

Argument from Analogy in Law, the Classical Tradition and Recent Theories, *Philosophy & Rhetoric*, 42, 2009, 154-182.

Fabrizio Macagno and Douglas Walton

Abstract

Argument from analogy is a common and formidable form of reasoning in law and in everyday conversation. Although there is substantial literature on the subject, according to a recent survey (Juthe 2005), there is little fundamental agreement on what form the argument should take, or on how it should be evaluated. The lack of conformity, no doubt, stems from the complexity and multiplicity of forms taken by arguments that fall under the umbrella of analogical reasoning in argumentation, dialectical studies, and law. Modeling arguments with argumentation schemes has proven useful in attempts to refine the analyst's understanding of not only the logical structures that shape the backbone of the argument itself, but also the logical underpinning of strategies for evaluating it, strategies based on the semantic categories of genus and relevance. By clarifying the distinction between argument from example and argument from analogy, it is possible to advance a useful proposal for the treatment of argument from analogy in law.