

Examining Argumentation in Context

Fifteen studies on strategic maneuvering

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Plausible and fallacious strategies to silence one's opponent

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1. Strategic maneuvering and freedom of speech

In this paper, I would like to take a closer look at instances of argumentative discourse where persuasive effects of strategic maneuvering can be observed, and which are potentially, but not necessarily, fallacious. I would like to defend a position which assumes that there is a continuum ranging from cases of strategic maneuvering which are rationally acceptable or at least plausible to a certain degree, to other cases where strategic maneuvering is at least dubious or even clearly fallacious.

At a general level, in recent contributions to argumentation theory it has been rightly claimed that not all instances of strategic maneuvering can be considered to be fallacious. For example, from a pragma-dialectic point of view, strategic maneuvering is acceptable as long as the norms for the rational solution of a conflict with the help of a critical discussion are not violated (cf. van Eemeren & Houtlosser 2002, p. 16):

[...] we would like to claim that there is nothing inconsistent about attempting to resolve a difference of opinion and trying to do so in one's own favour, even though there is indeed a potential discrepancy between pursuing dialectical objectives and rhetorical aims. This potential discrepancy gives rise to the management of the discourse that we call *strategic maneuvering*, which is aimed at making the strongest possible case while at the same time avoiding any moves that are clearly unreasonable.

At a more specific level, the problem of deciding whether strategic maneuvering has derailed and become fallacious in specific cases has to be solved. In this respect, van Eemeren & Houtlosser (2003, p. 3) remark that there is still much to be done within fallacy theory (cf. also Woods, 2004):

(1) [A]dequate criteria for deciding in concrete cases univocally whether or not a certain rule has been violated are still lacking; (2) no explanation has been given for why a lot of fallacies can be so persuasive; (3) no clues have been given as to why fallacies do so easily go unnoticed.

I suppose that a detailed analysis of case studies can be helpful in order to solve some of the problems mentioned by van Eemeren & Houtlosser (2003). More particularly, I wish to explore strategies to silence one's opponent and to distinguish between legitimate and dubious or fallacious ways to do so, to prevent one's opponent from defending their point of view. As to further case studies, I refer to van Eemeren's (2008) collection of case studies involving strategic maneuvering in differing institutional types of argumentative discourse (e.g. forensic discourse, parliamentary discourse, presidential debates, campaign speeches; cf. Feteris, 2008; Ietçu-Fairclough, 2008; Mohammed, 2008; Zarefsky, 2008) and to my analysis of fallacious instances of strategic maneuvering in fraudulent e-mail messages (cf. Kienpointner, 2006).

Now at first sight it seems to be rationally unacceptable to reduce the domain of applying the fundamental human right of freedom of speech. This human right has been postulated within Pragma-Dialectics as the first rule of the code of conduct for rational discussants (cf. van Eemeren & Grootendorst, 1992, pp. 208–209):

Rule (1) Parties must not prevent each other from advancing standpoints or from casting doubts on standpoints.

A more recent and more detailed version of rule (1) is given in van Eemeren & Grootendorst (2004, p. 136; italics by van Eemeren & Grootendorst):

Rule 1

- Special conditions apply neither to the propositional content of the assertives by which a standpoint is expressed, nor to the propositional content of the negation of the commissive by means of which a standpoint is called into question.*
- In the performance of these assertives and negative commissives, no special preparatory conditions apply to the position or status of the speaker or writer and listener or reader.*

Freedom of speech is also mentioned within a few catalogues on basic human rights, such as article 19 of the Universal Declaration of Human Rights accepted by the United Nations' General Assembly in 1948 and similar covenants and charters which followed this declaration:

1. In highly exceptional cases, for example, if Austrian or German citizens deny the holocaust, restrictions of the freedom of speech can be rationally justified,

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Universal Declaration of Human Rights, adopted by the United Nations General Assembly 1948)

However, the fulfillment of article 19 is not an easy matter. This is shown by the fact that, for instance, the corresponding Article 19 of the International Covenant on Civil and Political Rights (which was adopted by the General Assembly of the UNO 1966 and came into effect in 1976) contains several remarks on the limits and restrictions of freedom of speech (The same holds for article 10 of the European Convention on Human Rights (ECHR) adopted under the auspices of the Council of Europe in 1950):

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
a. For respect of the rights or reputations of others;
b. For the protection of national security or of public order (ordre public), or of public health or morals.

