

CONFLICT AND LEGITIMACY IN MODERN DEMOCRATIC SOCIETIES

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Abstract

The notion of “diplomatic attitude” in rhetoric as defined by Chaïm Perelman may be associated with sophistry. However, such a bias raises the more fundamental question of a possible link between diplomatic rhetoric and sophistic, or even sophistry. Could such a link be theorised to help understand international relations? In other words, does the notion of a “sophistic rhetoric” enable us to characterise the rhetorical shape of international relations today?

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International Relations, Rhetoric and Sophistic

In *L'Empire Rhétorique*, Chaïm Perelman notes that since the goal of an argumentation is not to deduce consequences from given premises, but to provoke or to increase the support of an audience for assumptions which are offered for approval, it never takes place in a vacuum. As a matter of fact, it presupposes a meeting of the minds between the speaker and its audience which results from the existence of shared rules and premises. He warns us against the dangers faced by whoever is involved in some kind of public argumentation: "Any deviation from these norms will be considered as illegal or improper, an insolence, an object of ridicule or scandal" (Perelman 1977, 23-24). Bearing this in mind, how can we define "international relations"? In other words, what is meant by "national"? The Oxford English Dictionary offers two definitions: national is either (1) what is relative to, or characteristic of, a nation or (2) what is owned, controlled or financially supported by the State. On the notion of State, Emile Durkheim wrote (Durkheim 1975, 172-173) that few words are so ill-defined: "Sometimes it is meant to designate society as a whole, sometimes only a part of that society." Even when it is considered in this last manner its extension may vary. "Among the various parts of society which are sometimes confounded with the State, one may find: the administrative branches which deliver public services, the institutions which are "the only one qualified to speak and act in the name of society" (i.e. the Parliament and the government), or even society as a whole, since "the moment societies reach a certain degree of complexity, they cannot act collectively anymore, but only through the intervention of the State." He adds: "The usefulness of such an organism is to introduce reflection in social life, and the role of reflection in social life is all the more considerable as the State is more developed. When there is a State, the various motivations which may pull the anonymous crowd of individuals in diverging directions would not suffice to determine a collective conscience; for this determination is the act which is peculiar to the State." However, Durkheim recognises that there may exist political societies without states. Their cohesion is ensured by tendencies and beliefs that are scattered in all the consciences and which move them "obscurely."

This leads us to the second definition of the adjective "national." The same standard dictionary we have already referred to offers the following definition of "nation": "a large aggregate of people united by a common descent, culture, or language, inhabiting a particular state or territory, for example the North American Indian people or confederation of people." To add to the complexity of the definition of what is national, one must not forget the way in which it can be combined with the notion of State. Durkheim notes that there are cases when large groups of men "which represent a unity" do not constitute a political society (i.e. a group that is not included in any other group while it may be composed of various sub-groups). He proposes to call *nationality* a group thus defined "by a community of civilisation," whether it corresponds to a former state, which has not given up the hope to reconstitute itself as a state or to a state at the stage of genesis. He proposes to restrict the notion of nation to the case where, "as is the case for France, the same group is both State and nationality" (Durkheim 1975, 179-180), i.e. what is commonly called a nation-state.

What all these various definitions of the national have in common is precisely that they define the very conditions, which ensure the contact of minds required for an argumentation to develop successfully. Consequently, when dealing with the rhetorical shape of international relations, one cannot avoid running the risk of transgressing the very rules of rhetoric which we are trying to describe. This risk arises each time the rules and premises, which define the conditions for the meeting of minds in the various "nations," considered are not compatible. Whether or not one's behaviour is then considered as "illegal or improper, an insolence, an object of ridicule or scandal," we may conclude that the rhetorical shape of international relations is characterised by the multiplication of the opportunity for conflicts which, developing from failures of argumentation, will naturally tend to degenerate into violence.

When confronted with such a problem, it seems natural enough to turn to treaties of rhetoric for a solution. Looking through the very detailed index of Perelman and Olbrechts-Tyteca's major opus (1958), one can only be struck by the limited attention devoted explicitly to the issue of international rhetoric, with the exception of two entries devoted to the words "diplomat" and "diplomatic." The first occurrence relates to the description of processes allowing to avoid incompatibility in the rules of argumentation. Such cases confront us with painful choices between conflicting values implying a share of compromise and sacrifice. "Given that such incompatibilities are not formal but exist only with respect to specific situations, one understands that three attitudes may be adopted to deal with the problems which this confrontation of rules and situations may address to the theoretician and to the man of action." Perelman and Olbrechts-Tyteca then distinguish three attitudes which characterise different ways of "conducting one's existence" (1958, 265). He who emulates the attitude of theoreticians in the way he conducts his life, and tries to consider "in advance all the possible difficulties and all the problems that may arise in the most diverse circumstances that one may imagine as the result of the application of rules to which one gives his adhesion," will be called "logical man" – "in the sense in which people say that Frenchmen are logical, and that Englishmen are practical and realistic." To this attitude, one may oppose that of the "practical man," who tries to solve the problem to the extent that he is actually confronted to it: "It is usually the attitude of the judge who, knowing that his decisions constitute precedents, tries to limit their scope as much as he can to spell them out without trespassing in their grounds what is necessary to justify his decisions, without extending his interpretative formulations to situations which complexity could get out of hand" (p. 266). The third attitude, which he calls the "diplomatic attitude" (as in "diplomatic sickness"), is that in which one avoids dealing directly with the incompatibility of different systems of rules, "inventing" processes which allow to avoid the manifestation of incompatibilities or to postpone the decisions to be taken at a more timely occasion" (p. 266).

