

The Dialogical Force of Implicit Premises. Presumptions in Legal Enthymemes

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Abstract. In the logical and rhetorical tradition, enthymemes have often been described according to two criteria: their structure and the epistemic status of their premises. These two characteristics are strictly connected to each other, since the major premise of an enthymeme can be taken for granted because it is commonly considered as likely. However, what is the relationship between likeliness and the possibility of taking a proposition for granted? Why does a speaker decide to leave a premise unexpressed? These two questions can be addressed by considering the pragmatic and the rhetorical perspectives. The purpose of this work is to investigate legal enthymemes, inquiring into their peculiar defeasible nature which makes them context-relevant and audience oriented. We maintain that the act of hiding a proposition needed to make the inference correct transforms the syllogistic type of reasoning into a powerful rhetorical strategy for both the speaker and the hearer. We claim that enthymemes can be considered as instruments of persuasion grounded on presumptions. The choice of an implicit premise becomes, in this perspective, a strategy of selecting what a specific interlocutor can hold as more likely based on his knowledge or values. For this reason the notion of *kairos*, the opportunity and contextual effectiveness of a premise, becomes crucial. An implicit premise should be regarded not only as an element that the speaker takes for granted, but as a strategic instrument for shifting and increasing the burden of proof.

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In the logical and rhetorical tradition, enthymemes have often been described according to two criteria: their structure and the epistemic status of their premises (Hamilton 1874, p. 389). For Aristotle, rhetorical syllogisms are syllogisms having fewer premises than the ordinary ones (Aristotle 1991, 1357a); they are characterized by an implicit dimension, by a premise that is left unexpressed (Gough 1985). From an epistemic perspective, enthymemes are not grounded on premises absolutely true (Burnyeat 1994), but on probabilities and signs (Aristotle 1991, 1357a), namely commonly accepted propositions (Walton and Reed 2005, p. 363; Walker 1994, p. 47) that do not need to be true, but only likely (Braet 1999).

The purpose of this work is to investigate enthymemes, and in particular legal enthymemes, inquiring into their peculiar defeasible nature which makes them context-relevant and audience oriented. We maintain that the act of hiding a proposition needed to make the inference correct, transforms the syllogistic type of reasoning into a powerful rhetorical strategy for both the speaker and the hearer. We claim that the dialectical and persuasive force of enthymemes is grounded on presumptions—on what is likely, namely what usually happens or *should* be the case.

1 The “Province of Opinion” of Enthymemes: Dialectical and Rhetorical *Topoi*

The definition of enthymeme as a truncated syllogism, or a syllogism with a missing premise has dominated the view on the rhetorical syllogism since the earliest commentators (Hamilton 1874, p. 154). However, according to Aristotle, the essential feature which makes a syllogism an enthymeme is not its accident of having a missing premise (McBurney 1994, p. 184), or having premises “fewer often than those which make up the normal syllogism” (Aristotle 1991, 1357a), but its matter, as it is drawn from “the province of opinion” (Quincey 1893, p. 149). The crucial question is what Aristotle intends with “opinion”, as distinguished from dialectics.

1.1 The Quasi-logical Relation of Rhetorical Syllogisms

Aristotle (Aristotle 1991, 1357a) points out that the propositions forming the basis of enthymemes are mostly or usually true, because they are probabilities and signs. In particular, he defines probabilities as follows (ibid., 1357a):

A Probability is a thing that usually happens; not, however, as some definitions would suggest, anything whatever that usually happens, but only if it belongs to the class of the “contingent” or “variable.”

On the other hand, Signs can be divided into two categories: the fallible and the infallible kind. The infallible signs cannot be rebutted, while the defeasible ones can lead only to plausible conclusions. Infallible signs can be represented as antecedents in logical consequences, while fallible signs can be conceived as abductive reasoning, or

reasoning to the best explanation (Harman 1965), in which the sign is the consequent of several possible antecedents. In the first case, the conclusion is the only possible explanation of the sign; in the second case, the conclusion is only the best of several options (Aristotle 1991, 1357b).

We can notice how in Aristotle’s treatment of enthymemes particular emphasis is placed on the defeasible and tentative nature of this type of reasoning, which is grounded on “opinions”, including both explanations and generalizations regarding the usual course of affairs. The province of opinion, however, is commonly considered as the area of inquiry of argumentation or human reasoning, different from the necessary logical inferences. This type of reasoning has been described using argument schemes, or prototypical patterns of inference (Walton and Reed 2005; Walton, Reed, and Macagno 2008). If we consider enthymemes as simply defeasible reasoning, we risk overlooking a crucial distinction pointed out by Aristotle between dialectical and rhetorical reasoning.

