

## **A FEW WORDS FROM THE EDITOR**

**Alessandro Serpe**

From the 1950's many critics biased towards the logical-legal reasoning arose. Legal Positivism was so hardly ever criticized because of its inadequate and insufficient logical-formal methodology i.e. the *legal syllogism*. True enough, many modes of analysis of practical argumentation, in general, and legal argumentation, in particular, may be seen as being built up and central in the debate throughout the last decades. Fundamental contribution to the core of legal reasoning and argumentation were made, amongst the others, by S. Toulmin, T. Viehweg, C. Perleman in their alternative use of a wider area application of simply inductive and deductive justification.

Since 1970' anti-logistic legal reasoning movements started up and focused on deep reflections concerning the theoretical conditions of Classic Logic and on the possibilities to stretch out its application field. Having gone through and rejected the said limited area of reasoning and argumentation conceptually provided by formal logic in legal thinking, R. Alexy, A. Aarnio, A. Peczenik masterly blended together in a notorious manifest of legal reasoning *The Foundation of Legal Reasoning*, Hermeneutics and Analytical method. On the model of the founding fathers, a conspicuous number of writers have to a greater or lesser extent traced abstract forms of argumentation and represented the decision aspect of reasoning a fundamental problem.

The structuring feature of the present part is not the emphasis on one particular element or another of this or that aspect of argumentation and legal reasoning. This applies particularly given that the phenomenon in question is considered to have great philosophical, linguistic, moral, legal, political significance in such a way to trigger different interpretation tendencies in relation to the very word terminology, the distinctive features over time, and the consequences that are being spoken of.

An attempt aimed at reinforcing characteristics in common to all *things* that could be called "legal argumentation" or "argumentation" is doomed to failure or, in the best case, would lead to problematic and unfruitful generalisations.

Actually occurring forms of legal reasoning and argumentation may not be ranked and linked to the whole of complete and exclusive generalizations. Tendencies towards systematization is emblematic of those who are bewitched by wonderlands detached

from experience. Whether or not this may be right or wrong should not be unrestrained determined in general.

What has been now outlined provides a very general background which in greater depth cause the room for the polysemous actually occurring debate on legal reasoning and argumentation. The joint aspect of multileveled domain that has now been portrayed opens the way for various areas of investigation and run counter to the different points of departure.

This being so, the overview of the present number is not confined to exclusively lawyers' language and argumentation *de lege lata* propositions in the perspective of lawyers cultures cutting across flourishing schools of legal theory. Thus, the classic topic of this number *Legal reasoning and Argumentation* relates to the question not in a well-delimited critical approach of individual answers presupposing a *common* point of departure. The main thread of the number consists in a superordinate discussion adjusting the focus on different aspects of legal reasoning and argumentation in special deference to *different* areas of thought. Full coverage in this sense is the very business of legal philosophy, legal theory, legal informatics, logic, psychology, mathematics and formalised science. Common to the present discussion is the pointing out that *reasoning* and *arguing* provides support for there being certain possible connections between philosophical positions. Nevertheless, although it might be tempting to imagine, no roughly unitary picture of legal reasoning and argumentation comes into play. This may serve to explaining the diversity of conceptual approaches characterising the present number.

Within this frame of discussion, various contributions and views of authoritative experts of different investigation fields about more specific topics actually occurring *in* and *with* legal reasoning and argumentation, have been selected.

To Francesco Romeo, Director of *i-lex*, who has unfailingly supported the present work along the way, goes my gratitude. With great pleasure I look back on our cooperation.

The editor, Alessandro Serpe