We may note that in rhetoric, the notion of "diplomatic attitude" as defined above may be associated with the notion of sophism as it developed in ancient Greece for at least four reasons.

1. Since diplomatic rhetoric is used between states, it takes place between foreigners. Sophists in Athens were foreigners (Gorgias came from Syracuse, Protagoras from Abdera, Antiphon from Thurion, etc...);

2. The diplomatic attitude is associated with negative connotations such as hypocrisy (Perelman, 1958, 266) or deceit (Perelman 1958 , 300);

3. The notion of “timely occasion” directly refers to the notion of “Kairos,” which is central to the technique of the sophists;

4. Finally, the very criterion which is used to oppose the diplomatic attitude from the other rhetorical attitudes, i.e. “the way of conducting one’s life,” is exactly the criterion which allows distinguishing a sophistic rhetoric from a non-sophistic rhetoric, according to Aristotle (Aristotle 2003, 1355b).

This could lead us to address the two following questions: to what extent can the link between diplomatic rhetoric and sophistic be generalised to all international relations? To what extent does the notion of sophistic rhetoric enable us to characterise “the rhetorical shape of international relations”?

Both questions in turn imply that we determine the extent to which it is possible to characterise the “shape” of sophistic rhetoric as opposed to non-sophistic rhetoric. In other words, to which extent can they be formally differentiated?

A “French” Approach

The space required to deal comprehensively with the potential complexities of the term “international relations” and the limits imposed on the present article engenders a form of “incompatibility.” Faced with this incompatibility, we have three options. Let us consider them successively. The *diplomatic attitude* would mean artfully avoiding the problems raised—not an option for an academic review. A *logical attitude* would be much too onerous, given the infinite number of combinations of definitions associated with the terms “national” and “international.” This leaves us with the choice of a *practical attitude*, i.e. limiting our analysis to a specific, manageable aspect of the question.

For practical reasons, let us consider the question from the point of view of a single nation –France. To characterise a French approach to the study of “international relations,” we may rely on what Durkheim tells us of the way in which the French point of view conflates the concept of nationality and of state, yielding what is commonly known as a “nation-state,” and on what Perelman tells us of way in which Frenchmen are associated with a preference for a *logical attitude* (as opposed, for instance, to the practical and realistic attitude which is supposed to characterise the English).

The choice of a French point of view will seem less arbitrary if we say that the word international is a neologism which was invented by a Frenchman. And this choice might seem less parochial if we add that this Frenchman’s name was Jeremy Bentham, made honorary citizen of France in 1792; that the word “international” first appeared in a book first published in England; and that its translator Etienne Dumont was Swiss. The choice of France will seem less illegitimately self-serving if we add that most of Bentham’s books appeared in France and in French (translated by the same Etienne Dumont), sometimes decades before they were published in England.

Bentham’s neologism -“international”- also allows us to focus on the word’s link to modern democratic societies. As early as 1788, “Bentham turned his attention to events in France. In an open letter written, in French, to Mirabeau, “Bentham made it clear that as far as Britain was concerned, he was still content with the

unreformed constitution while he was certain that the state of France called for a radical reform and that only equal representation could secure freedom of the press, the control of executive power of arrest, a fair system of taxation and a proper subordination of the armed force to civil authorities. But he was equally convinced at this time that in England, all these elements of good government were firmly established and secured" (Hart 1982, 67). His optimism regarding the English system changed when he "came indeed in view governments, the ruling few," as potential criminals perennially tempted to pursue their personal interests at the expense of the public. This was the standing conflict between the sinister interest of the ruling few and the interest of the subject many." This lead Bentham to claim "that the appropriate form of control in constitutional law was to place the power of appointment and dismissal of government in the hands of the people" (Hart 1982, 68).

