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**RETHORIC AND HERMENEUTICS:\***

*VICO AND RABBINIC TRADITION*

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*...et Deum esse, et mentem unam infinitam esse, et auctoris nobis aeternorum verorum esse.*

[G. B. Vico, *Opere giuridiche* (Firenze, Sansoni, 1974). p. 43]

**1. Preliminary Note**

In his masterful work, *Jerusalem and Athens* (1997), Professor Jacob Neusner studied the parallel between the dialectic developed in the Babylonian Talmud (3rd – 4<sup>th</sup> c.) and the dialectic of the teachers of the ancient Greek academies. Since it is difficult to establish direct or indirect links between these two, Neusner indicates that he only tries to study the "congruencies", that is, the similarities between both systems, not the historical links.<sup>1</sup> The purpose of the present study is also to examine some congruencies between the rabbinic tradition – specifically that in the Babylonian Talmud – and Vico's vision. It is obvious that there were not or possibly could have been direct links between the Talmud and Vico. One must point that the congruencies we here intend to examine rise in their own historical circumstances, and become defined within spaces that impose their own patterns and dynamics: Yet, they both coincide in displaying certain key ideas and institutions. To our understanding these parallels become more meaningful, precisely because these are mere congruencies: They belong purely to the human spirit {918} more than presumed *influences* – an astrological term that particularly dominates modern historiography.

In previous studies we have examined some common elements in Vico and Hebrew tradition.<sup>2</sup> Rabbinic tradition is the only intellectual movement from ancient times that rejects Greek rational-idealism, and one that develops an alternative

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\* Translation by David Ramírez.

<sup>1</sup> Jacob Neusner, *Jerusalem and Athens*, Leiden, E. J. Brill, 1997, p. XIII.

<sup>2</sup> Cfr. *Sephardism in the XIX Century: New Directions and Old Values*, in "Proceedings of the American Academy for Jewish Research," 1977, 44, pp. 29-52; *La Teoría del Conocimiento de Francisco Sánchez and verum / factum de Vico*, in "Cuadernos Sobre Vico", 1994, 4, pp. 83-99; Vico, *Humanismo Religioso y la Tradición Sefardita*, in "Cuadernos sobre Vico", 1997, 7-8, pp. 255-264; *La Ruptura del lógos: Algunas Observaciones sobre Vico y la Tradición Rabínica*, in "Cuadernos sobre Vico," 1997, 7-8, pp. 265-278; *Imagination and Religious Pluralism: Maimonides, ibn Verga, and Vico*, in "New Vico Studies," 1992, 10, pp. 36-51.

system.<sup>3</sup> Vico also rejects rational-idealism and proposes a "scienza nuova". In working towards discovering "ancient Roman wisdom," Vico proposes models that coincide with key aspects of Hebrew tradition. Is it perhaps that those congruencies are due to the fact that "ancient Roman wisdom," as rabbinic thinking, is part of an "ancient Mediterranean wisdom," having their own cultural patterns that are neither metaphysical or theological, both disengaged by rational-idealism, and which Vico tried to recover?

## **2. The Rupture of Logos and the Triumph of Rational-Idealism**

In its primordial state, the ideal constituted also the articulation of that idea: Meaning and its articulating word were indistinguishable. As Vico observes, originally the Greek *logos*, as the Hebrew *dabar*, meant "word / thing".<sup>4</sup> {919} Rational-idealism emerges from the rupture of the *logos*. The inaugural debate between Gorgias and Socrates (which still reverberates to our days) proceeds to break the link of *word* from *thing*. Both attempt to fissure the *logos* in two, "rhetoric / philosophy", and maintain a hierarchical opposition between them. This rupture marks the development of Greek thinking through the centuries. Once the unity of the *logos* has been violated, rhetoric breaks the link with *aletheia* (truth) and becomes part of *metis* (cleverness), not *sofia* (intelligence). In Gorgias' mind, rhetoric is similar to magic. Its purpose is to allow the speaker manipulate the audience, control its emotions as a skillful magician would do, creating illusions and lies in the mind of a public void of rational judgment. This rhetoric functions as an instrument for the irrational: It teaches the technique that will allow the speaker to *spell* the audience and have dominion over its emotions. It would be convenient to point out that for Gorgias this control is not immoral but something necessary for directing and motivating human society.<sup>5</sup> On the other hand, rational-idealism breaks the link between philosophy and word: The articulation of this idea is marginal to meaning. The idea is represented by an absolute truth governed by universal thought categories, independent of any particular language.<sup>6</sup> From here departs not only a monolingualism peculiar to idealist culture and thinking – only one language reflects the pure and absolute truth – but that this *truth* does not admit variations: It has categorical value in all historical periods and in all cultures.<sup>7</sup> Such truth rejects the *verisimilar* and reduces the study of the {920} humanities to marginal and

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<sup>3</sup> Refer to *Golden Doves with Silver Dots: Semiotics and Textuality in Rabbinic Tradition*, Bloomington, Indiana University Press, 1986, pp. xxvi - xxvii; *Homo Mysticus: A Guide to Maimonides's Guide for the Perplexed*, Syracuse, Syracuse University Press, 1999, pp. ix-x.

<sup>4</sup> SN § 401.

<sup>5</sup> See *Golden Doves with Silver Dots*, cit., pp. 63-64.

<sup>6</sup> This illusion is the result of confusing certain aspects of Greek language and grammar with canons of human thinking; look *Golden Doves with Silver Dots*, cit., pp. 7-8.

