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A Teleological Approach to Legal Dialogues

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ABSTRACT:
This paper aims at connecting two ideas that play a fundamental role in Robert Alexy's theory of legal reasoning, namely, on the one hand the idea of a dialogue and on the other hand the idea of a value (a goal to be realised in the political and legal domain). In particular, I shall argue that goal-oriented (teleological) considerations can contribute to determining the structure of dialectical interactions. Correspondingly, it is possible identify a variety of teleologically justified kinds of legal dialogues.

KEYWORDS:
law, argumentation, dialectics

Contents

A Teleological Approach to Legal Dialogues*

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1 Introduction

Robert Alexy has dedicated a particular and persistent attention to both dialogues and teleological reasoning, and his work on both subjects has strongly influenced the legal-theoretical debate of the last decades.

Dialogues have been a central concern for Alexy since the very beginning of his inquiries. In 1978 he delivered his *Theory of legal argumentation* (see Alexy 1989) where he provided an account of legal reasoning as a dialectical argumentation,[1] to be viewed as a special case of moral argumentation. Building upon Habermas's theory of discourse (see Habermas 1985), Alexy defined an abstract dialectical protocol—a set of rules governing the interaction of the participants in a dialogue—for carrying out moral discourse, and then identified what specific additions and refinements to such rules are required for dealing with legal issues. Moreover, he showed how the resulting model of legal reasoning could be coherent with, and provide a justification to, many aspects of the legal practice (such as constrained deference to legislation, precedent, and legal doctrine). The importance of Alexy's work on legal argumentation can hardly be underestimated: his analysis of legal dialectics represents one of the most significant and fruitful contributions to current legal theory.

Besides dialogues, also teleological reasoning has been an important concern for Alexy.[2] This is shown in particular by Alexy's theory of legal principles (developed in particular in Alexy 1985), which connects principles to values: for Alexy a principle is indeed the prescription to optimise the realisation of a certain value (taking into account the need to optimise also the satisfaction of other, possibly conflicting, values). This approach puts teleological reasoning at the very core of legal thinking, if we understand teleological reasoning in a sufficiently wide

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[1] I shall always use the word *dialectical* in the sense of *dialogical*, namely, as pertaining to linguistic exchanges between two or more people. I shall not take into account the further and different senses this word (or the cognate noun *dialectics*) has been given in the philosophical tradition (for instance, by Kant, Hegel, or Marx).

[2] Alexy's recognition of teleology marks a significant difference between his conception of legal reasoning and that of Habermas, who, besides in general downplaying the significance of instrumental (means-end) reasoning (on instrumental reasoning as the core of rationality, see Nozick 1993), also downplays the rational significance of the lawyers' effort toward achieving a balanced satisfaction of competing values, arguing that "weighing takes place either arbitrarily or unreflectingly, according to customary standards and hierarchies" (Habermas 1999, 259).

sense, namely, as including all of the following: (*a*) the identification of the relevant values, namely, the *teloi* (goals, ends, or purposes) that are to be pursed in politics and law, (*b*) the assessment of their relative importance, in different contexts, and (*c*) the determination of how (through what decisions, norms, institutions) the realisation of such multiple goals or values can best be achieved. And Alexy indeed has tried to provide some techniques for simplifying and facilitating this kind of reasoning in the circumstances of legal decision-making (Alexy 2002).

There is a potential tension between these two aspects of Alexy's analysis of legal reasoning.

From a dialectical perspective, it seems that dialogues (or discourses, namely, dialogues carried out according to certain standards aimed at ensuring their fairness and rationality) should come first: it should be up to dialogues to determine what goals have to be pursued in law and politics, and how they should be pursued.

From a teleological perspective, on the contrary, it seems that values should come first: it should be up to teleological reasoning to determine what kinds of dialectical interaction we should practise, as the most appropriate for optimising the achievement of certain legal and political values.

Moreover, there is a kind of entanglement between the two aspects just considered. On the one hand, if dialectical rules have to ensure fairness and rationality—epistemically intended as truth- or knowledge-conduciveness—of dialectical interactions (and possibly at realising other values as well), then their determination or at least their specification becomes a subject matter for teleological reasoning: we can view fairness and rationality as goals to be achieved and the rules governing a dialectical exchange as means (instruments) for achieving such goals. On the other end, even teleological reasoning can be performed though dialogues, namely, dialectical interaction aimed at identifying, and agreeing upon, what values are to be collectively pursued and how such values are to be realised.

This entanglement can be avoided only if certain strong assumptions are made. For achieving the independence of dialogues from teleological reasoning we need to assume that the structure of dialogues (or at least certain kinds of them) is fixed in advance, that it precedes and constrains the formation of our beliefs and opinions (and that it survives any change on such beliefs and opinions): it is the immutable transcendental framework which necessarily binds all language users (or which is necessarily presupposed in every language use). On the other hand, for achieving the independence of legal and political values from dialectial interactions, we need to assume that only individual rationality or intuition, or the aggregation is individual rationalities and intuitions (as expressed for instance in voting) can identify such values and the best ways to achieve them, an correspondingly guide legal and political action, regardless of inquiries carried out through dialectical exchanges and of agreements brought about through dialectical deliberation.