1.2 Enthymematic and Dialectical Topoi

(Amossy 2002, p. 476) noticed how dialectical reasoning is materially different from rhetorical inferences. On her view, while general *topoi*, or *topoi koinoi*, are in the domain of dialectics and are grounded on universal logic-semantic patterns (such as the relationship between genus and species), the specific, rhetorical topoi “embrace all kinds of stereotypical phenomena designated today by such terms as *commonplaces*, *received ideas*, *stereotypes*, *clichés*.” If we start from this observation, we can see how the nature of the principle of inference is essentially different in dialectical and rhetorical arguments. Dialectical arguments, we maintain, are defeasible because a general and (mostly) necessary principle of inference (the *maxim*) is applied to premises that are only generally shared; in other words, necessary principles become defeasible when instantiated. For instance, the topic from definition, “What is predicated of the definition is also predicated of the definiendum and vice versa” (Stump 1988, p. 1059c), expresses the principle that “Definition is a predicate convertible with its subject signifying the essence” (Aristotle 1991, pp. I, 8). The topic from definition corresponds to the characteristics of the predicable, which is a logic-semantic relation. The necessary topical relation is, however, instantiated by definitions, which can be shared or controversial. For instance, the force of the argument “Bob killed his neighbour without malice aforethought; therefore he committed manslaughter” depends on the plausibility of the factual premise (Bob’s homicide) and the definition of manslaughter, which can be shared or not accepted by the interlocutor. The abstract material rule of inference from definition is not controversial; what is weak is the actual definition from which the conclusion proceeds.

Rhetorical syllogisms reflect a structure of reasoning that presents two defeasible points, both the “factual” premise and the maxim. For Aristotle (*ibid.*, 1357a 30-31), “there are few facts of the necessary type that can form the basis of rhetorical deductions.” On his view, “the propositions forming the basis of enthymemes, though some of them may be necessary, will in the main hold for the most part. Now the materials of enthymemes are probabilities and signs.” Therefore, rhetorical topoi include also commonplaces that are not based on semantics or logical relationships,

which are basically grounded on the very structure of language. Rhetorical topoi can be based on general principles reflecting what happens most of the time (Aristotle 1991, 1358a 26-27). Rhetorical arguments are, therefore, defeasible for two reasons: not only is the specific relation between properties defeasible, but also the abstract principle of inference. The structure of this type of reasoning can be analyzed by taking into consideration the legal notion corresponding to this type of defeasible reasoning grounded on the so-called “maxims of experience”: presumptive reasoning.

2 Presumptive Reasoning

The concept of presumption is used to describe a particular type of inference based on general accepted principles that represent how things usually happen. They are defeasible generalizations and hold as true until the contrary is proven (Rescher 1977, p. 26). Presumptions are forms of inference used in conditions of lack of knowledge. For instance, if something has happened in a certain place the previous day, the place can be searched for evidence because it is presumed not have changed meanwhile. Such inferences are therefore strategies to fill the gap of incomplete knowledge shifting to the other party the burden of providing the missing contrary information or data (Walton 2008). Their conclusion is recognized as refutable even though it has not been refuted at that point of the discussion (Hart 1961, p. 10). Presumptions are grounded on principles of inference that need to be shared and based on the ordinary course of events; in particular, the presumed fact needs to be more likely than not to flow from the proved fact supporting it (for the specific notion of probability of presumptions in law, see *Leary v. United States*, 395 U.S. 6, at 36, 1969).

Presumptions work to move the dialogue further when knowledge is lacking. In law, they correspond to “maxims of experience” (Giulliani 1961) or presumptions of fact, propositions representing the ordinary course of events, or rather what is likely or what should be the case (*ibid.*, p. 231). They shift the burden of producing evidence, so that the proposition can be rejected only by providing contrary arguments or positive facts leading to a contrary conclusion. If not rebutted, the speaker can consider it as tentatively proved, and move the dialogue further. For instance, who flees the crime scene when the police arrive is circumstantially presumed to be guilty of the crime. If the defendant does not provide contrary evidence or rebuts the presumption, this circumstantial evidence will be evaluated by the jury (together with all the other available evidence) in order to establish his guilt or innocence (Prakken and Sartor 2006). For this reason, ordinary presumptions (*praesumptio facti*) shift the burden of producing evidence (see Macagno and Walton 2012; Walton 2008). Rescher represented the structure of this type of inference as shown in table 1 (Rescher 2006, p. 33)

The *Rule* of presumption links the acceptability of a proposition P (for instance, the defendant is guilty) to a condition C (for instance, he fled the crime scene) until a specific default proviso D obtains (for instance, he proves that he was forced to leave the scene). If he is found to have fled the crime scene and no contrary evidence is provided, he can be provisionally and circumstantially considered to be guilty.