The specific cases I am going to analyze all involve emotional arguments such as arguments *ad baculum*, *ad hominem* and *ad misericordiam*, which are formulated in a persuasive way. So strategic maneuvering in all these cases involves not only “an expedient selection from the options constituting the *topical potential* associated with a particular discussion stage”, but also consists in “selecting a responsive adaption to *audience demand*, and exploiting the appropriate *presentational devices*” (van Eemeren & Houtlosser, 2002, p. 16).

In the following, I will argue that attempts to silence the opponent are justifiable to differing degrees in the following contexts:

1. In highly exceptional cases, for example, if Austrian or German citizens deny the holocaust, restrictions of the freedom of speech can be rationally justified;

even if in this case the potential opponent is prohibited from expressing his or her opinion by sanctions of law; that is, the silencing of the opponent is politically institutionalized.

2. Strategies of silencing the opponent are dubious, but still plausible to a certain degree if there are no such institutionalized sanctions and the proponent tries to silence the opponent by plausible, albeit defeasible means of argumentation which could be acceptable at least in specific situations.
3. Strategies of silencing the opponent are highly dubious if the strategies employed clearly exceed rational techniques of argumentation, for example, by appealing to strong emotions in such a graphic way that it becomes almost impossible for the opponent to defend his or her point of view.
4. Strategies of silencing one's opponent are clearly fallacious if restrictions of the right of freedom of speech are not restricted to exceptional cases, are enforced by legal sanctions and are not justified by plausible arguments.

2. Case studies

2.1 The prohibition of neo-Nazi activities

In Austria, all neo-Nazi activities are prohibited by law (“Verbotsgesetz” / “Prohibition law”, May 8, 1945). This seems to be a clear violation of the principle of freedom of speech because the law also sanctions any kind of playing down of the effects of the holocaust in public discourse in paragraph 3h (quoted according to the amendment of the Prohibition Law dating from the year 1992, published in the “Bundesgesetzblatt 148”; similarly, the denial of the holocaust is forbidden according to § 130 (prohibition of the incitement of the masses) of the German Penal code):

§ 3 h. Nach § 3g wird auch bestraft, wer in einem Druckwerk, im Rundfunk oder in einem anderen Medium oder wer sonst öffentlich auf eine Weise, daß es vielen Menschen zugänglich wird, den nationalsozialistischen Völkermord oder andere nationalsozialistische Verbrechen gegen die Menschlichkeit leugnet, gräßlich verharmlost, gutheißt oder zu recht fertigen sucht.
 ‘§ 3 h. According to § 3 h anybody is punishable, who, in a printed text, on the radio or in another medium or in public, in another way, making the message publicly accessible for many persons, denies, strongly downplays, approves or tries to justify the National Socialist genocide or other National Socialist crimes against humanity.’

Moreover, this law also involves a fear appeal (cf. Walton 2000) because any right-wing politician either has to choose to remain quiet and to conceal his/her feelings or else face considerable sanctions, that is, 1–20 years in prison. So this prohibition to express certain opinions could at the same time also be considered to be an example of the argument *ad baculum* (cf. Walton, Reed, and Macagno, 2008, pp. 102–106).

To give an example, John Gudenus, former member of the Bundesrat (the Second Chamber of the Austrian Parliament) for the Austrian Freedom Party (FPÖ), was sentenced to one year suspended sentence on April 26, 2006. This was the result of two media interviews (the first given to a news magazine (Report) of the Austrian public TV station ORF on April 18, 2005; the second given to the Austrian newspaper DER STANDARD on June 8, 2005), in which Gudenus had expressed doubts whether gas chambers really existed and if so, whether they existed on the territory of the Third Reich:

- (1) *Und ich glaube Charles Popper hat gesagt man soll nicht Tabus aufstellen, sondern man soll physikalisch und wissenschaftlich prüfen. [...] Ich glaube, man sollte dieses Thema ernsthaft debattieren und nicht auf eine Frage du musst es ja oder nein beantworten. [...] Ich bin der Meinung, ich fordere eine, immer wiederum eine Prüfung.* (April 18, 2005, ORF Magazin Report)
 ‘And I believe Charles Popper said that you should not uphold taboos, but you should investigate (everything) according to physics and science. [...] I believe you should discuss this issue seriously and not – after a question – you must answer it with yes or no. [...] I have the opinion, I ask for a: always again an investigation.’ (ad verbatim)
- (2) *Es gab Gaskammern, aber nicht im Dritten Reich. Sondern in Polen. So steht das auch in Schulbüchern. Ich habe nie gesagt, dass ich prinzipiell Gaskammern anzweifle.*
 ‘There were gas chambers, but not in the Third Reich. Only in Poland. That’s what the school books say. I have never said that I question gas chambers generally’.

After the first interview, the attorney general began an investigation, which was stopped shortly afterwards. On April 27, 2005, Gudenus had to leave the FPÖ. After his second interview, the attorney general began an investigation which led to the loss of the parliamentary privileges of Gudenus and his being put on trial, where he received a one year suspended sentence.

Now the question arises whether this restriction of freedom of speech can be justified as legitimate strategic maneuvering by the state, that is, as a justifiable restriction on the topics politicians or other citizens are allowed to choose for

supposed to argue with a right-wing politician who invokes the authority of Karl Popper and the principle of falsification in order to doubt the existence of gas chambers? If any standpoint can and should be challenged, does this also hold for the assumption that the holocaust really took place?

As far as I am concerned, I assume that a good case can be made for the plausibility of the legal restriction mentioned above, despite the resulting violation of the right of freedom of speech. Here are the most important arguments:

1. On a highly general, philosophical level, it has to be admitted that not everything can be doubted anyway. Doubt, in order to be possible, needs assumptions which are not doubted (cf. Wittgenstein, 1984, p. 186). One can legitimately criticize Aristotle's point of view in his *Topics* (book I, paragraph 11), where he states that those who doubt that snow is white are not in need of arguments but of more adequate perception, and those who doubt that we should worship the gods and love our parents, are not in need of arguments but of punishment. Disagreeing with Aristotle's rather conservative and slightly authoritarian remarks, however, we can still agree with Wittgenstein, because doubting everything simply results in self-contradiction.
2. More particularly, the existence of gas chambers in the Third Reich has been proved "beyond reasonable doubt" (for ample documentation cf. e.g.: Vidal-Naquet, 1992; <http://www.yadvashem.org>). The wealth of verbal and visual documentation, the ample research done by social scientists and the testimony of eye witnesses has proven their existence to be a certainty.
3. To re-examine issues which have already been proven beyond reasonable doubt, without substantial new evidence or new arguments being brought forward, would be a waste of intellectual energy which could be much better applied elsewhere.
4. To allow neo-Nazis to bring forward their arguments publicly, which deny the right of existence of democratic societies, and postulate their destruction, would be a kind of false tolerance, a self-destructive attitude by democracies. Moreover, it would falsely create a public image of their point of view as an equally respectable position in a controversial discussion (cf. Tannen, 2004, p. 55).
5. Even if some other countries have chosen not to impose restrictions and sanctions on the public expression of neo-Nazi views, the specific historical background in Austria and Germany makes an optimistic attitude of the kind "This time we will convince them peacefully by means of rational persuasion, the same things will not happen once more even if we allow them to express

this ideology call for restrictions and legal sanctions for its public expression at least in the countries where Hitler and his followers started to argue their "case" (but note that similar restrictions exist in many other countries, for example, in Belgium, France, Israel, Canada, The Netherlands, Poland, Switzerland, Spain and South Africa).

It makes a big difference if the principle of freedom of speech is restricted only to those radical views which are banned from public discourse because they have been proven to be catastrophic in human history. Of course, this exception does not allow one to sanction all oppositional or politically radical views which are expressed in public. This would be unacceptable, at least for truly pluralist, democratic societies (cf. below).