I shall reject both of these assumptions, and rather develop a teleological analysis of legally relevant dialogues. This means that I shall view different dialectical patterns as different institutions, having specific social functions (social effects justifying their continued practice) constituting their social purposes, namely, their embedded values. I shall distinguish the purposes of a dialectical institution (for instance, civil proceedings) from the goals pursued by the parties of a corresponding dialogue (for instance, the parties in a civil case): the institution's purposes are not necessarily endorsed by the parties of the dialogue as their own goals. And the goals of the parties may be collective goals they are cooperatively pursuing, or they may be individual goals they are pursuing independently or even competitively.

Thus, while some dialogues appear usually to be cooperative games, others appear as non-cooperative game, or even as adversarial 0-sum games, where the achievement of the goal of one party means defeat for the other (as it is often the case for legal proceedings). And the parties

may have at the same time cooperative and competing goals (as when they exchange their view in front of an arbitrator they have chosen, sharing the goal to settle their dispute in this way, but having different goals with regard to what the arbitrator's decision should be).

Most legal dialogues will take place under strong resource constraints. The continuation of dialogue not only has direct costs for the parties (in terms of time, lawyers' fees, taxes on proceedings, and so on), but it also entails delaying the production of the outcome of the dialogue, and thus delaying the solution of the problem which originated the dialogue. While the dialogue goes on, such a problem can get worse (and produce further negative impacts on the parties and on others) and the implementation of the outcome of the dialogue can become more difficult and costly, or even impossible.

Thus typical legal dialogues will generally be very different from the kinds of dialogues on which discourse theory usually focuses, namely, dialogues that only consist of "communicative actions"[3] and which can to go indefinitely, until an agreed solution is found. However, also with regard to the law there is the opportunity, I shall argue, for developing cooperative dialogues, where each one gives his or her contribution for the collective purpose of increasing shared knowledge, and possibly coming to a shared opinion or even a binding agreement. Moreover, the diversity of legal dialogues, and of the goals at issue, does not exclude that we can view rational consent and cooperative debate as values (or regulative ideas) which should inspire legal reasoning and the design of legal institutions, as claimed by the advocates of deliberative democracy (see for all Postema 1995). In many cases, however, they cannot be assumed to be the goals of the parties in legal interactions, or the direct purpose of the dialectical institutions governing such interactions.

2 Dialogues and Dialectical Systems

To understand how legal interactions are structured and to evaluate their merit, I refer to the idea of a *dialectical system*, an idea originally introduced by Hamblin (1970). In general, a dialectical system is an "organised conversation where two parties (in the simplest case) speak in turn, by asking questions and giving replies (perhaps including other types of locutions) in an orderly way, taking into account, at any particular turn, what occurred previously in the dialogue" (Walton and Krabbe 1995, 5).

Dialectical procedures can be very different, in particular according to the following oppositions:

- The first is the opposition between *formal* and *informal protocols*, which concerns the language and the precision through which a dialectical system is specified. It opposes specification through natural language and specification through logical and mathematical formalisms.
- The second is the distinction between *description* and *design*, which concerns the purpose of the specification of a dialectical system. It opposes the aim of describing existing dialectical systems (the systems which are currently practised by the parties of certain dialogues) and the aim of designing new (or partially new) dialectical systems (as ways to improve dialectical interactions in certain contexts).

[3] As characterised by Habermas, namely, as the kind of interaction which is aimed toward agreement or consent, "in which all participants harmonize their individual plans of action with one another and thus pursue their illocutionary aims without reservation" (Habermas 1985). For a critical discussion of Habermas's approach to communication, see Tuomela 2002.

These oppositions are continuous dimensions, and define a two-dimensional space in which we can try to locate particular dialogue protocols, according to the extent to which they are more or less formal, and to which they reproduce practised protocols or innovate them.

All dialectical systems, regardless of their being formal or informal, and their aiming at description or design, are normative in the sense of including rules specifying how dialogues are to be carried out (if they are to respect the requirements of the dialectical system). However, designed dialogues are also normative in a different sense, concerning the choice of rules rather than their implementation: they suggest what rules ought to be adopted for certain purposes and in certain contexts.

Another notion that needs to be introduced when approaching dialectical systems is the idea of a *dialectical protocol*, by which it is usually meant the rules governing the interaction of the parties in the corresponding dialogues. Here we will use this notion in a broader sense. We view the protocol of a dialectical system as a *practical theory*, that is, as the whole set of assumptions that may provide appropriate guidance to the implementation of the dialectical system in actual dialogues (on this notion, see Sartor 2005, 78). Thus, a protocol for a dialectical system does not include only rules, but also the specification of values and goals to be achieved, and information concerning opportunities and risks related to the implementation of the dialectical system.

Dialectical systems can frequently be characterised as *games*, in a strict sense, i.e., according to game theory: the parties have certain *possible moves* (locution types) at their disposal, and under certain conditions the dialogue will *terminate* with certain outputs. Since the parties may assign different values to these outputs, somebody will then *win* or possibly *lose*.

