

The Witch Hunt as a Structure of Argumentation

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ABSTRACT: the concept of a witch hunt is frequently invoked, in recent times, to describe a kind of procedure for deciding the guilt of a person against whom an accusation has been made. But what exactly is a witch hunt? In this paper, ten conditions are formulated as a cluster of properties characterizing the witch hunt as a framework in which arguments are used: (1) pressure of social forces, (2) stigmatization, (3) climate of fear, (4) resemblance to a fair trial, (5) use of simulated evidence, (6) simulated expert testimony, (7) nonfalsifiability characteristic of evidence, (8) reversal of polarity, (9) non-openness, and (10) use of the loaded question technique. The witch hunt, as characterized by these criteria, is shown to function as a negative normative structure for evaluating argumentation used in particular cases.

KEY WORDS:

Just recently the term 'witch hunt' is coming to be used more and more frequently, to the extent that one wonders what this expression really means, or should be taken to mean. For example, Coren (1994, p. A22), describes a sexual abuse case where a man's name was put on a Child Abuse Register consequent upon his wife's accusation (during a custody dispute) that he had molested their daughter, despite no evidence of abuse being found. Coren comments (p. A22) that such cases 'represent a contemporary Salem,' adding that there exists an international computer network known as 'witch hunt,' contributed to by men fraudulently accused of this type of crime. Loftus (1995, p. 24) wonders why so many people are now being accused of child abuse based on dubious stories of 'recovered memory.' Pondering the many doubts expressed by people who find these cases bizarre and outrageous, she puts the question in the form, 'Why is the cry of "witch hunt" now so loud?' (p. 24). What exactly should we take the expression 'witch hunt' to mean? Only if some clear criteria are formulated for what constitutes a witch hunt can we say, one way or the other, whether comments like those of Coren and Loftus are justifiable.

One clue comes from the historical reference to the Salem witchcraft trials. Evidently part of the meaning is derived from historical allusions to witchcraft trials. The other clue is the use of words like 'fraudulent,' suggesting that the term 'witch hunt' is a species of normative condemnation of the argumentation used to arrive at an outcome of 'guilty' – implying that such argumentation is logically defective, because it is part of an

inquiry that is procedurally unfair, or somehow improper. In general, it seems that the term 'witch hunt' carries a negative normative load – it is used by someone accused (or someone commenting on the accusation) to say that he or she is being unfairly accused by a group who have set some kind of social framework, tribunal, method of inquiry, or procedure in place to secure conviction without properly justifying the accusation by arguments based on good (and adequate) evidence.

It is just this normative type of analysis of the witch hunt, as a normatively negative framework of argumentation, that is proposed below. A witch hunt will be defined as a normative framework, in which arguments are used, that has ten general identifying characteristics: (1) pressure of social forces, (2) stigmatization, (3) climate of fear, (4) resemblance to a fair trial, (5) use of simulated evidence, (6) simulated expert testimony, (7) nonfalsifiability characteristic of evidence, (8) reversal of polarity, (9) non-openness, and (10) use of the loaded question technique. These ten conditions form a cluster of properties such that if a weighted number of them is present, the framework is that of a witch hunt. Some of the conditions carry somewhat more weight than others, as will be made evident below. For example (8) is more essential than (10). But all the characteristics are important, and have a place in identifying the normative structure of the witch hunt. (1), (2), and (3) are the initial conditions that make the accusation powerful and are the circumstances that make the witch hunt possible. (4) gives the procedure apparent legitimacy by embedding the witch hunt in a socially recognized institution. (5), (6), and (7) describe the 'evidence' brought forward to 'prove' the accusation at the argumentation stage of the tribunal. And (8), (9), and (10) are the methods of argument used in the evaluation of the evidence in the procedure.

Characteristic (4) is especially important in understanding the normatively negative aspect of the witch hunt as a process of argumentation. The basic normative framework in which the arguments are to be evaluated is that of the *fair trial*, in which both sides have an adequate chance to bring forward their argumentation. The witch hunt is meant to resemble a fair trial, but deviates in a systematic way from it. The witch hunt is classified as a *parasemiotic structure* (from the Greek, *parasemos* = falsely struck; counterfeit), meaning that it derives its spurious legitimacy from its looking like a fair trial. The conclusions derived from these investigations are that the concept of a witch hunt is more than just a mythic concept, and that it can be used as a legitimate normative tool in logic to critically evaluate arguments.

1. THE INQUISITION

The *inquisition* as an evolving social institution, according to Alphandery (1963, p. 377) was the ecclesiastical jurisdiction dealing with the 'detec-

tion and punishment of heretics and all persons guilty of any offense against Catholic orthodoxy.' Although primarily a phenomenon of medieval times, the inquisition as an institution had origins dating back to church procedures of the fourth century. The procedures characteristic of the inquisition are outlined in the general account given by Alphandery (1963, pp. 378–379). The procedure was secret, and its aim was not to detect particular offenses or acts, but tendencies (like *heresy*, or being against the church). The accused were arrested on a basis of suspicion, and were presumed to be guilty (p. 387). The accused had a right to demand a written account of his or her offenses, but the names of the witnesses against him were not made available (p. 378). The prosecution took place 'in the utmost secrecy' (p. 379). Moral subterfuges and torture were allowed as ways of extracting confessions (p. 379). The procedure was not litigious in nature (p. 379), meaning that the purpose of the process was not to provide an arena for the accused to argue his case. Instead, the procedure was more like what we would nowadays call an 'interrogation' or perhaps a 're-education.'