Presumptive reasoning can reflect the structure of defeasible inference of rhetor-

Premise 1:	P (the proposition representing the presumption) obtains whenever the condition C obtains unless and until the standard default proviso D (to the effect that countervailing evidence is at hand) obtains.
Premise 2:	Condition C obtains (Fact).
Premise 3:	Proviso D does not obtain (Exception).
Conclusion:	P obtains.

Table 1: Presumptive reasoning.

ical syllogisms. However, enthymemes are characterized by another fundamental feature, their implicit dimension. Their tacit premise plays a crucial strategic role in the process of persuasion.

3 The Implicit Dimension of Enthymemes: Missing Premises and Presumptive Reasoning

The fundamental characteristic of enthymemes is that they are grounded on the opinion. Their premises, more than absolutely true, need to be plausible, or rather likely. This characteristic was shown by Aristotle as essentially related to another fundamental feature, its implicit dimension. According to Aristotle (Aristotle 1991, 1357a 16–18), enthymematic premises belong to the realm of opinion because they are tacit, and vice versa, they can be taken for granted as they are shared by the interlocutors. However, how is it possible to leave a premise implicit, if it is impossible to know our interlocutor’s mind?

3.1 Enthymemes as Presumptive Reasoning

A possible answer for the problem of knowing the other’s mind can be found in the reasoning underlying the act of taking for granted a proposition. The speaker acts as if the hearers knew the proposition left unexpressed, treating it as if it were part of the interlocutors’ dark-side commitment store (Walton and Krabbe 1995). According to the leading pragmatic theories, he “believes” or “thinks” that the proposition is a commonly known one, or at least it is shared by the hearer (Soames 1982, p. 486; Horn and Ward 2006, p. xii; Atlas 2008; Lewis 1979; Kempson 1975). This internal process of “believing” or “thinking” can be represented from a reasoning perspective by analyzing it as a form of presumptive reasoning (Macagno 2012), namely a form of guessing based on the speaker’s incomplete knowledge of the other’s mind. The speaker cannot know the other’s mind; he can only advance a tentative and defeasible conclusion proceeding from what is usually the case (Strawson 1971, pp. 58–59; Kempson 1975, pp. 166–167). He acts on the grounds of general principles such as “Speakers belonging to a specific speech community usually know the meaning of the most important words” and draws specific conclusions on the interlocutor’s knowledge. This type of reasoning can be regarded as presumptive (Rescher 1977, p.

1; Freeman 2005, p. 346).

For instance, we can analyze the presumptive reasoning of one of the most controversial legal and political cases, Obama’s redefinition of “hostilities”. In order to avoid requesting the Congress’ authorization to continue the hostilities (*War Powers Resolution*, sec 5b, Public Law 93–148), the President advanced the following enthymeme in which the fundamental premise, the redefinition of “hostilities” was left unexpressed (*Obama Administration letter to Congress justifying Libya engagement*, June 15th, 2011, p. 25).

Implicit redefinition: “Hostilities”

The President is of the view that the current U.S. military operations in Libya are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of “hostilities” contemplated by the Resolution’s 60 day termination provision. [...] U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors.

The presumptive effect of presuming the interlocutors’ knowledge of the tacit premise (a redefinition, in this case) can be shown by reconstructing the reasoning as shown in table 2.

Accepted meaning	Hostilities: “overt act of warfare”
RULE	The audience should know (be committed to) the shared meaning of “hostilities” (P) whenever such a word is used with its commonly accepted meaning (C) (unless the interlocutor does not master language belongs to a different culture or community, etc.). (D)
FACT	The commonly accepted definition of “hostilities” is “overt act of warfare”. (C)
EXCEPTION	It is not the case that the audience does not know the language or belongs to different community of speakers (or culture). (non-D)
CONCLUSION	The audience should know that the definition of ‘hostilities’ is “presence of land troops and sustained fighting” (P).

Table 2: Reconstructing presumptive reasoning—definition of “hostilities”.