The game-theoretical approach emphasises the *strategic* dimension of dialectical interactions: each party intends to achieve as much as possible (which regard to his or her goals), but this depends on the other party's moves. Therefore each party, besides respecting the rules of the game, must develop a strategy, and must do this by anticipating the other-party's strategy. This does not mean that the parties need always to act one against the other. Some dialogues can indeed be qualified as *non-cooperative games*, where for each winner there is a loser, but others represent *cooperative games*, where parties win or lose together, according to their ability to coordinate their actions. And while in some cooperative games the parties have complementary individual goals (so that the same combination of their actions leads to satisfying at the same time their separate goals), in other cases they share a common collective goal, possibly agreed between them so as to generate a binding joint commitment (see Tuomela 2002).

One of the most interesting features of the theory of dialectical systems is that it allows for the characterisation of infinite varieties of dialectical systems. At the descriptive level, this enables us to define dialectical systems that can approximate the concrete structure of different kinds of social interaction, taking into account the peculiarities of each of these kinds of interaction. At the design level, it allows us to specify what kinds of interaction would be more appropriate for achieving different purposes, in different contexts. Thus, a design characterisation of an interaction needs not be an idealisation, to wit, it needs not describe what might happen in circumstances that are not to be found in the real world. On the contrary, a dialectical system can be adapted to the concretely available possibilities and to the limitations (in knowledge, competence, time, and so on) that characterise its likely parties, and thus it may provide rules that the parties are capable of respecting.

The features of the theory of dialectical systems we have presented so far make it a useful tool for the study of legal procedures. Legal processes are indeed dialectical interactions, in which different parties play different roles. These interactions are governed by rules establishing what kinds of locutions are allowed to each party, in what circumstances, and to what effects. There is

much at stake, and there will usually be winners and losers, so that the parties will often develop a strategic interaction, each one anticipating the other's moves. There are various goals to be achieved, which will, and must, be reflected in the complexities of the rules of the game. The players are real persons acting under stringent resource constraints.

3 How to Characterise Dialectical Systems

A key aspect on the characterisation of a dialogue system consists in a set of rules. However, rules are not enough: they make sense only by adopting a purposive, or functional perspective.

By the *function of a dialectical system*, we mean those outcomes of the practice of such a system which explain and justify its being practised. This function does not need to be the aim of all participants in the dialogue. Often, the function of a dialogue will rather be achieved through the institutional machinery provided by the dialogue, even if the participants only aim at different particular purposes, corresponding to their individual interests.

For instance, in the typical legal proceedings in civil matters, the parties aim at opposite outcomes: each one wants to win the case, getting an advantageous outcome at the expense of the other. However, in pursuing their conflicting objectives the parties contribute to a different institutional purpose, that is, achieving a fair and informed justice while putting an end to their litigation. This difference—between the aims of the participants in a dialogue on the one hand and the function of the dialogue on the other hand—does not necessarily imply hypocrisy or self-deception: lawyers defending, legally and loyally, their clients, aim at winning their cases, but at the same time they may correctly believe that they are contributing to justice.

Viewing dialogues from a functional perspective enables us to understand the function of each rule, that is, its contribution to the dialogue's general purposes. This allows us to move from the pure description of the dialogue's rules to an *immanent critique*, and ultimately enables us to move to from description to design: we wonder whether the current rules of the dialogue enable it to perform its function in the best way, and what different rules would improve the functioning of the dialogue.

Beside the function of a dialectical system and the goals of its participants, we also need to identify the side-effects it may have, distinguishing the positive and the negative ones, both when the dialogue achieves its end and when it fails.

To characterise dialogues, we start from the classification schema in Table 1 on page 7 where we distinguish eight kinds of dialogue: persuasion, negotiation, deliberation, information-seeking, epistemic inquiry, practical inquiry, eristic, reconciliation.[4]

We shall not provide here a detailed comment of our schema, nor claim its exhaustiveness and adequacy. We will rather use it as a tentative pattern for identifying certain features of legal interactions, and thus to emphasise certain similarities and differences between them:

- making a contract or achieving a settled solution to a dispute can be classified as kinds of negotiation;
- parliamentary discussion falls under the heading of persuasion and negotiation, or sometimes of eristic (sometimes there also is an element of inquiry);
- doctrinal exchanges are instances of epistemic or of practical inquiry (sometimes also of persuasion);

[4]This is a revised version of the model proposed by Walton and Krabbe (1995, 66), which we have modified in two regards: we have added two new types of dialogues, practical inquiry and reconciliation, and also a description of the dangers ensuing from failure.

- judicial proceedings contain elements of persuasion, information seeking, negotiation, and possibly of inquiry and reconciliation.

4 The Structure of Dialectical Systems

Let us now move from a teleological perspective to a structural analysis, and consider the different types of rules that define the structure of dialogues.

A dialogue may be viewed as a succession of moves, each of which consists in performing a speech act. Performing one move has certain effects on the dialogue, and in particular on the *commitments* of the parties, that is, on the positions a party is bound to sustain (until the party can validly withdraw them, paying the penalties that are possibly linked to withdrawal). We may say that one party's commitments are those statements the party is bound to recognise (for instance, if I affirm something, I am bound to stick to it), unless the conditions for retraction are satisfied.

