CHARACTER EVIDENCE

An Abductive Theory

Douglas Walton

Springer

CHARACTER EVIDENCE

An Abductive Theory

DOUGLAS WALTON
University of Winnipeg, Canada

Springer

A C.I.P. Catalogue record for this book is available from the Library of Congress.

ISBN 10: 1-4020-4942-0 (HB)
ISBN 13: 978-1-4020-4942-2 (HB)
ISBN 10: 1-4020-4943-9 (e-book)
ISBN 13: 978-1-4020-4943-9 (e-book)

Published by Springer,
P.O. Box 17, 3300 AA Dordrecht, The Netherlands.

www.springer.com

Printed on acid-free paper

All Rights Reserved
© 2006 Springer
No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

CHARACTER EVIDENCE

Argumentation Library

Volume 11

Series Editors:
Frans H. Van Eemeren, *University of Amsterdam*
Scott Jacobs, *University of Arizona*
Erik C.W. Krabbe, *University of Groningen*
John Woods, *University of Lethbridge*

此为试读,需要完整PDF请访问: www.ertongbook.com

ACKNOWLEDGEMENTS

The first rough draft of this book was written during the spring term of 1999 while I was Visiting Professor in the Communication Department at Northwestern University. My research during this period was also supported by a Fulbright Senior Fellowship. I was unable to do much further work on the manuscript until my research and study leave in the spring term of 2001, spent as Visiting Professor in the Communication Department of the University of Arizona. During that period I was able to get access to Lexis-Nexis and to the Law Library at the University of Arizona, and collect more of the legal material I needed for the book. Towards the end of that visit, I was able to get a second draft of the manuscript ready. I would like to thank my colleagues in both departments who, through many discussions on allied matters, enabled me to learn more about various aspects of subjects treated in the book. I would especially like to thank Mike Leff, Jean Goodwin, David Zarefsky and Tom Goodnight of Northwestern University, and Michael Dues, Scott Jacobs and Sally Jackson at the University of Arizona. My collaboration on other projects with Chris Reed and Henry Prakken has also helped me to gain insights on argumentation schemes and legal reasoning that were useful in parts of this book.

I would like to thank Craig Callen for organizing and chairing the conference "Visions of Rationality in Evidence Law", held at the Michigan State University College of Law, April 3–6, 2003, and for discussions after the conference. The book has also benefited a good deal from discussions with other participants in the conference, both during the conference itself and afterwards by e-mail: especially I would like to thank Richard Friedman, Erica Beecher-Monas, Mike Redmayne, Greg Mitchell, Kevin Saunders, Michael Risinger, Michael Saks, Roger Park, Ron Allen, Myrna Raeder, Eleanor Swift and Bruce Burns. I would like to thank John Zeleznikow for inviting me to take part in the Second Joseph Bell Centre Workshop on the

Evaluation of Evidence at the University of Edinburgh in June–July 2003. I would like to thank John Zeleznikow, as well as Gary Davis, Philip Dawid, Jeroen Keppens, Sacha Iskovic, Moshe Koppel, Uri Schild, and Burkhard Schafer for discussions at the workshop that turned out to be helpful. Discussion with Eveline Feteris, Jose Plug, Bart Verheij, Tom Gordon, Trevor Bench-Capon and Arno Lodder has proved valuable, and it is obvious that the book has benefited from their written works as well.

I would like to thank Terry Anderson and William Twining for discussions on evidence during a visit to the University of Miami in December, 2003. I would like to thank the program committee of the Seventeenth Annual Conference on Legal Knowledge and Information Systems (JURIX 2004) held in Berlin, December 8–10, 2004 for inviting me as keynote speaker. For helpful discussions during and after my talk I would particularly like to thank Trevor Bench-Capon, Floris Bex, Wolfgang Bibel, Alison Chorley, Tom Gordon, Henry Prakken, Bram Roth, Burkhard Schafer, Bart Verheij, and Radboud Winkels.

Some of the research in this book derives from recent collaborative research on AI and law undertaken with Henry Prakken and Chris Reed. Their strong support has been very important for the continuation of my work on AI and law. Throughout the development of the project, my work was supported by a series of research grants from the Social Sciences and Humanities Research Council of Canada. I would like to thank Bill Dray, my former professor at the University of Toronto, who read through the whole manuscript and made many corrections and stylistic improvements. Special thanks are due to Roger Park for reading a previous draft, and making many corrections and suggested refinements of formulation. As well, he has provided a good deal of legal information that helped the book immensely.