In this case, we can notice a conflict between the meaning that is and should be commonly accepted, and the one that cannot be shared, as newly stipulated. His logical unreasonableness, however, has an extremely powerful dialogical effect. The implicit move based on presumptive reasoning shifts the burden of proof, at least in

the sense that the other party has to make the implicit premise explicit, in order to request, eventually, supporting arguments to the other side. Indeed, in order to rebut the presumption, the interlocutors (in this case the Congress) have to prove that the definition is not the accepted one, which became extremely difficult, as there was no legal definition of “hostilities” in the act. The implicitness of the premise shifts onto the other party the burden of disproving a controversial premise. From this point of view, the implicit dimension of enthymemes constitutes the ground of its strategic uses. Also in this case, implicit premises are dialogically presumed to be shared, shifting the burden of proof onto the interlocutor, who needs to prove that the proposition left tacit is not shared or is false.

3.2 Enthymemes and Kairos: Tacit Premises and Their Context-dependency

The presumptions on which an enthymeme is based are not all at the same level (Giulliani 1961, p. 66–67). Their credibility (or rather acceptability) varies according to their nature, and, more importantly, according to the values of the interlocutors. Quintilian underscored the different levels of credibility as follows (Quintilian 1996, pp. V, 10-16):

With regard to credibility there are three degrees. First, the highest, based on what usually happens, as for instance the assumption that children are loved by their parents. Secondly, there is the highly probable, as for instance the assumption that a man in the enjoyment of good health will probably live till tomorrow. The third degree is found where there is nothing absolutely against an assumption, such as that a theft committed in a house was the work of one of the household.

Some presumptions shall be, or are usually, preferred over others, and who denies them carries the burden of proof (Giulliani 1961, p. 67). The strongest presumptions correspond to ethical norms (“If she is his mother, she loves her son;” “If he is an avaricious man, he neglects his oath;” “There is no one who does not wish his children to be free from injury, and happy” (Cicero 1988, pp. I, 29-30), which carry not only a burden of proof, but also a burden of criticism (Kauffeld 1998, p. 264). For this reason, depending on the hierarchies of values of the audience (Perelman and Olbrechts-Tyteca 1951), some premises will be more effective because they are more shared, more acceptable, and more difficult to rebut. The relationship between presumptions, enthymemes, values, and audience brings to light the “situational” or rather contextual dimension of rhetoric (Bitzer 1968), which is essentially related to the notion of *kairos*, i.e. opportunity.

Kairos represents an essential dimension of enthymeme, and one of the material elements distinguishing between dialectical and rhetorical argument. The relationship between the opportunity and the structure of the enthymeme is pointed out by Aristotle when he analyzes the use and the choice of the maxims (Aristotle 1991, 1394a 25–26): “In regard to the use of maxims, it will most readily be evident on what subjects, and on what occasions, and by whom it is appropriate that maxims

should be employed in speeches.” According to Aristotle, *kairos* is not simply limited to the pathetic or emotional aspect of rhetorical discourse, nor is it only a problem of timeliness. The crucial role that the audience plays in rhetoric is related to the very structure of the rhetorical syllogism and its persuasive power (*pithanòn*). According to Aristotle, the grounds of enthymemes are probabilities [*ex eikònta*] and signs; in particular, *eikòs* refers to what “is accustomed generally to take place, or which depends upon the opinion of men, or which contains some resemblance to these properties, whether it be false or true.” (Cicero 1988, pp. I, 46). Enthymemes are grounded on what is presumed to usually occur, on what is likely, on what is supposed to be true by a *specific* audience, and not on statistical probability (Viano 1955, pp. 280–286).

4 Leaving Premises Unexpressed: Relative Likelihood and Presumptive Force

As mentioned above, the force and acceptability of presumptions depends on values and culture. Moreover, when the speaker leaves a premise unexpressed he can presume that it is shared by his audience. From this point of view, the persuasiveness of an argument depends on the acceptability of its premises. The speaker can take for granted an unaccepted premise; however, even if his argument were dialectically strong, it would be considered as not persuasive. The force of enthymemes lies in this fundamental relation between what is left unexpressed and what is shared by the audience. Instead of identifying the precise structure of the implicit premise by stating the other syllogistic premise and the conclusion, the speaker can omit the conclusion, or simply suggest it. In this fashion, he faces the interlocutors with a trigger, instead of a path of reasoning. The hearers can complete the reasoning with the premise that is more reasonable for them, and come to the conclusion that better reflects their structure of presumptions.

