Special Issue:

Methodologies for Research on Legal Argumentation

Preface

Guest Editors

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Law may be seen as a genuinely argumentative discipline. Every day lawyers argue about the issues of law and fact, trying to persuade juries and judges as regards the assessment of evidence and interpretation of law. Legal authorities justify their decisions posing arguments for or against a certain decision. Argumentation plays a key role in the process of legislative deliberation, negotiations of various kinds, and other forms of dispute resolution. Thus it is hardly surprising that research in legal argumentation has become a prominent tendency in the field of contemporary legal theory for several decades. As these decades have also witnessed an unprecedented development of general research on argumentation, many connections and interdependencies were revealed or created between the study of legal argumentation and general argumentation studies of

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various types.

The current state of the art in the study of legal argumentation may be characterized by the applicability of a great variety of concepts, distinctions, frameworks and methods that have been employed in dealing with this abundant field of research. Legal argumentation has been analyzed not only from the viewpoint of legal theory, but also in the scope of computational argumentation studies, artificial intelligence, and general theories of argumentation. Although many of the diverse tools used in the mentioned fields are well-developed, we believe that insufficient attention has been paid to the meta-level discussion between the representatives of various methodological traditions, including, in particular, the legal-theoretical, philosophical, and logical perspectives, as well as the point of view of computer science with a focus on AI research.

The special issue of *Informal Logic* devoted to the "Methodologies for Research on Legal Argumentation" is aimed at exploring the current state of the art in developing methods and conceptual frameworks in the study of legal argumentation. The main objective of the issue is to provide space for the presentation of the methodological ideas concerning the research on legal argumentation from three perspectives: AI and Law, (philosophical) argumentation theory, and legal theory. There is strong need for cooperation and mutual inspiration among these three domains of research in order to develop more effective, accurate, and scientifically adequate theories and models of legal argumentation. Thorough discussion of scientific aims and adopted methodologies is needed in this field, which may lead to establishing a greater number of interdisciplinary research projects related to legal argumentation.

The issue has been founded upon the discussions that took place at the 1st MET-ARG: "The International Workshop for Methodologies on Research on Legal Argumentation" organized on 10th of December 2014 in Kraków under the auspices of the ArgDiaP (a Polish nationwide initiative dedicated to the issues of argumentation, dialogue, and persuasion) in conjunction with JURIX 2014: The 27th International Conference on Legal Knowledge and Information Systems and CMNA 2014: The 14th Workshop on Computational Models of Natural Argument.

This special issue of *Informal Logic* brings together a selection of insightful papers that address a wide range of topics related to the methodology of research on legal argumentation. It should be noted that methodological aspects may be found on different levels of analysis of the mentioned domain. On the most general level, the fundamental relations between legal

reasoning on the one hand and the findings of philosophy (general epistemology in particular) may be analyzed. On a more particular level, general philosophical conceptions and models may be applied to the problems of legal argumentation for analytical, descriptive, and normative aims. Finally, certain concrete tools and conceptions may be fruitfully utilized for the sake of analysis of certain types of legal arguments or concrete legal problems (e.g., cases). Such a tripartite typology is obviously rather rough and vague, but nevertheless it is already able to demonstrate the diversity of approaches and differentiation of aims found in the methodological research on legal argumentation. The papers included in this special issue are arranged in a top-down direction, ranging from the papers dealing with the most abstract considerations to the contributions devoted to the analysis of concrete legal problems.

The first two papers connect legal-theoretical considerations with the insights from the field of general epistemology.

The special issue begins with the paper by Jaap Hage entitled "Anything Goes. An Apology for Parallel Distributed Legal Science" in which the author discusses the nature of knowledge of doctrinal legal science. The proposal is based on the notion of coherentist justification and Popperian idea of the third world: the world of objective concepts and theories. Consequently, according to the author, beliefs about law are justified if they are a part of coherent sets of beliefs and scientific knowledge can be seen as a type of world-3 knowledge. The adoption of these theses enables the author to provide an explanation for certain features concerning legal science and often seen as troubling, such as the multitude of branches of legal research, differentiated aims thereof, disputable methods, and the apparently reactive character of many legal scientific publications. The author sees this proposal as an outline of a new theory of legal doctrine and indicates the connections between this project and general accounts developed in the philosophy of science, in particular by Kuhn, Feyerabend, and Latour. Hage's paper provides important insight into the high-level dependencies between the theses of legal science and the general research in epistemology.