I would like to thank the Social Sciences and Humanities Research Council of Canada for a research grant that supported the final work on this book, and to thank Katie Atkinson for discussion after my paper on practical reasoning was read at The Norms, Reasoning and Knowledge in Technology Conference, June 3–4, 2005, Boxmeer, Holland. These comments helped me to make some key improvements. A revised version was read as an invited lecture for the department of philosophy at the University of Siena in Italy on June 13, 2005. I would like to thank Christoph Lumer and Sandro Nannini for questions and comments that turned out to be useful.

I would like to thank Rita Campbell for making the index, and Fabrizio Macagno and Anahid Melikian for proof-reading.

INTRODUCTION

The theory in the book is based on the latest research in argumentation theory, and especially on new applications of artificial intelligence (AI) to legal argumentation. The methodology of the book derives from recent work in argumentation theory and AI in which forms of reasoning other than deductive and inductive have been the focus of much investigation. The aim is not just to show how character judgments are made, but to show how they should properly be made based on sound reasoning, in order to avoid certain fallacies, errors and superficial judgments of a kind that are common. The book is about character judgments, but centrally about the kind of logical reasoning and evidence that should properly be used to support or question such judgments. According to the new theory put forward in this book, such evidence is based on a kind of multi-agent simulative reasoning in which one agent is able to explain the actions of another by understanding the situation confronted by the other, and recreating the plan adopted by the other. According to the theory, one agent can reach reasoned conclusions about the presumed character properties of another, using plan recognition and argumentation schemes representing stereotypical forms of reasoning.

We use character evidence every day in reasoning, as in the inference, "He has a certain character trait, so that is evidence he is the one who carried out this particular action". This kind of character-based inference has probative value in everyday reasoning, for otherwise it would not usually be worthwhile for employers to ask for references for potential employees (Friedman, 2003, p. 979). Similarly, the typical kind of inference based on circumstantial evidence, like "His shoe matches the shoe-print found at the crime scene, therefore he must have been the one who committed the crime" has probative value. In both instances, if the premise is accepted as a fact, the inference from it gives some evidence to support the conclusion. Why is it then that the latter kind of inference is generally considered relevant evidence in our

evidence rules in law while the former kind, the character-based inference, is generally considered not to be (subject to several important kinds of exceptions)? The answer, expressed very clearly in the Federal Rules of Evidence, is that character evidence might tend to prejudice a jury. Character evidence is treated in law as on a razor's edge. It is both probative and prejudicial. It is a kind of evidence that we often need to use in trials, for example, for cross-examining a witness. But its proclivity to mislead has required drawing strict and often complex boundaries around how it can be used.

Judging another person's character is necessary for activities like writing a biography, writing history, or evaluating legal and ethical arguments about a person's actions. But trying to determine the evidence on which character judgments should be based is filled with all kinds of problems and limitations, often leading to errors, wrong judgments, bias, and even allegations of slander. Character judgment is often abused, resulting in extremes. At one extreme are cases of character assassination and vicious attacks based on dubious evidence. At the other extreme are idealized, flattering portrayals of role models in propaganda whose worst qualities of character are hidden or minimized while their supposedly good qualities are puffed up. This book examines both abuses and reasonable uses of character judgment, answering key questions about how such judgments are and should be supported or refuted by verifiable evidence. What data are relevant to supporting character judgments? When one person makes a judgment about the character of another person, what kind of inference is drawn from the data, and how should such an inference properly be drawn? What kind of evidence should be used to support or question the conclusion drawn? For example, if I claim that some particular person is courageous or has integrity, what kind of data can be used to support or refute the claim? And once a conclusion is drawn from the given premises, what kind of evidence should be used to support that inference from the premises to the conclusion?

This book offers a new way of judging character evidence based on a set of argumentation schemes, or forms of argument, for reasoning about character. One of the most important of these schemes represents abductive reasoning from given data to a hypothesis that explains the data, a form of reasoning that is very common in forensic evidence (Walton, 2004). For example, if pieces of a knife blade are found in the window frame of a house where a burglary occurred, the best explanation may be that entry took place by someone's prying open the window with a knife. Abductive inference has been recognized as centrally important in AI (Josephson and Josephson, 1994; Walton, 2004), where it is seen as an important kind of reasoning used at the discovery stage of scientific hypothesis formation and testing. Abductive argumentation, based on a balance of considerations in a case, is deployed using a multi-agent dialogue model to represent the arguments for

and against a claim. Abductive inferences are defeasible, meaning that they can be defeated or revised as new facts enter in. According to the new theory, such abductive character evidence arguments are fallible, but can be accepted as reasonable under the right conditions. They can also be unreasonable, as shown by the examples of character assassination in the book. The book shows how to use character evidence to support or refute character arguments, based on a computational model of argument for legal reasoning support systems.