It is interesting to note that according to Peters (1988, p. 3) the inquisition as a 'single all-powerful horrific tribunal, whose agents worked everywhere to thwart religious truth, intellectual freedom, and political liberty, until it was overthrown sometime in the nineteenth century,' is a 'myth' of 'modern folklore' that exists only in polemic and fiction. Peters does not deny that the institutional tribunals employed by the clergy to protect their orthodox religious beliefs from the attacks of heretics actually existed. They did, but when we speak of the inquisition, which we often do, to condemn something or make a point in everyday conversation, we appeal to a kind of universalized mythic concept that has been transformed by literature and art into a symbol for something. But to understand the mythic concept, it is helpful to know what procedures the historical tribunals used to arrive at the conclusion that the accused party was guilty of heresy.

Some subtleties in the concept of evidence developed in the inquisition procedures are noted by Lea (1961). The crime sought out was purely a mental one, relating to the secret thoughts and opinions of the accused – a person might act in accord with orthodox religion, yet in 'his secret heart' he might be a heretic (p. 184). Also, a heretic might be guilty even if he could not be brought to confession of his guilt, and hence instead of having to prove guilt, the tribunal could find different 'grades of suspicion' – 'violent,' 'vehement' and 'light' (p. 204). A person could be judged to be guilty of heresy by the accusation (in some cases) of only one witness (p. 205). Resources for procuring unwilling confession included deceit and torture (p. 193). As a milder form of deceit, the examiner would ask loaded questions that assumed guilt, like, 'How often have you confessed as a heretic?' (p. 193). Thus the notion of evidence in the inquisition procedures was such that the accused was left little or no room to refute the charge by citing empirical evidence. In fact, the purpose of the tribunal was not

really one of proving guilt or innocence. It could be better described as the goal of securing adherence to orthodox church opinions by rooting out heretics and converting them to these opinions, or by eliminating the heretics who could not be converted.

2. WITCHCRAFT TRIALS

In the fifteenth century, the inquisition became involved in tribunals where the charge was sorcery (witchcraft). In 1398, the theology faculty of the University of Paris declared that acts of sorcery accomplished by means of a pact with the devil were to be considered as heretical in nature (Hamilton, 1981, p. 94). However, the number of cases of witchcraft brought before the inquisition was 'insignificant,' compared to the mass witchcraft trials that took place in Europe during the sixteenth and seventeenth centuries (Hamilton, 1981, p. 95).

Trevor-Roper (1967) described the European witch-craze of the sixteenth and seventeenth centuries in Europe as a 'new explosive force, constantly and fearfully expanding with the passage of time' (p. 91). The prosecution of witches was aided by 'experts' who supplied the esoteric details (p. 97). Witches were old women who had secretly made a pact with the devil. But lenient judges, or anyone aiding witches, were described as 'patrons of witches' (p. 96). This campaign against witches reached a 'holocaust' by 1630, 'in which lawyers, judges, clergy themselves join old women at the stake' (Trevor-Roper, 1967, p. 97). Trevor-Roper suggests that the force behind the persecution of witches was 'social pressure' (p. 110): the witch represented nonconformity, and in particular, heresy in the form of opposition to official religious views.

The Dominicans had theological experts on witchcraft who wrote 'demonological manuals' outlining methods for determining guilt based on the witch's confessions. One such manual had the epigraph on its title page. 'To disbelieve in witchcraft is the greatest of heresies' (Trevor-Roper, 1967, p. 117). Evidence used was of a kind that would be impossible to resist or rebut. Torture was sometimes used, and 'signs of fear' or a person's being 'old, ugly or smelly' were indications of guilt.

The Salem witchcraft trials in North America were actual legal proceedings. The height of these proceedings took place between June and September of 1692, when fourteen women and five men were hanged as witches in Salem, Massachusetts, and one man was tortured to death (Shapiro, 1992, p. 64). An outline of one of the most famous of these trials is given by Shapiro (1992, p. 65). Reverend Samuel Parris was the minister of Salem at the time.

During the winter of 1691-92, a few girls, mostly teenagers, started gathering in Parris's kitchen. There they listened to stories, perhaps voodoo tales, told by his West Indian slave Tituba; they also tried to discern their future husbands by fortune telling - dropping an

egg white into a glass and seeing what shape it took. For girls raised in Puritanism, which demanded life-long discipline and self-control, these sessions with Tituba represented a rare and risky bit of indulgence in pure fancy. Too risky, perhaps. Suddenly one after another of the girls was seized with fits. Their families were bewildered: the girls raved and fell into convulsions; one of them ran around on all fours and barked. Dr. William Griggs was called in and made his diagnosis: the 'evil hand' was upon them.

