

BOOK REVIEW

Douglas Walton (1998). *The New Dialectic. Conversational Contexts of Argument*. University of Toronto Press, Toronto. x + 304 pages. ISBN 0-8020-7987-3.

Douglas Walton (1998). *Ad Hominem Arguments*. The University of Alabama Press, Tuscaloosa. xx + 315 pages. ISBN 0-8173-0922-5.

Douglas Walton (1999). *One-Sided Arguments. A Dialectical Analysis Of Bias*. State University of New York Press, Albany. xix + 295 pages. ISBN 0-7914-4268-3.

1 Evaluating arguments

A central topic in the theory of argumentation is argument evaluation. For any particular argument, the question can be asked whether it is good or bad, rational or irrational, valid or invalid, reasonable or unreasonable. Formal logic has addressed the topic of argument evaluation focusing on certain idealized classes of arguments, like those involving the truth-functional connectives. In formal logic, argument evaluation is normally discussed in terms of a formal semantics or of inference rules. The focus of informal logic is on natural language, real-life arguments, for instance as they occur in the media, in scientific debate or in the court room. Discussion of argument evaluation in informal logic typically involves fallacies like the *argumentum ad baculum* (appeal to force) and *argumentum ad verecundiam* (inappropriate appeal to authority).

A productive author in the field of informal logic and fallacies is Douglas Walton. The list of books by Walton is impressive: since 1989 he has published 16 titles.¹ Walton's work can roughly be divided into two categories. First there are the books in which he expounds his theoretical framework for the analysis and evaluation of argumentation. Examples are *A Pragmatic Theory of Fallacy* (1995), *Argument Structure: A Pragmatic Theory* (1996) and *The New Dialectic: Conversational Contexts of Argument* (1998). Second there are the books in which a specific type of argumentation or fallacy is addressed. Examples are *Appeal to Expert Opinion: Arguments from Authority* (1997), *Ad Hominem Arguments* (1998) and *One-Sided Arguments. A Dialectical Analysis Of Bias* (1999).

¹ The list of books is available on the web at http://www.uwinnipeg.ca/~walton/r_and_p.htm. Only one of the books has a coauthor, viz. *Commitment in Dialogue* (1995), written with Eric Krabbe.

A starting point in Walton's work is that argumentation can only be rightly appreciated in its conversational context. As a consequence, in order to evaluate a particular instance of argumentation as good or bad, it does not suffice to analyze it as a structured series of statements that express a line of reasoning. Similarly relevant for the evaluation of argumentation is the dialogue context in which it occurs. In Walton's theory, amongst others, the dialogue type and goal can determine whether an argument is good or bad.

It turns out that Walton addresses many topics that are also dealt with by researchers in artificial intelligence and law, such as the relation between dialogue and argument evaluation, the defeasibility of arguments, and the specification of particular kinds of arguments. Walton aims mainly at the informal logic community and other readers with a theoretical or practical interest in the analysis and evaluation of actual argumentation. His style is not formal and as such very different from that of the formally oriented work in artificial intelligence and law. As a result, Walton's work can provide a refreshing perspective on a number of familiar themes and inspire future formal work.

In the following, two aspects of Walton's theoretical framework are discussed that play a central role in the three books under review: dialogue types and argumentation schemes. Dialogue types and their relation to argument evaluation are the central topic of *The New Dialectic: Conversational Contexts of Argument*. Walton applies his theory of dialogue types to the evaluation and analysis of biased arguments in *One-Sided Arguments. A Dialectical Analysis Of Bias*. Dialogue types are discussed below in section 2. Argumentation schemes are the basic tool in Walton's analysis of personal attack arguments in *Ad Hominem Arguments*. Section 3 is about argumentation schemes.