Many of the kinds of character judgments studied in the book arise from legal cases in which arguments about character are used in trials, or are barred from use in trials on ground of relevance or irrelevance. Other character judgments arise from controversial cases in history or ethics that concern ethical qualities of character like honesty, courage and integrity. Many will read the book because they are concerned about character evidence in law or history, because they have been concerned about whether character judgments can be supported by verifiable evidence, as opposed to purely subjective opinion. But merely to state this aspect of the book is to indicate that it is also an original work in cognitive science and argumentation that presents a theory concerning the evidential support for inferences drawn by one person about the thoughts and actions of another. Thus the findings of the book have significant implications not only for law and history, but as well for argumentation theory generally as a basis for evidence. The book is written in a clear style, and explains all new terms and concepts. It can be widely read by anyone with no special training in law or computing. It can be used in courses where character evidence is a topic of interest, like courses on law (evidence law, legal reasoning, criminal law), philosophy (ethics, philosophy of history, philosophy of law and philosophy of mind), artificial intelligence, cognitive science, argumentation, speech communication, rhetoric, linguistics, political science and sociology.

CONTENTS

Acknowledgements xi

Introduction xiii

1
The Problem of Character Evidence 1
1.1 Individual Worth and Respect for Character 2
1.2 Ruling on Relevance of Character Evidence in Trials 5
1.3 Problem of the Two-sided Nature of Character Evidence in Law 9
1.4 Innuendo and Attacks on Character 15
1.5 Character Assassination and Panegyric Discourse 17
1.6 Reputation and Character 20
1.7 Character Attacks and *Ad Hominem* Arguments 24
1.8 A Problem of Reasoning and Evidence 27
1.9 Character Properties in Law and Ethics 29
1.10 Character Evidence in Law and Artificial Intelligence 33

2
Defining and Judging Character 39
2.1 Bias and Character 40
2.2 Habit, Propensity and Motive 43
2.3 Agents, Practical Reasoning and Character 46
2.4 Character as the Property of an Agent 49
2.5 Evaluating Witness Testimony 52
2.6 The Structure of Abductive Reasoning 56
2.7 Character as an Interpersonal Notion 61

此为试读,需要完整PDF请访问: www.ertongbook.com

2.8 Evidence for Character Judgments 64
2.9 Drawing Conclusions by Abductive Reasoning from Given Data 67
2.10 Differentiating Character, Motive and Bias 74

3
Integrity and Hypocrisy 79
3.1 The Three Central Characteristics of Integrity 80
3.2 Judging a Person's Integrity 82
3.3 Commitment and Integrity 84
3.4 A Case Where a Person's Integrity is in Doubt 87
3.5 Living Up to a Commitment 88
3.6 Integrity and Living Up to a Commitment 90
3.7 Character Attack Based on Alleged Hypocrisy 94
3.8 Evaluation of the Alleged Hypocrisy Case 98
3.9 Evidence for Judgments of Integrity and Hypocrisy 101
3.10 The Defeasibility of Character Judgments 105

4
Simulative Reasoning and Plan Recognition 109
4.1 Collingwood's Theory of Reenactment 110
4.2 Simulative and Autoepistemic Reasoning 112
4.3 Strategic Use of Simulative Reasoning 116
4.4 Scripts and Stories 119
4.5 Simulative Practical Reasoning 123
4.6 Plan Recognition 125
4.7 Characteristics of Simulative Practical Reasoning 128
4.8 Combination of Simulative and Abductive Reasoning 130
4.9 Abstraction and Chaining 133
4.10 Defeasible Reasoning 135

5
Multi-Agent Dialogue 139
5.1 Plausible Reasoning 140
5.2 Plan Recognition and Dialogue 146
5.3 Sources of Dialogue Evidence 149
5.4 Commitment in Dialogue 153
5.5 Legal Evidence and Examination Dialogue 155
5.6 Examination Dialogue and Conversational Postulates 159
5.7 A Dialectical Theory of Explanation 162
5.8 A Dialectical Argumentation Scheme for Abduction 165

