

An *Analogie* Model Based on IBE

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Abstract

In German judicial methodological theories, *Analogie* is a form of further development of the law (*Rechtsfortbildung*) in cases involving statutory loopholes (*Gesetzeslücke*). This paper argues that there are at least four levels of indeterminacy in *Analogie* which reveal argumentative characteristics in making an *Analogie* argument. Current methodological theories commonly construct *Analogie* based on deductive models; however, this approach fails to address the argumentative process of *Analogie*. This paper suggests that theories of inference to the best explanation can better capture these characteristics when it is used to represent *Analogie* in law. It examines theories of IBE and evaluates their potential to facilitate legal reasoning. The last part of this paper suggests an *Analogie* model which is based on IBE. This alternative model enhances the rationale-giving and dialectical function in the construction of an *Analogie* argument.

Key Words: analogical reasoning, *Analogie*, inference to the best explanation (IBE), judicial methodology