2.2 *Ad hominem* attacks in political discourse

The following example is a passage from a TV debate that took place on September 21, 2006, on the ORF, the Austrian public TV station. A few days before the general elections for the Upper House ("Nationalrat") of the Austrian parliament, the former Austrian chancellor, Wolfgang Schüssel, former leader of the Austrian Conservative Party (ÖVP), and Alfred Gusenbauer, the successor of Schüssel as Austrian chancellor and former leader of the Austrian Social Democrats (SPÖ), discuss the problem of the large number of Austrian citizens in need of permanent care. The relatives of these people often hire nurses from abroad (most of the time from the Czech Republic or Slovakia), who earn much less money than Austrian nurses. Approximately 40,000 persons work according to these employment conditions, illegally, according to the respective Austrian laws, which are, however, now in the process of being reformed.

As Schüssel had claimed in earlier public statements that there was no serious problem for persons in need of permanent care in Austria, while at the same time his mother-in-law was taken care of by nurses from abroad, Gusenbauer attacked him with a circumstantial variant of the argument *ad hominem* (of the type: "You are not practising what you preach"). This highly competitive attack made Schüssel furious and he, too, used a subtype of *ad hominem* attack in his reply, namely the abusive variant questioning the physical and mental (moral) qualities of the opponent (cf. Walton, 1998; Walton et al., 2008, 140–162). A few minutes earlier, Gusenbauer had used a handkerchief to wipe his upper lip, where beads of perspiration were clearly visible in a close-up shot of the TV camera:

(3) GU: [...] Ich sag'ich sag Ihnen, was eine WIRKliche Bedrohung ist.

SCH:

Nämlich
wann ein Bundeskanzler ein Vorbild an ILLEGALITÄT sein will. Weil dass Sie
hier im Fernsehen erKLÄRT haben, Sie würden ein ZWEITES Mal es genau so
machen und anraten, dass Verwandte von Ihnen ILLEGAL gepflegt werden, des is
nicht meine VORSTELLUNG von einem Bundeskanzler, der soll nämlich anstehende
Probleme lösen.

[...]

SCH: (1 Sekunde Pause) Jetzt versteh i Ihre Schweißperlen auf der St auf der
Lippe. Mit diesem Untergiff haben Sie sich endgültig disqualifiziert. Ich würde
NIEmals Ihre Familie hereinziehen, niemals.

'GU: [...] I tell/I tell you what's a REAL threat.

SCH:

What is?

GU: Namely, when a chancellor wants to be a model of ILLEGALITY. Because you have deCLARED here on TV, that you would do exactly the same thing a SECOND time and give the advice that relatives of yours should be taken care of illEGALLY, that is not my concept of a chancellor, who is supposed to solve urgent problems.

[...]

SCH: (pause of 1 second) Now I understand why you've got beads of perspiration on your fo-/on your lip. With this unfair trick you have disqualified yourself forever. I would NEVER bring your family into it, never!

Transcription symbols: GU = Gusenbauer; SCH = Schüssel; CAPITALS = syllable with special emphasis; [...] = omitted passages; / = self correction.

At first sight, Schüssel's counter attack does not seem acceptable because of its irrelevance: Gusenbauer's sweating has nothing to do with his arguments about permanent care in Austria. Moreover, his fictitious argument involving justice ("I would never mention your family in a public debate, so mentioning my family, you have disqualified yourself with this unfair attack") seems to be a problematic attempt to silence Gusenbauer as far as private issues are concerned. Furthermore, his appeal to justice shares the general weakness of all fictitious arguments: Schüssel could not prove that he really would refrain from bringing in Gusenbauer's family because at the time no family member of Gusenbauer needed the help of nurses from abroad. What is more, apart from having a bad conscience, Gusenbauer's transpiration can be easily explained with the high temperature in the TV-studio and his (maybe too heavy) makeup.