The relationship between the choice of the “opportune” premises and the force (or persuasive effect) of enthymemes emerges when the problem of the relative likelihood of an argument arises. Sometimes leaving a premise unexpressed is not simply a choice aimed at not repeating what is commonly shared, but a strategy for increasing the force of the conclusion. As the President Obama’s example illustrates, a tacit premise may be exploited in order to leave implicit a controversial issue, shifting the burden of proof onto the other side. Moreover, the speaker can also combine two presumptive effects: the maxim of experience leading to a provisional conclusion, and the presumptive force of an implicit premise. To this purpose, the speaker can advance a much stronger conclusion than the one that could be borne out by the presumptive reasoning he is advancing. Or he can simply suggest the stronger conclusion to the interlocutors, so that he can avoid any commitment, leaving to the hearers the burden of reconstructing the viewpoint and more specifically the probative weight thereof. The effectiveness of this tactic depends on the boundary between presumption and prejudice, namely on the relationship between the hierarchies of presumptions that characterize a specific audience and their probative weight. The clearest case is the use of personal attacks in criminal trials. In these cases, an

allegation of prior bad conduct of a witness or the defendant can implicitly support conclusions on his credibility or guilt that are inadequate for the presumptive nature of the reasoning supporting them.

In U.S. criminal procedure, the presentation of evidence is governed by the *Federal Rules of Evidence*.¹ Rule 403 concerns the exclusion of evidence of the defendant’s past actions. Such evidence needs to be relevant, but even when admissible, it may be excluded if its probative value “is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” The purpose of making an uncertain or unknown fact more probable needs to be considered together with the risk of prejudice (Park, Leonard, and Goldberg 1998, p. 720). Concerning witness’ testimony, according to the *Federal Rules of Evidence* (rule 609) it is possible also to introduce evidence of the witness’s past convictions in order to impeach his character for truthfulness. However, the implicit attack consisting in presenting his prior bad acts needs to be distinguished from the explicit ones, in which the sign (his past action) is presented as directly proving the person’s bad character. (McCormick 1972, p. 104) underscored how “a slashing cross-examination may carry strong accusations of misconduct and bad character, which the witness’s denial will not remove from the jury’s mind.” For this reason, the risk of leading the jury to a too strong conclusion needs to be evaluated when admitting questions during cross-examination.

The presumptive relationship between past actions, character, and guilt can be represented through a complex pattern of defeasible reasoning, based on the presumptions that the character and habit of a person is presumed to continue as proved to be at a time past (Lawson 1885, p. 180), and that the habit of an individual being proved he is presumed to act in a particular case in accordance with that habit (ibid., p. 184; Park, Leonard, and Goldberg 1998, p. 158). We can represent the complex structure of this reasoning as shown in table 3.

Reasoning from SIGN Value judgment	- Agent a committed the negative actions A, B, C. - A, B, C are a sign that a has an unchangeable negative characteristic P. - Agent a has (is) P.
Reasoning from CAUSE TO EFFECT Prediction	- P is a cause of a’s choices for negative actions of the kind Q - Agent a is presumably inclined towards committing negative actions of the kind Q

Table 3: Reasoning from signs to predictions.

The syllogistic reconstruction of a character attack shows its inherent defeasibility, and the tentative nature of the conclusion that it can support. However, the effect of such reasoning can be greatly increased by leaving some of the premises unexpressed, and suggesting the conclusion instead of expressing it as tentative. The

¹The latest version of these rules can be found on the web at www.uscourts.gov/rules/newrules4.html.

speaker can introduce evidence of past crimes, which can trigger an enthymematic reasoning grounded on presumptions that can become prejudices. We can analyze three cases, in which the speaker, instead of providing the jury with a complete reasoning, advances only the factual premise, leaving up to the interlocutors to draw the most appropriate conclusion.

In *State v. Carter* (189 Conn. 631, 1983) the defendant, accused of burglary and sexual assault, testified his innocence. In order to attack his credibility, during the cross-examination the prosecution introduced evidence of prior crimes, among which a previous sexual assault. The character attack, however, became an actual reason supporting his guilt, based on his tendency to commit sexual crimes (189 Conn. 631, at 644, 1983):