<sup>7</sup> One has treated this subject more extensively in *La ruptura del logos*, cit., pp. 265-278. About Greek monolingualism, see *Golden Doves with Silver Dots*, cit., pp. 7-8, 155-156, and the study *Monolingualism and Judaism*, in "Cardozo Law Review", 1993, 14, pp. 1713-1744.

inconsequential ambits. Also from this posture, we get the anti-humanist stance that characterizes modernity's idealist philosophy.<sup>8</sup>

One of the consequences from the triumph of *philosophy* over *rhetoric*, and its subsequent displacement of the *word* in favor of *pure* thought, is what Ortega y Gasset describes as the "practice for the disarticulation of knowledge."<sup>9</sup> The humanist movement of the Renaissance comes to repair this rupture. As Ernesto Grassi has pointed out, the purpose of Humanism is "the unity of *res* and *verba*."<sup>10</sup> The work of the poet, thus confirmed by Juan Ramón Jiménez, is to repair the rupture "word / thing:" "*Que mi palabra sea, la cosa misma, creada por mi alma nuevamente / Let my word be the same thing, newly created by my soul.*"<sup>11</sup> For Vico also, "*res, verba et rerum*" are linked linguistically.<sup>12</sup> As clearly demonstrated by Professor Hidalgo-Serna, this basic aspect of Vichian thought differs from the traditional philosophy of *ratio*.<sup>13</sup> Its purpose is to repair the fissure of the *logos*. The unity of sciences proceeds from the just mentioned; Vichian curriculum, its opposition to academic specialization<sup>14</sup> and his anticartesian criticism demand it.<sup>15</sup>

{921} Developing since ancient times, Rabbinic tradition is the only intellectual movement in the West that continued postulating the integrity of "word / thing," thus rejecting the hierarchical opposition "philosophy / rhetoric" and its subsequent unfolding. In a more profound sense, the integrity of the *logos* is corollary to Hebrew monotheism. If we suppose, as the Hebrew Bible and rabbinic tradition maintain, that the Cosmos is no more than a "Book" written by the hand of only one author, all the elements of this book must be organically linked, like the "Tree of Life" (Prov. 3: 1.8) – a symbol of Hebrew wisdom.<sup>16</sup> Translated into modern terminology, the integrity of "word / thing" postulates a Humboldt-like theory of language. As it has been noted, for Humboldt language is "More than a simple instrument of communication." Quoting Humboldt, language is "the medium through which man simultaneously forms himself and the world." The *thing* that the individual perceives outside himself allows him to give context to the *word*, at the same time that the *word* allows him to place the *thing* outside himself and recognize it

<sup>8</sup> See Ernesto Grassi, *La rehabilitación del humanismo retórico. Considerando el antihumanismo de Heidegger*, en "Cuadernos sobre Vico," 1992,2, pp. 21-34.

<sup>9</sup> José Ortega y Gasset, *La rebelión de las masas*, in *Obras Completas de José Ortega y Gasset*, Madrid, Alianza, 1994, vol. 4, p. 218. A comparison between Ortega and Vico in "Cuadernos Sobre Vico," 1991, 1.

<sup>10</sup> Ernesto Grassi, *Vico y el humanismo*, Barcelona, Anthropos, 1999, p. 15.

<sup>11</sup> "Inteligencia," in *Segunda Antología Poética*, Madrid, Espasa Calpe, 1920.

<sup>12</sup> Giambattista Vico, *Institutiones oratariae*, 35, en *Opera Omnia*, Bari, Laterza, vol. VII, p. 183; quoted by Hidalgo-Serna in the next footnote.

<sup>13</sup> Emilio Hidalgo-Serna, *Vives, Calderón, y Vico*, in "Cuadernos sobre Vico," 1992, 2, pp. 75-88.

<sup>14</sup> See Giorgio Tagliacozzo, *La Unidad del Conocimiento*, presentation, footnotes and translation by José M. Sevilla, in "Cuadernos sobre Vico," 1997,7-8, pp. 209-236. Cfr. Giuseppe Patella, *Giambattista Vico, la Universidad y el Saber*, in "Cuadernos sobre Vico," 1997, 7-8, pp. 101-112.

<sup>15</sup> About this subject look Gemma Muñoz-Alonso López, *La crítica de Vico a Descartes*, in "Cuadernos sobre Vico," 1992, 2, pp. 51-63.

<sup>16</sup> I have expanded this subject in *God as a Writer: Omnipresence and the Art of Dissimulation*, in "Religion and Intellectual Life," 1989, 6, pp. 31-34. Cfr., *Golden Doves*, cit., pp. xxi-xxii, 23-6, 59-60, 138-142, 167.

as such. “Without language, objects would not be even such for men.” Again quoting Humboldt: “And thus, the world that is reflected on man is born between the language that links man with the world and fertilizes the former through the latter.”<sup>17</sup> From here we obtain that language establishes the unity and diversity of humanity at the same time. Rabbinic tradition maintains that God pronounced the “Torá,” or revealed Law, in “seventy languages,” the totality of languages and nations that are part of humanity. As a consequence, the “Torá” has “seventy faces” or modalities of interpretation – each face {922} representing one of the languages and nations of humankind<sup>18</sup> – similar to the Humboldt’s “*innere Sprachform*”.<sup>19</sup> This postulates, as Vico proposes, “a common mental language to all nations,” capable to give articulation within a variety of linguistic modalities.<sup>20</sup> To reject the rupture of *logos* means, among other things, to negate the intellectual basis for the division of academic specialties,<sup>21</sup> even the division of ethics / eloquence.<sup>22</sup> It also means to negate a hierarchical relationship between *rhetoric* and *philosophy*, where one is either superior or marginal to the other. In this key point resides the difference with Valla, who supposes that “philosophy, the same way as a soldier or an orator, is under the command of oratory.”<sup>23</sup>

When negating the integrity of the *logos*, on one side rational-idealism exposes itself to the dangers of a sleepwalking logic that spills over a rational injury, which is sometimes delirious. These are the “philosophies” that Vico informs us about, which lead to “intellectual” corruption and “descend to skepticism.” On the other hand, once dispossessed of the *ratio*, “eloquence becomes abused.” Rhetoric at this stage will depend more and more of emotiveness (as exemplified by Cicero y Quintilianus), which will *spellbind* the audience with “false eloquence.”<sup>24</sup>

### 3. Mental Law and Sensus Communis

{923} The *peshat* of Talmudic literature, erroneously translated as “literal sense,” actually means a possible interpretation of the text, which emerges from “what

<sup>17</sup> Donatella Di Cesare, *Wilhelm von Humboldt y el estudio filosófico de las lenguas*, Barcelona, Anthropos, 1999, p. 33.

