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LEGAL PHILOSOPHY AND THE STUDY OF LEGAL REASONING

In this paper, I argue that legal philosophers ought to focus more on problems of legal reasoning. This is a field with many philosophically interesting questions to consider, but also, a field in which legal philosophers can contribute the most to the study and the practice of law. Neither legal practitioners nor legal scholars reason with the same care and precision as philosophers do. Against this background, I suggest that the following three types of questions regarding legal reasoning are especially worthy of serious consideration. The first is that of the relevance of the theory of reasons holism to legal reasoning. The second is the question of how to analyze (first-order) legal statements in a way that does not undermine the rationality of legal reasoning. And the third is the question of whether legal arguments are to be understood as deductive arguments, inductive arguments, or both, and if so how.

Key words: *Legal reasoning*. – *Nature of law*. – *Conceptual engineering*. – *Reasons holism*. – *Legal statements*.

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1. INTRODUCTION

The topic of this conference is the fundamental problem(s) of contemporary legal philosophy. This is a deep and difficult topic, however, so I shall be content to say something about how I understand legal philosophy and what I consider to be especially interesting questions in legal philosophy today. And my central claim is going to be that legal philosophers ought to focus more than they have done so far on problems of legal reasoning. Not only is this a field with many philosophically interesting questions to consider, but it is also, in my estimation, the field in which legal philosophers can contribute the most to both the practice and the study of law. The practice of law is, after all, an argumentative practice. Lawyers and judges aim to provide solutions to concrete legal problems but rarely try to say anything of general application. And although legal scholars take a more general view of things and typically discuss types of legal problems, they, too, tend to prefer a rather piecemeal approach to legal problem-solving, and usually abstain from defending general theories or otherwise speaking in general terms.

But even though reasoning and interpretation are at the center of what legal practitioners and legal scholars do, and even though there are many highly talented persons in the above-mentioned groups, neither legal practitioners nor legal scholars reason with the same care and precision as philosophers do. Perhaps the most important difference is that whereas legal practitioners and legal scholars typically approach reasoning and interpretation in an intuitive way, emphasizing rules of thumb, common sense, and the value of workable legal solutions to problematic cases, philosophers, although they may also reason intuitively and emphasize common sense, often take care to make the logical structure of the relevant argument explicit by formulating as precisely as possible both the conclusion and the premises, and by subjecting the argument thus formulated to close logical as well as substantive scrutiny, where such scrutiny typically involves paying close attention to the content, structure, and function of any relevant concepts.

The study of legal reasoning has not been high on the agenda of the most prominent legal philosophers, however. Hans Kelsen ([1945] 1999; 1960), Gustav Radbruch, Karl Olivecrona (1939; 1971), H. L. A. Hart ([1961] 2012, 1982), and John Finnis (1980), for example, have had little to say about legal reasoning. The obvious exception to the rule is, of course, Ronald Dworkin (1977; 1986), whose theory of law may be best described as a theory of adjudication, though it is worth noting that thinkers such as Alf Ross ([1953] 2019), Aleksander Peczenik (1980; 1990), Michael Moore (1985; 1989–1990), Frederick Schauer (1991), Robert Alexy (1992), Neil MacCormick

(1994; 2005), and Joseph Raz ([1979] 2009a; 2009b), too, have devoted books, book chapters, or articles to problems of legal reasoning or legal interpretation.[1] On the whole, however, legal philosophers, at least English-speaking legal philosophers, have mostly focused on the question of the nature of law, and to some extent on the analysis of fundamental legal concepts, or else have concerned themselves with normative/evaluative inquiries, such as the justification of punishment. The study of legal reasoning, at least as it appears in court opinions, has not received the attention it deserves.