The second paper by Danny Marrero, "An Epistemological Theory of Argumentation for Adversarial Legal Proceedings," also examines the important connection between law and theory of knowledge, albeit on more concrete level. The author is interested in the application of epistemological theories of argumentation to account for argumentation in the process of litigation. He criticizes a rhetorical view of legal argumentation

by pointing out that this perspective cannot capture adequately the epistemological dimension of judicial proceedings, and carefully analyzes the assumptions grounding this criticized view: strict invariantism and extreme adversarialism. Then the author proceeds to outline the epistemological theory of argumentation in legal adversarial proceedings. In his view, apart from its descriptive advantages, this theory should secure substantively just treatment of individuals in judicial proceedings.

Fabrizio Macagno in "Defining marriage. Classification, interpretation, and definitional disputes" tackles the problem of legal classification, that is, determining that a certain state of affairs falls within the scope of a legal category. The author employs the influential theory of argumentation schemes to clarify the structure of arguments used in the context of legal classification as well as critical questions used to attack these arguments. Then Macagno discusses the famous *Obergefell v. Hodges* case, where the Supreme Court of the United States examined the concept of marriage (and the category of liberty) in the context of the (un)constitutionality of state legislative provisions not allowing same-sex marriage. The author provides a graphical illustration of judicial argumentation used in this case, taking into account the majority opinion and the dissents. The contribution reveals both the expressive power and the limits of the argumentation schemes theory with regard to the analysis of actual judicial argumentation.

In the next paper, "Administrative judicial decisions as a hybrid argumentative activity type" written by José Plug, the author demonstrates how conventions in the legal communicative domain may change and what consequences these changes may have for the characterization of the communicative activity type. The illustrative material chosen by the author is Dutch administrative law. Plug investigates the implications of a major reform of this branch of law that added to the traditional function of the administrative judge (that is, assessing the legitimacy of governmental decisions) also the function of the "alternative mediator." In order to characterize the argumentative activity of the judge in this new context, she employs the conceptual scheme elaborated in the field of pragma-dialectics, one of the most influential theories of argumentation. The analyses are illustrated by means of concrete examples from actual legal cases.

The paper "Evidence Assessment in Refugee Law with Stories and Arguments" by Floris Bex and Viola Bex-Reimert analyzes whether a systematic method for reasoning with evidence in legal cases—the hybrid theory of stories and

arguments—can be applied to a legal domain the importance of which is rapidly growing nowadays, namely, the assessment of asylum cases in Europe. This analysis serves as a case study for testing the applicability of the hybrid theory outside of the standard context of criminal law. The authors thoroughly explain the basic facets of a hybrid theory of argumentation against the background of the chosen illustrative material. In conclusion, they discuss how accurately the theory in question captures the process of Credibility Assessment in Refugee Law and indicate the directions of future work on the discussed theory as well as possible amendments to the investigated legal procedures. Therefore, the contribution may bring not only theoretical development in the hybrid theory of argumentation, but also practical benefits in the context of actually applied asylum proceedings.

The final paper: "Redundancy of redundancy in justifications of verdicts of Polish Constitutional Tribunal" written by Jan Winczorek presents an analysis of the outcomes of an empirical social-scientific study of argumentative patterns in the justifications of verdicts of the Polish Constitutional Tribunal. The author argues that the Polish Constitutional Tribunal prefers doxa-type argumentation, in particular arguments based on previous decisions by the Tribunal, lacking a deepened discussion of the rationale behind these decisions. The paper is an example of the application of quantitative methods in the analysis of corpora of legal texts combined with legal-theoretical analysis based on the findings Niklas Luhmann's systems theory, especially on his account of the notion of redundancy. The results of the study are not only descriptive, but they enable the author to identify certain risks in the approach taken by the Polish Constitutional Tribunal.

The argumentation process is the subject of analysis of many scientific disciplines, each using its own conceptual framework. The papers presented in this issue clearly demonstrate that each of these disciplines investigates argumentation from a different perspective and for a different purpose, thus making nearly impracticable the creation of one unified methodology of research and theory of argumentation. It should nevertheless be observed that interdisciplinary studies may pave the way for extending the perspective on argumentation and exploring further the nuances of this complex phenomenon.

As guest editors we would like to express our appreciation for the tremendous efforts made by the members of the Panel of Experts who reviewed the papers submitted to the special issue. Likewise, we thank all the authors for submitting their excellent

manuscripts to this special issue. We also express our sincere thanks to the editorial team of *Informal Logic*.

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