<sup>18</sup> See *Golden Doves*, cit., p. 120. This is the primary thesis of Professor Neusner, who defends that one should speak of “Judaisms” in the plural, particularly when one studies ancient Judaism.

<sup>19</sup> See *Golden Doves*, p. xii; y D. di Cesare, *Wilhelm von Humboldt y el estudio filosófico de las lenguas*, cit., pp. 85-89.

<sup>20</sup> SN § 161, cfr. S 162.

<sup>21</sup> See John D. Schaeffer, *Sensus Communis*, Durham, Duke University Press, 1990, p. 152. Cfr. *supra* footnote 14.

<sup>22</sup> See *Sensus Communis*, cit., p. 156.

<sup>23</sup> Quoted by E. Grassi, *La filosofía del Humanismo*, Barcelona, Anthropos, 1993, p. 133. Cfr. Nancy S. Struever, *Rhetoric and Philosophy in Vichian Inquiry*, in “New Vico Studies”, 1985, III, p. 140.

<sup>24</sup> SN § 1102. Cfr. Gustavo Costa, *Vico's Political Thought in His Time and Ours*, in Giorgio Tagliacozzo (ed.), *Vico and Contemporary Thought*, Atlantic Highlands –N.J., Humanities Press, 1976, part I, p. 232-234; and I. D. Schaeffer, *Sensus Communis*, cit., p. 153.

is commonly accepted.”<sup>25</sup> The *peshat* is possible thanks to logical and psychological factors, as well as to historical processes, which synchronically link the linguistic community, thus allowing the establishment of the *obvious* sense in a written text. For Maimonides the *peshat* is the linking sense of the Torá (=de-oraita) and as a consequence something that counts with the unanimous consent of the community of Israel. A synonymous expression of *peshat* prior to the Common Era is *dabar she-ha-Tsadoqim modim bo*, “something on which the Tsadoqites concur with;” in other words, that which is accepted by all, even the sectarians (Tsadoqites).<sup>26</sup> In this precise sense, the *peshat* is a universal phenomenon: The *sensus communis* of all the linguistic community. This is essentially *oral*: It can never become a written text. Rabbinic tradition maintains that together with the *written law* or the text of the Torá, the people of Israel received an *oral law* – the psychological-linguistic apparatus that allows the interpretation of the written text. Spanish-speaking Sephardim translate *oral law* as *ley mental* [mental law]<sup>27</sup>. This *ley mental* constitutes the mental apparatus of the linguistic community, through which a text of the *written law* is processed (allowing certain {924} syntactic connections and rejecting others). In this manner one establishes a semiologic relationship between the written text – or that which is interpreted – and the mental law, or the interpreter system. This relationship cannot become inverted: The interpreting system cannot be interpreted by any other system. Otherwise, mental law would be an interpreted object and not an interpreting system.<sup>28</sup>

From the latter, two fundamental parallels spring forth between rabbinic tradition and Vichian thinking. The *peshat* or *sensus communis* represents the primordial psychological-linguistic system that allows a community to articulate its own values: Then, any other cannot articulate this system. The *oral* aspect of the mental law does not only elude the reduction of the *sensus communis* to a written text, but it must precede a written text. According to Geonic tradition (teachers of Talmudic Academies in Babylonia, 8<sup>th</sup> - 11<sup>th</sup> c.) and that of Maimonides, the oral law of Israel preceded the written one.<sup>29</sup> This is a universal phenomenon: All written text

<sup>25</sup> I have elaborated on this subject in my study *Texte et société: histoire du texte révéle*, in ed. Shmuel Trigano, *La société juive à travers l'histoire*, Paris, Arthème Fayard, 1992, vol. 1, pp. 66-69; and in my article *Basic Concepts in Rabbinic Hermeneutics*, in “Shofar,” 1997, 16, pp. 1-12.

<sup>26</sup> See *Basic Concepts in Rabbinic Hermeneutics*, cit., pp. 1-12.

<sup>27</sup> It is important to note that this voice in the Latin form *lex mens* penetrates Italian judicial thinking. This becomes evident from the brilliant exposition of Dr. Fabrizio Lomonaco, presented in the same **Congreso Internacional sobre Vico** celebrated in Seville, where he examined the meaning of this term in Gravina. The text can be compared with the work *Diritto naturale e storia. Note su Gravina e Vico*.

<sup>28</sup> See Golden Doves, cit., pp. xvii, 54, 111-112; cfr. *ibidem*, pp. 12, 136. There is a very erudite discussion of the terms “mind” and “reason,” in Santino Cavaciuti’s *In margine alla dottrina vichiana di “mente” e “ragione”: assolutezza e concretezza della “mens”; strumentalità e astrattezza della “ratio,”* in Antoni Quarta e Paolo Pellegrino (eds.), *Humanitas: Studi in Memoria di Attonio Verri*, Lecce, Mario Congedo Editore, vol. 1, pp. 93-102. Nonetheless, in my view, mind / *mens* is only an interpreting system, in the precise sense of “*ley mental*” within the Spanish Sephardic tradition, while reason / *ratio* is not more than the application of a method that allows to calculate or evaluate something.