Fits identified as satanic possession had broken out among adolescent girls at earlier times in New England. Often their distress was traced to local women who, it was said, had entered into a compact with the Devil and were now recruiting new witches by tormenting the innocent until they succumbed. So the adults in Salem Village began pressing the girls with questions: 'Who torments you? Who torments you?' Finally they named three women – Tituba, Sarah Good and Sarah Osborne – all of them easily recognizable as Satan's handmaidens. Tituba was seen as a shameless pagan, Good was a poor beggar given to muttering angrily as she went from house to house and Osborne was known to have lived with her second husband before they were married. The three were arrested and jailed, but the girls' torments did not cease. On the contrary, fits were spreading like smallpox; dozens more girls and young women went into violent contortions, flailing, kicking and uttering names.

While they were testifying, the girls went into shrieking fits, and at any sign that the jury might be willing to find the defendant innocent, these fits increased in volume. This performance kept pressure on the proceedings, and the wailing ceased only when the defendant confessed (Shapiro, 1992, p. 64).

Witchcraft, the crime of which the defendants were accused, was defined (as noted above, in the European context), as a contract between the witch and the devil. The evidence of this crime was called 'spectral evidence,' referring to the shape or 'specter' of the devil, as he took the shape of the witch. Spectral evidence is characterized by Boyer and Nissenbaum (1977, p. 19) as 'ticklish,' because so much of it took place in the mind of the witch, and because it was based on visions or other-worldly experience that was visible only to the person testifying. The witness would report that the accused person 'appeared devilish.' According to Boyer and Nissenbaum (1977, p. 20) this kind of testimony 'possessed a superficial resemblance to firm empirical evidence,' but 'remained impossible to verify, since only the person experiencing the vision could see it.'

The problem of falsification inherent in this kind of evidence has the consequence that the accused party is not effectively able to mount a defence against the accusation, because evidence to refute or falsify the charge is not really open or available. The reason is that what can be observed as evidence relevant to the charge is available only to the accuser and the accused, and the credibility of the latter is discounted from the outset, because this person is in league with the devil, and would be expected to lie and engage in subterfuges anyway.

The above historical sketch gives one some insight into the derivation of the mythic concept of a witch hunt, and an intuitive idea of its main features. How could this concept be clarified and analyzed systematically

so that it could be useful as a tool for the critical analysis of arguments? The first step is that the main identifying characteristics of the concept need to be clearly expressed in a form that is amenable to analysis as a pragmatic structure.

3. INITIAL CONDITIONS

A circumstance that is very important in defining and understanding the witch hunt, and seeing how it functions as a kind of framework of argument, is the 'hysteria' or wave of popular opinions and feelings that initiates and propels the witch hunt. Witch hunts occur only at certain times, and in certain social conditions, where powerful social and political forces have an impact on the legal system. Some describe this as 'hysteria.' But what it really amounts to is political pressure being exerted on the legal system, or on the currently accepted ways of making determinations of criminal guilt, by powerful forces that have ideological backing of a kind that could be called 'zealous.' Thus the tribunal or trial becomes a tool for display of public, visible punishment for selected persons (apparently) opposed to the ideology advocated by the zealots, and thereby to re-align public morality to come more in line to the cause of the zealots.

The set of circumstances that gives rise to the witch hunt is a pressure of social forces causing conflicts and a changing climate of opinion, where a new ideology is on the upswing. Originally, the Inquisition was a method devised by the growing Church to accelerate the process of gaining converts, and forcing their conversion and allegiance to the religious viewpoint of the Church. The Salem outbreak occurred during a time when Massachusetts was politically adrift, and there were ideological clashes between the thriving merchants and the Puritan farmers (Watson, 1992, p. 121). In both instances, the religious ideology was used to target individuals who were not members of the group ideology, and who were designated as offenders who were in league with those identified as the most evil and vilified persons one could imagine, from the point of view of the ideology of the group.

A key characteristic of the witch hunt, then, is that the accused is under suspicion for having committed some type of offense that is regarded or portrayed as particularly disgusting, at a particular period and in a particular climate of opinion then popular. Hence his or her reputation is badly damaged merely by the accusation.

A second characteristic of the witch hunt in the initial conditions is the stigmatization of the accused party by accusing him or her of a particular type of crime that is seen as particularly horrible, so that the charge of having committed this offense tends (at the outset) to destroy his or her credibility. Thus the accused party cannot effectively mount a credible argument in order to defend him or herself against the charge. This aspect

of the witch hunt is often called (interestingly) *demonization*, because the accusation implies that the accused party is a 'devil,' i.e. an evil person who always tries to deceive you and can never be trusted to tell the truth, or to take part in a sincere and honest discussion. In logic, this type of personal attack argument is known as the *argumentum ad hominem* (see for example, Walton, 1989, chap. 6). For example, in the McCarthy era, the accused was said to be a 'communist sympathizer,' and in the climate of the time this allegation meant he or she was a bad and dangerous person who could not be trusted to tell the truth, and was probably a spy, or member of a communist 'cell.'

This characteristic of stigmatization is achieved by tailoring the charge to some category of malfeasance that is particularly 'taboo' during a particular social and historical period, so that even the accusation sounds so repellent that it destroys the reputation of the accused party. During an era characterized by dominant religious ideology, the accusation of being a witch was the worst possible one to stigmatize a person, because such a person was said to be in league with the devil. And the devil was the very personification of evil and cunning deception. Anyone in league with the devil would be expected to lie and engage in subtle deceptions and evil seductions in their arguments. The implication is that such a person must not be trusted. Any arguments they might use to defend themselves must therefore automatically be discounted as worthless.