2 Dialogue types

As said, in Walton's theoretical framework, arguments are analyzed and evaluated in their conversational context. According to Walton's theory, the evaluation of an argument is in part determined by the rules and goals that obtain in the particular context of that argument. What counts as a fallacy in one context can be a reasonable use of argument in another. For instance, it can be reasonable when an attorney argues that a witness testimony is worthless because of the witnesses biased position or bad moral standards. In another context, such *ad hominem* arguments would count as fallacious. For instance, a scientific discussion should not be about the moral standards of the researchers involved.

2.1 The six dialogue types

Walton distinguishes six main types of dialogue: persuasion, negotiation, inquiry, deliberation, information-seeking and eristic dialogue. Each dialogue type represents a conventional context with its own argumentative rules and goals.

In a *persuasion dialogue*, the proponent of a claim tries to persuade an opposing participant that the claim is true. The opposing participant raises doubts, e.g., by proposing an opposite claim. Persuasion dialogues have a so-called maieutic function, i.e., they can result in an explication of the commitments of the participants in the dialogue: in Walton's terms, a 'dark-side' commitment becomes a 'light-side' commitment when it is made explicit. The success of a persuasion dialogue depends on this maieutic effect, and does not necessarily involve the resolution of the conflict of opinions. When the success of a dialogue requires that the conflict of opinions is resolved, Walton speaks of a *critical discussion*.

In *negotiation*, the goal is not in the first place to find out about truth and falsity or about the other participant's or participants' commitments, but to reach a good deal. Participants do not start with fixed proposals, but use the discussion in order to gradually fix the deal and find out what proposal is as good as possible. In contrast with the situation in persuasion dialogue, threats can be appropriate in negotiation. Walton mentions threatening to strike in a negotiation between unions and employers as an example. In the legal context, one can think of mediation and plea bargaining as kinds of negotiation.

The goal of *inquiry* is to establish that a claim can be proven or that it cannot. In contrast with the adversarial nature of persuasion dialogue, inquiry is in the first place collaborative, and does not involve the retraction of claims.

Deliberation has the goal to determine what to do. As such, the argumentation involved in deliberation is a form of what in philosophy is called practical reasoning. The typical example of such reasoning is means-end reasoning.² Deliberation dialogue can take place by oneself (as a kind of 'inner dialogue'), among two people or among a group of people. Just like negotiation, but unlike persuasion, deliberation does not necessarily start with a definite proposal. Lawyers providing legal advice to their clients are involved in a deliberation dialogue.

In *information-seeking*, a participant wants to extract information from other participants. One can think of the consultation of an expert, for instance, in court.

² For a theoretical and computational perspective on practical reasoning in the context of decision support, see Girle *et al.* (2000).

The typical example of *eristic dialogue* is a quarrel. A function of eristic dialogue is to overcome or become aware of grievances. Emotion, irrelevant argumentation and personal attack - each in principle disallowed in the other dialogue types - occur frequently in eristic dialogue, and can serve a purpose. In the legal context, the pre-court interaction between the lawyers of opposing parties, e.g., in a situation of divorce, can perhaps be thought of as a kind of formalized eristic dialogue.

Walton's list of six types is not meant to be exhaustive or mutually exclusive, but is intended as a pragmatic and normative framework in order to evaluate actual argumentative exchanges. For instance, Walton explains how dialectical shifts, i.e., a change of one type of dialogue to another, can lead to fallacious argumentation. Walton also discusses the possibility of mixed dialogues, in which characteristics of more than one of the dialogue types are present. As an example, he discusses argumentation in a criminal trial, which has many characteristics of the persuasion type of dialogue, e.g., since the prosecution tries to persuade the judge and the jury of the accused's guilt. On the other hand, in some respects, argumentation in a trial is not evaluated according to the norms obtaining for persuasion dialogue. For instance, an appeal to pity - which would be fallacious in a persuasion context - can be relevant at the stage of determining the actual sentence, and the cross-examination of a witness can rightly involve arguments of the *ad hominem* type.

The theory of dialogue and their types is extensively discussed in Walton's book *The New Dialectic*. Each type is discussed in a separate chapter, followed by chapters on dialectical shifts, mixed dialogue and argument evaluation.