<sup>29</sup> This fundamental aspect has been documented in my *Studies in the Mishne Tora* (heb.), Jerusalem, Mossad Harav Kook, 1978, pp. 95-96.



presupposes a *sensus communis* or mental law that will allow it to be interpreted by the linguistic community. In this manner, the linguistic community projects meaning onto the written text and *reads into it*.<sup>30</sup> Vico postulates this as following:

{925} free peoples must be lords of their own laws, since these are the ones that give those laws the meanings that conduct the powerful to observe them, and who [. . .], would not like to have them.<sup>31</sup>

Second, as Vico shows, the *sensus communis* processes “a judgment without any reflection.”<sup>32</sup> This is not the effect of a verbal communication but of “divine providence” that forms all nations. In the same way as the *berit* or the bond of the Hebrew nation,

It is the criteria taught to the nations by divine providence to define what is certain in respect to the natural law of peoples; from which the nations pinpoint to understand correctly the substantial subjects of such law, through which all convene with certain modifications.<sup>33</sup>

In a lesser voice, such agreement is *sacred*, something that is transcendently binding, and emanates from archaic intuitions originating from a preverbal state (and as a result pre-voluntary) from all the linguistic community.<sup>34</sup> As we have indicated somewhere else, this type of intuition forms from collective trances that will affect the linguistic community’s *imagination* and the perimeter of semantic possibilities.<sup>35</sup>

#### 4. Rhetoric

In the Andalusian-Jewish tradition, the Bible is considered as the paradigm of *melitsa* – Hebrew word that translates into *rhetoric* – in the sense of “art of eloquence.”<sup>36</sup> {926} The Sevillian Shelomó ibn Verga (d. ca. 1520), author of the famous work *Shebet Yehudá*, asserts that “the Jews are the masters of rhetoric (*melitsa*)”, due to the fact “that their children are raised on the lap of the (Hebrew) Bible, which is the essence of rhetoric (*melitsa*).”<sup>37</sup> David Nieto too (1654-1728) – Venetian who lived in the same age as Vico, and who was Rabbi in Liorna, then of the Sepharadi community

<sup>30</sup> See *Texte et société*, cit., pp. 68-69; *Basic Concepts in Rabbinic Hermeneutics*, cit., pp. 6-7.

<sup>31</sup> SN § 936 (cfr. *Ciencia Nueva*, Tecnos, Madrid, 1995, Spanish transl. by R. de la Villa). About oral aspect of “*sensus communis*” in Vico, see *Sensus Communis*, cit., pp. 68-79; cfr. *ibidem*, p. 125.

<sup>32</sup> SN § 142.

<sup>33</sup> SN § 145. (Cfr. op. cit., Spanish transl.)

<sup>34</sup> See *Sensus Communis*, cit., pp. 152-153.

<sup>35</sup> See *Homo Mysticus*, cit., pp. 63-84, 131-134.

<sup>36</sup> See the Spanish-Hebrew bilingual edition of David Nieto, *Matte Dan*. Londres, 5474-1714, IV, Indice. fol. 97a; IV, 8, fol. 103a. With this term Yehuda al-Harizi translates the title of Aristotele’s *Rhetoric*.

<sup>37</sup> Shelomo ibn Verga. *Shebet Yehuda*, Azreil Schochet and Y. Beer (eds.), Jerusalem. Mossad Bialik, 5707-1947, XXXII, p. 80. Cfr. Our book *In the Shadow of History: Jews and Conversos at the Dawn of Modernity*. Albany, SUNY, 1992. pp. 180-181; *Imagination and Religious Humanism*, cit., p. 36-52.

of London – maintains that the Hebrew Bible is the paradigm of the *melitsa*-rhetoric.<sup>38</sup> The *melitsa*-rhetoric tradition, as told by ibn Verga, continued to be cultivated in the Talmud.<sup>39</sup> In effect, the teachers of the Talmudic Academies in Israel and Babylonia (3<sup>rd</sup> – 4<sup>th</sup> c.) are called *Amora'im* (singular of *'amora*), of the root 'MR "to speak," "to articulate," "to expose." The 'amora is the orator, or master of eloquence who develops the topics of the ancient masters of the Mishná, key work for rabbinic tradition compiled circa at the end of the 2<sup>nd</sup> century. The Mishná contains (depending of how it is counted) sixty or seventy treatises, divided in six *sedarim*, "orders."<sup>40</sup> This is not a legal *code* (analogous to {927} Roman codes), as some modern researchers think it is.<sup>41</sup> Better yet, its treatises contain the *common loci* – what Vico calls legal "oratory themes."<sup>42</sup> – that will be developed in the Academies by the masters of eloquence or *'amora'im*.

The rational-idealism imposes itself; as a result there is no need for eloquence. The absolute is necessary. As the root *vir* suggests, *truth* (*verdad*) means "might / force" and as its end, it means violence. This [*truth*] must impose itself *ipso facto*: Due to the fact that it is absolute. This affects our concepts of ethics and morality. The *truth* that the moral philosophers deal with is an objective category.<sup>43</sup> Hence, the "quantum jump" is realized from the metaphysical (to be) to the ethical (to make): Violence is the function of ethics.<sup>44</sup> With Vico, "common sense springs forth from the verisimilar."<sup>45</sup> The mathematical model that the Cartesian system proposes excludes the aspect of opinion and the verisimilar. From the rational-idealist perspective, when two individuals arrive at two opposite conclusions, one should necessarily conclude that at least one is wrong. The *other* expresses an *erroneous* view that does not agree with the *rational*. Applied to the legal ambit, this model leads to the absurd

<sup>38</sup> Matte Dan, *Londre5*, 5474-1714. IV, 8. fo1. 103a ff.

<sup>39</sup> *Shebet Yehuda*, XXXII. p. 89 (II. 3-4).

<sup>40</sup> *Sedarim* is usually translated as "divisions." Without a doubt, Imanuel Aboab's translation "orders" or "classes" is more correct, *Nomologias*, 5389- 1649, p. 250; in other words, "the organization" of subjects that should need to be elaborated by the masters of eloquence. The root of this term, SDR appears in SiDduR or the "ordering" of liturgical themes that will be developed by the *precedentor* at the Synagogue; in SeDeR as "ordering" the themes celebrating the Exodus from Egypt that the participants will develop. SiDRa indicates the portion of the Hebrew Bible that will be paraphrased into Aramean or the one that the class teacher intends to develop in the classroom, but *never* the Hebrew text by itself. In this manner, one will not find the root of this term accompanied by the verb "to read" (*qara*).

<sup>41</sup> See Golden Doves, cit., p. 99.