The link between the appearance of the word international and the issue of conflicts in modern democracies may appear even more essential if we add that, having become radically critical of the "vices of the unreformed British constitution" Bentham turned to the United States. He did so with such passion that not only did he give it as an example to be followed (except for what it had kept from its colonial past, i.e. slavery and the adoption of the system of common law): he also went as far as writing to President Madison in 1811, "offering him his services as codifier" (Hart 1982, 76). In 1817, "he published a circular to all the governors of all States in the Union, and finally a vast collection of eight letters addressed to the citizens if the American United States" (Hart 1982, 77). In 1830, Bentham, then eighty-two, wrote to President Jackson to express his intense admiration of his inaugural message to Congress." He once more proposed to replace the "utter inaptitude of common law" with a codification system.

One might wonder whether Bentham's books, his open letter to Mirabeau, his personal letters to Madison and Jackson belong to the rhetoric of international relations. The same question could be asked about President Jackson's Inaugural address to Congress. Facing these questions, we are still left with the fact that there are as many ways of describing "the rhetorical shape of international relations" as there are criteria to define what is rhetorical on the one hand and what is international on the other hand. For instance, on this last point, it may be worthwhile to note that to the extent that Jackson is addressing representatives of all American states, it is "international" according to a common American usage of the word. Given the fact that Bentham considered himself as a legitimate addressee of this speech, the question remains of knowing whether it could be considered international in a more general sense, and especially in the sense that we could say it of President Bush's "State of the Union" speech, broadcast "live" around the planet. This hints at the fact that the definition of what is international seem to have changed quite radically since 1789, when Bentham first published his *Introduction to the Principle of Morals and Legislation* where the first occurrence of his most successful neologism can be found .

Before turning to the role of history, it might be of interest to note that Bentham, the inventor of the word "international," was also the author of a book entitled *The Book of Fallacies* in English, and *Sophismes Politiques* in French. This seems to give some support to the proposition that sophism be considered as characteristic of international relations. This leaves us with the question of knowing to which ex-

tent the notion of sophistic rhetoric can characterise the rhetorical shape of international relations.

According to Aristotle's definition of rhetoric, the notion of rhetorical shape can be defined at two levels: argumentation itself and rhetorical genre, i.e. the conditions determining the "meeting of the minds" as they are defined by Chaim Perelman.

(1) At the level of the rhetorical arguments themselves, Aristotle tells us that there is no difference between a sophistic and a non-sophistic argumentation. Hence rhetorical shapes cannot be discriminated at this level.

(2) At the level of the rhetorical genre, we may note that Aristotle does not deal with what would be the equivalent of an "international rhetoric" in his "Rhetoric," as he limits the scope of his analysis to speeches delivered within the limits of the city (Polis): either in front a tribunal (juridical rhetoric) or in front of the "Boule" (deliberative rhetoric) or the people gathered in the Agora (epidictic rhetoric).

However, taking into account the various ways in which Aristotle addresses the issue of sophism, it would seem possible to distinguish sophistic from non-sophistic rhetoric. The rhetorical action will be considered as non-sophistic if the rules and premises which constitute the rhetorical genre under which argumentations take place are considered by the rhetorician as having foundations which do not depend on the success or the failure of the rhetorical action itself. In the case of the rhetorical genre defined by Aristotle, it can be assumed that this condition is reached by the fact of submitting oneself to the conditions which determine the "natural" order of the city (Aristotle 1993) – conditions which the rhetorician reinforces by the very fact of complying with them.

On the contrary, if the rules and premises which constitute the rhetorical genre are considered merely as conditions for the success of a given rhetorical action, their value relying therefore entirely on the result of the interaction, the rhetorical action can be said to be sophistic. What characterises the attitude of the sophist is that his respect for the rules and premises that govern rhetorical genres is only determined by the desire to succeed and uninhibited by the notion that the rules and premises of a rhetorical genre are supposed to be free of incompatibilities.

Going back to Perelman's distinction of the three attitudes which can be adopted in front of incompatibilities, we can say that for Aristotle only two of them can be said to be non sophistic. The first one is the logical attitude that is described and analysed in the various treaties which constitute the *Organon*, of which the "Sophistic Refutations" constitute the last part, but obviously not the least for our purpose. The second one is the pragmatic attitude which is associated with the notion of prudence (*phronesis*). It is dealt with in the part of his work devoted to ethics.

Prudence

We may note that while in certain circumstances (that of dialectic dialogue as defined by Aristotle in the *Topics*), the logical attitude allows to attribute a "shape" to sophistic rhetoric, the ethical criterion does not.