However, both *ad hominem* attacks could be justified as being relevant arguments, at least to a certain degree. Political leaders cannot claim the same right of privacy as ordinary citizens because the consistency of their private and public

behaviour can be intimately connected with the well-being of the whole nation. Certain aspects of their personality such as credibility, honesty, stress management (note that perspiration is interpreted by Schüssel as a sign of a bad conscience and/or nervousness) are extremely relevant for future prime ministers (cf. Perelman & Olbrechts-Tyteca, 1983, p. 395; Kienpointner, 1992, p. 319 on "person-act" arguments; Walton et al., 2008, pp. 140–147 on "ethotic arguments"). As this is true for both politicians, although their mutual attacks threaten their positive and negative faces in the sense of politeness theory (cf. Brown & Levinson, 1987), both are somehow justifiable in the context of a competitive TV debate, which, as far as the dialogue type is concerned, often comes close to an eristic dialogue (cf. Walton, 1992, 1998, 1999; Kienpointner, 2008).

Moreover, as far as freedom of speech is concerned, Schüssel did not have any institutional power to sanction Gusenbauer for his circumstantial *ad hominem* attack. In democratic societies, institutional sanctions violating the principle of freedom of speech are acceptable only in really exceptional cases, such as the prohibition of neo-Nazi activities discussed above. Schüssel's only strategic option, therefore, was the attempt to silence Gusenbauer on private issues by persuasive argumentative means, namely, his abusive *ad hominem* attack and his fictitious appeal to justice. Furthermore, Schüssel's attempt to silence Gusenbauer on certain private issues cannot be condemned completely because politicians, too, should be granted that there are limits to making their private life an issue of a public debate (cf. Tannen, 2004, pp. 78–132). Therefore, Schüssel's and Gusenbauer's *ad hominem* attacks seem to be extremely problematic discussion moves, but not a clear case of a fallacious instance of strategic maneuvering. (cf. Zarefsky, 2008, p. 328).

2.3 Drastic appeals to pity

As for other emotional arguments traditionally labelled as fallacies, Walton (1997) has shown in the case of appeals to pity that they can be plausible arguments in certain contexts (cf. also Walton et al., 2008, pp. 108–112). When is this fallacious, then? Walton's answer contains the following two important elements:

1. The argument *ad misericordiam* tends to be fallacious when it is used "to seal off the asking of critical questions that would be appropriate for properly deliberating on the question at issue", when the dramatic impact of the emotional appeal is used "to block further questioning" (Walton, 1997, pp. 158–159).
2. The argument *ad misericordiam* "is most dangerous as a fallacy when the visual or dramatic appeal to feeling – in itself a legitimate type of argument – is blown out of proportion, due to its dramatic impact" (Walton, 1997, p. 160).

In the first case, the speaker is going too far because he or she ignores or suppresses critical questions, which should be asked to test the plausibility of the appeal to pity, for example (cf. similarly Walton, 1997, p. 155):

- Q1. Is x really in need of help?
- Q2. Will bringing about A by y really help or relieve this distress?
- Q3. Is it possible for y to bring about A ?
- Q4. Would negative side effects of y 's bringing about A be too great?

If these or similar critical questions are blocked by the argument *ad misericordiam*, it becomes fallacious (for some clearly fallacious instances of arguments *ad misericordiam* cf. Kiernpointner, 2006).

In the second case, visual messages which accompany verbal argumentation can be so drastic that rational argumentation becomes almost impossible. Quite often, both verbal and visual strategies are combined. A clearly fallacious appeal to pity was the message presented by Nayirah, a fifteen-year-old Kuwaiti girl who testified on October 10, 1990, in a hearing before the Congressional Human Rights Caucus, that Iraqi soldiers had pulled babies from incubators in Kuwait (quoted after Walton, 1997, p. 128):

- (4) *Mr. Chairman and members of the committee, my name is Nayirah, and I just came out of Kuwait. While I was there, I saw the Iraqi soldiers come into the hospital with guns. They took the babies out of the incubators, took the incubators, and left the children to die on the cold floor [crying] It was horrifying.*

This atrocity story was an appeal to pity and proved to play a major role in the decision of the U.S. Senate on January 10, 1991 to go to war against Iraq. President George Bush mentioned it at least ten times in the weeks following the broadcast of Nayirah's story in U.S. media and "[s]even U.S. senators cited Nayirah's testimony in speeches backing the use of force" (Walton, 1997, p. 129). In the end, however, it turned out that Nayirah (actually Nijirah al-Sabah) was the daughter of Saud Nasir al-Sabah, the Kuwaiti ambassador to the United States, and a member of Kuwait's royal family. Subsequent investigations, including interviews with Kuwaiti medical officials (pediatricians, obstetricians), revealed that there was no evidence whatsoever for the incubator story. So Nayirah's story turned out to be a classical example of black propaganda (cf. Jowett & O'Dowell, 1992).

