Damiano Canale and Giovanni Tuzet (2009). *The Rules of Inference. Inferentialism in Law and Philosophy*. Milano: Egea

Reviewed by Harm Kloosterhuis (Erasmus School of Law, Erasmus University Rotterdam)

H.L.A. Hart did not only introduce the concept of *open texture* in law, but also a contextual and inferential approach to the problems of legal interpretation. In his inaugural lecture *Definition and Theory in Jurisprudence* (1953) Hart claimed that 'We must take not the *word* 'right' but the sentence 'You have a right' as starting point for an analysis. According to Hart a statement of the form 'X has a right' means to draw a conclusion in a particular case with an 'argumentative background' of facts, a legal system and rules of inference. According to the editors of the interesting and thought provoking collection of essays *The Rules of Inference. Inferentialism in Law and Philosophy* — Damiano Canale and Giovanni Tuzet — this perspective on legal interpretation and argumentation is still a very fruitful one. This is the consequence of three widely accepted (connected) assumptions in legal theory: (1) legal language is fundamentally indeterminate, but (2) this does not mean that legal interpretation and adjudication are irrational and (3) the criteria of rationality are part of a public linguistic normative practice. These assumptions result in three related central research questions in the theory of legal argumentation: questions about (1) the nature of legal indeterminacy, (2) the kind of legal rationality and (3) the precise criteria of this rationality.

Canale and Tuzet started in 2004 a research project aimed at exploring the relevance of the insights of Robert Brandom's *semantic inferentialism* for answering these questions. Their point of departure is the claim that Brandom's theory provides an promising integrated account of the problems of linguistic indeterminacy, the sources of rationality and the structure of argumentative practices. Applied to legal questions about meaning and interpretation (1) the content of a legal provision amounts to the possible inferences from that provision, (2) these inferences are governed by rules and (3) these rules express criteria of rationality. In their research project Canale and Tuzet aim at two goals. They want to determine whether an 'inferentialist account' of legal argumentation can explain some general aspects of legal reasoning and legal decision making and whether the study of legal practice can contribute to some aspects of an inferentialist theory of content and reasoning.

The Rules of Inference is a collection of papers presented at an international conference at Bocconi University (Milan) on the inferentetialist account of

legal interpretation and argumentation. It is divided in two parts. In part one — *Inferentialism on debate* — the application of theory of Brandom to the legal domain is discussed. Carlo Penco analyses the problem of the commitment to the implicit and the consequences of what is said. Starting with Grices distinction between saying and implicating and Brandom's theory of inferentialism, Penco tries to give a definition of a new concept, the concept of 'inferential responsibility'. In 'Inferentialism and the Normativity Trilemma' Michael Esfeld investigates the relation between naturalism, cognitivism and the naturalistic fallacy and he proposes a naturalistic explanation of the sources of normativitiy. Italo Testo first discusses relevant aspects of the debate between Brandom and Habermas about the social basis of normativity and content and he then focuses on the relation between recognition and normativity on the one hand and recognition and criticism on the other. Giorgio Bongiovanni, Antonino Rotolo and Corrado Roversi evaluate the relevance of the inferentialist approach for the relation between law and morality. Starting with Alexy's famous 'claim to correctness' the authors discuss some problematic aspects of Brandoms's account which are related to the role of cooperation in practical reason and to the notion of disagreement. Canale and Tuzet give an example of an inferentialist analysis of legal argumentation by reconstructing the normative commitments and entitlements undertaken in an interpretative discussion. With this analysis they want to show the advantages and drawbacks of an inferential approach in legal argumentation theory.

The aim of the second part of the book — *Inferentialism, Argumentation and Pragmatism* — is to provide a historical theoretical background and a confrontation with other approaches to legal argumentation with a similar background. Among the essays in the second part there is a very interesting historical paper of Susan Haack and a pragma-dialectical analysis of teleological-evaluative argumentation by Eveline Feteris.

The editors of *The Rules of Inference* do not formulate general conclusions about the applicability of Brandom's theory. But the reader can conclude that Brandom's theory provides interesting perspectives on legal interpretation and argumentation. In 2008 this was also shown by Matthias Klatt — one of the Phd-students of Robert Alexy. Klatt defended in his dissertation *Making the Law Explicit. The Normativity of Legal Argumentation* with the help of Brandom's theory the claim that legal argumentation can be objective, and he maintains that statements on the meaning of legal concepts can be right or wrong, and take on intersubjective validity accordingly.

In their introduction Canale and Tuzet explain the American pragmatist background of Brandom's ideas. But the essays show that there is a clear relation with other traditions in philosophy and legal theory as well, going back to Frege, Wittgenstein and, again, Hart. It was Hart who introduced an inferential account

and who analyzed legal interpretation and adjudication as a social, normative practice with commitments and entitlements within constraints of rationality.

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