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Reply to Commentary on “Between Evidence and Facts: An Argumentative Perspective of Legal Evidence”

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This is our response to Professor Marko Novak’s commentary:

We must thank Prof. Marko Novak very much for his professional comments and constructive suggestions. Marko gives us three suggestions, detailed and addressed below.

First, Marko suggests that we introduce standards of proof. There is no doubt that standards of proof are essential for ALG; however, since our work builds on previous work (Xiong, 2010), we omitted them in our original essay. Maybe we should add it. In past work (Xiong, 2010), I have discussed two basic rules of legal logic: one is Modus Ponens and the other is the burden of proof, including beyond reasonable doubt (in criminal procedures), the preponderance of evidence, and clear and convincing evidence (in civil procedures).

As for the second suggestion regarding the trial party, including judges and juries, there must be cases when there are issues that require a decision based on value and substance. For this reason, we introduce Floris Bex’s stories theory (2010). We think it is a variant of rhetorical theory because of the narrative rationality it seeks.

Finally, Marko thinks Bex’s hybrid theory of stories and arguments does not seem to support the authors’ attempt to strike a balance between dialectical reasonableness and rhetorical effectiveness in their ALG. We think oppositely, since the focus of our discussion is on evidential reasoning and fact argumentation from an argumentative point of view. Clearly, the effectiveness in the sense of pragma-dialectics needs to be enhanced by narrative rationality.

Thank you, again, Professor Marko Novak.

Wenjing Du & Minghui Xiong

Reference

Xiong, M. (2010). *Litigation argumentation: Logical analysis of Litigation Game* (Chinese). Beijing: China University of Political Science and Law Press.