The book *One-Sided Arguments* can be regarded as an application of Walton's theory of dialogue. A starting point is to find a relativistic account of argumentation in which the relevance of an arguer's biased commitments and interests are recognized without drawing the post-modernist conclusion that anything goes. According to Walton, bias is not in itself wrong. For instance, in court, the biases of the opposing parties are natural and can help efficient information exchange. In other words, when bias occurs in an appropriate context it can serve reasonable goals.

One-Sided Arguments starts with a historical overview on bias in argumentation theory and a summary of Walton's theory of dialogue. Then Walton explains his theory of bias. Walton focuses on what he calls dialectical bias: one-sided advocacy of one point of view, thus failing to be balanced. In a chapter on indicators of bias, Walton discusses for instance the biased selection of arguments, emphasis and hyperbole. The indicator of biased language is discussed in a chapter of its own. A number of case studies follow, for instance on the role of bias in sales and advertising, in order to show how bias can be evaluated. In a chapter on legal and scientific argument, Walton explains how

bias can play a legitimate and essential role in these specific contexts, but he also warns for the possibility that such institutionalized bias can be misused. In this respect one can think of the responsibility of a defendant's lawyer: does it end with his client's interests, or should other interests, such as the justness and effectiveness of the legal system, in exceptional circumstances lead him to limit his use of legal gaps and mistakes?

2.2 *Dialogues in artificial intelligence and law*

How does Walton's classification of dialogue types relate to work on dialogue in artificial intelligence and law (cf. amongst others the work of Ashley, Alevén, Bench-Capon, Gordon, Hage, Leenes, Lodder, Loui, Nitta, Prakken, Rissland, Sartor)? An insightful review is given by Hage (2000). He distinguishes five roles of dialogue in the field of artificial intelligence and law: characterizing logical operators, modeling the defeasibility of legal reasoning, providing the basis for legal justification, identifying legal issues and establishing the law in concrete cases.³

Several of these roles fit in Walton's classification of dialogue types. For instance, Walton thinks of intuitionistic logic as formally modeling the sequence of argumentation in inquiry. In this way, the inquiry type of dialogue characterizes a logical operator. Modeling the defeasibility of legal reasoning can be associated with several of the dialogue types. However, it seems that in artificial intelligence and law research the focus has been primarily on what Walton calls the persuasion type of dialogue, and then in particular the subtype of critical discussion: dialogue often serves the purpose of settling an issue or conflict of opinions. In some artificial intelligence and law research, the role of dialogue is that of identifying (and not necessarily solving) legal issues, corresponding to Walton's discussion of the maieutic function of persuasion dialogue. The role of providing the basis for legal justification is also related to the persuasion type of dialogue, since it provides a medium to establish a set of shared commitments.

It seems that the role of establishing the law (and the facts for that matter) in concrete cases does not clearly fit in Walton's classification. The idea is that the court procedure should not simply be thought of as establishing pre-existing fact and law, since neither the facts nor the law are sufficiently well accessible for the participants in the procedure: the available information can be conflicting, ambiguous and underspecified. As a result, court procedure is (at least in part) *constitutive* for the facts and the law as they obtain in the case at hand. A court

³ See also the notes of the seventh lecture of my course on the logic of defeasible argumentation (<http://www.metajur.unimaas.nl/~bart/teaching/defarg/>).

procedure is not perfect in the sense that it only and always establishes objective truths. The participants' actual actions and the judge's decisions determine the outcome. For instance, in civil law, when a participant overlooks to provide evidence for a claim for which he bears the burden of proof, the judge is not obliged to fill that gap. Also when there are differing opinions on a matter of law (as they frequently occur), a judge is to some extent free to choose between the different points of view. One symptom of the constitutive, imperfect nature of the court procedure is that it can occur that innocent people are convicted. In order to minimize such unwanted effects, the court procedure is especially strongly constrained by rules of procedure, e.g., that delimit the judge's freedom and that allow revision of cases.