Our analysis will be based on the model of Walton and Krabbe (1995), which distinguish the following types of dialogue rules:

- *locution rules*, establishing what moves are available to the parties;
- *structural rules*, indicating when the available moves can be performed;
- *commitment rules*, specifying what effects moves have on commitments of the parties;
- *termination rule*, stating when the dialogue terminates and with what results.

5 The Persuasion Dialogue: The Structure

To illustrate the notions we have introduced in the previous paragraph, let us analyse the structure of the most studied type of dialectical system, the *persuasion dialogue*, of which we will provide an elementary account. First we characterise the parties:

- there are two parties, let us call them $Proponent$ and $Opponent$;
- Proponent is going to try to persuade Opponent and Opponent will resist persuasion.

Let us now consider locution rules and commitment rules (here we combine the two for simplicity) for the persuasion dialogue: we identify what speech acts are available to the parties and specify what effects these acts have on the commitments of the parties. The set of available moves can accordingly be described as follows:

1. Claiming a proposition φ. This commits the speaker to φ. For instance, Proponent says: "I claim that you have to compensate me for the damage to my crops."
2. Challenging a claimed proposition φ. This obliges[5] the hearer to give grounds for φ. For instance, Opponent says: "I challenge your statement that I have to compensate you for the

[5]The idea of a dialogical obligation has two sides. One the one hand it may express the notion of a *burden* or a *technical ought*: unless the participant does the "obligatory" action, the participant will fail to achieve his or her dialectical goals. For instance if the party in a legal dispute fails to support the proposition she is claiming, that party will probably loose (and the other party will not complain for this). On the other hand a dialogical obligation may also express the notion of proper *deontic obligation*. This is when the goal to be achieved though the fulfilment of the obligation is a collective goal of the participants or a goal of another participant, and the obligation concerns giving one's contribution to achieve that goal. For instance, if in an academic discussion I keep for myself some information which is relevant to the subject-matter and interesting for the others, avoiding to share it with my fellows, they can

Type	Subtypes	Initial situation	Main goal	Participant's aims	Beneficial side effects	Implications of main goal	Dangers related to failure	Psychological disposition required
Persuasion	Dispute; discussion of proposals	One party's position not shared	Get to a shared position	Persuade the other(s)	Develop and reveal positions	Opponent commits to the persuader's thesis	Resent lack of understanding	Accept merit of arguments by others
Negotiation	Bargain; make a package deal	Need of cooperation; conflicting interests	Make a deal, possibly stable and fair	Make a deal convenient for oneself	Cooperate; recognise others' interests	All commit to the agreed deal	Resent greed; implement threats	Disposition to keep promises
Deliberation	Board meeting; political decision-making	Need to adopt a (rational) group-position	Good and effective decisions; participation	Favour a decision one views as better	Cooperation	Shared commitment to the decided result	Distrust, uncoordinated action, conflict	Disposition to work for the common good
Information-seeking	Interrogation, expert consultation	Interviewer needs to know; interviewee putatively knows	Spread knowledge; reveal positions	Gain or pass personal knowledge	Agreement; cooperation; prestige	Interviewee commits to statement		Sincerity
Epistemic inquiry	Scientific investigation; examination	General ignorance	Progress in epistemic knowledge	Find proofs or destroy them	Agreement; cooperation; prestige	Technological ability		Curiosity; passion for reason
Practical inquiry	Moral, political or doctrinal discussion	Uncertainty of what should be done	Progress in practical knowledge	Find arguments or destroy them	Agreement, cooperation, prestige	Ability to act correctly		Curiosity; passion for reason
Eristic	Quarrel; eristic discussion	Conflict; distrust	Reach provisional accommodation	Strike and defeat the other	Vent emotions; reveal positions	Reciprocal recognition	Physical violence; refusal to interact	Combativeness; resilience
Reconciliation	Peace making; restorative justice	Past conflicts; distrust	Build trust; prepare cooperation	Repentance; forgiveness	Shared understanding of the past	Shared commitment to acceptance and cooperation	More struggle and distrust	Recognition; trust; sincerity

Table 1: *Types of dialogues*

damage to your crops." This obliges Proponent to give grounds that support the conclusion that Opponent has to compensate the damage.

3. Conceding a proposition φ that was claimed by the other party. This commits the speaker to φ. For instance, Opponent says: "I concede that the damage to your crop was caused by my cows."
4. Claiming proposition φ as a complete reason supporting a previously claimed proposition ψ. This commits the speaker to φ. For instance, assume that Proponent says: "You have to compensate me for the damage to my crop, since (*a*) you own the cows that caused the damage, (*b*) cows are animals and (*c*) owners are under the obligation to compensate others for damage caused by their animals." (The claimed proposition is the conjunction of *a*, *b*, and *c*.)
5. Claiming proposition φ as a partial reason supporting a previously claimed proposition ψ. Commits the speaker both to ψ, and to the assumption that ψ can be expanded into a complete reason for φ. For instance, Proponent rather than stating the complete reason indicated in (4), can only provide a part of it, by saying: "You have to compensate me for the damage to my crops, since you own the cows that caused the damage."
6. Challenging partial reason φ (in reply to move 5). Obliges the hearer to complement φ with further partial reasons. For instance, Opponent says: "I challenge your statement that the fact that I own the cows entails that I have to compensate you for the tear in your jacket."

