

The Logic of Choice: A Model for Analysis of Propositions of Judgment

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The relative paucity of research suggesting models for analysis of non-policy propositions has left academic debate on such topics with less clear analytic methods than for policy propositions. Most analysis of propositions of value, for instance, has been done by philosophers. [1] In this essay, I propose a model of analysis for academic debate on non-policy propositions drawn from Gidon Gottlieb's investigation of the logic of choice in legal judgments.

Nature of Propositions

Non-policy propositions are characterized by Wagner as propositions of fact and value [2] and by Terris, Ziegelmüller and Dause as propositions of judgment.[3] This later characterization finds support in modern philosophy.

As Langer points out, the dominant philosophical paradigm of this century is the sign or symbol. [4] With roots in Kant, thinkers such as Cassirer, De Saussure, Levi-Strauss, and modern structuralists and semioticians conceive the process of talking about facts, values, meanings, or other intellectual constructs as judgment -- placing notions within the verbal, rule-guided structures that constitute human reality and knowledge.[5] In the case of questions of value and meaning, the process of constituting is intuitively clear. Yet even facts, which seem to belong in an objective realm beyond judgment, are subject to the same classification process that is the essence of knowing. As a result, clustering propositions of fact, value, meaning, and other non-policy questions together leads to possible models for analysis based on the common act of judgment.

Analysis of Propositions of Judgment

The standard model for analysis of propositions of value currently is the criteria-application model in which two stock issues -- the criteria of the value and the application of facts to those criteria -- are argued. [6] Weaknesses of this model are both practical and theoretical. On a practical level, debaters often do little more to establish criteria for a value word like "detrimental" by reference to the definition of the word, thereby resulting in criteria that are nothing more than other equally abstract words such as "loss" or "damage." This process offers little by way of guidance for judgment.

The practical problem is related directly to the theoretical problem -- what does it mean to develop a criterion for a value? Beyond defining the central terms, what is, or ought to be, the logical process for determining questions of judgment? The criteria-application analysis provides little insight into the logic of this process.

The Logic of Choice

Gottlieb's The Logic of Choice is an attempt to revise standard conceptions of rationality by proposing a model of rational argument; used in the law, a logic of rule-guided choices and decisions. [7] Gottlieb argues that legal and moral reasoning cannot be assessed meaningfully in terms of the inductive or deductive model of rationality. The deductive model is not adequate to describe judgments because its logic cannot lead to conclusions about the truth of premises. Further, "questions about the selection of 'relevant' facts, which make up the minor premise, from the total situation in which a choice or judgment is required" cannot be solved by deductive syllogisms. [8] On the other hand, Gottlieb argues that the probability attached to inductive conclusions is not descriptive of the process of judgments. Inductive reasoning gives information about

observables and patterns of occurrence; judgments are reasoning relying on rules.

Gottlieb's proposal of a model for reasoning as it occurs in the legal process is a rule-guided logic. The legal logic of judgment or choice does not evaluate arguments by their conformity to an ideal but by the adoption, application, and amendment of rules. Without evaluating his critique of formal and scientific reasoning systems and their relation to jurisprudence, I will overview the portions of Gottlieb's system relevant to propositions of judgment in general.

Gottlieb's notion of a "rule" involves the sequential reasoning process of inference. Rules are "devices for the guidance of mental processes of inference leading to choices, decisions, actions, attitudes, judgments, conclusions and the like." They are "tools of communication for the guidance of some species of mental operations." [9] Rules guide human ratiocination towards choice among alternatives.

Rules involve four principal components. The first is the protasis of the rule, the part describing and circumscribing the situations in which the rule is operative. A moral rule proscribing lying might operate only in cases in which the truth causes no worse moral wrong than the lie itself. The second element of rules is the apodosis, which gives the consequence of the rule, that is, that which the rule seeks to attain. In the instant case, the apodosis is to stop lying. The third element is the character or the inference warrant of the rule; this element indicates whether the inference is permitted, required, prohibited, etc. The rule statement that all ruminants have four stomachs implicitly has a required inference warrant. The final element is the indication that the statement in question is designed to function as a rule. This component can be demonstrated by rules of law that appear as decisions in court cases; by so

appearing, the status as rule or precedent is indicated.

To illustrate all four components, one could imagine a rule that said: In times of peace, individuals' rights to criticize their government may not be violated. The protasis is the limitation to peacetime; the apodosis is that individuals are free to criticize the government; the inference warrant is the prohibition of governmental violation of these rights; and the indication that the statement is a rule is its appearance in a federal court appellate opinion as the holding of a case.