In the *abusive ad hominem* argument, the proponent argues that the respondent has a bad character generally, or more specifically, a bad character for veracity, and then uses this allegation to try to get the audience to conclude that the respondent lacks credibility, and therefore to conclude that his argument should not be accepted as plausible (believable, credible). This type of argument is (generally, but not always) allowed in a trial in cross-examination of a witness.

The circumstantial type of *ad hominem* argument is also a very common and powerfully effective form of political attack on an opponent's credibility or integrity on an issue (Walton, 1989, chap. 6). But it is primarily the abusive type and a third subtype of *ad hominem* attack that are used to undermine the credibility of the person accused in a witch hunt.

The third subtype is the *bias ad hominem argument*, where the proponent claims that the respondent has a bias on the issue being discussed (often on the grounds that the respondent has a financial stake, or something to gain, in the outcome), and that therefore he is not credible, and therefore his argument should not be accepted as credible (or as credible as it would be without the bias). A standard textbook example is the following case (Hurley, 1994, p. 121).

Bill Gates has argued at length that Microsoft Corporation does not have a monopoly on computer disc operating systems. But Gates is chief executive officer of Microsoft, and he desperately wants to avoid antitrust action against his company. Therefore, we should ignore Gates's arguments.

The idea here is not that Gates' argument is totally worthless, but that we judge it to be less credible once we are told that he is CEO of Microsoft. Therefore, the conclusion in the example above, using the word 'ignore' is too strong.

In the literature on *ad hominem* arguments, there are differences of opinion on how to evaluate such arguments, and differences of opinion on how to classify the subtypes. Hurley (p. 121), for example, classifies the Gates case above under the circumstantial category, as opposed to the bias category. For more on these questions of classification of the subtypes, see Krabbe and Walton (1993).

In the witch hunt, the abusive type of *ad hominem* against the accused party is built right into the structure of the procedure. For only certain types of charges are alleged – those that have a stigma attached, during a particular historical epoch and in a particular social setting and climate of opinion – so the accused is demonized from the outset of the proceedings. Since the accused is in league with the devil, and represents the devil's interests, naturally he is going to lie, and to conceal his demonic nature. And therefore, he will be devious and hypocritical in his arguments used. The proposed approach then, is not to listen to his arguments, but only to get him to 'confess' and to adopt the new values by 're-educating' him and other offenders.

A climate of fear is a third important characteristic of the initial conditions of the witch hunt. First, the witch hunt is based on, and propelled by fear of the stigmatized individuals that are the objects of the hunt. Witches are portrayed, for example, as both repellent and dangerous. But second, the whole procedure of the witch hunt is suffused with fear. Everyone who could be accused is terrified, because they know that the targeting is relatively random, and even an innocent person can be accused. But also, they know that once they are accused, and caught up in the tribunal process, the consequences are horrific (for anyone whose reputation matters to them) and the outcome is inevitably certain to be bad. Thus a climate of (well-founded) fear is characteristic of the whole process of the witch hunt.

It is exactly with respect to this climate of fear that Trevor-Roper (1967, p. 128) saw the European witch craze of the sixteenth and seventeenth centuries as being comparable to the McCarthy tribunals of the 1950s in the U.S.

The McCarthyite experience of the United States in the 1950s was exactly comparable: social fear, the fear of a different kind of society, was given intellectual form as a heretical ideology and suspect individuals were then persecuted by reference to that heresy. In the same way, in the fourteenth and fifteenth centuries, the hatred felt for unassimilable societies was intellectualized as a new heresy and politically suspect individuals were brought to judgment by reference to it. The great sorcery trials in France and England at that time – the trials of the Templars and Joan of Arc, of the Duchess of Gloucester and the Duchess of Bedford – were political exploitations of a social fear and a social ideology, whose origins were to be found at a deeper level and in another field. The difference

was that whereas McCarthyism in America lasted only a few years (although it may yet recur), the European witch-craze had a far longer history.

This aspect of fear and panic was especially commented on by Rovere (1959, pp. 16–17) who recalled his experience in 1953 that ‘the very thought of Joe McCarthy could “shiver the White House timbers.”’

I remember once, in about the middle of that year, calling upon one of the President’s assistants, a man who seemed to me then, as he does today, to be well above the average in courage and candor. I had gone in search of enlightenment on a number of things, most of them as unrelated to McCarthy as it was possible for anything to be in those days. We had a friendly enough talk and toward the end of it I brought up Topic A – and of course offered the customary assurances that I would not make use of anything he said in such a way as to embarrass him or make his life more difficult than it already was. At the mention of McCarthy, his whole manner and expression changed; though he did not move from his chair or put his palms together he assumed, figuratively, and on his face quite literally a supplicating mien. I have no record of the exact words he used, but I have a painfully vivid memory of them. ‘Don’t ask me,’ he said. ‘For God’s sake, please don’t ask me to discuss this. Not now. I’ll help you as much as I possibly can, I’ll talk about anything else you want. Anything. Just don’t press me on this. Don’t even ask me why I don’t want to talk about it. Maybe someday we can talk it all over, but not now. Accept my word that my reasons are good.’ I have not before or since seen a grown man in a responsible position behave in such a fashion.

It is this climate of fear that presses the witch hunt ahead and suppresses the normal opposition to it that would be voiced by the victims of it, or by anyone who disagrees with the advocacy it represents.

