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Multimodal Reconstruction of a Very Unclear Legal Case

Multimodal theory of argumentation contributes to a fuller understanding of complex legal procedures and their participants. The multimodal theory that I am interested in is Michael Gilbert's version, with the logical, emotional, *kisceral*, and *visceral* modes of argumentation. With the purpose of linking them with Jung's psychological typology, whose findings have nowadays been re-emphasized by neuro- and cognitive science, I have "translated" these four modes into the logical, emotional, intuitive, and sensory modes. Moreover, to apply Gilbert's multimodality to the analysis of legal argumentation, it was necessary to modify the logical mode to become the so-called legal mode, this being a sort of application of the logical mode to the specific area of law.

The legal mode is to a predominant extent verbal, considering in particular linguistic legal arguments, and rational, referring to mainly informal logical and systemic legal arguments. It is mostly present and explicated in the context of justification of legal decisions. The legal mode is definitely the most important mode for law, however it is not the only one or omnipotent. This can be confirmed by a more realistic approach to law. Other modes, such as emotional, intuitive, and sensory modes, have relevance too but this is to a large extent neglected by traditional (or "mainstream") legal argumentation theory. The purpose of these non-legal modes is not to supersede traditional legal arguments of the legal mode, but to view legal argumentation from another, broader perspective, when also the context of discovery is taken into consideration, which is too complex to be simply translated or reduced into the legal mode in the justification phase. I claim that apart from the explicit reasoning in a legal decision there is also "invisible ink," an implicit or hidden text between the lines of the reasoning (justification) of a legal decision. It is there where multimodal non-legal arguments can be found.

In the context of multimodal reconstruction of a very unclear legal case (here the Slovene Constitutional Court's case concerning the constitutional admissibility of a referendum on gay marriage), not only argument as the product (logic) is analyzed but also arguers and audiences as personalities are relevant to analyze in such a case in order for a broader picture of the case to be demonstrated. In such a manner the traditional version of legal argumentation is extended to become rhetorical legal argumentation.

Methodologically, I have developed a model of multimodal reconstruction according to which I am interested to investigate traces of the non-legal modes (i.e. emotions, intuitions, perhaps also physicalities) in the legal text (mostly through studying (logical) fallacies in majority/separate opinions and rhetorical figures in judges' separate opinions) and its wider context (public hearings, *travaux préparatoires*, judges' previous decisions, their public opinions, their psychological profiles, etc.).

From a normative perspective multimodal reconstruction cannot be compared with rational reconstruction. It is less important but perhaps interesting from a descriptive point of view, in order to contribute to reality and transparency of judicial decision-making and justification, a critique of such, and a better way of both the deciding and reasoning of legal decisions.