

ISSA Proceedings 2014 - An Epistemic Theory Of Argumentation For Intercultural Argumentative Dialogues

Abstract: In scenarios of legal pluralism, adjudicators cannot always generalize their cognitive standards because some of the reasons put forward only make sense in a cultural context. How can the adjudicators assess arguments that make sense in a culturally different worldview? The answer for this should include a method for the evaluation of the culturally-dependent arguments. I will evaluate the main theories of epistemic justification looking for the most compelling answer for this question.

Keywords: Epistemological theories of argumentation, legal pluralism, argumentation in intercultural scenarios, theories of justification, adjudication

1. Introduction

I believe that scenarios of legal pluralism pose certain question to theories of argumentation. Broadly speaking, scenarios of legal pluralism are either legal communities where the cultural diversity of their populations is legally recognized and protected such as Australia (Mabo and Others v. Queensland 1992) Canada (Canadian Multicultural Act 1985) or Colombia (Const. 1991), or international tribunals where legal agents (e.g., judges, juries, prosecutors, defendants, witnesses, and so on) belong to culturally differentiated groups (Cryer 2007; Kelsall 2009). In scenarios of legal pluralism, some of the conflicts involve members of culturally differentiated groups who justify their allegations with arguments that only make sense in the culture to which they belong. If the adjudicator does not share the same cultural worldview as the parts under litigation, how can he/she come to make a decision determining the parties' rights and obligations?

A simple picture of adjudication illustrates my point. It is commonly accepted that the resolution of legal disputes requires the application of the law in accordance with the facts alleged by the parties. Consequently, adjudication implies

epistemological evaluations. To be sure, adjudicators assess litigant's factual reconstructions determining whether or not their beliefs are justified. If a legal dispute takes place in a culturally unified scenario, the adjudicator becomes an archetypal epistemic agent. This means that he/she confers or denies justification based on the assumption that he/she and the parties are experientially and doxastically alike. Therefore, if he/she were undergoing the experiences alleged by the parties, and he/she would be justified in his/her beliefs, then the parties would be justified, too. In scenarios of legal pluralism, alternatively, adjudicators cannot generalize their cognitive standards because the alleged facts are reconstructed from culturally different views. That is to say that although the adjudicator and the parties are experientially alike, they are doxastically different.

If my diagnosis is accurate, how can the adjudicators determine the justificatory status of a belief inferred from a radically differentiated cultural view? The main theories of epistemic justification (i.e., foundationalism, coherentism and reliabilism) offer competing answers for this question. I will evaluate these accounts defending that reliabilism provides the best response. With this in mind, I will complete the following agenda. First, I will formulate the issue more carefully. In doing this, I will use some legal cases decided by the Colombian Constitutional Court. Second, I will reconstruct the three alternative answers provided for the theories of epistemic justification, and I will evaluate these competing accounts.

2. The problem

As I take it, the problem of determining the justificatory status of a belief held from a culturally differentiated group emerges from intercultural argumentative dialogues where the positions under debate are a product of radically different worldviews. To clarify, the trigger of an argumentative dialogue is a difference of opinions between two arguers. The radical difference of the intercultural argumentative dialogues under scrutiny comes from the fact that the participants in these dialogues do not do have unified doxastic states because of their differentiated cultural perspectives. This is illustrated in the following case decided by the Colombian Constitutional Court.