<sup>42</sup> *Della istituzione oratoria*, cit., p. 20. Cfr. Ch. Perelman and L. Olbrechts-Tyteca, *New Rhetoric*, Notre Dame, Notre Dame Press, 1971, pp. 84-85; y cfr. E. Grassi, *Vico y el humanismo*, cit., pp. 9-16. It is important to note that the *loci* of the Mishná are not classified metaphysically, in accidents, properties, etc., as in Aristotelian *Rhetoric*. About topics on the Mishná and its organization, see Jacob Neusner, *The Philosophical Mishnah*, Atlanta . Georgia, Scholars Press, 1988, vol. 1.

<sup>43</sup> Cfr. Ch. Perleman, *Justice, Law, and Argument*, Dodrech - Holand, D. Reidel Publishing Company, 1980, p. 113.

<sup>44</sup> About the function of violence in pagan political-judicial systems, see our article *Law and Hermeneutics in Rabbinic Jurisprudence: A Maimonidean Perspective*, in "Cardozo Law Review," 1993, 14, pp. 1662-1663, 1669, 1671, footnote 74; cfr. Our article *One-Dimensional Jew, Zero-Dimensional Judaism*, in "Annual of Rabbinic Judaism," 1999, 2, pp. 31-50.

<sup>45</sup> See E. Grassi, *Vico y el humanismo*, cit., pp. 7-9.

conclusion that a great number of the most distinguished jurists are either irrational or {928} dishonest. As Ch. Perelman has observed in his criticism of the Cartesian model:

If the important decisions of the Supreme Court of the United States are rarely unanimous, one should accuse at least one of these respected jurists of being irrational or dishonest. Or should one perhaps conclude that disagreements in (matters of) law should be explained with specific reasons?<sup>46</sup>

The intellectual space of the teachers of the Mishná and the Talmud moves within the ambit of the verisimilar. The Talmud does not recognize any specific metaphysical system. One will not find in the Talmud formal and analytical proofs, proceeding as in scholastics, of syllogisms accompanied by axioms, premises and conclusions. Its proofs are not “demonstrative,” structured from formal deductions and inductions.<sup>47</sup> The object of Talmudic dialectics are equiprobable and inequiprobable alternatives, inferences and analog constructs, undetermined and statistical knowledge, variables and quantitative differences.<sup>48</sup> In the Talmudic lexicon the word “rational” (*muskal*) does not appear. Its dialectic is expository: It proposes the “reasonable” (*sebara*), not the “rational” (*muskal*). The divergent and contradictory opinions that the ‘*amora'im*’ study and propose are not classified into “true” (*emet*) and “false” (*sheqer*). One of the fundamental doctrines of rabbinic dialectic was established by the ‘*Amora* Samuel (circa 2<sup>nd</sup> to the end of the 3<sup>rd</sup> c.) Referring to the numerous controversies between the schools of Hillel and Shammai, he postulates the following doctrine: “These [of the school of Shammai] and those [of the school of Hillel] [express] the words of the Living God, but the *halakha* [legal norm] is {929} according to the school of Hillel.<sup>49</sup> From here two fundamental points depart. First, the dialectic must postulate an absolute horizontality among the disputing parties: Each one expresses “the words of the Living God.” Second (and as a consequence of the former), controversies are not to be resolved metaphysically, according to a certain supreme hierarchical proof, but through the process of *halakha* (legal norm), where the judicial authorities adopt a position instead of the other: The “other” is not necessarily false, but specific reasons and situations leads to take one decision over the other. This is why rabbinic literature also includes the dissident or rejected minority opinion.

This suggests, the same way Vico does, that the foundations for the preeminence of one opinion over the other is due to particular and concrete terms, products of a rational modality that is essentially historic.<sup>50</sup> It is important to remember that the

<sup>46</sup> Ch. Perelman, *Justice, Law, and Argument*, cit., p. 165.

<sup>47</sup> There is an excellent analysis of Talmudic dialectics in *Jerusalem and Athens*, cit., chapter 4.

<sup>48</sup> See *Homo Mysticus*, cit., p. 112; cfr. *ibidem*, pp. 102, 113-115, 118- One should note that Maimónides rejects Aristotle's concept of “need,” cfr. *ibidem*, pp. 113.

<sup>49</sup> Talmud ‘*Erubin* 13b.

<sup>50</sup> This is one of the fundamental doctrines of ibn Verga, see *Imagination and Religious Pluralism: Maimonides, ibn Verga, and Vico*, cit., pp. 43- 47. I study this type of rationality in *In the Shadow of History*, cit., pp. 176- 178. About Vichian historical consciousness and its relationship with his theory of rhetoric, see the important article by Umberto Galeazzi, *Vico e la conscenza storica. Sui Sapere*



noun *halakha* (legal norm) comes from the verb *halakh*, “to walk:” The magistrates, teachers, and society, *choose* to conduct themselves through one *path* and *walk* according to one of the opinions instead of the other. Considering its historic context, judicial decisions cannot be categorical. Rabbinic tradition teaches, “the Torá that God revealed to Israel was revealed in [terms that express] forty nine faces of impurity and forty nine faces of purity.<sup>51</sup> Alluding to that {930} doctrine, R. Yom Tob as-Sibili (“the Sevillian) (ca. 1250-1330) teaches, in the name of the “French rabbis of blessed memory,” that when Moses ascended to the heavens to receive the Torá, “forty nine faces were indicated for prohibition and forty nine for permission” on each of the commandments. He asks God how could this be possible. He answers: “in each generation the Sages of Israel must determine [one of the faces, and that law will be] according to what they [decide].”<sup>52</sup>

The rational-idealist intellectual space rejects the probable. Similarly, the space of what is probable does not tolerate absolutist idealism. Already in his *De nostri* (1709) and *Institutiones Oratoriae* (1711, 1738), Vico answers to the Cartesian challenge by developing a theory of rhetoric that will allow an explanation for the philosophic basis for *elocutio*, which operates in the ambit of the probable.<sup>53</sup> Once *elocutio* is not conceived in terms of scientific models, Vichian and Talmudic rhetoric develop a dialectic where, particularly in the forensic ambit, the opposed opinion is not necessarily wrong. Referring to the Talmud’s legal dialectic, Perelman observes:

Jewish tradition, which never intended to conceive the law through a scientific model, offers a meaningful history on this point. In the Talmud two schools of biblical interpretation are in constant struggle, the school of Hillel and the school of Shammai. . . One Voice from above replied that both theses expressed the word of the {931} Living God. This lesson is clear: Two opposed interpretations can be equally respected, and it is not necessary to mark as unreasonable at least one of these interpretations.<sup>54</sup>

The same can be said about forensic Vichian eloquence.

