

Approaches to Legal Rationality

LOGIC, EPISTEMOLOGY, AND THE UNITY OF SCIENCE

VOLUME 20

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Logic, Epistemology, and the Unity of Science aims to reconsider the question of the unity of science in light of recent developments in logic. At present, no single logical, semantical or methodological framework dominates the philosophy of science. However, the editors of this series believe that formal techniques like, for example, independence friendly logic, dialogical logics, multimodal logics, game theoretic semantics and linear logics, have the potential to cast new light on basic issues in the discussion of the unity of science.

This series provides a venue where philosophers and logicians can apply specific technical insights to fundamental philosophical problems. While the series is open to a wide variety of perspectives, including the study and analysis of argumentation and the critical discussion of the relationship between logic and the philosophy of science, the aim is to provide an integrated picture of the scientific enterprise in all its diversity.

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Introduction

At the origin of the present volume there is a team of researchers coming from three different French institutions: the UMR-CNRS 8163 “Savoirs, Textes, Langage”, and especially the group “Dialogical Pragmatism” at the Department of Philosophy of the University of Lille, the former Center Eric Weil at the University of Lille, and the Center René Demogue at the Law Faculty of the University of Lille.

An international workshop “Argumentation, Logic and Law”, held in November 2005 at the Maison de la Recherche of the University of Lille, closed a first sequence of that interdisciplinary work. With the help of the Institut d’Histoire et de Philosophie des Sciences et des Techniques (IHPST) in Paris, and also with the logistic assistance of the Maison des Sciences de l’Homme du Nord et du Pas-de-Calais, researchers from different horizons, both geographical (England, France, Germany, Israel, Netherlands, Poland, Republic of Macedonia, United States) and intellectual, joined together to cross the lines of disciplines. During three days, logicians, legal theorists, moral philosophers, computer scientists and AI researchers, each of them usually working either in his own field in the ignorance of the other fields, or in the very same field but in one tradition in the ignorance of the others, tried to give new insights in the ways and means of legal reasoning.

Although the present volume flows from that conference and its methodological point of view, it should not be reduced to proceedings. The papers of this volume consist of a select subset of revised and newly refereed versions of the papers accepted for presentation at the workshop “Argumentation, Logic and Law”. It also includes papers from leading researchers in logic, legal theory, moral philosophy and computer science, who did not attend the workshop but share our strong interdisciplinary perspective and have something new to propose about legal reasoning.

The result is a collection of papers that has a natural place in the series “Logic, Epistemology and the Unity of Science”. From the beginning, the founders of that series were convinced of the necessity to provide it with a volume about legal reasoning.¹ The editors hope that the present volume meets the challenge.

¹Cf. Rahman S and Symons J (2004). Logic, Epistemology and the Unity of Science: an Encyclopedic Project in the Spirit of Neurath and Diderot. In Rahman S, Symons J, Gabbay D, and van Bendegem JP (eds) *Logic, Epistemology and the Unity of Science*. Volume 1, Springer, 2004, pp. 3–16.

The theme of the present volume is legal reasoning. All the papers are concerned with the question of making the structure of legal reasoning explicit. Despite of the fact that they operate in very different fields (legal theory, political sciences, sociology, philosophy of either “analytical” or “continental” traditions, logic, computer science, AI & Law), they all share a strong adherence to the intuitive structure of legal reasoning. More than other features, such an attention to legal reasoning as actually practiced by legal institutions makes our volume special in the normal production in this expanding area. The result is a set of new insights in major topics such as (to pick up just a few examples) the analysis and evaluation of legal arguments, the respective advantages and disadvantages of both logical and (dialectical) argumentative approaches to legal reasoning, rule-based reasoning *versus* reason-based reasoning, the relevance of logic to the law (and conversely).

The volume is divided into five parts.

The first part is concerned with the question of the “specificity” of legal reasoning. Tracking back to Aristotle and Cicero, four philosophers (Michel Crubellier, Fosca Mariani Zini, Pol Boucher and Jan Wolenski) give new insights and rediscover forgotten traditions in the received history of approaches to legal reasoning. The result is a critical discussion of some mainstream logical approaches to the law in the contemporary conceptual landscape.

The second part collects papers in which legal arguments are considered within the context of public reasoning. Indeed, the study of legal reasoning, of its structure and of its evaluation, often forgets, or fails, to take into account the fact that the notion of legal reason is directly linked to the notion of public reason in numerous and complex ways. Coming from different areas (legal theory, political sciences, sociology, and philosophy), four researchers (David M. Rasmussen, Patrice Canivez, Mathilde Cohen and Sandrine Chassagnard-Pinet) make some of those ways explicit.

The third part is devoted to the interface between logic and the law. Combining general and special investigations (the latter centered about the notions of condition, reasonable doubt and relevance in the law), three philosophers and logicians (Dov M. Gabbay, John Woods and Alexandre Thiercelin) propose new conceptual paths “to cross the lines of discipline”.

The fourth part deals with formal approaches to legal reasoning. The relevance of logical models of defeasible legal argumentation is especially considered from a legal theory point of view (Ana Dimiskovska Trajanoska, Otto Pfersmann). New logical tools for modeling legal arguments are proposed in the framework of Labelled Deductive Systems (Dov M. Gabbay and John Woods).

Last but not least, the fifth part of the volume consists in a unique, ambitious paper by Maximilian Herberger, who strives to describe in a thorough way the different uses of the words “logic”, “logical” and “logically” in a preeminent legal institution. Based upon a very rich set of textual data, his contribution opens a new direction for pragmatic investigations in the area.

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