5.9 Abductive Evidence for Courage Judgments 170
5.10 Abductive Evidence for Integrity Judgments 174

6
A Multi-Agent System for Character Evidence 177
6.1 Character-Based Inferences 178
6.2 Inferences Linking Evidence to Character 181
6.3 Generalizations and Fallacies 185
6.4 Character-Based Evidence Contrasted to Other Evidence 189
6.5 Argumentation Schemes 192
6.6 *Ad Hominem* Arguments 196
6.7 Plan Recognition and Practical Inconsistency 200
6.8 Simulative Reasoning in *Ad Hominem* Arguments 204
6.9 The PFARD Multi-Agent Dialogue System 207
6.10 Summary of the Method 214

Bibliography 221
Index 231

Chapter 1

THE PROBLEM OF CHARACTER EVIDENCE

Character evidence is regarded as so powerful in law that its use in trials is carefully circumscribed by the Federal Rules of Evidence. In criminal law, for example, the argument "The defendant is a bad person (perhaps as shown by previous convictions), therefore he is guilty of the crime he is charged with" is ruled inadmissible. And yet where it is allowed in a trial, for example in attacking the honesty of a witness in cross-examination, character evidence can be the deciding factor. It is perhaps for these reasons that character evidence has recently become so controversial in law, and why, even at the pretrial stage attorneys will argue strenuously about its admissibility. But character argumentation is not confined to law. It is a potent tool of political rhetoric, as used in negative campaign tactics. It is also significant in history and philosophy. One only has to cite the examples of Francis Bacon and Friedrich Nietzsche to realize how a famous philosopher, many years after his death, can have his work discredited by attacks on his character. Of course, not all character-based arguments are negative. As Aristotle pointed out, positive *ethos*, or character of a speaker, can greatly enhance the persuasive power of arguments put forward in a speech. If character evidence is so important in all these areas, why is it we seem to know so little about its structure as a form of argument? How can we overcome this ignorance, and provide an objective basis for identifying, analyzing and evaluating this kind of argument?

The central problem posed is to determine the kind of evidence that is, or should be used, to support or criticize judgments of the kind that are made every day about a person's character. The problem is to come to understand how such claims can be justified, when they are true, or acceptable on the basis of the evidence, and how they can be refuted when they are false, or not acceptable on the basis of the evidence. The subject of the investigation then is one of evidence. It has to do with how we can properly support or refute

claims made about a person's character using logical reasoning and argument. The best route to solving the problem, it will be argued in this book, lies in recent findings in two other fields, artificial intelligence and argumentation theory (informal logic). This subject falls within cognitive science and the study of rational argumentation as applied to human thinking, because the aim is to find the kind of evidence and the structure of argumentation that should properly be used to support judgments about a person's character. But the viewpoint is not primarily one of psychology, at least insofar as psychology is the empirical science of human behavior. The viewpoint is better seen having a strong ethical component, since judgments about a person's character are based on how ethical qualities of character should be defined in virtue ethics. It also has a strong legal component, because character evidence is a centrally important part of evidence law. Law has developed specific methods and procedures for processing and evaluating character, and these methods and procedures are very useful for coming to understand reasoning about character. The viewpoint also has a logical component, because the kind of reasoning used in the justification of character judgments is at the heart of the problems posed by the uses of character evidence. So this chapter will introduce various logical matters of reasoning and evidence, as well as matters of ethical and legal argumentation about character.

1.1 Individual Worth and Respect for Character

The traditional framework for judging a person's character was built around the notions of respect, individual worth, and reputation. The framework supports three kinds of judgments about a person's worth and character. One is that we have respect for someone who has proved that they have excellence of character. A second is that we have less respect for someone who does not have excellence of character. For example, when we first meet someone, and know nothing about them, then we neither respect nor disrespect that person. Third, we have no respect for someone who is "worthless", and has shown they do not deserve our respect, because they have exhibited some weakness of character like dishonesty. A person's reputation will affect which of these three evaluations will be appropriate in a given case. But as well as reputation, the evidence of a person's actions, including what they say as well as what they do, will count in such evaluations. Much historical evidence of the importance of such moral evaluations of character can be found. Benedict Arnold is categorized as a traitor, for example, while the many moral qualities of character of Abraham Lincoln have been extolled in historical writings.

Respect for worth is also identified in the social science literature with "face", in the sense of "saving face". Respect is also associated with dignity.