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*ermeneutico della Scienza Nuova*, found in Antonio Quarta e Paolo Pellegrino (eds.), *Humanitas: Studi in Memoria di Antonio Verri*, Lecce, Mario Congedo Editore, vol. 1, pp. 321-343. Cfr. Fabrizio Lomonaco, *Critica storica e pirronismo: il modello olandese nell’età di Vico*, in “Bollettino Filosofico,” 1999, 15, pp. 213-238.

<sup>51</sup> *Massekhet Soferim*, XVI, 6; see the bibliographic review in *Midrasch Echa Rabbati*, edic. Salomon Buber, Vilna, Wittwe & Gebruder Romm., 1899, p. 20, footnote 28. The reason why forty nine faces are revealed is because according to rabbinic tradition there are fifty different grades of intelligence. Grade number fifty represents absolute wisdom that does not permit any interpretation or variation.

<sup>52</sup> *Hiddushe ha-Ritba apud Talmud ‘Erubin 13b*. Cfr. my article *The Legal Thinking of the Tosafot*, in “Dine Israel,” 1975, VI, pp. L-LI, and noted references *ibidem*, footnote 6.

<sup>53</sup> This fundamental point has been examined in *Sensus Communis*, cit., chp. 3. Some technical aspects of this dispute are analyzed by Linda Gardiner Janik, *A Renaissance Quarrel: The Origin of Vico's Anti-Cartesianism*, in “New Vico Studies,” 1983, 1, pp. 39-50.

<sup>54</sup> *Justice, Law, and Argument*, cit., p. 165.

## 5. Hermeneutics

Rabbinic rhetorical epistemology emerges from hermeneutics (*derasha* or “exposition”) of the Biblical text. Differently from Christian hermeneutics, the purpose of the *derasha* is not to *discover* the original sense of the Biblical text, but to *generate* a new meaning *independent* from the author’s intention.<sup>55</sup> In specific terms, its purpose is to amplify and modify the *semantic* sense of the word contained in the *peshat* or *sensus communis* of the text, utilizing hermeneutic norms that compare, link, and differentiate.<sup>56</sup> Eloquence is the art of presenting to the public this new meaning. In this manner, the *derasha* penetrates the mind of the community; eventually it will become part of its *sensus communis* and it will be the *peshat* or “obvious sense” of the sacred text. In this manner, the *derasha*, as Vichian eloquence, is intimately linked with “virtue” and “wisdom.” In precise terms: “Eloquence is nothing more than the wisdom of speech,”<sup>57</sup> as in {932} Vichian ingenuity.<sup>58</sup> The orator focuses on those topics that will “make the mind ingenious.”<sup>59</sup> In Rabbinic tradition, the distinctive aspect of the “sage” (*hakham*) is the faculty to compose its own *derasha*; a “disciple” (*talmid*) could capture its meaning, but he will not know how to compose it.<sup>60</sup>

Historically, the *derasha* filled the vacuum created by the destruction of the political (the monarchy), religious (Jerusalem’s Temple) and judicial (the Sanhedrin or Supreme Court) institutions in the year 70. The *derasha* emerges for the first time at the end of the first century (before the common era) when Israel’s civil and political institutions were coming to an end. It reaches its apogee at the end of the 2<sup>nd</sup> c., after having suffered its worst military catastrophe with the defeat of Bar Kokhba (135). Through the *derasha* the people’s *sensus communis* is transformed, thus allowing it to capture the Biblical text in the context of their new situation. In concrete terms, the *derasha* replaces government institutions and bureaucracies.<sup>61</sup> All dialectic technique, and as a result rhetorical, presupposes that a *sensus communis* allows to persuade in the name of “reason,” “equity,” “equality,” “liberty,” “religion,” or any of the basic values that unite the community and promote social action. Without the *sensus*

<sup>55</sup> See my article *Law and Hermeneutics in Rabbinic Jurisprudence*, in “Cardozo Law Review,” 1993, 14, pp. 1674-1677; and *Texte et société*, cit., pp. 60-66; cfr. *Golden Doves*, cit., pp. xviii-xix, 122-123.

<sup>56</sup> About the technique of *derasha* and some basic examples, see *Golden Doves*, cit., pp. XVIII-XIX.

<sup>57</sup> *Giambattista Vico, Las Academias y las relaciones entre filosofía y elocuencia*, Spanish transl. and footnotes by José M. Sevilla, in “Cuadernos sobre Vico,” 1997, 7-8, p. 476; *Autobiography*, English version, Part A, 172, p. 144; SN § 1112. About this subject, see Michael Mooney, *The Primacy of Language in Vico*, in the edition of Giorgio Tagliacozzo, *Vico and Contemporary Thought*, Atlantic Highlands – N.J., Humanities Press, 1976, parte I, pp. 194-197.

<sup>58</sup> About the roots of Vichian ingenuity in Spanish Thinking, see the eminent study of Emilio Hidalgo-Serna, *Vives, Calderón, y Vico*, in “Cuadernos sobre Vico,” 1992, 2, pgs. 75-88. To my view, this ingenious-inventiveness is nothing more than the *hiddush* or “new mode” of Talmudic textual focusing that all hermeneutic genuinely “creative” proposes; cfr. *Homo Mysticus*, cit., pp. xi-xii. One should note that Vives, Gracián and Calderón are of *converso* origin.

<sup>59</sup> SN § 498. Cfr. E. Grassi, *Vico y el humanismo*, cit., pp. 23-30.

<sup>60</sup> See *Golden Doves*, cit., p. xviii. Cfr. *Homo Mysticus*, cit., pp. 46-47.

<sup>61</sup> See *Texte et société*, cit., pp. 74-82.