This apparent omission in Walton's classification might lead to an interesting extension, perhaps by adding the constitutive dialogue as a seventh type.

I want to make one additional point concerning Walton's use of dialogue: it is very strongly connected to dialogue as a context of *argumentation*. By the focus on argumentation in Walton's books, it can be good to keep in mind that dialogue is in the first place a context of information exchange, which does not always involve argumentation per se. For instance, in current work on e-commerce or human-computer interaction, there are other relevant topics than argumentation, such as, for instance, the standardization of the relevant kinds of speech acts and the establishment of efficient protocols.

3 Argumentation schemes

A second central aspect of Walton's theoretical framework concerns argumentation schemes. The argumentation schemes used in the dialogue provide further insight into the dialectical relevance of an argument, given a particular dialogue context with a specific type, stage and goal. Argumentation schemes represent kinds of argument as they occur in conversation. Arguments based on argumentation schemes need not be conclusive, but can be defeasible. Walton lists argumentation schemes as a kind of semi-formal argument templates. For instance, the scheme 'Generic Ad Hominem Argument' looks as follows (*Ad Hominem Arguments*, p. 249):

GENERIC AH

a is a bad person.

Therefore, *a*'s argument α should not be accepted.

While GENERIC AH looks like a semi-formal rule of inference, other argumentation schemes are like small derivations or pieces of dialogue (p. 256-257):

GUILT BY ASSOCIATION AH

a is a member of or is associated with group *G*, which should be morally condemned.

Therefore, *a* is a bad person.

Therefore, *a*'s argument α should not be accepted.

TWO WRONGS AH

Proponent: Respondent, you have committed some morally blameworthy action (and the specific action is then cited).

Respondent: You are just as bad, for you also committed a morally blameworthy action (then cited, generally a different type of action from the one cited by the proponent but comparable in respect of being blameworthy). Therefore, you are a bad person, and your argument against me should not be accepted as having any worth.

Note that GENERIC AH occurs in GUILT BY ASSOCIATION AH and TWO WRONGS AH (literally in the former, and with a minor adaptation in the latter).

Argumentation schemes come with critical questions, that can be asked to question the dialectical relevance of an argument based on the scheme. GENERIC AH has the following three (p. 249):

cQ1

Is the premise true (or well supported) that *a* is a bad person?

cQ2

Is the allegation that *a* is a bad person relevant to judging *a*'s argument α ?

cQ3

Is the conclusion of the argument that α should be (absolutely) rejected even if other evidence to support α has been presented, or is the conclusion merely (the relative claim) that α should be assigned a reduced weight of credibility, relative to the total body of evidence available?

In the book *Ad Hominem Arguments*, Walton uses argumentation schemes to classify different types of *ad hominem* arguments. He lists twenty-one argumentation schemes that are related to *ad hominem* style argumentation. As main types, he distinguishes the *direct* (or ethotetic) variant, in which an arguer's character is attacked, the *circumstantial* variant, in which an arguer advocates a claim that contradicts his earlier claims or behavior, and the *bias*

variant, in which an arguer is discredited because of his biases. (The main schemes for the three variants occur on the pages 249, 251 and 255, respectively.)

For someone with a formal background, the way in which Walton uses argumentation schemes seems rather loose. He uses variables, like *a* for an arguer and *A* for a claim, but it turns out that different occurrences of a variable need not be identical. For instance, the scheme ‘Argument from Commitment’ is as follows (p. 248):

AC

a is committed to proposition *A* (generally, or in virtue of what she said in the past).
Therefore, in this case, *a* should support *A*.

The third critical question associated with AC is the following:

CQ3

Is the proposition *A*, as cited in the premise, identical to the proposition *A* as cited in the conclusion? If not, what exactly is the nature of the relationship between the two propositions?