2. PHILOSOPHY

I shall start out from a rather broad and inclusive conception of philosophy, including legal philosophy, which can accommodate not only conceptual investigations and the analysis of arguments, but also metaphysical, normative/evaluative, and, of course, epistemological inquiries. Here I find Wilfrid Sellars's characterization of the aim of philosophy appealing (1962, 35): "The aim of philosophy, abstractly formulated, is to understand how things in the broadest possible sense of the term hang together in the broadest possible sense of the term." While Sellars's characterization is indeed highly abstract and clearly lends itself to competing specifications, I shall be content to say that it opens up the field of philosophical investigations quite a bit, and that it is eminently compatible with the important idea that what philosophers are primarily interested in is not what this or that person said at one time or another, but in whether what he or she said is true, or at least justified. In my view, this is also the proper approach to take to the study of legal reasoning: What, exactly, is the argument? What is the conclusion, and what are the premises? Is the argument logically valid, or at least inductively strong? Are the premises true? Are there perhaps taken-for-granted premises that need to be made explicit?

Broad and inclusive though my conception of philosophy may be, I narrow it down a bit by adopting as a rule of thumb what we might call a weak naturalist constraint. For I aim to make my legal-philosophical inquiries compatible with a combination of ontological naturalism and methodological naturalism of the *results*-continuity type, that is, the view that philosophical inquiries should be in keeping with the results of the sciences. I am less keen to accept methodological (or epistemological) naturalism

[1] Here I would like to mention two excellent collections of essays on problems of legal reasoning, both edited by Neil MacCormick and Robert Summers, namely (MacCormick, Summers 1991; 1997).

of the *methods*-continuity type, however, that is, the view that philosophy should be "continuous with" the sciences, in the sense that philosophers should adopt the methods and techniques of reasoning or investigation used in the sciences (on types of naturalism, see Leiter 2007, 33–39).[2] The problem with this type of naturalism, as I see it, is that it appears to involve a rejection of the existence of a priori knowledge, such as knowledge of basic forms of inference, and knowledge of analytical statements, and, therefore, also a rejection of the possibility of conceptual analysis, classically conceived.[3] This would be a problem for me, because even though I prefer in most cases explication (or rational reconstruction) to conceptual analysis, classically conceived, I take such conceptual analysis to be an important part of philosophy, whether or not the relevant concepts are part of successful scientific theories.

The reason why I treat the above-mentioned naturalist constraint as a rule of thumb only is that I prefer to adopt a bottom-up instead of a top-down approach to the question of the adequacy or fruitfulness of philosophical inquiries, that is, I prefer to assess the adequacy or fruitfulness of fairly specific legal-philosophical proposals to starting out from first principles, so to speak, and deducing conclusions about the adequacy or fruitfulness of a proposal from them. For I do not wish to rule out beforehand the possibility that a philosophical investigation of a non-naturalist type can yield valuable insights.

Finally, I should say that even though I take a favorable view of conceptual analysis, as well as of explication, I am primarily interested in the world, not the language we use when speaking about the world. As I see it, a focus on the elucidation of concepts is typically a means to the end of understanding the world. In defending quasi-realism about values, Simon Blackburn (1984, 190) explains that the question for a quasi-realist about values is not what the world is like, but under what conditions it is semantically appropriate to *say* that an action or a state of affairs is good or bad. As much as I like Blackburn's philosophy, this is not how I see things.

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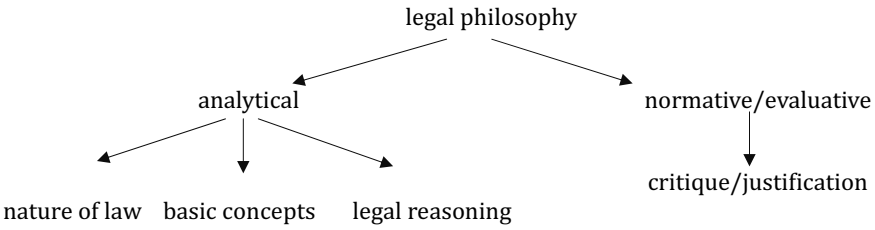
[2] It may be true that the main reason to accept ontological naturalism is that one also accepts methodological naturalism of the methods-continuity type. It seems to me, however, that another good reason to accept ontological naturalism is that one also accepts methodological naturalism of the results-continuity type.