Prudence, or practical wisdom, is not defined as some stable reference to which men choose to conform or not. On the contrary, it is the man, by his very choices, who manifests his capacity to make good choices. From that point of view, in matters of practical choices, one could say that for Aristotle as for the sophist, it is man

himself that is the measure of all things. This is why he advises us to look for prudence by looking for the prudent. "One way of grasping the nature of prudence is to characterise who are the persons which we call prudent ... that is to say able to deliberate correctly on what is good and advantageous for himself, not on a limited point ... but in a general manner in such way that, for instance, things may lead to a happy life" (Aristotle 1965, VI-V).

The question remains of what makes prudence possible, or rather – since the prudent man is the guarantor of prudence – how one becomes a prudent man. Unlike the sophists, for whom all men are equally the measure of all things, Aristotle states clearly that all men are not equally capable of becoming prudent. To begin with, a *prudent man* is born good-natured. But this alone is not sufficient. A good education is also required, and, above all, enough experience in a favourable context. Exercising choice in a suitably well-governed family or city enables a man to learn how to make good choices. For prudence to prosper, it is essential that *prudent men* be in charge of families and cities. This is probably why Aristotle described Pericles as the quintessential *prudent man*.

A kind of circle establishes itself between the prudent man and the city, each one requiring the existence of the other. But this circle starts with the city: "Prudence presupposes the city, thus it does not allow by itself to build it, even if it allows a well-constituted state to last thanks to the good sense of its Leaders" (Weil 1970, 9-43).

Thucydides

Two difficulties remain to be resolved in order to deal with the relationship between sophism and international relations (so much as we agree, for the time being, to assimilate the City with a nation-state, as it is currently done each time Athens is described as the origin and the model of modern democracies (Cassin 2004): one relative to relations internal to the city, the other one relative to rhetoric which develop outside the city.

As concerns internal relations, we are left without a formal phenomenological criterion of what differentiates a sophistic from a non-sophistic rhetoric. Indeed, if most famous sophists were foreigners (and as such, they could not be considered *phronimos* in the Aristotelian meaning of the word), Aristotle's target is not limited to them, it encompasses also their pupils.

As concerns external relations, we are left without guidance, as Aristotle does not deal with them at all. A logical way, or should we say, a traditional way to try to extend our enquiry towards the issue of external relations would be to direct our attention towards the work of Thucydides, whom modern textbooks of international relations regularly describe as one of the major and most venerable sources of their discipline in general, and of the realist school in particular (Sur 2004, Batistella 2003). The main reason for turning our attention towards Thucydides is that speeches play a central role in his description of the development of the Peloponnesian wars (Thucydides 1966, I,XXII). To enquire about the link between sophism and the "rhetorical shape of international relations," it is logical to turn to the links between Thucydides and sophism. Thucydides can be associated with the sophists either because he is known to have followed the lessons of Antiphon in matters of rhetoric, or because the speeches were not reported according to what

actually was said: instead, they were reported according to what he felt was timely for a speaker to say given the circumstances. He thus behaved in the manner of a sophist, as a logographer, someone who produces models of speeches. However Thucydides himself criticises the logographers who, “more to charm the ears rather than to serve the truth, gather facts that are impossible to verify rigorously” (Thucydides 1966, I, XXI).

These statements may appear less contradictory if we take into account the deep transformation undergone by the notion of sophism after the death of Thucydides (460-399 BC) in the writings of Plato (427-347 BC), and above all Aristotle (384-322 BC). If the former, while rejecting rhetoric, never stopped debating with the sophists, the latter, while accepting to develop rhetoric as a technique, rejected the very idea of discussing with sophists. According to Michel Narcy, the strategy of Aristotle with respect to the sophist consists in establishing a strict distinction between those who, “victim of some *aporia*,” may nevertheless be persuaded by argumentation, and those who “speak for the pleasure of speaking” and are so insensitive to the value of arguments (even those pointing to manifest self-contradiction) that they destroy the very power of discourse, and consequently require that constraint be imposed on them (Narcy 1986). We could say, referring to what Perelman tells us about the attitudes that one may take in front of incompatibilities, that Aristotle completely refuses the diplomatic attitude which precisely consists in providing the means for a high degree of misunderstanding to be tolerated.

This leaves us with two directions of inquiry. The first one consists in analysing how the speeches reported by Thucydides deal with the issue of the incompatibilities which may exist between the rules, and premises which govern rhetoric in the various cities participating in the debates. The second one consists in turning one’s attention to the very fact that the meaning of the words we use to describe things, such as sophism and sophistic, may change through time under the effect of some form of social constraint.