Case 1

(Argumentative Dialogues Arising from Radically Differentiated Cultural Views):

In 1997, the Colombian indigenous community, called Paes, was reported to the Colombian Constitutional Court by one of its members. A man was found guilty of

the murder of another member of his community, and he was sentenced to sixty lashes by the Paes judicial authorities. He said this punishment was torture, and it was illegal because under the Constitution of Colombia (Art. 12) and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 2), the cruel and inhumane punishments were banned. The Paes judicial authorities said this punishment was not torture; it was an act of purification. The Paes believed when one of them was lashed, a “ray touched them.” This magic touch produces two effects. First, the indigenous person’s crime is purified by the ray’s touch. Second, he/she can return peacefully to his/her community. As a result, the lashes are a ray that purifies and allows pacific coexistence in their community. (Colombian Constitutional Court 1997, T-523)

The epistemological evaluation to be made is whether or not the indigenous community is justified in believing that the aforementioned lashes are a “ray’s touch.” If this is the case, the punishment is not illegal. If it is not the case, the indigenous community is acting beyond its constitutional rights, and its actions ought to be stopped. To recall, the adjudicator is not supposed to confer or deny justification based on the assumption that he/she and the parties are experientially and doxastically alike. In fact, the adjudicator is expected to take the cultural differences seriously and evaluate the parties’ doxastic states in accordance with the cultural contexts to which they belong. However, how can such evaluation be done if, *ex hypothesi*, the adjudicator does not share the same cultural view with the parties? I will determine a specific methodology of work before answering this question below.

3. The methodology

The evaluation to be done in this paper requires the specification of the conditions that foundationalism, coherentism and reliabilism have to fulfill in answering the issue under account. If any of these theories do not accomplish these conditions, the theory should be either corrected or abandoned. Since the idea is to evaluate an adjudicator’s assessment of justificatory status in contexts of legal pluralism, I will adopt the method suggested by Alvin Goldman (2003) to evaluate inferences in procedures of adjudication. Avoiding unnecessary complexities, I will quote the steps of such method. After the passage, some comments and adaptations will be made.

Step 1 - Select the inference procedure, R, as a target of analysis.

Step 2 - Posit an aim, or set of aims, A, of the legal adjudication system - for example, truth, or rectitude, of decision.

Step 3 - Determine how well the procedure R, would promote aim A.

Step 4 - If R would be ineffective or deficient in promoting A, identify some remedies that would make R perform better. (215)

Following Step 1, I am going to analyze three inference procedures (R). Each of them will be differentiated by the epistemological principle that is used in its evaluation. Specifically, R_f will adopt the tenet suggested by foundationalism, R_c by coherentism and R_r by reliabilism.

Step 2, above, requires some clarification. For Goldman, theories of legal proceedings can take two forms – either they are pluralistic or unified (2005, 163-164). Pluralistic accounts hold that legal processes have different aims, no one of which is prior to the other (e.g., justice, impartiality, allowing coexistence, seeking the truth, protection of civil rights, etc.). Unified theories, in contrast, explain proceedings with reference to one main end. They do not hold that legal proceedings actually achieve the selected goal; better yet, they use it as an explanatory resource to clarify the main activities performed in legal proceedings. Within this second alternative, one can find pure unified theories and impure unified theories. Pure unified theories state that the legal practices taken into account are subsumable in one exclusive desideratum. Impure unified theories defend that although the aim of legal procedures is such an exclusive aim, it is possible to recognize alternative goals coexisting with the dominant rationale. To illustrate, Goldman himself adopts an impure unified theory of legal procedures. This allows him to defend that even though the main goal of the law is not the determination of the truth; it is truth-oriented. These are his words:

The aim [of legal procedures] is securing *substantively just* treatment of individuals. This depends on (1) the content of the law and (2) the genuine, or true, facts concerning the actions they (and others) performed and the circumstances of those actions. Thus, determining the truth about a person's actions is a crucial *means* to just treatment. (Goldman 2005, 164)

In the same way, I believe processes of adjudication in contexts of legal pluralism have one main aim (A), namely, to promote the coexistence between people who belong to different cultures. In achieving this goal, alternative aims have to be attained. First of all, the relevant laws have to be applied, (A1). Secondly, the

alleged facts should be determined (A2). Thirdly, the different cultures have to be preserved (A3). Finally, the understanding of the cultures that constitute a political community might increase (A4). Given that A1 and A2 are common goals for all legal proceedings, my analysis will focus on A3 and A4.