[3] I am not, however, convinced that the invocation of a priori knowledge really is incompatible with the methods used by scientists. For scientists surely use logic, mathematics, as well as inductive reasoning, and it does seem difficult to account for the fundamental laws of logic or of mathematics, or for the principle of induction, without invoking the idea of a priori knowledge (on this, see Bonjour 1998).

3. LEGAL PHILOSOPHY

Following H. L. A. Hart (1983, 88–89), I offer the following schema of the field of legal philosophy:



Although Hart presented this schema already in the 1960s, I think it is still instructive to view the field of legal philosophy in this way. And here I shall concentrate on the analytical part. The question of the nature of law has been, and probably still is, considered by legal philosophers, especially in the English-speaking world, to be the central, perhaps the only, legal-philosophical question. I, too, find this question very interesting and think it is of central importance to legal philosophy, but I do not think it is the only legal-philosophical question, or even the only legal-philosophical question worth pursuing. Indeed, as I shall explain, I believe that for the moment there are more promising legal-philosophical questions to tackle. Nevertheless, I do believe there are some interesting nature-of-law questions that need to be dealt with. For one thing, there is the methodological question of the proper object of investigation. Should legal philosophers be focusing on the concept of law (Hart [1961] 2012; Raz 2009b; Alexy 2008) or rather on law itself (Moore 1992; Dworkin 1986), and what, exactly, is the difference? I myself prefer to focus on the *concept* of law, just as I prefer to focus on the *concept* of a legal right, or the *concept* of legal validity, since one can do this without presupposing that there is something that corresponds to the concept. Once one has arrived at an analysis of the relevant concept, one can proceed to investigate and see whether there really is something that corresponds to the concept thus analyzed. In addition, one may wonder whether one can even find the study object, if one does not have access to the relevant concept (Kelsen [1945] 1999, 178). Nevertheless, the question of the proper study object seems to me to be rather open.

Furthermore, for quite some time now, those who inquire into the nature of law have been inclined to focus on one particular aspect of the nature of law, namely, the (alleged) normativity of law, especially when seen against a naturalistic background (on this question, see, e.g., the essays in Bertea, Pavlakos 2011). I am not convinced, however, that a continued focus on this

particular problem is the best way for legal philosophers to spend their time. For it seems to me that the rewards we reap do not stand in proportion to the energy expended; it seems to be a matter of diminishing returns. If, however, one finds the question of the normativity of law, or, more broadly, the question of the nature of law, irresistible, I would suggest the following questions to focus on.

First, what is normativity? Whereas some, perhaps the majority of legal philosophers, operate with a strong conception of normativity, something like genuine, as distinguished from conventional, normativity, others appear to have something different and much weaker in mind when they speak of normativity. For example, Joseph Raz (2009a, 134–137) argues that whereas Kelsen operates with a conception of justified normativity, Hart defends a conception of social normativity, where the former type of normativity is much stronger than the latter. Secondly, many who focus on genuine normativity of law assume that such normativity is to be analyzed in terms of genuine, as distinguished from conventional (or institutional), reasons for action. But what, exactly, is a genuine reason, and are there any genuine reasons? The usual way to explain what a genuine reason is, is to say that it applies to, and has force for, the agent whether or not he has accepted any institution or perspective, such as the institution of law (Joyce 2001, 30–52). That is to say, the agent may have a reason to refrain from stealing, whatever his attitudes or preferences or commitments. Thirdly, there is the question of whether genuine normativity is to be understood as a species of moral normativity, or as some other type of normativity; and if it is thought to be a species of moral normativity, there is the question of how the contemporary debate about the normativity of law relates to the traditional debate between legal positivists and natural law theorists about the nature of law. If instead genuine normativity is not to be thus understood, the question arises how, exactly, it is to be understood. My own view is that genuine normativity is best conceived as moral normativity, and that this means that the question of the normativity of law is difficult to distinguish from the question of whether law is necessarily moral, as that question has been understood and debated by legal positivists and natural law thinkers.