There are three connected factors in the circumstances that make the witch hunt possible. One is a dominant or rising advocacy group in a position to punish both its victims and any of its opponents in a social climate of opinion in a particular historical epoch that makes it possible for this advocacy group to base its tribunal on conflicting but changing public opinion. Another is the stigmatizing of perceived offenders of the values advocated by the ideology. A third is the exploiting of underlying fears and emotions, whipping them up to marshal social forces towards a particular line of action.

4. PARASEMOTIC STRUCTURE

The fourth characteristic of a witch hunt is that it is meant to resemble a fair trial. The witch hunt derives whatever force it has to convince an audience from taking it to represent a genuine, truth-seeking, fair trial, or taking it to be like a fair trial in key respects. To make the witch hunt function credibly, the trappings of a trial, or of some sort of official tribunal, must be present. Of course, if the proceeding really is a witch hunt, these outward features of the trial will be phony or simulated. But it is precisely this element of phoniness or deception that makes the witch hunt what it is.

For example, the McCarthy tribunals were not real (i.e. legally constituted) trials. They were Senate hearings. But they were televised, and the image conveyed was that of a trial. McCarthy was seated at a desk, and witnesses of various kinds were called forth to appear, while McCarthy questioned them, and read from papers that appeared to have the form of evidence being cited. According to Chase (1956, p. 164), these tribunals looked like a 'Hollywood version' of a trial, when viewed on television, but in reality, the accusations made were based on little or no real evidence.

But it is not just the outer trappings of a trial that are most important, or even the official sanction of the tribunal as being a legal trial. What is important is that there be a pretense or simulation that factual or verifiable evidence of some sort is being collected, and then evaluated by examining and evaluating the reasons for and against the charge. The perception conveyed is that some third party, a judge or jury, who is not committed (at the outset) to either side, is evaluating the evidence on both sides.

What general requirements can be cited to justify the fair trial as an institution that reasonable people could agree to, taking the criminal trial as the case in point, for purposes of discussion? One requirement would be that the crime, or type of act subject to prosecution, should be generally agreed on to be something that should be prosecuted. Another requirement is that the question of whether this alleged act was committed in a given case, should be subject to an open examination of relevant evidence on both sides, and the issue decided by a third, neutral party on the basis of this evidence. This second requirement is procedural and pragmatic in nature. It has to do with what is considered to be evidence, and how that body of evidence is used to reach the conclusion of whether the accused party committed the crime or not.

As set out here the concept of the fair trial is an abstract normative structure that provides an ideal model of a type of dialogue exchange in which arguments can be evaluated as strong or weak, correct or incorrect, reasonable or fallacious, insofar as they contribute to the goals of the dialogue or not. In this sense, the concept of the fair trial does not vary from culture to culture, or from one historical epoch to another. But on the other hand, the parasemiotic concept of resemblance to a fair trial does vary in its application to different actual cases and historico-social contexts. For it is social recognition of the institution of the witch hunt, in a given case, as being similar to a fair trial, that gives the procedure its apparent legitimacy. In other words, the seeming-legitimacy or parasemiotic aspect of the witch hunt as resembling a fair trial is dependent on cultural and historical factors of what appears legitimate at a given time.

In this regard, the witch hunts of the 1500s are parasemiotic in relation to the people who endured them, participated in them, and observed them, in that period, because those trials must simulate a fair trial of the 1500s, which would have differed markedly from modern fair trials in

western society. For one thing, fair trials of the 1500s would have included torture.

The McCarthy tribunals in Washington in the 1950s were socially sanctioned, in that not only were they not illegal, but they were activities of socially recognized institutions. However, their activities were considered unfair by many then, and are definitely considered unfair now, by popular and educated opinion.

So we need to be sensitive to these differences in historical and cultural contexts in understanding how the witch hunt gets its apparent legitimacy by acting as a counterfeit, in relation to the perceptions of the time, of a fair trial. But from an abstract normative point of view, we can criticize the argumentation in a witch hunt framework as failing to meet certain standards of correctness as arguments, on the grounds that they systematically deviate from the general normative requirements of a fair trial.

5. EVIDENCE

An important characteristic of a witch hunt is the nature of the 'evidence' itself. This 'evidence' may look scientific, it may be reported by witnesses, and these witnesses may be said to be experts in some field of supposed scientific knowledge. But this resemblance to evidence is really a sham. What is characteristic of the argumentation used in a witch hunt is that it is not verifiable (and in particular, not falsifiable) by appeal to empirical findings or generally accepted scientific findings of some established field of expert inquiry. For example, in the witchcraft trials, the 'spectral' evidence was visible only to certain people. So if an ordinary person failed to see it in a particular case, this failure would not count as evidence against its existence in that case. The point is that the 'evidence' is inaccessible to anyone on the side of the defence, who might try to deny it. Such 'evidence' is not real evidence, in the sense of the term appropriate for a fair trial, or a scientific investigation. It is only taken to be evidence because of its ideological colorization and stigmatization, and its perceived resemblance to some kind of legitimate and widely accepted evidence.