We find, however, that we cannot justify the use of the very recent conviction of the defendant for the identical charge of sexual assault in the first degree of which he was also accused in this case. [...] It was, nevertheless, unreasonable for the trial court to attribute to the sexual assault conviction such great probative value on the issue of credibility as to outweigh the extraordinary prejudice which must have arisen once the jury learned that this defendant had been convicted of a similar sexual assault offense the month before. "Where multiple convictions of various kinds can be shown, strong reasons arise for excluding those which are for the same crime because of the inevitable pressure on lay jurors to believe that 'if he did it before he probably did so this time.'" *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967), cert. denied, 390 U.S. 1029, 88 S. Ct. 1421, 20 L. Ed. 2d 287 (1968). That pressure must have been extreme when the past conviction for a similar crime was so recent and for so infamous a crime as that involved here. *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967), cert. denied, 390 U.S. 1029, 88 S. Ct. 1421, 20 L. Ed. 2d 287 (1968). That pressure must have been extreme when the past conviction for a similar crime was so recent and for so infamous a crime as that involved here.

In this case, the prosecutor simply introduced evidence of past crimes, which triggered a conclusion not based on the aforementioned presumptive reasoning, but on prejudices. By letting the interlocutors reconstruct the reasoning with the presumptive premise that is more acceptable and reasonable for them, it is possible to increase the effectiveness of an argument.

The strategic force of implicitness depends on the specific audience that needs to reconstruct what is left unexpressed. In order to show this dimension of enthymemes, it is useful to take into consideration the O. J. Simpson trial, and in particular in the arguments against the witness for the prosecution (Detective Fuhrman) in the defence attorney's closing statement (Bayor 2004, p. 928):

We owe a debt of gratitude to this lady that ultimately and finally came forward. And she tells us that this man over the time of these interviews uses the "N" word 42 times is what she says. And so-called Fuhrman tapes. And you of course had an opportunity to listen to this man and

espouse this evil, this personification of evil. [...] Talking about women. Doesn't like them any better than he likes African Americans. They don't go out and initiate contact with some six foot five inch Nigger who has been in prison pumping weights. This is how he sees this world. That is this man's cynical view of the world. This is this man who is out there protecting and serving. That is Mark Fuhrman.

This argument was used by the defence to show that the detective (Mr. Fuhrman) that found the fundamental pieces of evidence incriminating the defendant, Mr. Simpson, was actually lying and could have likely planted the evidence in order to harm an Afro-American. The argument could be reconstructed as follows:

- Fuhrman stated that he never used racial epithets.
- In the last 10 years, Fuhrman was found to have used privately racial epithets 42 times (in some interviews aimed at writing a novel and a screenplay).
- Therefore 1) he is not credible as a witness and 2) he is a racist and hates Afro-American people.

The argument can be refuted by stating its premises. Using racial epithets is only a sign of racism (also considering the context of screenplay interviews), and the “N” words were used over a period of 10 years. Similarly, Fuhrman's false testimony concerning the use of racial epithets can be considered only a weak sign of his lack of credibility concerning matters related to his work. However, the enthymeme could be reconstructed with the premises “Who uses racial epithets is a racist” and “Who lies about not being a racist (or using racial epithets) should not be credible” (or more simply, “Racist should not be trusted”), which were extremely acceptable, particularly by a jury composed primarily of black people (10 out of 12 jurors were Afro-American; see also Schiller and Willwerth 1997, p. 220). The choice of leaving such premises implicit had an extremely powerful effect on the specific jury (Thagard 2003), noticeably increasing the weight of the probability that the defendant was not guilty (Dung and Thang 2010). The same evidence had a significantly different effect when presented in the civil trial before a mostly white jury.

5 Conclusion

Legal enthymemes can be strategic instruments for persuading the audience and shifting the burden of proof. Their crucial rhetorical and dialogical characteristic is their nature, which is presumptive for two reasons: 1. rhetorical syllogisms are grounded on generally accepted propositions, which are only presumptively true; 2. enthymemes are usually advanced by leaving a premise unexpressed, namely presumed to be generally known. Enthymemes proceed from what people usually accept to be likely, from presumptions, not from knowledge. The presumptive dimension of enthymemes can explain its implicitness. Rhetorical syllogisms are incomplete because one of its components is taken for granted: the speaker presumes that it is accepted by the interlocutor, and for this reason treats it as uncontroversial. This

implicit move shifts the burden of proof onto the hearer, who needs to reject the move and provide evidence that the presupposed proposition is in fact not acceptable or shared. The presumptive dimension of enthymemes is the cornerstone of *kairos*, which is the strategic aspect of rhetoric. The speaker can leave it up to the hearer to reconstruct the reasoning with the premise that is more acceptable to him. Enthymemes become triggers of specific conclusions that can have different forces depending on the community it is used in, and the shared hierarchy of presumptions and values.

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