The second subfield of the analytical part of legal philosophy concerns the study of legal concepts, especially fundamental legal concepts, such as the eight concepts discussed by Wesley Hohfeld ([1913; 1917] 2001) in the early twentieth century, or the concepts of a legal right, of a legal system, of legal validity, or of punishment. But there are, of course, many more concepts that deserve to be analyzed, or, if you prefer, explicated. Two such concepts might be the concepts of normativity and of reason for action, especially the concept of a genuine reason for action. What exactly is normativity, or

genuine normativity, and what is a genuine reason for action? Can we even grasp the concept of genuine normativity without first having grasped the concept of a genuine reason for action?

The enterprise of elucidating or clarifying a legal concept is an important enterprise, primarily because it is conducive to clarity of thought and, therefore, to economy of effort in legal thinking. But how are we to understand it? We may distinguish between *analyzing* a concept in the strict sense of attempting to establish an analytically true equivalence between the *analysandum* (that which is to be analyzed) and the *analysans* (that which does the analyzing), and *explicating* a concept in the sense of attempting to make sharper the contours of a somewhat unclear, or pre-theoretical, concept, in order to make the concept (more) suitable for a certain purpose (on explication, see Carnap 1950, 1–8; 1956, 7–8). Whereas an *analysis* will be true or false (or correct or incorrect), an *explication* will rather be more or less adequate in relation to its purpose; and the criteria of adequacy for such an explication are not moral, but theoretical, namely, that the explicated concept (the *explicatum*) should be (i) similar to the original concept (the *explicandum*), (ii) precise, (iii), fruitful, and (iv) simple. Note that the question of how to weigh these different criteria against one another is to be answered on pragmatic grounds, typically in light of the purpose of the explication.

When speaking of explication, one should also consider so-called conceptual engineering (on this, see Burgess *et al.* 2020). Conceptual engineering is said by one of its foremost proponents (Cappelen 2020, 132. Emphasis in the original.) to be "*the project of assessing and developing improvements of our representational devices*", where concepts are taken to be our core representational devices. The idea, which is not new, is that we should view our concepts (our representational devices) with suspicion and assume that they are not likely to be the best they can be. Hence we have reason to consider them closely and look for ways of improving them, so that they will be more useful for a given purpose. Carnaps's idea of explicating concepts is taken to be a prime example of conceptual engineering, but some conceptual engineers are willing to go further than what Carnap recommends. As they see it, we sometimes have reason to eliminate concepts, on the grounds that they are incoherent in some sense, or contribute to the oppression of minorities or other groups of people. Can one legitimately engage in conceptual engineering in the field of legal philosophy? I believe so, but I also believe one should distinguish carefully between different degrees of conceptual engineering and ask oneself what is a scholarly and what is a moral or political enterprise.

Finally, there is the third subfield, the study of legal reasoning. As I have said, the practice of law is argumentative. Judges, attorneys and legal scholars do not often put forward general normative or descriptive theories of law or legal phenomena, but argue individual cases, and, sometimes, in the case of legal scholars, argue cases of a given type. In addition, the use of information technology in law would seem to require a clear understanding of the logic of legal argumentation, at least on the part of programmers. So I believe it behooves us as legal philosophers to study legal reasoning in pretty much all its aspects, perhaps leaving empirical, quantitative studies to economists, political scientists, or sociologists of law.

I would, in keeping with this, like to say a few words about three types of questions regarding legal reasoning that I consider to be especially worthy of serious consideration. I acknowledge, however, that my choice of questions is very likely a reflection of my own taste and interests, which need not be shared by others, and the reader is therefore recommended to take what I will say in the following with a grain of salt. In any case, the first question is that of the relevance of the theory of reasons holism to legal reasoning in general. The second is the question of how to analyze (first-order) legal statements in a way that does not undermine the rationality of legal reasoning. And the third is the question of whether legal arguments or inferences are to be understood as deductive or as inductive inferences, or both, and if so how.

