

Conditionals and Legal Reasoning. Elements of a Logic of Law¹

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Abstract: The main aim of this paper is to study the notion of conditional right by means of a dialogical approach to constructive type theory (CTT). We will develop this idea in a frame-work where the distinction between local-reason and strategic-reason leads to the further distinction between two basic kinds of pieces of evidence, factual and logical.

The present paper is based on Rahman (2015). However, though the underlying CTT-analysis is the same, the dialogical reconstruction makes use of a new way of linking dialogical logic and CTT.

Key-words: Leibniz, argumentation, legal reasoning, conditional-right, dialogues, logic, epistemic logic.

Résumé: L'objectif principal de cet article est d'étudier la notion de droit conditionnel au moyen d'une approche dialogique de la théorie des types constructifs (TCT). Nous développerons cette idée dans un cadre où la distinction entre "raison locale" et "raison stratégique" conduit à une distinction plus poussée entre deux types élémentaires de preuves: factuelles et logiques.

La présente étude est basée sur Rahman (2015). Cependant, bien que l'analyse TCT sous-jacente soit la même, la reconstruction dialogique utilise une nouvelle manière de relier la logique dialogique et la TCT.

Mots-clés: Leibniz, argumentation, raisonnement juridique, droit conditionnel, dialogues, logique, logique épistémique.

Introduction:

Sébastien Magnier (2013) provides a remarkable analysis of the notion of conditional right² that he generalizes for the logical study of legal norms. The main idea of Magnier, motivated by the exhaustive precedent textual and systematic work of Matthias Armgardt (2001, 2008, 2010)³ and the subsequent studies carried out by Alexandre Thiercelin (2001, 2008, 2010)⁴, involves Leibniz' notion of *certification*, which has a central role in the famous

¹ The present paper is based on Rahman (2015). However, though the underlying CTT-analysis is the same, the dialogical reconstruction makes use of a new way of linking dialogical logic and CTT.

² The terminology used in the present paper follows the one of Leibniz rather than the one in use in nowadays Law-contexts.

³ The work of Matthias Armgardt launched and influenced a host of new researches on the bearings of Leibniz's approach to nowadays studies in legal rationality.

⁴ In fact, Thiercelin researches have been triggered by the work of Armgardt.

Reasoning And The Law The Elements

John Tasioulas



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