But even if we assume, for one moment and for the sake of the argument, that Nayirah's story had been true, the highly dramatic presentation (note the nonverbal aspect of Nayirah's crying) and the horrible topic selected for to make the military invasion of Iraq almost inevitable, namely, the brutal treatment of the babies by Iraqi soldiers, could be criticised as a highly problematic instance of strategic maneuvering. The verbal and visual techniques employed by Hill and

Knowlton, the public relations firm promoting a military intervention (cf. Walton 1997, p. 130) were likely to prevent a fully critical deliberation, that is, a careful assessment of all the pros and cons of starting a war. In this way attempts were made to silence critical opponents in an illegitimate way.

Even more drastic are the persuasive visual strategies used by Pro-Life lobby groups. Although the issue is a complex one and both pro-life and pro-choice lobbyists have some strong arguments for their point of view (e.g. invoking the human rights of unborn children vs. the human rights of women, respectively), the aggressive pictures used in the campaigns of Pro-Life groups and on their websites seem to convey a conversational implicature such as "Seeing these pictures, any morally responsible person has to do everything to prevent further abortions, so how can you go on to argue for abortion instead of joining our side?" Moreover, verbal techniques of presentation such as metaphor are also used in a most aggressive way. Frequently, pro-life texts portray legal abortion as "genocide" or "holocaust". Comparisons of abortion with genocide or the holocaust can also be criticized as instances of the fallacy of "false analogy" (on sound and fallacious instances of the argument from analogy cf. Walton et al., 2008, pp. 48–55).

For example, the following passage from a Pro-Life website contains problematic comparisons between the Nuremberg laws and slave societies with U.S. legislation on abortion (and the shocking pictures of aborted fetuses shown on the same website, which could be analysed as visual arguments; cf. Groarke, 2002), make a reasonable discussion of the pros and cons of abortion very difficult indeed:

- (5) *In 1935, the Nuremberg Laws codified the exclusion of Jews from German society. The next year, the Reichsgericht (Germany's highest court) essentially legalized the Holocaust. Cartoons routinely depicted Jews as pigs, dogs, rats, and other vermin.*
- In 1857, the U.S. Supreme Court declared Blacks "...a subordinate and inferior class of beings..." in [Dred] Scott v. Sandford. Black slaves were often assigned diminutive names, such as "Mingo," that were normally reserved for pets.*

In 1973, the U.S. Supreme Court found that "the word 'person' as used in the [Constitution], does not include the unborn." Today, unwanted children are spoken of in dehumanizing terms: "embryo," "fetus," "products of conception," etc. (cf. <http://www.blackgenocide.org/abortion.html>, April 13, 2007)

All in all, then, appeals to pity using excessively drastic verbal and visual means of argumentation for their standpoint in order to seal off the discussion and to silence the opponent are highly problematic strategic moves. They could be plausibly called instances of "derailed strategic maneuvering", that is, arguments *ad misericordiam* which are used to silence opponents by dubious means of visual and verbal presentation.

2.4 Silencing political opponents

The clearest cases of fallacious attempts to silence an opponent are to be found in the frequent practice of totalitarian states (e.g. both right-wing and left-wing dictatorships) to generally forbid public criticism of members of the regime, its laws, its policy and its ideological background. Here the right of freedom of speech is prohibited at a highly general level, that is, it is not restricted to very specific, exceptional cases. Furthermore, this prohibition is enforced by serious legal sanctions (including imprisonment, mistreatment, torture). Finally, very often the prohibition is not justified by arguments at all, but simply enforced by threatening, arresting and mistreating political opponents and their families (a non-argument variety of *ad baculum* appeals, cf. Walton 2000, p. 174).