To conclude, Step 3 is the goal-promoting evaluation of the reasoning under consideration (i.e., Rf, Rc and Rr). To recall, if some of these accounts do not promote the constellation of aims that they should supposedly promote (i.e., from A1 to A4), it has to be either reformed or ruled out.

4. *Three alternative answers*

Theories of justification are accounts that specify the conditions under which a person is justified in believing (Goldman 1976, 3). Following the standard pattern, a theory of justification adopts the next structure:

Individual Epistemic Justification

S is justified in believing that p if and only if (iff):

C1, C2 ..., Cn

Where S stands for a cognitive agent, p is for propositional knowledge, and C1 ... Cn are the conditions that transfer positive justificatory status. In Case 1 above, S is the Paes judicial authorities and p is “when a man receives lashes, he is being touched by a ray.” Therefore, the ultimate proposition is:

The Paes judicial authorities are justified in believing that when a man receives lashes, he is being touched by a ray.

I believe that foundationalism, coherentism and reliabilism suggest different conditions for the justificatory status of this proposition. A detailed reconstruction of these theories is beyond the specific goal of this paper. Better yet, I will make cautious generalizations showing how Rf, Rc and Rr could be used in processes of adjudication in scenarios of legal pluralism.

4.1 *Foundationalism*

The main idea of foundationalism can be captured by the standard pattern as follows:

Individual Epistemic Justification 1 (Foundationalism):

S is justified in believing that p iff:

C1: p is derived from a basic belief, or,

C2: p is derived from a proposition which is, directly or indirectly, derived from a basic belief.

Two expressions need clarification, namely, “basic beliefs” and “directly or indirectly.” I will start with the last one. Foundationalism suggests that the justification of a belief depends upon the propositional relation between it and other propositions that confer justification. Hence, p is justified if it is inferred from another justified proposition, p1. Similarly, p1 is justified if it is drawn from the justified proposition, p2. Equally, p2 acquires its justified status from another justified proposition, p3. Thus, the evaluation of the justificatory status of a proposition implies following the path of propositions in which the ultimate belief relies on. Since this tracking of justification cannot be done ad infinitum, foundationalism determines a point in which the chain of justification is anchored. In other words, these are the foundations of justification, or the basic beliefs. These are propositions with the salient feature that they confer justification, but they need not be justified by other propositions because they are justified themselves. In the history of philosophy, several alternatives have been suggested as basic beliefs: clear and distinct ideas, mathematical or logical truths, spontaneous formed beliefs, and so on. Contemporary epistemology suggests that perception is a basic belief. To justify this, they propose the following principle:

Seeming Principle

If it seems to S that p, then S is prima facie justified in believing that p.

Practically, I believe that there is a computer screen in front of me because it seems visually to me that that is the case. Given that I do not need a justificatory proposition when it seems to me that I am looking at a computer screen, the belief that I am looking at a computer screen is basic. Furthermore, since this belief depends upon the external world, it yields knowledge.

Putting all this together in Case 1, if the constitutional judge had used the Rf model to evaluate the justificatory status of the belief held by the Paes judicial authorities, the following structure would have been obtained:

Inference Procedure 1 (Rf):

The Paes judicial authorities are justified in believing that when a man receives lashes, he is being touched by a ray iff:

C1: “When a man receives lashes, he is being touched by a ray” is derived from something we perceive, or,

C2: “When a man receives lashes, he is being touched by a ray” is derived from a proposition which is, directly or indirectly, derived from something we perceive.

Based on this structure, the constitutional judge would deny the justificatory status of the ultimate proposition. The reason for this verdict is that this adjudicator, in normal conditions, cannot verify whether or not the Paes judicial authorities derived their belief from some perception. From the judge’s view, what is perceived is a man who is receiving lashes from another man, but not a ray. The Paes judicial authorities interpret the perceiving lashing ritual as if a ray touches the man, but it is not derived, directly or indirectly, from any sensorial experience. Therefore, the Paes judicial authorities are not epistemically justified in believing that when a man receives lashes, he is being touched by a ray.