On the first point, it may be of some interest to note that “there is one topic, however, consistently and constantly underplayed by Thucydides, which raises the question whether his failure to fully treat it does not seriously distort his work. I refer, of course to the matter of Athenian relations with Persia. There is not a word about the peace negotiation in the Pentekontaetia; the abortive embassy of 425/4 is mentioned (4.50.3), but there is no word of a peace treaty being subsequently made with King Darius. “... It is a scandal. ... the matter should have been described. If one asks why Thucydides has so underplayed Persia, there is no obvious answer” (Cawkwell 1997, 15-16). Maybe it would be possible to argue that this question is intimately related to the issue of the rhetorical shape of international relations, and especially to the way in which it requires that two different types of situations be considered, those in which it can be said that a superior system of rules and premises exist which is shared by all the parties considered, and those in which such a system does not exist. In the first case, rhetoric does not have to be dominated by the “diplomatic attitude,” given that the rules and premises which characterise each “nation” can be considered as being themselves submitted, without incompatibility, to a system of common values and presuppositions which define and characterise what we can call an “international order.” This “international order” may result either from the imperial domination of one nation on the others (such as the one Athens wanted to impose at times on Greek cities or as the one

Rome imposed on the world under the form of the “*Pax Romana*”), or from the existence of a common civilisation based on shared language and religion (*panhellenic civilisation or Koine*). Such seems to be the point of view of Nicholas Whyte in *Individual and Conflict in Greek Ethics* when he writes:

In Thucydides’s History of Peloponnesian War, too, we encounter appeals to norms and considerations broader than those of the polis ... Indeed, it could hardly be otherwise, if cities come into conflict and if there is to be an expectation of an orderly way of settling matters. Thucydides, as well as the people whom he portrays, are usually cynical about the effectiveness of these inter-city standards, that is to say, about whether or not people will actually adhere to them very much. However, that is largely a different issue from the question whether the standards are deemed to exist, that is to be there to be appealed to, on the chance that the hearer might find them to have some weight. Everyone is fully aware that cities generally try to act in their own interest, and that a city’s own norms will have this tendency. That does not, however, gainsay the fact that standards more general than those of a particular polis are often referred to and invoked in defending a claim or offering a justification (White 2004, 139-141).

The existence of standards common to the Greek cities, even in a context of violent conflict, finds support in the difference noted above between the way in which Thucydides reports conflicts between Greek cities and the relationships between the Greeks and the Persians. By downplaying or ignoring the part played by Persians in the war to the point of appearing “scandalous” to a modern historian, Thucydides shows that he submits his own description of the Peloponnesian war to the rules and premises which define the Greek Community of his time.

But what may be even more important for our inquiry is the fact that the status of the very words which allow to define the notion of “rhetorical shape” are liable to very radical changes. Thus Aristotle’s condemnation of sophism may be considered as introducing a radical change in the ways of describing the “shape” of rhetoric. Henceforth the sophist is to be excluded from the conditions which determine the meeting of minds required for legitimate rhetorical interaction to take place. We may note that this does not mean that sophism and sophists do not exist anymore, but only that the very words which allow naming them carry with them the condemnation of all the speakers and the arguments to which they are applied.

This remark is all the more important because it could be said that the emergence of modern democracies has been accompanied, at least in Europe, by a condemnation of rhetoric and rhetoricians quite similar to the condemnation of sophism and sophistic by Aristotle. Ironically, it was to part with the Aristotelian tradition, which was dominant then, that the theoretician of the modern state had to apply the same treatment to rhetoric as Aristotle had applied to sophism and sophistic.

This can be seen through the examples of Thomas Hobbes, the founder of the modern social contract theory of sovereignty, and of Bentham, one of the founders of modern democratic legal theory and the inventor of the word international.

Quentin Skinner has described how Thomas Hobbes, whose first publication had been a translation of Thucydides History of the Peloponnesian Wars, had then parted with the humanistic tradition in which he had been raised, rejecting rheto-

ric under the influence of Descartes through the intermediation of Mersenne. For him, science was to be substituted to rhetoric as the foundation of a state that would be able to escape the danger of civil war (Skinner 1966).

The fact that Jeremy Bentham follows the example of Aristotle in his fight against fallacies does not prevent him from quite radically condemning rhetoric. For example, at the end of the first paragraph of *An Introduction to the Principles of Morals and Legislation* he writes: "But enough of metaphor and declamation: it is not by such means that moral science is to be improved" (Bentham 1970). His fight against rhetoric is founded on an elaborate method of logic and theory of language, the theory of fictions, which tends to strictly separate rhetoric from dialectic in a way that seems to accomplish the program established by Pierre Ramus in his work directed against the classical scholastic teaching in 1555 (Ramus 1964). This expresses itself in the development of distinctions and in the invention of neologisms, of which the word international is one of the best examples.