Although much reasoning in the area of judgment proceeds without articulating these steps, Gottlieb argues that the components are not "merely fictional attributes of rules." [10] The key to characterizing a statement as a rule is not that the normative utterance is completely formulated according to the above components, but that it has the potential to be analyzed, translated, or expanded into rule form.

The process of legal judgment, argues Gottlieb, involves two distinct types of rules -- rules of guidance and rules of justification. The former are enunciated prior to judgment. They are precedential rules to be followed in inference drawing, hence the term "guidance." Justificational rules are imposed ex post facto, after a judgment is reached. The distinction is one of timing and different inferential processes. To argue that X must be the rule because Y is the case is to posit a rule of justification. To determine that Y is the case because it is the result reached by applying the material facts to X is to cite a rule of guidance. According to Gottlieb, rules of justification can be criticized if the rule posited is not authorized by preexisting rules.

In law, rules "are applied to facts." A determination of the material facts precedes the application of those facts to the protasis of the rule. Gottlieb correctly points out that facts are not objectively given truths

about the world of events but are choices of meaning, the process of selective interpretation. In the law, facts are those situations "proved and believed." [11] The determination of which of these facts are relevant itself involves the acceptance of a criterion for relevance. In a criminal prosecution, those facts are relevant which bear on the crime charged, the modus operandi, or, if it is in question, the character of the defendant.

A further issue in a legal judgment is the foreseeable consequences of the decision. A determination that a particular rule governs certain facts, or that particular facts meet the protasis of a rule, must be balanced against the future impact of such a finding. Applications of rules serve to define the meaning and future applicability of the rule. If the judgment in a murder prosecution is that a high blood-alcohol level acted to remove the protasis of intent from the rule governing which acts are to be called murder, one who renders such judgment must first consider the precedent that judgment will set for future questions involving the rule about murder.

Another relevant concept developed by Gottlieb is that of the purpose of rule. The notion of a rule is inherently purposive -- "a device for the guidance of mental processes of inference leading to decisions and judgments." [12] As a result, consideration of a particular application of a rule ought to include consideration of the purpose the rule was intended to accomplish. Such analysis would be relevant to the determination of whether the rule ought to be applied in the present circumstances. Rules of law, in particular, are not "experiments in aimless direction. They presuppose congeries of purposes and policies which they are designed to promote."

Purposes and consequences are interrelated. Consequences of applying a rule to certain material facts must be weighed with respect to the

purpose the rule was designed to further. A consequence of applying the rule that driving over 55 mph will be categorized as speeding to an ambulance making an emergency trip to a hospital will be a lessening of public respect for the law, which is one of the purposes of the criminal laws for protecting public safety. Gottlieb summarizes by suggesting that the analysis of choice vis-a-vis purpose is necessary when:

the situation governed by a rule is marginal with respect to the language of the rule . . . [;] the application of the rule would be inappropriate in light of the rule's own purposes or of other preferred purposes promoted by other rules of the system; . . . [or] competing rules claim to govern the same situation, for their respective purposes must then be considered. [13]

These components, along with other parts of Gottlieb's analysis pertaining uniquely to law, are the "recurring necessary connections" between rules and other elements of logic that necessarily are involved with the application of such rule. The relationship of this logic to legal rules is made clear, but the application of the logic of choice to other types of judgment is not readily apparent in his work. However, as Gottlieb himself points out, "every device for guiding a decision can be restated in the form of a rule."[14] To classify or judge is to do so on the basis of rules, be they for language use, moral behavior, or law, and from this follows the conclusion that Gottlieb's logic of choice can be adapted to locate stases in any proposition of judgment and, thereby, serve as stock issues for the debate of such propositions.

Model for Analysis

Five general stases can be identified in The Logic of Choice that could guide the analysis of propositions of judgment in any field. These stock issues are material facts, rule, prioritization, situation, and consequences. To illustrate each of these, a proposition of judgment will be analyzed: "Censorship is justified to defend the national security of

the United States."

Determination of the material facts is the first stock issue that a logic for propositions of judgment must address. Arguments may center on which set of competing or contradictory facts is to be accepted, what counts as a fact, or which facts are relevant to the particular proposition. Included in this would be argumentation about reasonable definitions of the terms of the proposition. For the censorship topic, argumentation might include questions such as the definition of national security, whether only prior restraints count as censorship or if subsequent punishment of expression could be so categorized. In addition, questions about what would count as threats to national security and questions about certain examples would arise.