I believe *Rf* does not promote the aims of adjudication in contexts of legal pluralism. Specifically, it does not promote A3 because the requirement of sensorial experience limits the Paes culture to the sensorial experiences of the judge. Using the Seeming Principle, given that for the constitutional judge, it does not seem that a ray is touching a person when that person receives lashes, the judge does not have any reason to think that Paes judicial authorities are justified in such a belief. Consequently, *Rf* does not promote the coexistence between people who belong to different cultures because it reduces one culture to the other. Apparently, coherentism could offer a better alternative because it does not focus on sense experiences, but on systems of beliefs. This alternative has to be evaluated carefully.

4.2 *Coherentism*

Coherentists, unlike founderentists, claim that epistemic justification is not linear, but holistic. That is, epistemic justification does not go back from the ultimate proposition to be justified to the previous justificatory propositions. Instead, epistemic justification has to do with holistic relations of systems of information. In other words, coherentism is the view that holds the following formula for epistemic justification:

Individual Epistemic Justification 2 (Coherentism):

S is justified in believing that p iff:

C1: p belongs to a coherent set of beliefs.

In this model, the justificatory status of the ultimate proposition is conferred by

the coherence relations it has with the system of beliefs it belongs to. That is, S's system of beliefs. The main issue for coherentism is to explain the nature of coherence relations. Old fashioned coherentism used to require that a particular belief should cohere with the whole doxastic system of the individual whose belief was being evaluated. However, contemporary coherentists realized that this requirement was too strong because any incompatible belief would make the whole system incoherent. That is why contemporary coherentists adopt a moderate position claiming that coherence is predicated of a specific sub-system of beliefs, and not from the whole system of them. This allows to compartmentalize systems of beliefs preserving their coherence against particular inconsistent beliefs (Kvanvig 2012b).

How can an adjudicator evaluate the coherence of a belief inferred from a radically differentiated cultural view? I am not offering substantial answer for these question here. For the present purposes, it suffices to imagine two situations which outline a possible answer. To begin, in Case 1, the judge could determine, with the help of an expert anthropologist, the core of the Paes's beliefs system. Secondly, performing some basic logical (or probabilistic) operations, the adjudicator could verify if the p coheres with this system of beliefs. These ideas constitute R_c , as follows:

Inference Procedure 2 (R_c):

The Paes judicial authorities are justified in believing that when a man receives lashes, he is being touched by a ray iff:

C1: "When a man receives lashes, he is being touched by a ray" is coherent with the Paes judicial authorities' set of beliefs.

Coherentism has been traditionally criticized with the isolation argument. Broadly speaking, since the mere coherence between propositions confers justificatory status, the external world does not matter. However, the isolation problem does not necessarily weaken coherentism as such. Instead, it is a threat for coherentists' theories that do not include perception within their concept of system of beliefs (Kvanvig 2012a, 63). I claim, however, that the isolation problem represents a threat for coherentism in scenarios of legal pluralism. To recall, the failure of R_f is that it is too strong. That is, since it demands perceptual experience for all justified beliefs, then A3 is not promoted. With the mere coherence requirement, this problem seems to be overcome because perception does not play a strong role in epistemic evaluation. The problem is that now A4 is

not promoted. To clarify, if there are not external standards for justification, the understanding between cultures is impossible. *Rc*, therefore, does not only lead to the isolation from the external world, but also creates epistemic bubbles.

4.3 *Reliabilism*

As a first approximation, reliabilism suggests that:

Individual Epistemic Justification 3 (Reliabilism):

S is justified in believing that p iff:

C1: p results from a reliable cognitive process.