That there is an intimate relationship between the rejection of rhetoric and the origin of modern democracies can be illustrated additionally by the fact that Descartes will be one of the three historical figures that will be proposed for the Mausoleum devoted to the national glories to be established in Saint Genevieve Church during the French Revolution (Azouvi 2003, 129)

The rejection of rhetoric does not mean that rhetoric disappears *de facto* (it is in the nature of man to speak, and in the nature of rhetorician to analyse any speech in terms of rhetoric), but only that it is rejected *de jure* or, to be more precise, that it is limited and subordinated to the rules and premises provided by scientific language in the realm of political science and legislation.

Looking at the rhetorical shape of international relations from a French (i.e. Benthamian) perspective, we are confronted with a paradoxical situation. Just when the notion of international emerges, the notion of rhetoric is required to disappear from the official description of the rules which govern legal democracies.

As we have noted above, we are choosing to restrict our approach to the French point of view, which is akin to that of Bentham, who wrote to Dumont: "God Almighty predestined me to be the *âme damnée* of France" (Hart 1982, 76). Bentham's invention of the word international implies the possibility of opposing clearly the internal and the external lives of a nation. Our assumption is that a preliminary understanding is needed of the way in which the prohibition of the notion of rhetoric was established and evolved in the internal institutional life of modern democratic nations. Only then does it become possible to define the categories under which relations between nations are supposed to be described. The proposed argument summarises an argument fully developed in former writings (Laufer et al 1990; Laufer 1986, 1993).

Modern Democratic Societies as Systems of Conflict Resolution

We shall define modern democratic societies as those which foundations were defined with reference to the recognition of the basic tenets of the declaration of human rights such as they have been expressed historically during the French and the American revolutions. For our purpose, it will be enough to state that, by definition, men are considered free and equal.

The coexistence of free and equal individuals cannot avoid to give rise to conflicts. Hence modern democratic societies, to the extent that they require peaceful coexistence between free and equal people, can be defined as a system of conflict resolution. Such is the role of the notion of sovereign state.

A bureaucratic organisation, be it public or private, can be represented by a situation where a large number of people (say ten thousand) address an even larger number of people (say ten million). The hypothesis of freedom of expression implies that anyone may address questions to any other individual.

The potential number of interactions between all the individuals involved in the situation under scrutiny turns out to be more than 100 billions. If each potential interaction gave rise to a conflict, let alone a simple objection, we can assume that the activity of the organisation would stop immediately, because the cost (in time and in money) of solving these conflicts would be too high to allow any profit to be made or any taxation rate to cover the expenses of the state. Considered from this point of view, the very fact that collective action does take place must appear as some kind of “miracle” (or at least a very unlikely event), unless very stringent constraints be imposed on the freedom of action (and of enquiry) of those who are involved in it. Let us consider what might be these conditions.

We shall propose that the first condition for collective action to take place is that in most interactions (say for instance 99% of them), no conflict takes place – not even rising an objection. We may note that this supposes the existence of an *implicit system of shared values and representations* which allow people to adjust immediately to each other without developing a conscious process of adjustment. However, even if we assume that this first condition is fulfilled, we are still left with more than one billion objections, which is probably more than enough to threaten the development of any collective action. New conditions are required to which we now turn our attention.

For any cooperative action to take place, it is necessary that in most of the cases (say 99% of the cases), the interactions be very short (i.e. not too costly), reduced to an exchange of the type: “Why – because,” the answer being readily accepted. This implies that the answer must be recognised immediately by the person who objected as a correct answer. For this to happen, it is necessary (1) that this answer be already present in the mind of the people to which it is addressed (we could say that it belongs to their ideology), (2) that the answer be recognised immediately as fitting the situation under scrutiny, and (3) that this be true for millions of people in millions of situations.

For these conditions to be fulfilled it is necessary to hypothesise the existence of a *very simple system of shared symbols* which are accepted by most members of the given society as providing satisfactory description of most of the actions which are likely to be the source of conflicts or objections. This system of shared symbol which, by definition, constitutes an important part of the “ideology” of the society under scrutiny, will be considered as constituting its *system of legitimacy*. The *system of legitimacy* thus defined constitutes a central element of a *normative phenomenology of common sense* of the society considered as it corresponds to the way in which things should appear to any person belonging to it. It constitutes a central element of the *explicit culture* of the country considered.

From an epistemological point of view, it is interesting to note that the value of this theory does not lie so much in the fact that it is true, i.e. that it gives an accu-

rate representation of reality, but in the fact that it is necessary for fruitful social interactions to take place. The importance of such a theory for modern democratic societies is such that it is made compulsory through the establishment of legal institutions. This is formally expressed through an “irrefragable presumption” which states that “ignorance of the law is no excuse.” Thus is enforced the link between theory and empirical facts. The system of legitimacy expresses itself in social settings under the form of *performative statements* (i.e. statements the truth value of which depends on the degree to which they are considered such). The legal rule may be the best example of this as its acceptance is compulsory (Austin 1962).