A dignified person deserves our respect and, presumably, has done something to deserve it in the past. A person who deserves our respect is worthy of it because they have exhibited admirable qualities of character, and presumably will continue to do so. This traditional view of character even has an aristocratic flavor at times, for example, when someone is said to have shown a "noble" character. This traditional framework of judging the worth of a person's character could perhaps be called the respect model. In light of recent emphasis on self-esteem, it may seem that respect for the respect model has eroded considerably. It could perhaps be that many object to, or feel uneasy about the apparent implication that respect implies that one person is better than another. This implication may even seem offensive today to many people, somehow seeming to imply a traditional aristocratic class system that fosters inequality. But that is not necessarily so. It depends on how you judge what is better.

In fact, we make judgments about character all the time. Such judgments might even show excellence of character of a kind that goes against a traditional aristocratic class system. One small incident can reveal a lot about a person's character, as the following story about Abraham Lincoln (Wecter, 1947, p. 90) illustrates.

> A story, told with many variations, ran that at a levee the President had interrupted a young English peer a moment after his introduction: "Excuse me, my lord, there's an old friend of mine," and stepped over to greet a bent Illinois farmer and his sunbonneted wife, come to see their wounded son in a Washington hospital.

This small story relates a relatively insignificant incident, but it tells a lot about Lincoln's character. Many conclusions can be drawn from it about Lincoln's values. It shows his loyalty to his friends, even if they were people that would not be considered important, glamorous, or influential. It shows Lincoln acting in a certain perspective that reveals what was evidently important to him. It is hard to say in words just exactly what it shows, but it makes me, and I am sure many others, have great admiration and respect for Lincoln as a person. This incident shows how respect for a person's character does not at all imply any kind of inequality, or favor of an aristocratic class system.

Another possible implication of the respect model is that judging anyone's character implies a kind of God-like stance. The question that will be asked is: how can anyone think that he or she has the right to judge another person? This rhetorical question implies that anyone who judges the worth of the character of another person is putting themselves on a higher plane than the person they are judging. This inequality, it is suggested, is a bad thing, because, in the end, both parties are human beings. The "us-them" judgment implied in such an act of judging is equated with "looking down"

on another person. This criticism does pose a genuine problem for the project of attempting to judge character. How can it be done in an objective way if both the judged and the judge are persons who share the same character faults as well as virtues? This problem is a hard one. It may be that character judgments are fallible and prone to bias and error. But suppose that underlying the fallible nature of such judgments we can find an objective structure of reasoning. This structure could be useful in helping us to recognize and avoid errors and misconceptions of superficial character judgment.

We make character judgments all the time anyway. Such judgments are inherently imperfect and fallible, but they are vitally important in business decision-making, especially in hiring. In politics, much of the basis of voting for a candidate, particularly in presidential elections, is character judgment. These are judgments that large numbers of people make routinely. The problem is to gain insight into how they are made, and how they should be made, and to carry out this task not in any arbitrary or God-like way, but by understanding the kind of reasoning we already use, and learning more about its structure. Some empirical evidence suggests that evidence of past crimes tells us something about a person's character. Redmayne (2002, pp. 693–695) has examined statistical evidence suggesting that previous convictions have considerable probative value in relation to the conclusion that an individual is more or less likely to commit the same type of crime. The statistics vary with type of crime involved. For example, the likelihood of committing robbery is much higher than that of a drug offense. These statistics suggest that character evidence does have some value as evidence in predicting certain types of crimes, but statistics are notoriously slippery (Redmayne, 2002, p. 700). Even though its use is restricted in law, character judgment is often vitally important as evidence when witnesses are cross-examined in court.

Why is it important or useful to study judgments of character? The applicability of the subject is wider than just the field of ethical theory. Recent trends highlight why judgments of character are vitally important in both legal and political argumentation. Because of recent political developments in which character attack arguments have been prominent in negative campaign tactics and political attack argumentation generally, it has been made quite evident how important judgments of character are in a democratic political system. One might also cite the recent trial for the impeachment of the president of the US. In the Anglo-American system of legal argumentation, judgments of the character of a witness are vitally important evidence in a trial. Character evidence can be so influential on a jury in criminal trial that it is often ruled inadmissible. It is well known, for example, that the sexual history of the victim is deemed irrelevant in a rape trial. In other

此为试读,需要完整PDF请访问: www.ertongbook.com