

Logocratic Method and the Modes of Common Law Argument

Universität Konstanz

18 - 27 June 2019

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Syllabus

Course Description

This course is a detailed introduction to the Logocratic Method and the theory that animates it, as applied to Common Law and its distinctive modes of argument.

Legal analysis is dominated by legal arguments, and the assessment of any legal claim requires the assessment of the strengths and weaknesses of those arguments. The Logocratic Method is a systematic method for assessing the strengths and weaknesses of arguments. It uses an explanatory framework of virtue and vice (in a non-moral conception of these concepts) to offer a precise account of three of the kinds of strength and weakness of arguments that are of great concern to arguers, including, but not limited to, legal arguers such as judges, lawyers, theorists, and students of law

Although the Logocratic Method is applicable to any type of argument, we present it in this course with a focus on the Logocratic framework for assessing the virtuous strengths and vicious (characterized by or pertaining to vice) weaknesses of legal arguments. The focus is on American law, whose methods of argument are in many ways representative of other of the world's Common Law systems, such as those of the United Kingdom and Commonwealth, although there are of course important variations of modes of reasoning among these Common Law systems as well.

For any legal system that aspires to have a system of proof and argument that is sufficiently reliable to meet the requirements of *intellectual due process*, we may fashion an analogue for the Socratic maxim "the unexamined life is not worth living": the unexamined (legal) argument is not worth believing. The Logocratic Method seeks to help the legal analyst pursue that Socratic mission.

Syllabus

Class	Date, Time, Location	Assigned	Topics covered
1	Tuesday, June 18 15.15 – 16.45 G 227	<ul style="list-style-type: none"> • Brewer, S., <i>Logocratic Method and the Virtues and Vices of Arguments</i>, in Weinstein et al, <i>Evidence</i>, 10th ed (2017), Chapter 2: read pages 119-25 and 138-45 • Brewer, Using Propositional Deductive Logic . . . The Logocratic Approach (2017), read pages 97-111 • <i>Monge v. Beebe Rubber Co.</i> (N.H. Supreme Court 1980) • <i>Old Chief v. United States</i> (U.S. Supreme Court 1997) 	(1) Introduction to the Logocratic Method and Four Modes of Legal Argument: Deduction, Induction, Abduction, Analogy (2) American Common Law and Code Law Blends: Reasoning with Evidence

Class	Date, Time, Location	Assigned	Topics covered
2	Wednesday June 19 15.15 – 18.30 K 503	<ul style="list-style-type: none"> • UCC § 2-207 and Official Comments • UCC 2-207 background and pathology • <i>Trans-Aire International v. Northern Adhesive Co. Inc.</i> • Background reading on basics of propositional deductive logic: Tapscott, <i>Elementary Applied Symbolic Logic</i>, chapters 1-8 	Logocratic analysis of <i>Deductive Virtue</i> in Legal Argument (continued from Class 1)

Class	Date, Time, Location	Assigned	Topics covered
3	Monday, June 24 15.15 – 18.30 G 227	<ul style="list-style-type: none"> • Brewer, S., <i>Evident Virtue, Concepts and Procedures of the Logocratic Method</i>, in Weinstein et al, <i>Evidence</i>, 10th ed (2017), Chapter 1 § 2 • <i>Knapp vs. State</i> (Indiana Supreme Court 1907) • <i>Sherrod v. Berry</i> (U.S. 7th Cir. Ct. App. 1988) 	Logocratic analysis of <i>Inductive Virtue</i> in Legal Argument

Class	Date, Time, Location	Assigned	Topics covered
4	Tuesday, June 25 15.15 – 16.45, G 227	<ul style="list-style-type: none"> • Brewer, <i>Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Reasoning by Analogy</i> (1996) • Optional: Brewer, S., <i>Logocratic Method and the Virtues and Vices of Arguments</i>, in Weinstein et al, <i>Evidence</i>, 10th ed (2017), Chapter 2: pages 135-38 • <i>Monge v. Beebe Rubber Co.</i> (N.H. Supreme Court 1980) [re-read, from Class 1 assignment] • <i>Howard v. Dorr Woolen Co.</i> (N.H. Supreme Court 1980) • <i>Cloutier v. A&P</i> (N.H. Supreme Court 1981) 	Logocratic analysis of <i>Analogical Virtue</i> in Legal Argument

Class	Date, Time, Location	Assigned	Topics covered
5	Wednesday, June 26 15.15 – 16.45 Y 311	<ul style="list-style-type: none"> • Brewer, S., <i>Logocratic Method and the Virtues and Vices of Arguments</i>, in Weinstein et al, <i>Evidence</i>, 10th ed (2017), Chapter 2: read pages 129-35 • <i>Drennan v. Star Paving Co.</i> (California Supreme Court 1958) • <i>James Baird Co. v. Gimbel Co</i> (U.S. 2nd Cir. Ct. App. 1933) • <i>Shelley v. Kraemer</i> (U.S. Supreme Court 1948) • <i>Shelley v. Kraemer</i> (Marshall, T., brief 1947) 	(1) Logocratic analysis of <i>Abductive Virtue</i> in Legal Argument (2) Case studies for Abductive Virtue: American Contract Common Law and American “Constitutional Common Law”

Class	Date, Time, Location	Assigned	Topics covered
6	Thursday, June 27 15.15 – 16.45 G 227	<ul style="list-style-type: none">• <i>Totem Marine Tug and Barge v Alyeska Pipeline</i> (Supreme Court of Alaska 1978)• <i>Wright v. Newman</i> (Supreme Court of Georgia 1996)	Two Case Studies for <i>Logocratic Virtue</i>