System of Legitimacy and Max Weber’s Types of Legitimate Authority

We are left with the task of finding the systems of shared symbols that characterise modern, democratic societies. In order to do so, we shall turn our attention toward to the way in which Max Weber defines three types of legitimate authority: charismatic authority, traditional authority, and legal-rational authority (Weber 1968, 212-254). We shall propose that this list constitutes the theory we are looking for. To keep the argument short, we shall state it in a somewhat axiomatic style. We assume that a well-formed system of legitimacy comprises a cosmos on which a dichotomy is defined between the locus of legitimate authority and the locus of application of legitimate authority, a dichotomy which can only be observed through special spectacles. It then becomes possible to say that:

- *Charismatic authority* corresponds to a *cosmos* defined by a *dichotomy* between *the sacred*, as seen through *the spectacles* of faith and *the profane*, the profane being submitted to the sacred.
- *Traditional authority* corresponds to a *cosmos* defined by a *dichotomy* between *culture*, as seen through *the spectacles of respect*, and *nature*, nature being submitted to (traditional) culture.
- *Legal-rational authority* corresponds to a *cosmos* defined by a *dichotomy* between *nature* as seen through *the spectacles of science*, and *culture*, culture being submitted to nature.

It is possible to see that with two dichotomies (sacred/profane and nature/culture), one can only define three systems of legitimacy, as the submission of the sacred to the profane cannot in anyway be made legitimate (by definition).

The French Revolution can be analysed, from the point of view of the notion of system of legitimacy, as the substitution of the legal-rational system to the charismatic and traditional system which characterised the old regime. As we have seen above, this system is founded on the way science allows to define the difference between nature and culture. Epistemology is therefore a central element of this system. We may note that the rejection of sophism and rhetoric in the institutions of French democracy is directly linked to the role philosophy plays in the foundation of its legitimacy.

The system of legitimacy is made effective through the existence of a legal system which is derived from it, and remains directly subordinated to it. Thus, in the in French legal system, the division between a private and a public sectors can be

associated with the submission of the private sector to the “natural” laws of political economy (such as defined by Jean-Baptiste Say), while the public sector is given the task of discovering the laws of nature (through the legislative body), of promulgating them (through government action), and of controlling them (through the judiciary). We may note that in this way, the private sector is rational because it is legal, while the public sector is legal because it is rational. The public sector additionally comprises foreign affairs and the army, central to the issue of international relations: their role it is to warranty peace and security within national borders. In addition, public administration of transportation is required for market mechanisms to be efficient.

The history of the limit between the public and the private sector, i.e. the history of *the criterion of administrative law*, will provide us with a compulsory history of French institutions. They comprise three periods:

- from 1800 to 1880-1900 is the reign of the *public power criterion*, where the legitimacy of action relies on its *origin* (the legal status of the actor);
- from 1880-1900 to 1945-1960 is the reign of the *public service criterion*, where the legitimacy of action relies on its *finality* (the function fulfilled by the actor);
- since 1945-1960, textbooks of law tell us that we are witnessing *a crisis of the criterion*. Henceforth the legitimacy of action relies on the *methods of power* (i.e. methods which provide the acceptability of the action as such).

Accordingly, modern democracy in this third period is described (by law, i.e. in a compulsory manner) as undergoing a crisis of legitimacy. It can be argued that this corresponds to a crisis of the very principle of sovereignty, which expresses itself by the existence of a well-defined system of legal rules in internal affairs. To understand the way in which this expresses itself in the realm of international relations, we shall turn to the history of the epistemological paradigms which are associated with the history of the legal rule we have just described. We will consider on the one hand, the status they attribute to rhetoric, and on the other hand, the way in which they allow to define the nation-states as a closed systems, i.e. autonomous actors of international life.

Correspondence between Epistemological Paradigms and the Definition of International Relations

Let us define an action (phenomenologically) as *a change in appearances, inasmuch as it refers to a cause*. There are logically only three manners of legitimising an action thus defined. These three manners correspond to the three periods of the history of legal rules we have described above. At each stage, we shall give a short summary of the status rhetoric and the category describing the limits of the nation-state in the epistemology considered. We shall then deduce some characteristics of the rhetorical shape of international relations.

First Manner: If “the Cause” Is Legitimate, the Action Is Legitimate. This corresponds to an epistemology in which nature is strictly separated from culture, nature being *the origin of legitimate power*. This corresponds in turn to the legitimisation principle of the first stage of the history of the legal rule described above. It can be shown that its fully developed form is to be found in Kant’s first critique. This defines an epistemology of which rhetoric is, *de jure*, completely excluded, as

science is completely deterministic and as all rational individuals have equal access to the “spectacles” of science.