In courts of law 'evidence' is used in a narrow sense to anything that meets the requirements of the rules of evidence. For example, the Federal Rules of Evidence apply in the U.S. In fact, a good deal of the evidence actually used in a criminal trial tends to be testimonial in nature, even though objects (like a pistol) and documents are admitted. For expert testimony is now prevalent in courts. You may need a ballistics expert, for example, to tell you what the pistol was probably used to do, or an accountant, to interpret a tax document.

In our present legal system, expert testimony is presumed to be based on scientific evidence. For example, a qualified expert on DNA testing may

be called in to testify on the question of whether an accused person's blood has the same DNA as that of blood found at the scene of the crime. According to the Frye Rule (which has been broadened by the new Federal Rules of Evidence, however) a scientific technique or theory used in expert testimony must have gained 'general acceptance' in a scientific field of knowledge (Giannelli, 1981, p. 13). As more and more psychologists and psychiatrists have been brought in as expert witnesses in criminal cases, however, there has been some worry expressed that the courts are relying on expert testimony too much, in a way that tends to usurp the jury's function of deciding guilt (Imwinkelried, 1986).

In the inquisition, as described by Lea (1961, p. 807) so-called 'committees of experts' (theologians) were used in trials. Here the problem is that the function of providing expert testimony has been perverted by using so-called 'experts,' who are not really experts in a scientific field of knowledge, but who have a strong professional bias towards convicting the accused party of a particular type of offense. These so-called 'experts' are really advocates for a particular ideology, or partisan interest group that is socially powerful.

In a trial where there is no verifiable or falsifiable evidence, and everything turns on what the accuser claims, versus what the accused claims, the outcome depends on the credibility of the two parties. But credibility is subjective. The issue becomes one of whom you believe. A trial can sometimes be fought out on this basis.

Even so, it seems to be an assumption that evidence should generally be verifiable or falsifiable in principle, by appeal to some observable or checkable facts, so that in cross-examination it can be challenged or refuted by appealing to other evidence.

Hence another very important distinction between the fair trial and the witch hunt relates to the falsifiability of evidence. In a legal trial, legal rules of evidence define what is or is not evidence. For example, witness testimony or expert testimony are admitted, under the right conditions, and subject to cross-examination, as evidence. In order to be evidence in a trial, as well, there needs to be a verifiability (or falsifiability) requirement similar to scientific requirements on evidence. If something is evidence, it should be open to verification or falsification by being judged in relation to observations and accepted scientific facts and theories (Huber, 1991). In other words, 'evidence' should be subject to checking, and to falsification if it can be shown to be inconsistent with the facts, or with what is known to be true. 'Evidence' that is private or subjective to only one party, and cannot be checked by referring to observable facts or reproducible findings, must be treated with special care. Is it really 'evidence' if no one except the accuser or the accused can ever falsify or verify it by facts that can be reproduced, tested, or checked by other parties?

6. NON-OPENNESS

One important characteristic of a fair trial is the requirement that the judge or jury, who decides the outcome, must not have made up its mind on that outcome before all of the evidence has been presented. That is, the judge or jury must be sufficiently unbiased, at the beginning stage, that they can be swung one way or the other by evidence produced during the argumentation stage of the trial. Otherwise the trial is pointless, from a normative perspective of judging the case on the balance of all the relevant evidence presented.

The opposite quality is characteristic of the witch hunt. The judge or jury (the deciding party) in a witch hunt has already determined that the accused party (once designated as the accused) is guilty before the argumentation stage and evidence evaluation stages of the trial have taken place. So the whole effort of the trial, once started, is focused on reaffirming the presumption of guilt, and no effort is made to collect or present evidence that might tend to indicate that the accused party is not guilty. Instead, the procedure is designed to shield off this possibility, or prevent it from arising.

One of the most important characteristics of the critical discussion as a type of talk exchange is the willingness of a proponent to admit or concede that her argument was wrong, or inadequate to justify its conclusion, should evidence be given by the respondent to reveal such an inadequacy (Van Eemeren and Grootendorst, 1984, p. 160). This willingness to admit defeat is an important characteristic that distinguishes the critical discussion from the quarrel, or eristic type of dialogue (Walton, 1989, p. 4).

This quality of openness in a critical discussion is contrasted with the attitude of an arguer in a quarrel. In this type of talk exchange, the proponent of an argument is never open to defeat (Walton, 1996). Should convincing arguments that present evidence against his point of view be presented by an opponent, he will always try to brush them aside, or use personal attack or whatever means, in order not to admit that his argument was wrong.

The opposite of this quality of openness in a critical discussion is the notion of the 'closed mind' associated with quarrelsome and dogmatic argumentation. Advocacy, or partisan argumentation that supports one's own point of view as strongly as possible, is not a bad thing in a critical discussion. In fact, it is normal and expected, and is vitally important for the success of the critical discussion. But if such advocacy is pressed ahead too strongly, so that it becomes a dogmatic and quarrelsome refusal to even consider any opposed viewpoint, the result is an obstruction to the critical discussion, and is likewise an obstruction to a fair trial.

It is crucial in a critical discussion that advocacy be fully and openly expressed on both sides, so that the originating conflict of opinions can be resolved by a balance of the evidence on both sides. This balancing of the

evidence on both sides of a disputed case is also the key requirement of a fair trial.