Let us now consider structural rules, namely, the rules which indicate when the moves we have just described can legitimately be performed:

- The dialogue starts with an initial claim of Proponent, after which the parties take moves in turn.
- Opponent may attack (challenge) one of Proponent's previous statements, or accept it (concede).
- Proponent may defend (by giving grounds) the attacked statement.
- Those Proponent's statements that Opponent has not explicitly attacked count as being conceded, until they are explicitly attacked.

Finally, here are the termination rules:

- The dialogue terminates in favour of Proponent when, after a move by Opponent, the statements implicitly or explicitly conceded by Opponent form a valid argument supporting Proponent's claim.
- The dialogue terminates in favour of Opponent, when, after a Proponent's move, the statements conceded by Opponent or yet unchallenged do not form such a valid argument.

The latter rules, in other terms, say that Proponent wins if Opponent has explicitly or implicitly (that is, by not contesting) conceded all statements of an argument supporting Proponent's initial claim. On the contrary, Opponent wins if she has challenged all arguments so far proposed by Proponent and the latter does not put forward any further arguments supporting his claim.

Let us consider, for instance, the following dialogue, where Proponent performs P-labelled statements, and Opponent, the O-labelled one:

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claim that I have failed to contribute to the discussion as I was supposed to do. Similarly, if I am questioned, and I reply with a proposition that is irrelevant to the question, my partner can claim that I have violated a dialectical rule of the information-seeking dialogue (where one is supposed to give an answer, if one knows it, and otherwise to declare one's ignorance).

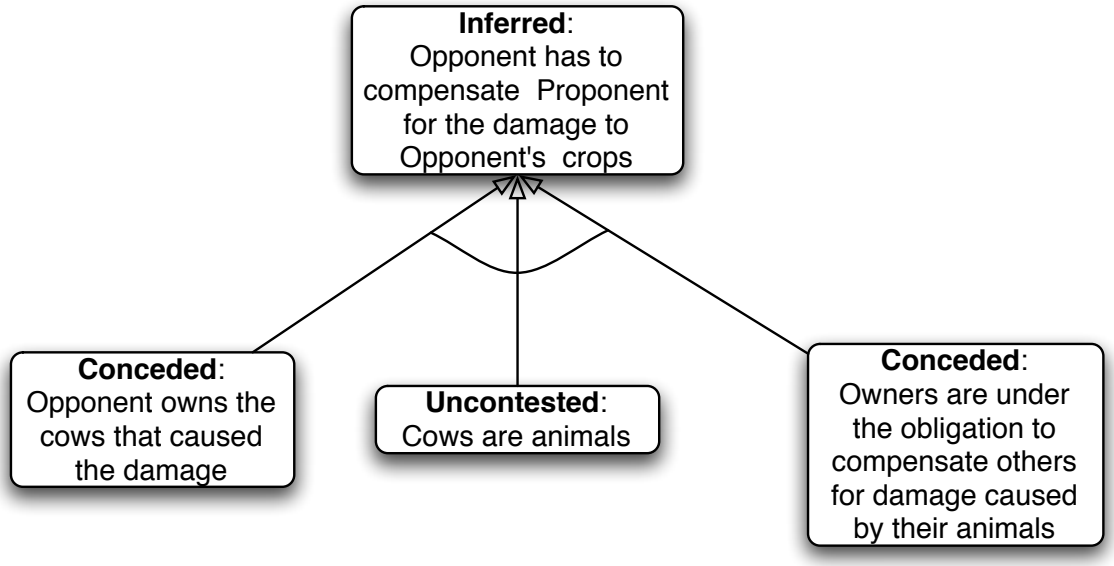

Figure 1: A winning argument in a persuasion dialogue

P1: I claim that you have to compensate me for the damage to my crops.
O1: I challenge your claim.
P2: You have to compensate me for the damage to my crop, since (*a*) you own the cows that caused the damage, (*b*) cows are animals and (*c*) owners are under the obligation to compensate others for damage caused by their animals.
O2: I concede that I own the cows that caused the damage to your crops, but I challenge that this entails that I have to compensate you for such damage.
P3: I claim that owners are under the obligation to compensate others for damage caused by their animals.
O3: I concede that owners are under the obligation to compensate others for damages caused by their animals.

Proponent wins the dialogue since Opponent concedes (explicitly or implicitly) premises that are sufficient to support Proponent's request for compensation. The winning argument is shown in Figure 1, which also indicates the dialectical status of each proposition.

6 The Persuasion Dialogue: The Position of the Parties

In a persuasion dialogue the proponent tries to push the opponent into a situation where the opponent will be forced either to fall in a contradiction (or in an unsustainable positions) or to concede elements sufficient to establish the claim of the proponent. Thus, in principle the opponent enjoys an advantaged position: she may avoid losing just by challenging whatever statement the proponent puts forward and never committing to anything. If the opponent adopts this strategy, she will be sure that she will never fall in a contradiction (and the proponent in the end will have to abandon the game).