Similarly, a purely theoretical deduction of the legal order of the nation-states (which is required for the legal rule to be enforced efficiently) remains impossible, given that in Kant’s epistemology, there is no place for any closed system (time and space in Newtonian physics are infinite, by analogy, the laws of classical market economics are universal). Thus the separation between the interior and the exterior of a nation-state can only be defined historically. To reconcile it with the power of logic, one must consider the present definition of nations from the point of view of a “universal history” which contains in itself the project of a “perpetual peace.” However, for the time being, limits of nation-states can only be justified by their existence and the type of principles which suits this kind of justification: tradition. This may be the reason why post revolutionary France could not help but rely on the general principle of restorations, the illegitimacy of which was only expressed by the revolutions which interrupted them at times.

From the point of view of international relations, this corresponds on the one hand to the domination of the logic of inter-state diplomatic relations, and on the other hand to a fight between two conflicting views of international order, that of the revolution which corresponds to the development of the movement of nationalities, and that of the ancient regime which expressed itself fully in the famous Congress of Vienna of 1815.

Second and Third Manners: If Some Confusion Introduces Itself Between Nature and Culture. If the limits between nature and culture are not well-defined any more, one cannot legitimise an action by the origin of power (as it is not anymore clearly defined): one must now rely on the evaluation of *the change in appearances*. Two cases must then be distinguished, depending on whether or not there is an *a priori* consensus on the way in which the change in the appearances can be measured.

Second Manner: The Case Where There Is a Consensus on Measurement of Change in Appearances. This corresponds to the *positivistic* epistemology such as it has been developed by Comte. Legitimacy now lies in *the finality of action* (the measure of the change in appearances on which by definition there is a consensus), which conforms to the second stage of the history of the legal rule we have described above.

This epistemology is characterised by the existence of mutually exclusive fields of knowledge, each of them being endowed with a specialised category of scientists. While science remains deterministic, a place is made for rhetoric, as those who know (the specialists) must be able to teach their knowledge to the non-specialist. This dissymmetric and thus non-sophistic rhetoric is called pedagogy.

One of the central aspects of this epistemology is the central role its symbolic structure gives to closed systems, and the borders that define them as similar to those which separate the various domains of scientific knowledge.

It is thus possible to define a closed system such as a nation-state within the limits of science, and especially of sociology, as is shown in the work of Durkheim. Hence it becomes possible to define fully modern democratic societies and their sovereignty under the categories of the rational-legal system.

This corresponds to the emergence of the society of nations not as a futuristic necessary utopia such as expressed in Kant’s work, but as a concrete notion likely

to give rise to actual institutions where a new kind of international rhetoric can take place. This is shown by the development of all kinds of more or less specialised international institutions during the corresponding period.

Third Manner: If There Is No More *a priori* Consensus on Measurement of Change in Appearances, the Consensus Must Be Produced Pragmatically. Complete confusion of nature and culture results in the emergence of the artificial as a unique complex category (as, by definition, the artificial is what is both natural and cultural). Science becomes the science of the artificial, the architecture of complexity, i.e. the science of systems as it is defined by Herbert Simon (1969). The products of science are descriptions of the world by entities and flows, i.e., in pragmatic terms, “circles” and “arrows.” The validity of these simulations depends entirely on the conformity of their apparent behaviour with the phenomenon they are supposed to describe; nothing guarantees anymore the determinism of the processes thus described.

From the point of view of rhetoric, it corresponds to the generalised reign of rhetoric, i.e. of a rhetoric which would not any more be submitted to any well-established system of rules and premises, i.e. a sophistic rhetoric.

As for nations, they can only be described as a special kind of open systems, i.e. systems which borders are not well defined anymore.

Conclusion

The day after 9/11, President George W. Bush declared that the United States were at war with international terrorism. Insurance companies seemed interested, since in case of war, they were not liable anymore. Consequently, it was decided that, from this point of view at least, terrorism did not correspond to a state of war. Recently, the General Assembly of the United Nations unanimously condemned terrorism, but failed to agree on a common definition of the notion. This shows that the definition of war and peace is the object of common *a priori* representation of international relations not anymore. Similar examples of confusion in the categories which used to define the realm of international relations could be shown concerning all other aspects of legal, economic, social, political, or cultural life. They may concern notions of sovereignty, separation of public and private sectors, separation of civil society and the state, or separation between church and state. In such a context, the role of rhetoric is less to participate to the enactment of the rules and premises which characterise a preexisting international order than to contribute, by its own action, to the establishment of the conditions required for the development of a peaceful system of conflict resolution.¹

Note:

1. On various categories which, with some confusion, attempt to describe international relations, see Hassner 2005, Laufer 1993, Leben 2003, Vedrine 2003.

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