

Dialectical argumentation with argumentation schemes: an approach to legal logic (abstract)

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Substantial progress has been made in the logic of law. Abstract topics like defeasibility and the process of argumentation have been formally analyzed with greater theoretical satisfactoriness, and concrete topics like precedent-based and statute-based reasoning have been formally analyzed in more detail and with greater empirical adequacy. Among the topics addressed are exceptions to rules, rule applicability, inconsistency handling, reasoning with priorities, the weighing of reasons, case comparison, analogy, the role of principles, values and goals, argument attack and defeat, burden of proof and the dynamics of reasoning.

In this research, many formal patterns of legal reasoning have been explicated, which has resulted in a deeper understanding of these reasoning patterns. Nevertheless - and notwithstanding offhand claims of some of the researchers involved - no formalism has gained the status of the canonical logic of law.

Although there are signs of convergence it is not easy to get a coherent unified view on the different opinions and approaches that have been proposed. Recently some attempts towards unification have been made to bridge the unwarranted gap between precedent-based and statute-based reasoning models (cf. the work of Hage 1993, 1997 and Prakken and Sartor 1996, 1998), but this integrative task has not yet been completed to full satisfaction. Recent work by Bench-Capon and Sartor (2003) on the role of values in precedent-based reasoning adds to the diversity of approaches. A reason can be that there still is no common set of primitive notions that has turned out sufficiently flexible and expressive to accommodate the different approaches.

The present paper proposes the use of argumentation schemes - a concept borrowed from the field of argumentation theory - as the main tool of analysis. A model of dialectical argumentation with argumentation schemes is presented as an attempt to provide a unifying approach to the formal modeling of legal reasoning, i.e., an approach to legal logic.

A four-step methodology for the investigation of argumentation schemes is proposed:

1. Determine the relevant types of sentences
2. Determine the argumentation schemes
3. Determine the exceptions blocking the use of the argumentation schemes
4. Determine the conditions for the use of the argumentation schemes

Step 3 is related to the defeasibility of argumentation schemes: there can be exceptional situations in which the scheme should not be used. Step 4 has to do with the contingency of schemes: it can be the case that the use of a scheme depends on certain conditions.

The methodology is inspired by previous formal work on dialectical argumentation and concrete argumentation schemes (e.g., Verheij 1999b, 2001a). A deep issue concerning argumentation schemes raised by the proposal is their specificity. To what extent can argumentation schemes be specified at all? Argumentation schemes are variable, flexible and robust: people use the schemes all the time, and do not seem to encounter difficulties in adapting a scheme to neatly fit new circumstances. The example of a concrete logic discussed in the paper (Reason-Based Logic) is illustrative in this respect: it has been described in many versions, each with its own specific characteristics and purpose. How to deal with the issue of specificity of argumentation schemes other than in the pragmatic way of specifying what is needed in a specific context is beyond our current state of understanding and reminds of deep questions concerning language use and cognition.

References

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