The position of the proponent is much more difficult: He must make assertions (and therefore he can fall in contradiction), and must support them by giving grounds.

In a realistic setting the challenge-all trap may be avoided by appealing to shared opinions.

First of all, an opinion may be shared by the parties of the dialogue, that is, the proponent may appeal to ideas that are already adopted by the opponent, who is committed to these ideas either on personal grounds, or because she has publicly endorsed them.

Secondly, the proponent may appeal to opinions that are shared in the social setting where the dialogue takes place. These opinions are usually referred to by using the Aristotelian term *endoxa*, which denotes propositions that are normally accepted in the social context in which the dialogue is embedded. *Endoxa* may indeed be viewed as defeasible presumptions, to be accepted until refuted (see Sartor 2005, 78). The same holds for the so called *rhetorical places* (*topoi*), namely, the theses that can be introduced in any discourse (common rhetorical places) or in particular disciplines (specific rhetorical places) being generally accepted and acceptable, though being susceptible of limitations, conflicts and exceptions.

Moreover, as we shall see in the following, when a third party participates in a persuasion dialogue (as a judge or a jury) the decisive step consists in appealing to the opinions of the third party. More generally (consider for example a political debate) the proponent's position is strengthened when there is an audience, who can sanction the opponent's refusal to concede what is accepted (and appears to require acceptance) by everybody else.

7 Other Kinds of Dialogue: Information Seeking, Negotiation, and Reconciliation

The pattern of interaction required for the purpose of information-seeking is different from the pattern characterising a persuasion dialogue. In an *information-seeking dialogue*, speech acts are not claims, challenges and concessions, but rather *questions* and *answers*. We may also admit the challenge of a question, which consists in raising doubts about its admissibility or its relevance. As a result of such a challenge, the information-seeking dialogue will embed a persuasion dialogue, where the interviewer tries to persuade the interviewee (or the observers) of the relevance of her question.

In information-seeking dialogues the interviewer plays safe: She does not need to commit to any assertion. On the contrary, the interviewee gets committed to his statements, and incurs the risk of contradicting himself. However, in a cooperative situation, information-seeking dialogues are win-win games: The interviewer succeeds by accessing the information, the interviewee by transmitting it. On the contrary, in a non-cooperative situation, when one party is interested in coming to know certain facts, where the other does not want to provide information, the interviewer will win if she extracts the information she wants. In a different sense, the interviewer also wins if the interviewee falls into contradiction, and is discredited. As an example of a (usually) cooperative interview, consider a lawyer examining a witness he has indicated; as an example of a (usually) non-cooperative interview consider a lawyer examining the witnesses indicated by the other party. Also prosecutorial fact-finding tends generally to assume the pattern of an information-seeking dialogue, though there are significant variations in different legal systems.

Still different rules are required for a *negotiation dialogue*. In such dialogues there is a *negotiation space*, namely, a set of negotiated outcomes that both parties prefer to a non-negotiated solution. However, the parties gain differently from different negotiated outcomes. For example, assume that a prosecutor would prefer trial to an agreed penalty lower than 5 years, and the ac-

cused would prefer trial to an agreed penalty higher than 10 years. Within this negotiation space (from 5 to 10 years) the two parties have to find an agreement. Here the moves are the parties' offers. Each party is committed to his or her offers: if the offer is accepted by the other party, it will become a binding agreement. Moreover, the subsequent offer of one party must be at least as convenient as the previous offer of that party. The dialogue finishes when an offer is accepted, and thus a deal is made.

In a successful negotiation dialogue both parties win, and the amount of their victory is the difference between the agreed result and the minimum result that would still be advantageous to them (which is determined by the expected value of a non-negotiated solution). In our example, if the agreement is for the accused to plead guilty with a six-year sentence, the prosecutor wins one year ($6 - 5 = 1$) and the accused wins four years ($10 - 6 = 4$). Note that the gains of the two parties may be very different (in a sense, we may also say the party getting the lion's share is the one who really wins). The game also finishes when both parties refuse to make further offers: in this case both parties lose, missing the advantages of cooperation. The loss may even be worse than simple non-cooperation: If in the course of a negotiation threats were issued, now they may need to be implemented, to the detriment of both parties (otherwise the issuer of the threat would lose his or her credibility and consequently the possibility of using threats in the future).

Still different rules are required for *practical inquiry*, where the parties engage in a common disinterested search for practical knowledge. In these dialogues—a precise account of which has been provided by Alexy's theory of practical reasoning (see Alexy 1991. and also the formalisation provided in Gordon 1995)—each one can put forward relevant statements, can defend them through arguments, is obliged to justify his or her statements if required to do so, and can challenge the statements and the arguments of any others. In practical inquiry, defining what counts as winning or losing depends on the purposes of each participant, to wit, on whether they want to achieve an agreement, or rather to increase their individual knowledge or practical wisdom through the interaction with other people, or rather to contribute to the enterprise of increasing collective practical knowledge:

- In the first case, everybody wins if a shared conclusion is achieved, that is, if argument has been produced which has been capable of surviving all challenges and attacks. Everybody loses if no such argument has been constructed.
- In the second case, one wins if one becomes aware of relevant and insightful arguments supporting or attacking a thesis one is interested in. One loses if no increase in one's individual knowledge and wisdom is obtained through the dialogue.
- In the third case, one wins if one contributes to the development of practical knowledge, viewed as a collective enterprise.