3.1. Reasons Holism

When discussing questions of legal reasoning, one should give consideration to a general theory of reasons called reasons holism (on reasons holism, see Dancy 1993; 2004). Whereas reasons atomists hold that a consideration that is a reason in one situation, with a certain force and polarity (direction), will be a reason with the same force and polarity in any other situation, reasons holists maintain instead that a reason in favor of, or against, an action, or a belief, need not have the same force or polarity in every situation in which it appears. Thus, whereas reasons atomists argue that the fact that one person promised another to do something is always a reason with a certain force to require that the promisor do what he promised to do, and to hold that he acted wrongly and, perhaps, that he ought to be sanctioned, if he does not do what he promised to do, reasons holists maintain that such a fact may be a reason to perform the relevant action in one situation, a reason not to perform the action in another situation, and no reason at all in a third situation. If, however, legal or moral reasons function in this way, there can

be no genuine (or true) general legal or moral norms, since the existence of such norms presupposes precisely that the reasons in terms of which they are formulated function in the same way in every situation; and this finding would in turn be relevant to, among other things, our understanding of the principle of uniform law-application, the idea of the *ratio decidendi* of a case, conceived as the general legal norm without which the precedent court could not rationally have decided the case the way it did, and what it means to follow a precedent. What I have in mind here, then, is that the most natural way of understanding the idea of treating like cases alike is to think of it as involving action in accordance with a general norm that covers the relevant cases. However, if there are no genuine general norms, one cannot reason in this way.

It is important to note that reasons holism is a theory of *genuine*, not conventional, reasons, where a conventional reason is a reason that applies to, and has force for, an agent if, and only if, the agent has accepted a certain institution, such as the institution of law, or of etiquette, and a genuine reason is a reason that applies to, and has force for, an agent, whether or not the agent has accepted such an institution (Joyce 2001, 30–52). For if legal reasons are genuine, reasons holism will apply to them, and if reasons holism is true, this raises the question of whether we have to modify, or even reject, our understanding of the idea of treating like cases alike; whereas if legal reasons are merely conventional, reasons holism will not apply to them, and as a result our understanding of this idea will not be threatened.

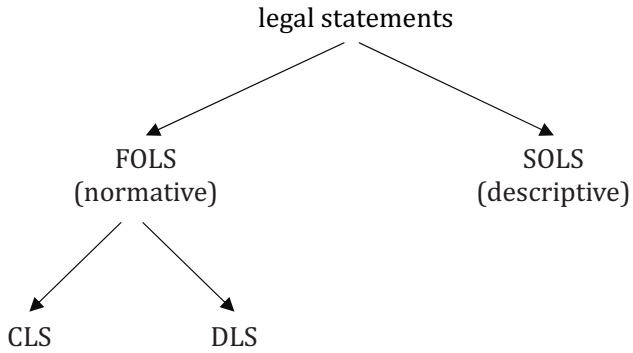
But are legal reasons genuine or merely conventional? The nature of legal reasons depends on the nature of law. Hence if legal positivism is true, legal reasons will be merely conventional reasons, since this follows from the separation thesis, which has it that there is no necessary connection between the content of law and true morality; if instead some version of non-positivism is true, legal reasons *might* be genuine reasons, since such theories reject the separation thesis.[4] However, if legal positivism is true, we also need to consider whether there might be some room for genuine reasons in the interpretation and application of the law, since one could argue that legal positivism does not apply to the interpretation and application of the law, and that therefore the possibility cannot be ruled out that such legal reasons are genuine (on the scope of legal positivism, see Spaak 2021). And if legal reasons are indeed genuine, reasons holism will apply to them.

[4] Whether legal reasons will be genuine reasons will depend on the details of the relevant theory. I believe Ronald Dworkin's and John Finnis's theories are cases in point. Dworkin (1977; 1986); Finnis (1980).

But even if legal positivism does not apply to the level of the interpretation and application of the law, one could perhaps avoid the conclusion that legal reasons that occur in the interpretation and application of the law are genuine reasons, by arguing that whatever the precise scope of legal positivism, the interpretive arguments and other legal meta-norms that are part of the lawyer's tool-box are best conceived as providing the judge with conventional reasons only. On this analysis, the textual interpretive argument, say, or the rule of lenity, would be a strictly legal meta-norm, that is, a legal analogue to the corresponding moral, or more generally, practical, meta-norm. The underlying idea would be that the very reason why judges (and others) make use of these meta-norms in the interpretation and application of the law is precisely that there is a tacit agreement (a convention) between judges that these are the meta-norms that should be used in legal reasoning. On this analysis, these meta-norms are used not because they are, or are considered to be, right, but because there is an agreement (a convention) to use them.