7. REVERSAL OF POLARITY

The problem with the fair trial as an instrument for the proving of guilt is that it is imperfect and fallible in drawing a conclusion, based on the known evidence in a given case. From time to time, parties who are not guilty are convicted even in a fair trial. One problem is that witnesses lie, often because it is in their best interests to do so. Yet the trial could be procedurally fair, on the basis of the given evidence.

So, to justify the trial as an institution, we have requirements of burden of proof that are meant to make it more difficult to convict accused persons who are not guilty, and keep the number of such convictions to a tolerable proportion (Morton and Hutchison, 1987, p. 7). The tool for this purpose in the criminal trial is to require proof beyond a reasonable doubt. The burden is on the prosecution to prove that the accused party is guilty. The defence has only to cast doubt on this claim by raising enough questions against it. By the initial stigmatization, however, this burden of proof is reversed in the witch hunt. Such a reversal of burden of proof is called *reversal of polarity*, because it is a constant pull that affects a whole procedure.

Another characteristic of the witch hunt is the reversal of polarity in the normal burden of proof appropriate for a fair trial. In a fair criminal trial, a high burden of proof is on the accuser, to prove the defendant is guilty of the allegation beyond reasonable doubt. The burden of proof is allocated in this asymmetrical way, upon the accuser, in order to minimize the mischief of innocent persons being convicted by false or frivolous accusations.

This allocation of burden of proof is reversed in the witch hunt, giving the whole procedure a reversed polarity. The weight of proving his own innocence falls heavily on to the side of the accused. The accused party must struggle to collect and present evidence to show that he or she is not guilty. Unless he or she can present overwhelming evidence that he or she is not guilty, the outcome is a finding of guilt. In effect there is a polarization of the burden of proof. It is supposed to be allocated one way but during the whole sequence of argumentation, its effect keeps pulling the argumentation the other way, so that the defendant has to struggle against it.

The logic of the argument in such a polarized framework is that of the traditional *argumentum ad ignorantiam* or argument from ignorance, of the form: proposition *A* is not known (proved) to be true (false), therefore *A* is false (true). This form of argument defines the burden of proof in a criminal trial, and in such an instance is a reasonable argument. But

notoriously, *ad ignorantiam* arguments can be used fallaciously, especially in cases where falsifiability of evidence is a problem, as noted by Copi (1982, p. 101): 'This fallacy often arises in connection with such matters as psychic phenomena, telepathy, and the like, where there is no clear-cut evidence either for or against.' It is interesting in connection with the subject of witch hunts that Copi (p. 112) uses the following example, in an exercise, as an instance of the *ad ignorantiam* fallacy.

On the Senate floor in 1950, Joe McCarthy announced that he had penetrated 'Truman's iron curtain of secrecy.' He had 81 case histories of persons whom he considered to be Communists in the State Department. Of Case 40, he said, 'I do not have much information on this except the general statement of the agency that there is nothing in the files to disprove his Communist connections.'

According to the pragmatic analysis of the *ad ignorantiam* fallacy given in Walton (1996), it is the normative framework of dialogue in which this type of argument is used that is a main factor in accounting for whether it is fallacious or not in a given case.

It is precisely in the witch hunt context, where the burden of proof appropriate for a fair criminal trial is reversed, that the *ad ignorantiam* argument is fallacious, yet at the same time so terribly effective as a sophistical tactic. Even the suspicion of guilt raised by the accuser is enough to press forward the *ad ignorantiam* argument: if the accused party cannot prove that he or she is not guilty, then he or she must be guilty. The parasemiotic framework of the witch hunt makes the argument seem legitimate when, in reality, from the point of view of a fair trial, it is not.

8. USE OF LOADED QUESTIONS

Another important characteristic of the witch hunt is the technique of questioning used in the sequence of dialogue exchanges between the prosecutor and the accused. Instead of questions being asked in a normal sequence that would be appropriate for a critical discussion, a loaded question technique is used. This technique is characteristic of the type of dialogue called the interrogation. The use of loaded questions as a sophistical tactic used in argumentation has been studied in Walton (1989, pp. 27–43, 1991). A *loaded* question may be defined (Walton, 1989, p. 31) as a question containing a proposition (as presupposition) that the respondent is not committed to, in the given context of dialogue in a case. The idea is that if the respondent gives a direct answer to the question, he or she will become committed to this proposition contained within the question. For example, the question 'Did you burn the book that contained the incriminating evidence against you?' contains the proposition (as a presupposition) that the book referred to contained incriminating evidence against the respondent.

Normally, in a critical discussion, questions in a sequence are asked in a certain appropriate order in the dialogue. For example, a sequence might consist of the following ordering of questions.

Q1: Did you burn a book?

Q2: Did the book contain evidence?

Q3: Was that evidence incriminating against you?

This sequence allows the respondent to give a definite 'yes' answer to *Q1*, to give a qualified answer to *Q2*, or perhaps to indicate a lack of certainty, and to then give a 'no' or 'I didn't think so, at the time,' answer to *Q3*. These refinements and clarifications are not so easy to make if the respondent has to give one simple answer to the original loaded question, 'Did you burn a book that contained incriminating evidence against you?' The asking of this question (in context) puts pressure on the respondent.

The use of loaded questions is characteristic of interrogation. Instead of asking a respondent, 'Did you hide a weapon?', or even 'Where did you hide the weapon?', an interrogator may put the question, 'Did you hide the gun in the well or the field?' The use of this loaded, complex (disjunctive) question puts pressure on the respondent. The tactic is to try to trap the respondent into some guilt-implying concession. In particular, the question is loaded, and either direct answer, of the two alternatives, implies guilt on the part of the respondent.