Apparently, *A* in the premise can differ from *A* in the conclusion. Also, the schemes and the critical questions as they are used by Walton cannot be regarded as purely formal specifications of kinds of arguments, in the sense that actual arguments simply are obtained by filling in variables. Good use of the schemes and questions requires further interpretation by a competent language user (cf. for instance the scheme TWO WRONGS AH cited above).

This may sound as a criticism, but it is not meant that way. Walton’s looseness may for the formally inclined be somewhat unsettling, it can be warranted by Walton’s goal: provide tools for the analysis and evaluation of real-life arguments. Purely formal schemes and questions might not be sufficiently flexible for that goal.

At the same time, it is tempting to investigate how far one can get with the formal method. The task then becomes to formalize concrete kinds of argumentation as they occur in real-life contexts, such as the law. The result would be the design of concrete, contextual logics, such as a logic of law (cf. Verheij 1999). Of course, formalization leads to *idealizations* of the kinds of argumentation (which would lead Walton away from his focus on real-life argument), but there is the gain of unambiguous precision and the possibility of computer implementation.

Much work in artificial intelligence and law has followed the path of formalizing legal argumentation, but especially the explicitly logically oriented

work (e.g., Hage 1997, Prakken & Sartor 1996, Verheij 1996) has some clear similarities with Walton's approach. All specify dedicated types of facts related to legal reasoning (e.g., about rule validity and applicability) and show how they are related (e.g., in terms of special rules of inference or semantic constraints). There clearly is a similarity in style between this kind of work and Walton's specification of types of facts related to *ad hominem* reasoning (e.g., about an arguer's character or biases) and their relations in terms of argumentation schemes. There is also a shared attention to the defeasibility of argumentation (cf. also the work of Toulmin, Reiter, Pollock, Loui, Vreeswijk, Dung and many others in the fields of artificial intelligence and philosophy). Where Walton uses critical questions, the logically oriented work in artificial intelligence and law speaks of counterarguments and exceptions. There indeed seems to be a close connection between the two: critical questions often point to exceptional circumstances or counterarguments that block the use of an argumentation scheme (cf. also Girle *et al.* 2000).⁴

The book *Ad Hominem Arguments* is an application of Walton's view of argumentation schemes and critical questions in the context of dialogue. The book starts with classic cases of *ad hominem* argument and basic concepts, followed by a discussion of the treatment of the *ad hominem* in textbooks (starting with one dating from 1883). Walton emphasizes that the distinction between a Lockean account of *ad hominem* focusing on commitment (cf. the scheme AC above) and an account in terms of personal attack is fruitful. After a chapter on character and practical reasoning, the book finishes with the classification of types of *ad hominem* arguments and a discussion of their evaluation.

4 Final remarks

In sum, Walton's work focuses on themes that are of direct relevance for research in artificial intelligence and law. The role of dialogue in argumentation and of argumentation schemes in specific argumentative contexts are examples of such themes, and Walton's approach can provide inspiration for future formal work in artificial intelligence and law. It should be noted however that although Walton occasionally uses examples from the legal domain - for instance since both biased advocacy and certain types of *ad hominem* arguments can be appropriate instead of fallacious in court settings - his aim is wider than the context of legal argumentation.

⁴ The connections between argumentation schemes and defeasible logic are further explored by Verheij (1999, 2001).

Walton has informed me that he is currently more directly focusing on legal reasoning. For instance, a book on legal argumentation and evidence is currently in press. It is a fortunate development that the ties between the informal and formal approaches to argumentation with an eye on the law are getting stronger. Stimulating initiatives such as the Bonskeid Symposium on Argument and Computation (2000)⁵ (where one of the inter-disciplinary groups focused on argument and legal reasoning) and the special issue of the Artificial Intelligence and Law journal on formal and informal models of dialectical legal argument (Vol. 8, Issue 2/3), help the necessary exchange of ideas between the communities studying legal reasoning from an informal and formal point of view.

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⁵ See <http://www.csd.abdn.ac.uk/~tnorman/sac/>.

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