3.2. Legal Statements

When judges and others engage in legal reasoning, they make legal statements, that is, statements of, or about, the law. They might maintain that a person has a legal obligation, or a legal right, or legal power, or that a statute or a precedent should, or should not, be interpreted and applied in a certain way, etc. Not all legal statements are of the same type, however. As I see it, there are two main types of legal statements, namely, (i) first-order statements (FOLS), which are normative (or evaluative), and (ii) second-order statements (SOLS), which are descriptive, and two different types of first-order statements, namely, (ia) committed statements (CLS) and (ib) detached statements (DLS):



The distinction between first-order and second-order legal statements is clearly important to legal (and moral) thinking; and even though it may seem obvious in the abstract, it may be difficult to uphold the distinction consistently when analyzing legal or moral problems. As I said, I believe there are two different types of first-order legal statements, namely, committed statements and detached statements. One who makes a *committed* statement, such as "one ought to drive on the right-hand side of the road", or "I sentence you to 25 years in prison for aggravated murder", makes a genuine normative claim in the sense that he seriously means what he says. What, then, is a *detached* legal statement?[5] In an effort to understand Kelsen's theory of the basic norm, Joseph Raz (2009a, 140–143) introduces the concept of the legal man – the legal man accepts the law of the land as his personal morality – and explains that, on Kelsen's analysis, legal scholars adopt the point of view of the legal man, albeit in a *detached*, not a committed, way. The reason is that they wish to be able to conceive of the law as a system of valid (binding) norms for the purely intellectual purpose of discussing its correct interpretation and application. On this analysis, a person who maintains that Smith has a legal obligation to do *X*, is speaking from a point of view that he does not share, namely, that of someone who believes that the legal order has moral authority – if he had shared this point of view, he would have been making a committed statement, or so it seems to me.

Having introduced this typology of legal statements, we see that certain questions arise. First, do we encounter *all* of these types of legal statements in legal reasoning by judges, attorneys, prosecutors, legal scholars, and others? One may wonder, in particular, whether judges and attorneys make detached legal statements at all, or whether it is mostly legal scholars who make such statements. Interestingly, Hart appears to believe that all actors make detached legal statements. As he puts it (1982, 145), "[s]uch normative statements [that is, detached legal statements] are the most common ways of stating the content of the law, in relation to any subject matter, made by ordinary citizens, lawyers, judges, or other officials, and also by jurists and teachers of law in relation to their own or other systems of law." This claim strikes me as rather speculative, however. For one thing, I do not think it is clear just how one is to tell whether a person is making a detached (normative) legal statement or a second-order (descriptive) legal statement. Given that the explicit language used is no certain guide to the meaning of a statement, the natural conclusion

[5] The following paragraphs can be found, more or less verbatim, in Spaak (2018, 331–333).

is that one would have to inquire into the *intentions* of the person making the statement. Undertaking such an inquiry would not be easy, however, and it seems safe to assume that Hart never did so.

Secondly, first-order legal statements, in particular, require an analysis, and here several new questions arise. Since such statements are normative, in either a committed or a detached way, it seems natural to propose a meta-ethical analysis. The question, then, is whether they require a cognitivist or a non-cognitivist analysis; if they require a cognitivist analysis, the question arises whether this should be some version of realism or some version of anti-realism; and if they require an anti-realist analysis, we must ask ourselves whether this should be a constructivist, an error-theoretical, or a fictionalist analysis. Should we say, for example, that detached legal statements are best understood along the lines of pretense fictionalism – as distinguished from so-called tacit story operator fictionalism – that is, the view that the speaker is not asserting the relevant proposition, but is only pretending to do so (on fictionalism, see, e.g., Joyce 2001, chap. 7; 2005)? Alternatively, one could perhaps argue that legal statements require some sort of hybrid analysis, as Hart seems to have believed (on this, see Raz 1993).

