of such rhetoric reaffirms the central role of human agency in judicial proceedings. Prosecutors and defense attorneys are not merely constructor of stories or organizers of evidence; they are, in fact, strategists who employ rhetoric to navigate generalizations whether these involve decisive conflicts or degree

contests—Just as defining the rules of chess does not automatically make one a skilled player; excellence in the game stems from a mastery of strategy and tactics (Prakken 1997, p.273). Judges or jurors are not merely a Bayesian calculator of the probative weight of evidence; rather, there exists a mind connection between the fact-finders and the litigants. At present, there is extensive discussion regarding the development of legal artificial intelligence through "functional simulation"[12] (Schank & Abelson 1977, p.1-2). Rhetoric, as a unique method of reasoning with evidence, may be one of the reasons why artificial intelligence cannot replace human reasoning due to its ability to evoke empathy, perspective shift, and heuristic of reasons among specific audiences.

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[12] "Functional simulation" refers to the use of artificial intelligence to emulate the cognitive structures and reasoning processes of human thought. This stands in contrast to "structural simulation," which attempts to reconstruct the neural network systems of the human brain from a biomimetic perspective.

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