9. THE SEQUENCE OF ARGUMENTATION IN THE WITCH HUNT

Broadly speaking, what characterizes the witch hunt as a parasemiotic and pathological framework of argumentation is that the sequence of argumentation is (comparatively) compressed and distorted. Instead of the sequence going forward in the prescribed and appropriate way in a critical discussion, where the arguments on both sides are given a consideration that is balanced and probing, the structure of the dialogue puts the argumentation in it under distorting pressure at every stage. For example, in Shapiro's description of the Salem trial (in section two, above) the wailing and convulsions of the girls put terrific pressure on all participants to push ahead to a confession. Similarly, all the other elements of fear, use of loaded questions, stigmatization, and so forth, are both methods for applying this pressure and are themselves the indicators of how the sequence of argumentation is distorted and compressed. For example, instead of a properly linked sequence of questions and answers, loaded questions are used that compress the argument sequence, distorting towards the presumption of guilt, instead of yielding question-reply sequences that are balanced and probing.

A fair trial should exhibit question-reply sequences of connected argumentation comparable to that of a probing critical discussion that looks into

all the relevant evidence on both sides. Then at the concluding stage, a decision should be arrived at by using the principle of burden of proof agreed upon at the opening stage. We know what such a connected sequence of argumentation should look like in a fair trial. It has a certain quality of controlled argument and coherent openness to questioning and rebuttal. What is crucial is the judging party is guided by a weighing of the body of falsifiable evidence that is presented and evaluated during the trial.

The witch hunt, by comparison, exhibits a pressurized sequence of argumentation that is steamrollered ahead by the compressive forces of the argument on the one side. The initial presumption is that the accused party is guilty so all the argumentation used in the trial is supportive of this outcome. The other side is only given a sham hearing, and every time it puts an argument forward, that argument is immediately discounted or pushed down, overwhelmed by the pressure on the other side.

What is normatively defective in the argumentation is not visible exclusively in any particular argument (taken as a local set of premises and conclusions) by itself. The problem lies in how the sequences of arguments are tied together within the structure of the comprehensive dialogue structure. The defect is a pragmatic one of how an argument is situated in a context – it is in the procedure itself. Even a very good argument by the defence – ‘good’ in the sense of being based on appropriate, falsifiable, and relevant evidence – has no chance of going anywhere. It cannot contribute to the goal of supporting one side of the conflict of opinions that is supposed to be resolved by the dialogue, because it is buried in the overwhelming onslaught of the argumentation pressed ahead by the other side. Even a good argument against guilt has no real chance, because the procedure itself is so heavily and relentlessly stacked against it.

What you have to do, in a particular case, to see if the expression ‘witch hunt’ is appropriate to characterize the argumentation in that case, is to reconstruct the sequences of questions and replies in which the argument was embedded (in the text of discourse given in the case). This sequence is called a *profile of dialogue* (Walton, 1989, p. 38) in that it represents an outline or sketch of a sequence of connected moves as part of a context provided by a larger framework of dialogue (procedure). The profile then has to be evaluated in light of the broader context of dialogue it is a part of. The ten characteristics of the witch hunt cited above are to be evaluated by comparing the actual sequence of dialogue in the given case to an abstract profile of dialogue that represents the kind of question-reply sequence that would be appropriate for the argumentation in a fair trial. The more the argumentation in the given case exhibits more of the ten characteristics, and deviates from (or even subverts) the profiles of dialogue characteristic of the fair trial, the more evidence one has for characterizing the given case as a witch hunt.

10. JUDGING CASES

With regard to the kinds of cases cited by Coren and Loftus, the reader can evaluate each case on its merits, and judge the extent to which the argumentation in that case conforms to the characteristics of a witch hunt or not. There is a vast array of materials to choose from, involving a wave of trials and tribunals that makes the Salem witchcraft trials look like a small and relatively minor localized incident, by comparison. Good places to start are the account of the McMartin Preschool trial given in Eberle and Eberle (1993) and accounts of the comparable Martensville trial – see Roberts (1994). The sequence of argumentation in these trials has the classic pattern of many similar trials in North America in recent years – the pushing forward of false allegations of satanic-ritual abuse based on questionable argumentation tactics of inexperienced police officers, and interviewing of suggestible children by aggressive questioning techniques of social workers and therapists.

Another prominent characteristic of the kinds of ‘evidence’ used in such cases is the questionable verifiability of the claims. Sexual abuse claims based on recovered memory are highly problematic, or even impossible to verify subsequently on a basis of reproducible evidence. Although recovered memories have gained increased acceptance by psychotherapists, there has been considerable controversy about the validity of such interviews between therapists and patients as scientific evidence (Loftus and Rosenwald, 1993).

At any rate, there is an abundant mass of case material in recent court cases to work with for the reader who wants to apply the parasemiotic structure of the witch hunt to evaluating current practices of argumentation. But just as the argumentation in the Salem trials proved to be more clearly evaluated in historical perspective, some time after the events occurred, so too will the argumentation used in the current cases come to be more clearly evaluated once the social pressures surrounding it have abated.

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