When trying to come up with the correct metaethical analysis, one also needs to consider the application of the laws of logic to legal statements. If, for example, one wishes to defend a non-cognitivist analysis of committed legal statements, one will need to consider the so-called Frege-Geach problem. Simon Blackburn's quasi-realism (1984), for example, is an effort to do justice to our moral reasoning on an expressivist basis in a way that does not fall prey to the Frege-Geach problem.[6]

3.3. Deduction or Induction?

One may wonder whether legal arguments or inferences are deductive or inductive, a bit of both, or neither. To be sure, it does seem natural to think of many legal inferences as being deductive, though it remains to be seen if one can square this claim with one's metaethical analysis of legal statements. If, however, one believes that inductive reasoning plays an important role in legal reasoning – I have in mind here questions of law, not questions of fact – one needs to explain precisely how this can be the case. But what, exactly, is an inductive argument? I shall say that while a logically valid deductive argument is an argument in which the premises necessitate the

[6] I discuss Blackburn's quasi-realism in Spaak (2020).

conclusion, in the sense that it is necessarily the case that if the premises are true, then the conclusion is true, an inductive argument is an argument in which the premises do not necessitate the conclusion, but renders it more or less probable; and I shall also assume that there are three main types of inductive arguments, namely, (i) enumerative induction, (ii) analogical reasoning, and (iii) inference to the best explanation.

In his well-known treatise on legal theory and legal reasoning ([1978] 1994), Neil MacCormick points out that although deductive justification plays an important role in legal reasoning, there are limits to the use of such reasoning; and he offers as one example of non-deductive reasoning the interpretation of, say, a statutory provision (*ibid*., 65–72). His idea, I take it, is that in a conflict between, say, textual and teleological (or purposive) interpretive arguments, the judge might simply find that the former type of argument has stronger normative force (or carries more normative weight) than the latter and therefore trumps it, and that such a process of weighing does not in any way involve any deductive component.

If we now assume that all arguments (or inferences) are either deductive or inductive, so that if a given argument is not deductive, it must be inductive, the question arises precisely *how* we should think of non-deductive arguments, such as the weighing of interpretive arguments, conceived as inductive arguments. What type of inductive argument would this be? Would it be a matter of enumerative induction, or would it be an analogical argument, or an inference to the best explanation? I believe this will depend very much on the circumstances in the particular case, but whether we conceive of it as an argument from enumerative induction, as an analogical argument, or as an inference to the best explanation, the argument thus conceived will not be convincing. My own view is that the argument is better conceived as precisely a deductive argument, namely, (in this case) one that involves the application of a general legal meta-norm, according to which textual considerations trump teleological considerations unless there is a special reason to think otherwise. The problem with the (alleged) inductive argument, as I see it, is that once we take the above-mentioned general norm out of the equation, the argument seems to lack a proper foundation. What we seem to be left with is simply a brute assertion about the comparative normative force of two (or more) competing considerations, an assertion that may strike some, but not others, as convincing. Note here that this way of conceiving the argument is in keeping with the claim of reasons holists, that a reason in favor of, or against, an action, or a belief, need not have the same force or polarity in every situation in which it appears, and that therefore there can be no genuine general norms. In my view, however, this casts doubts on the plausibility of reasons holism.

As for deductive arguments in law, I shall be brief and simply state my view that I would like to see more legal-philosophical work that *applies* formal logic, especially quantificational deontic or modal logic, to legal or moral reasoning instead of discussing general features of various systems of logic, such as logical paradoxes or questions of soundness and completeness. I believe that formal logic could be used to clarify both legal and philosophical arguments, and that deontic logicians and others who know formal logic could be successful in selling their products to a legal-philosophical audience, if only they took care to emphasize application rather than abstract questions about the viability of competing systems of logic. Such an emphasis on the application of logic to legal reasoning would seem to be especially valuable in light of our increased use of information technology in law. Note that I am *not* suggesting that the abstract questions are pointless, or in any way misconceived, but only that they are much more difficult to appreciate for amateur logicians, not to mention all those with a visceral dislike of formalization, than are questions of application.

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