Choice of a rule to guide inference would be the next stasis. Drawing from Gottlieb's distinction between rules of guidance and rules of justification, the rule proposed could be one in existence or one that ought to be created to apply to a situation like the instant case. In proposing a rule, each of the four elements of the rule in question ought to be put forward: 1) What is the apodosis -- the thing to be attained -- of the rule?; 2) Is the rule's inference warrant one of prohibition, requirement, allowance, or other?; 3) What is the protasis -- the situation in which this rule is operative?; and 4) What evidence exists that this indeed is a rule?

On the censorship topic, the affirmative might put forth a rule that all individual rights are, in times of war, secondary to the war effort. They would argue that this rule is required and that it functions as a rule because it appears in a certain Supreme Court case, which is binding on all other courts in the land. Or, the affirmative might propose a rule not currently in existence, but for which some of the material facts call and

argue that it ought to be a rule based on our system of law or morality. Statements can be rules because everyone believes them to be true, because an authority assures or mandates that they are rules, or because people become convinced that they ought to be rules.

Rules are not only of the type that "if X, then Y." Rules can be anything that guides an inference. For example, a rule could be formulated that all redheads are intelligent, or that persons who exceed the speed limit can be fined, or that persons should do unto others as they would have done unto themselves. In other words, any statement that expresses relationship, consequences, or orders qualifies as a rule to the extent it can be used to guide inference.

Prioritizing the proposed rule vis-a-vis other rules is the next stock issue. Concerning this prioritizing, arguments would center on which contradictory rule should be applied or take precedence, how rules actually complement rather than contradict one another, or why certain rules aren't relevant. Using the rule above, a counter argument is that the First Amendment language is absolutely prohibitory, not acknowledging any exceptions. So, the rule that Congress shall make no law abridging freedom of speech must be prioritized with the wartime apodosis of the rule about national security and individual rights.

The fourth stasis is the application of the established material facts to the protasis of the rule. This issue includes questions about the purpose of the rule selected to guide the inference, whether the material facts create a situation envisioned by the protasis of the rule, and even if so, whether the purpose of the rule is furthered by applying them thusly. The situation of the rule in the case at hand is wartime. If the relevant facts deal with censorship of military personnel any time during their service, the facts go beyond the apodosis of the rule. If the war in

question is between other countries than the United States, such as the Falklands War, opponents might argue that although the apodosis of the rule seems to be met, the purpose of the rule indicates that only wars in which the US is involved are relevant to what the rule is trying to accomplish.

Consequences of a newly created rule or of applying any rule in particular situations is the final stock issue to be considered in determining propositions of judgment. Questions to be argued include the precedent set by the instant application of the rule, the logical ramifications of the judgment, the effect that the judgment will have on the world of affairs. If we allow national security interest to take precedence over individual rights in the case of banning reporters from battlefronts, then it can be argued that abuse of power by military leaders will be unchecked as the Fourth Estate is not only the watchdog of the people but the main source of unbiased information for Congress and the Executive branch. Further, other individual rights such as the right to apply for a writ of habeas corpus, which the Constitution says shall never be denied, could be withdrawn in the name of national security.

This example is but one illustration of the utility of Gottlieb's logic of choice for locating stases in debates on propositions of judgment. Adopting this model for analysis gives greater guidance to disputants and persons charged with making judgments than that given by existing models not because the Gottlieb model is a radical departure from them, but because it explicates the logical process that only is implied by the "criteria-appliation" model.

Choice of Models of Analysis

The models of analysis for propositions of judgment laid out above is designed to aid in assessing and determining questions of value, meaning, fact, or other classification controversies. Evaluation of this model can

proceed by asking whether it improves the clarity of debate on propositions of judgment and illuminates the process such reasoning ought to follow. Adoption of a model of rule-guided reasoning requires, at the very least, the same process as it suggests.

The rules model is superior to the criteria-application model because it is more complete. As demonstrated above, the latter has both practical and theoretical problems. The rules model solves both by listing the necessary logical steps to choosing a criterion for a value and for applying certain examples or cases to that criterion.

Brownlee, among others, argues that values do not exist in a vacuum; because they have "policy-implications," he argues that the stock issues model for propositions of policy is applicable to the determination of value judgment questions. [15] The element of determination of questions of judgment to which Brownlee is referring is the "consequences" issue in the rules model. Practically, the term "policy implications" has connotations that serve only to confuse the analysis process. Further, although some questions from the stock-issues model for policy questions, such as costs, are useful, others are not. No problem need be proven in order to make a judgment about classifications of fact, or of meanings, or about values.