Finally, different rules hold for *reconciliation dialogues*. Here the starting situation is where one party is accused of committing certain offences, the performance of which impairs future cooperation, and which reveal a hostile disposition incompatible with cooperation.

Though very often both parties in a reconciliation dialogue may be in the offender's position one towards the other (as is usually the case after a civil war), it is useful, for analytical purposes, to view reconciliation between reciprocal offenders as consisting in two reconciliation processes going in opposite directions, and thus to keep the idea that reconciliation connects an offender and a victim. The accused party has the possibility either of rejecting the accusation, or instead of admitting his past wrongs while rejecting the disposition that led him to commit such wrongs. The rejection of the accusation would possibly determine a shift into a different type of dialogue, possibly an information-seeking or a persuasion dialogue. The admission would determine a

situation where the other party either gives her forgiveness or challenges the change in disposition of the accused. Again this last reply may start a new type of dialogue—possibly an information-seeking or a persuasion dialogue—intended to establish whether such a change has taken place. It is hard to say who wins or loses a reconciliation dialogue, since this largely depends on the psychological attitudes of the parties. We can say that both win if the reconciliation takes place: both parties are now committed to cooperate, and the wrongdoer has changed for good. Both lose if reconciliation fails, which can lead to an escalation of the conflict.

8 Combination of Dialogues, Dialogue Shifts, and Inversion of the Burden of Proof

According to Walton and Krabbe (1995), various other aspects become relevant in describing a dialogue, besides those we considered in the previous sections: the type of conflict (more generally, the type of problem) from which a dialogue originates, the nature of the subject discussed, the degree of rigidity of the rules, the preciseness of the procedural description of the dialogue, the commixture with other types of dialogues. These aspects too need to be discussed with specific reference to different dialectical systems. For instance, an excessive precision of rules and procedures can play a negative role in a reconciliation dialogue, where excess in formality can prevent people from sincerely expressing their feelings, while precision can be useful in persuasion dialogues, where it can make interaction quicker and more effective.

The diversity of dialectical systems, and their different ability of coping with different aims and contexts, explains why a *combination of dialogue-types* may be required for handling complex interactions, where more than one purpose is at hand, and parties may take very different attitudes. This is typically the case in legal proceedings.

The basic pattern for reconstructing such proceedings, both in the civil process and in the (accusatorial) criminal process is given by the *persuasion dialogue*. There are indeed many advantages linked to this type of dialogue. It strongly protects the interests of the opponent, and in particular allows him control over his *privacy*, namely, over the decision of what information to disclose at what stage (by conceding the corresponding statement of the proponent). It does not make major psychological demands on the parties: they are fighting one against the other, and there is no need for their having a joint purpose. It may be tightly regulated, since each party reacts to the moves of the other party. Though a persuasion dialogue has these interesting features, it is clear that no legal process could work as pure persuasion.

First, the opponent could always avoid being persuaded (so that he would never lose) simply by challenging every statement of the proponent, even those that are most evident. This can be compensated by introducing in the debate an impartial observer, such as a jury (or a judge), with the task of establishing what statements cannot be undermined by a simple challenge, but must be assumed unless proof to the contrary is provided (when *res ipsa loquitur*). The evaluation of the observer may be anticipated by the proponent, who tries to provide reasons that her auditorium will presumptively accept. The judgement on the presumptive acceptability can also be made directly by the law, by establishing inversions of the burden of proof.

An inversion of the burden of proof, in a persuasion dialogue, starts a new, embedded persuasion dialogue, where the parties switch their places: with regard to a certain proposition, now the original opponent (the defendant) becomes the proponent while the original proponent (the plaintiff) becomes the opponent (see Prakken 2001). For instance, in the example above once the plaintiff has established that the defendant's cows has caused the damage, the defendant can still

avoid liability by showing that the plaintiff's careless behaviour (for instance, the fact that he left open the gate to his field) was a decisive precondition for the production of the damage. In regard to this condition, the burden of proof is upon the defendant: she becomes the proponent of this proposition, and she must push the plaintiff to concede it, or provide evidence that convinces the judge. For instance, the defendant can prove that the plaintiff unreasonably forgot to close his gate (knowing that the defendant's cows here grazing in the adjoining field).

Another way to avoid the challenge-all trap consists in embedding inside a persuasion dialogue an information-seeking phase, as when a witness is interrogated, an expert provides his opinion, or when one of the parties takes an oath. Again, such a step will (usually) provide an inversion on the burden of proof, which requires the defendant to take the initiative: what results from the embedded dialogue (e.g. the statements of the witness) will be presumed to be true, unless the defendant persuades the other party (or at least the observer) of the contrary.

Finally, there may be the possibility of embedding negotiation into persuasion, though this would rather consist into moving to a completely different dialogue, as when parties negotiate an agreement to end litigation.