To give but one recent example: Ironically, Article 301 of the Turkish penal code does not sanction the denial of a genocide, but the public claim that a genocide indeed took place, namely, the genocide of the Armenian population in the Ottoman Empire in the years 1915–1917. This Article 301 sanctions the public denigration of “Turkishness, the Turkish Republic and the Great National Assembly of Turkey” (“Türkliği, Cumhuriyeti ve TBMM’yi alenen aşağılama”; TBMM = Türkiye Büyük Millet Meclisi) by imprisonment between six months and three years:

- (6) *Türkliği, Cumhuriyeti, Devletin kurum ve organlarını aşağılama MADDE 301. – (1) Türkliği, Cumhuriyeti veya Türkiye Büyük Millet Meclisini alenen aşağılayan kişi, altı aydan iki yıla kadar hapis cezası ile cezalandırılır.*
“The denigration of Turkishness, the Turkish Republic, institutions and agencies of the state

Article 301. – (1) A person who denigrates Turkishness, the Turkish Republic or the Great National Assembly of Turkey in public, is punished by imprisonment from 6 months to 3 years.

Apart from the fact that “denigration” as a term of law leaves too much room for interpretation and, thus, for general intimidation and suppression of critical citizens, the Armenian genocide is now already widely accepted as a historical fact, for example, by the European Parliament, by more than 20 individual states, among them Argentina, Belgium, Canada, France, Italy, The Netherlands, Russia, Switzerland), and by distinguished social scientists, such as the Turkish historian Taner Akçam (cf. Akçam, 2006), who has repeatedly been threatened by Turkish nationalists. The Armenian genocide is also portrayed as a fact by reliable encyclopedias. For example, the online edition of the Encyclopedia Britannica contains the following remark about the massacres ordered by representatives of the Ottoman Empire in 1915–1917:

In what would later be known as the first genocide of the 20th century, hundreds of thousands of Armenians were driven from their homes, massacred, or marched until they died” (cf. similarly the article “Armenier” in the German Brockhaus Encyclopädie, vol. 2, 1987, p. 124)

Therefore, to claim in public that the genocide took place can hardly be judged to be an exceptional case where the freedom of speech can be restricted legitimately. One could even argue that it is not a clear case of “denigration” of the Turkish Republic because the genocide took place during the last years of the Ottoman Empire. Therefore, it is a case where the restriction of the freedom of speech is not justified by plausible arguments or can only be justified by bad arguments such as the alleged unacceptability of a challenge of chauvinist emotions and nationalist pride.

Trials in the year 2006 against prominent Turkish citizens such as the author and Nobel Prize winner Orhan Pamuk or the well-known Turkish-Armenian journalist Hrant Dink (assassinated on January 19, 2007 by a Turkish nationalist), who criticized the fact that Turkey still today does not accept the Ottoman Empire’s responsibility of the Armenian genocide, did not lead to their imprisonment. However, the very fact that they could be prosecuted according to Article 301 is alarming. This, then, is a clear case where strategies of silencing the opponent derail as instances of strategic maneuvering.

3. Conclusions

The case studies analyzed above have shown that there are many different strategic attempts to silence an opponent, not all of which are necessarily fallacious. Some of them are legal sanctions implemented by the state, others are argumentative strategies, both verbal and visual ones. Some of them rely on rational arguments, some appeal (additionally or almost exclusively) to emotions.

Strategic maneuvering consisting in attempts to silence an opponent can be justified in exceptional cases, especially when limits to the freedom of speech are not (merely) established by legal sanctions, but (also) justified with reasonable arguments or with arguments which are at least plausible to a certain degree in a specific context.

However, not all kinds of argument can justify attempts to silence an opponent. They become problematic and dubious if the opponent is overwhelmed with highly emotional appeals which try to seal off the discussion. Finally, attempts to silence an opponent clearly derail as strategic maneuvering if they restrict the

human right of freedom of speech at a highly general level and are established by legal sanctions or brutal force rather than justified by plausible arguments.

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