Warnick also finds the "criteria-application" model wanting. She proposes a five-stage model of value analysis: 1) define the evaluative term; 2) locate the term in a field; 3) give standards for judgment; 4) apply standards to evaluative term; 5) establish a value hierarchy. [16] Some of these stages mirror the rule model, such as the final one. Others, however, suffer from the same vagueness as the criteria-application model. What are standards? How does the process of setting standards and inferring from standards work? The rules model is a superior analytic tool

for guiding this reasoning process. Definitions for evaluative terms merely shift the perspective. Positing, analyzing, and prioritizing rules ground the inferential process in the symbolic, social, and political milieu of the disputants and the person(s) responsible for making a judgment about the proposition.

A final model is that of Ulrich, who suggests that philosophical systems ought to be argued as competing paradigms for value debate.[17] The rule model allows for this as rules can be drawn from social mores, philosophical systems, laws, or any other source. Again, the guidance this perspective offers to the process of such reasoning makes it the superior model.

Other suggestions for value analysis similarly are offshoots of the criteria-application model can be subsumed under one or more issues of the rules model, or refer to one aspect only of the process of determining propositions of judgment. The rules perspective as a model of analysis for non-policy debate suggests a richer and more productive yield.

The model also may suggest judging standards. Five issues must be decided if both teams dispute them. However, due to the distinct nature of judgment determinations, loss of one issue does not spell necessarily a loss for a team. The rule-model stock issues, involve one judgment question. Prioritizing rules involves questions of consequence as does application of the material facts to the apodosis of the rule. The judge in debates on questions of judgment votes not on which lost issue prevents the team from overcoming the natural presumption against a change in policy but on such things as whether the facts do not apply to the situation of the rule, whether they are not as material as other facts that do not fit the apodosis of the rule, whether they are not as material as other facts that do not fit the apodosis of the rule, or whether the consequence of

applying this rule to these facts is a poor one, for example.

To conclude, Gottlieb's The Logic of Choice, although primarily intended to describe the logic employed in law, offers an insight into propositions of judgment that is superior to the existing models of analysis in that it elucidates a process that others only name. Adopting it as a stock-issues model for non-policy propositions would make analysis of such propositions more clear and may suggest standards for judging. As Rabin explains, "Gottlieb's system does two things: it identifies the crucial elements of rule-guided reasoning and provides us with a systematic method for evaluating it." [18]

Notes

[1] See, for example, Chaim Perelman, The Idea of Justice and the Problem of Argument, tr. John Petrie (1963; rpt. Atlantic Highlands, NJ: Humanities, 1977); Stephen Toulmin, The Uses of Argument, (1958; rpt. Cambridge: Cambridge Univ. Press, 1974).

[2] Russell H. Wagner, Handbook of Argumentation (New York: 1938).

[3] George W. Zieglmueller and Charles A. Dause, Argumentation: Inquiry and Advocacy (Englewood Cliffs, NJ: Prentice-Hall, 1975), pp. 14-15; Walter Terris, "The Classification of the Argumentative Proposition," 49 Quarterly Journal of Speech (Oct., 1963), p. 270.

[4] Suzanne K. Langer, Philosophy in a New Key (New York: Mentor, 1951).

[5] See, for example, Ernst Cassirer, The Philosophy of Symbolic Forms, tr. Ralph Manheim, 3 vols. (1955; rpt. New Haven: Yale Univ. Press, 1973); Ferdinand de Saussure, Course in General Linguistics, tr. Wade Baskin (New York: McGraw-Hill, 1966); Claude Levi-Strauss, Structural Anthropology (New York: Basic Books, 1963); and Umberto Eco, A Theory of Semiotics (Bloomington: Univ. of Indiana Press, 1976).

[6] See, for example, Ziegelemueller and Dause, pp. 42-45.

[7] Gidon Gottlieb, The Logic of Choice: An Investigation of the Concepts of Rule and Rationality (New York: Macmillan, 1968).

[8] Gottlieb, p. 18.

[9] Gottlieb, p. 157.

[10] Gottlieb, p. 42.

- [11] Gottlieb, p. 53.
- [12] Gottlieb, p. 109.
- [13] Gottlieb, p. 113.
- [14] Gottlieb, p. 43.
- [15] Don Brownlee, "Advocacy and Values," in Perspectives on Non-Policy Debate, ed. Don Brownlee (Cross Examination Debate Association, 1980), pp. 43-47.
- [16] Barbara Warnick, "Arguing Value Propositions," 18 Journal of the American Forensic Association (Fall, 1981), pp. 109-119.
- [17] Walter Ulrich, "Philosophical Systems as Paradigms for Value Debate," in CEDA Yearbook, ed. Don Brownlee (Cross Examination Debate Association, 1983), pp. 22-28.
- [18] David A. Rabin, "Gottlieb's Model of Rule-Guided Reasoning: An Analysis of Griswold v. Connecticut," 15 Journal of the American Forensic Association (Fall, 1978), p. 90.