Two concepts need to be clarified, namely, “reliable” and “cognitive process.” Goldman defines cognitive process as a function with inputs that have beliefs as outputs (1976, 13). Two types of processes are important here. First, the belief-dependent processes have other beliefs as inputs. Second, the belief-independent processes do not have other beliefs as inputs. While perception is a good example of the latter, memory or inference are good instantiations of the former. Following this terminology, Goldman introduces more distinctions. There are two kinds of beliefs. A belief-independent belief is the output of a belief-independent process. A belief-dependent belief is the result of a belief dependent process (13-14). Consequently, perceptual beliefs are instantiations of belief-independent beliefs, and the conclusion of a deductive argument is an example of a belief-dependent belief. Finally, reliability is “the tendency of a process to produce beliefs that are true rather than false” (16). While in belief-dependent processes reliability depends on the truth of the inputs, in belief-independent processes, reliability is categorical. From these distinctions, reliabilism suggests two forms for evaluating justificatory status.

First,

Individual Epistemic Justification 3 (Reliabilism 1):

S is justified in believing that p iff:

C1: p is a belief-independent belief, and

C2: p is the result of a categorically reliable process.

Second,

Individual Epistemic Justification 3 (Reliabilism 2):

S is justified in believing that p iff:

C1: p is a belief-dependent belief, and

C2: p is the result of a conditional reliable process.

According to this second form, Rr adopts the following structure:

Inference Procedure 3 (Rr):

The Paes judicial authorities are justified in believing that when a man receives lashes, he is being touched by a ray iff:

C1: "When a man receives lashes, he is being touched by a ray" is a belief-dependent belief, and

C2: "When a man receives lashes, he is being touched by a ray" is the result of a conditional reliable process.

C1 is correct because, as I pointed out previously, the ultimate belief in this case is no product of direct perception, but of a cultural interpretation. That is, the Paes judicial authorities' belief that "when a man receives lashes, he is being touched by a ray" depends on the beliefs of the Paes community. The constitutional judge, therefore, has to evaluate C2. For instance, he/she has to appraise the process of reasoning used by the Paes judicial authorities, or the memory that they have of their traditions. Due to the fact that this sort of evaluation is not perception-dependent, the constitutional tribunal does not have to rule out the Paes judicial authorities' ultimate beliefs. Even if the Constitutional judge does not share the input beliefs of the Paes culture, this adjudicator can evaluate the process of reasoning done by the Paes judicial authorities. Now, there is an epistemic achievement when cognitive agents reason properly or recall memories in an accurate way (Lyons 2012, 8). By the same token, assuming that the Paes judicial authorities got their inferences right, or recalled their traditions in the right way, the constitutional judge can attribute a positive epistemic status to their belief-dependent beliefs.

5. *Conclusion*

If my analysis is correct, reliabilism offers the best answer for the problem of the evaluation of justificatory status of beliefs in multicultural scenarios. On one hand, Foundationalism does not preserve cultural differences. On the other hand, Coherentism leads to epistemological relativism. With Reliabilism, on the contrary, it is possible to achieve A3 and A4. To be sure, with Rr it is possible to achieve A3. For one thing, the Paes judicial authorities are not reduced to the seemings of the Constitutional Court. For another, the adjudicator is not reduced to the Paes culture either. Rather, the point is that the Constitutional Court

should reason contrafactually. In other words, the question the adjudicator should ask is: if I were undergoing the experiences of the Paes judicial authorities, would the belief that “when a man receives lashes, he is being touched by a ray” be justified? *Ex hypothesi*, the constitutional judge is not a member of the Paes community, but given the psychological similarities between him/her and the members of that indigenous community (e.g., the two of them reason, have intuitions, make inferences, and the like), if the constitutional judge were conditionally justified, then the Paes judicial authorities would be conditionally justified, too. With Rr it is also possible to achieve A4. Some epistemologists claim that understanding is not factive. That is, the value of understanding is not in the truth of the propositions understood, but in the grasping of the explanatory connections of those propositions (Kvanvig 2003, 200). Given that Rr allows for conditional justification, the truth of the beliefs of culturally differentiated groups is not an obstacle for the intercultural understanding.

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