*communis* accompanied by rhetoric, one could impose but not convince.<sup>62</sup> {933} Thus, the *derasha* continues developing through all the rabbinic period (at the end of the 7<sup>th</sup> c.), until to relatively modern times. Without *derasha*, Israel could not have survived two thousand years of exile.

Hermeneutics is the effect of historical situations, not of philosophical theories.<sup>63</sup> Its context is the tension between the “ideal” that emerges from the *sensus communis* of the text and the “reality” that confronts the community. Hermeneutics does not harmonize between these two domains; better yet, it builds bridges that will allow new strategies of social action and spiritual formation. This suggests, that in the same manner of Vives’ ingenious-inventiveness, the frame of the *derasha* is the concrete situation – just as demanded by the Hebrew concept of *dabar*, “word-thing” – not the abstract meaning of a *verbum* disengaged from *res*.<sup>64</sup> The following example is paradigmatic. In Jerusalem’s Temple, as in the rest of the ancient world, “service” to God meant an offering of sacramental sacrifices. With the destruction of the Temple and the dispersion of the people of Israel, the offering of sacramental sacrifices was impossible to fulfill. Without *derasha* one had two alternatives. One was to transgress the Biblical prohibition of establishing a Temple outside Jerusalem, as some Jews did in Alexandria and the Elephantine colony of Egypt. Another option would be to eliminate all sacramental services. Both alternatives would have constituted the end of the Jewish people and their religion. The dilemma is resolved through *derasha*. In Hebrew ‘*aboda* (“service”) means offerings of sacramental sacrifices. Now, in the Pentateuch there is a passage that exhorts to “serve” God “with thy hearts” (Deut. 11:13). Linking {934} both terms, the *derasha* questions: “What service can be achieved only within the *heart*?” And it proposes: “It is prayer! (*tefilá*).” From here springs forth one the most revolutionary doctrines in the history of religious ideas: “Prayers (*tefilot*) were instituted in consideration of (*keneged*) daily sacrifices.” This doctrine establishes not only that prayer constitutes the true “service of the heart,” but also as a consequence the sage (*hakham*) replaces the priest, and the Synagogue the Temple. One must point out that the model of the Church and the Mosque was not the Temple of Jerusalem, but the Synagogue, then dispersed throughout the Diaspora of Israel.<sup>65</sup>

In a more general domain, the hermeneutic experience is the function of the doctrine that stipulates that the “Torá speaks in the language of Adam’s children (*bene Adam*).”<sup>66</sup> Translated into Vichian terminology, this means that God expresses

<sup>62</sup> See Ch. Perelman, *Justice, Law, and Argument*, cit., pp. 120-132. About the character of Vico’s rhetorical persuasion, see Paolo Fabiani, *La Persuasión desde las Institutiones Oratoriae a la Scienza Nuova*, in “Cuadernos sobre Vico,” 1997, 7-8, pp. 59-72.

<sup>63</sup> This is contrary to Humbolt’s position, cfr. D. di Cesare, *Wilhelm von Humholdt y el estudio filosófico de las lenguas*, cit., chp. XVI. Consequently, it is more correct to speak of metaphysical hermeneutics rather than hermeneutical metaphysics; on this very important Vichian distinction, see the seminal article by Leon Pompa, *Hermeneutica Metafísica y Metafísica Hermenéutica*, in “Cuadernos sobre Vico,” 1997, 7-8, pp. 141-166.

<sup>64</sup> Cfr. E. Grassi, *La filosofía del Humanismo*, cit., pp. 115-120.

<sup>65</sup> See *Law and Hermeneutics in Rabbinic Jurisprudence*, cit., pp. 1673- 1674; *Monolingualism*, cit., pp. 1737-1739.

<sup>66</sup> See *Golden Doves*, cit., p. 151 and quoted references *ibidem*. footnote 54.

Himself according to the “sapienza volgare.” Now then, the semantics of vernacular language contain prejudices that prevent to capture the divine message in all of its aspects and content. This means that the Adamic language must be object of perpetual purification. Through the *derasha* the orator purifies the archaic intuition of vernacular semantics, elevating the “sapienza volgare,” thus creating a new *sensus communis* and a new *peshat*. Without this process of semantic refinement all “nuova scienza” is impossible to take into effect. If the semantics are compromised, “ancient man” will end up perverting the “new language” assimilating it in terms of his “ancient semantic.”<sup>67</sup> The semantic purification effected through hermeneutics allows God to “newly” speak to the linguistic community through their *sensus communis*.<sup>68</sup>

{935} While the purpose of philosophy (and as a result of philosophic hermeneutics) is the “closure” of problems by resolving them *permanently*, the hermeneutics founded on the *sensus communis* “inaugurates” radical apertures of problems that will be resolved not metaphysically, but through a historical process of social action that radically affects the *sensus communis*.<sup>69</sup> The curvature that hermeneutics imposes to the text transforms it from a self-referencing system to a self-critical system.<sup>70</sup> This type of hermeneutics is self-subversive: All criticism must direct itself to the community’s *sensus communis*, never in third person.<sup>71</sup>

Three aspects of rabbinic hermeneutics will help to capture the just mentioned. First, the *derasha* functions as a pedagogical instrument, in the classroom, in the weekly reading at the Synagogue and community assemblies. The purpose of *derasha*, as the ideal of Vichian education, is to “put wisdom at the service of the human species.”<sup>72</sup> Second, it is an instrument of ethics. “Because sciences,” as Vico teaches, are “of the same nature as virtues.”<sup>73</sup> Specifically, its function is to develop the archaic *sensus communis*. {936} When hermeneutics teaches that the Biblical proverbial saying “eye for eye, tooth for tooth” (Lev 24:20) means monetary indemnification, this is what is intended because otherwise there would not be true justice.<sup>74</sup> Ultimately, all *derasha* is a criticism to a prior *sensus communis*. We shall illustrate this point with the last example. When hermeneutics transforms the semantic

<sup>67</sup> This is the criticism launched by Yehudá ha-Levi about the christianizing and islamizing of pagan societies; see *El Cuzari*, 4:11, 13., Spanish trns. by R. Jacob Abendana, Madrid, Librería Victoriano Suárez, 1910, pp. 245-249. Cfr. *Homo Mysticus*, cit., pp. 134-135.

<sup>68</sup> See Talmud *Berakhot* 63b; cfr. *Sifre*, § 33, ed. L. Finkdstein, New York, The Jewish Theological Seminary, 1969, p. 59. In the same way as in any classic text, *La Celestina*, *Don Quijote*, etc., speak again to the modern reader through the semantic transformation of language; cfr. *Basic Concepts in Rabbinic Hermeneutics*, cit., pp. 11-12.

<sup>69</sup> As a result, Sephardic Jewish authorities, among them Maimonides, stipulate that a law promulgated on hermeneutic grounds can be abrogated even by an inferior judicial authority. See our *Studies in the Mishne Tora* (heb), cit., pp. 31-32.

<sup>70</sup> Cfr. *Texte et société*, cit., pp. 60-66.

<sup>71</sup> Cfr. Nancy S. Struever, *Rhetoric and Philosophy in Vichian Inquiry*, in “New Vico Studies,” 1985, 3, pp. 140-142.

<sup>72</sup> Giambattista Vico, *Sobre la Mente Heroica*, trns. to Spanish by Francisco J. Navarro Gómez, in “Cuadernos sobre Vico,” 1997, 7-8, p. 462.

<sup>73</sup> *Ibidem*, pp. 463-464.

<sup>74</sup> See Talmud *Baba Qamma* 84a; *Law and Hermeneutics in Rabbinic Jurisprudence*, cit., pp. 1672-1673; *Monolingualism*, cit., pp. 1736-1737.

“eye for eye” into indemnification, it is also directing criticism to a prior interpretation of the law of retribution. The same happens with the *derasha* that teaches the commandment “respect your father and mother” (Ex. 20: 12), thus including the “step-father and the step-mother”<sup>75</sup>: This is simultaneously criticizing a prior *sensus communis* that limited this rule to blood-related parents.

One has pointed out that the Vichian orator functions as an educational character.<sup>76</sup> When one includes the literary elements of the community to the *sensus communis*, “eloquence” plays an important hermeneutical role.<sup>77</sup> Thus affirming the intimate relationship among “virtue, wisdom and eloquence,”<sup>78</sup> and “whoever is not just cannot truly be wise.”<sup>79</sup> Consequently, neither rabbinic or Vichian eloquence are pathetic; both exclude emotiveness.<sup>80</sup>

## 6. Congruencies

Rabbinic tradition and Vichian thinking assume a certain primordial system (*sensus communis*, *peshat*) that allows the linguistic community to process its texts in an “obvious” manner, {937} and recognize certain key-concepts that mutually allow a constant dialogue and persuasion. The ambit of this dialogue is the verisimilar, and its exposed opinions represent the reasonable, not the absolute or necessary. Rhetoric defines the intellectual, social and psychological space of this dialogue,<sup>81</sup> helping to choose one of its opinions. Eloquence functions as an alternative to “violence” – political, metaphysical, psychological, etc. – and serves as a unique ground for the solution of human conflicts. Both presuppose a legal system in the role of supreme referee regarding conflict of interests. One should point out that in rabbinic tradition, Moses is the Chief Justice of the Supreme Court of Israel, not the incarnation of a *logos*. Both conceive this system as something conditioned by historic factors and experiences that result in certain plurality, marking the variation and modalities, of human societies. This system is not static and it unfolds according to its own historical context proper to the community. The purpose of hermeneutics is to assimilate the historical context, thus directly affecting the community’s *sensus communis*. As Grassi confirms:

The interpretation of the being, that is the *res*, can only be taken into effect departing from the ambit of the response that must be given to that inter-appeal through the use of the pronounced word “here” and “now,” in other words, through the art of rhetoric.<sup>82</sup>

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<sup>75</sup> Talmud *Ketubot* 103a; cfr. Maimonides, *Mishne Tora*, *Mamrim* VI, 15.

<sup>76</sup> See María José Rebollo Espinosa, *El Educador Vichiano*, en “Cuadernos sobre Vico,” 1997,7-8, pp. 181-190.

<sup>77</sup> See SN §§ 429, 438,779, 935, etc.; cfr. *Sensus Communis*, cit., chapters 4-5, and pp. 158-159.

<sup>78</sup> *Autobiography* [Part A, 1725), English version, p. 144.

<sup>79</sup> SN§ 1112.

<sup>80</sup> Cfr. E. Grassi, *Vico y el humanismo*, cit., pp. 1-4.

<sup>81</sup> Cfr. *Rhetoric and Philosophy in Vichian Inquiry*, cit., p. 141

<sup>82</sup> E. Grassi, *Vico y el humanismo*, cit., p. 133.



Then, contrary to Grassi, one must conclude that this response must be essentially historical. Hermeneutics do not give closure to problems, but it traces “paths” – in the precise sense of *halakha* – cultural routes and strategies, conforming to the proper pattern of the community. It is obvious in this manner that the *sensus communis* will not – it cannot – manifest in a homogenous form in all societies and in all historical periods. {938} As Arnaldo Momigliano notes, this vision constitutes a manifesto “in favor of cultural plurality and respect for minorities,” whether it be Hebrew or Neapolitan.<sup>83</sup>

The rhetoric of which we have spoken, and the spirit of tolerance that it generates, encounter a peculiar voice in the “New Rhetoric” developed by Professor Chaim Perelman. One of its purposes, and perhaps the most meaningful, would be to free humanity of persecuting ideologies:

We are profoundly convinced that happiness and tolerance require that no political power should be deposited in the hands of a fanatic or ideologist that pretend to know the highest and more absolute truths, and who want to save humanity, without being concerned that those to be saved thus wish it or not.<sup>84</sup>

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<sup>83</sup> *The New York Review of Books*, Nov. 11, 1976, p. 33.

<sup>84</sup> Mieczyslaw Maneli, *Perelamn's New Rhetoric*, Dordrecht, Kluwer Academic publishers, 1993, p. 133.