Embedding is an aspect of the more general phenomenon of a *dialogue-shift*, which occurs when a dialogue shades into another dialogue-type. This may happen under different circumstances: with the agreement of all participants, according to the intention of only some of them (while others are against the change), or even without the parties being fully aware. For instance, persuasion can become inquiry if the proponent, rather than defending her thesis, confesses her perplexity on the matter, and asks for cooperation in order to solve her predicament. Similarly persuasion can become information seeking, if the persuader starts questioning her opponent (rather then providing reasons supporting his own statements). Inquiry can become persuasion when one researcher is so convinced of, or so committed to, her thesis that she just focuses on resisting the challenges against it (rather then impartially considering the merits of the views of others).

In some contexts, such shifts may have a negative impact, since they imply abandonment or distortion of the original purpose of the dialogue. For instance epistemic inquiry (for example by a committee of experts) can shift to a negotiation when the parties bargain the result of their inquiry (since they can find an outcome whose acceptance would be more convenient to all of them than the acceptance of the conclusion they believe to true), failing to achieve the epistemic purpose of inquiry (getting to the truth, or at least increasing shared knowledge). Similarly, a persuasion dialogue can degenerate into a quarrel, and so miss the purpose of settling a disagreement. It is even worse when reconciliation dialogue shifts into a quarrel: in this case the parties will attack each other, emphasise their differences, and attribute to each other (and exhibit) features and attitudes that make a future cooperation even more difficult.[6]

9 What Dialogues for What Procedures

Dialectical exchanges constitute the essential component of legal procedures. We need, however, to refrain from always imposing a single dialectical model, inspired by an abstract idea of dialectical rationality.

[6]On the works of the South African Truth and Reconciliation Committee, see among the others Christodoulidis 2000, who stresses the tension between legal proceedings and reconciliation, and the dangers of a dialogue-shift toward an adversarial paradigm.

	Reach cognition	Avoid mistakes	Promote cooperation	Avoid violent clashes	Promote recognition	Preserve dignity	Promote accommodation	Be self-supporting	Provide Efficiency	Psychological ease
Persuasion	L	H	L	H	L	H	L	H	M	H
Negotiation	L	L	H	H	M	M	H	H	H	H
Deliberation	M	M	H	M	M	M	M	M	M	H
Information-seeking	H	L	M	M	L	L	M	L	H	M
Epistemic Inquiry	H	H	H	H	M	H	M	H	L	L
Practical inquiry	M	M	H	H	M	H	M	H	L	L
Eristic	L	L	L	M	M	L	L	H	M	H
Reconcilia-tion	M	M	H	H	H	H	M	M	M	L

H=High; M=Medium; L=Low

Table 2: *Performance of different dialectical systems*

As I shall argue in the following, different procedures serve different aims, in different contexts, and need therefore to be viewed as implementing different types of dialogue.

In fact, eifferent types of dialogues might contribute to different extents to the different ends which may be pursued through legal processes, as shown in Table 2, which lists the performance of different types of dialogue under different regards.[7]

As it appears from the table, different types of dialogues have different advantages and disadvantages and thus are more or less appropriate for different goals: this implies that for achieving the various goals of a legal procedure we will need a combination of dialogues.

For instance, a criminal process inspired only by *persuasion* would correspond to an extreme version of the *accusatorial* system: The accuser is the proponent, the defendant is the opponent, and the jury (or the judge) is the impartial observer (and adjudicator). Such a process would have the advantage of maximising the avoidance of wrong convictions, since the burden of proof (of persuasion) would lie on the accuser, but on the other hand it would also minimise the possibility of establishing the liability of the defendant. However, much would depend on what evidentiary strength is required in order that the burden of proof is shifted unto the other party, to wit, on what conditions have to be satisfied for a statement to be considered so evident that it needs to be disproved, rather than proved.

A persuasion-based process would not promote cooperation, since the two parties would have conflicting strategies, but on the other hand it would avoid violent clashes, since whatever one party may say, it will be attributed to the "logic of the game," rather than to personal attitudes towards the other party (in other words, this would reduce shifts towards quarrel). In fact, the antagonistic position of the parties favours their reciprocal recognition as adversaries in a fair contest. This is different from being partners in a cooperative project, but also from one party having an arbitrary power over the other. A legal interaction modelled according to the persuasion dialogue would tend to be characterised as a win-all or lose-all game. Thus an accommodation that is satisfactory for both parties will not usually be achieved.

The persuasion model is self-sustaining, since it builds upon the interested behaviour of the parties. It is also moderately efficient, and it requires minimal psychological attitudes on the

[7]The grades indicated just report a very tentative and intuitive personal assessment, which I advance an example, not being supported by new empirical inquiries nor by the examination of the relevant socio-psychological literature.

parties: they would define their strategies so to maximise the achievement of their opposite interests, without the need of taking an impartial or cooperative perspective.

Let us now move to model of the *information-seeking* dialogue. This seems to characterise the model of the *inquisitorial process*. Here the accuser (the judge or prosecutor) is basically an interviewer, who has the task of putting questions to the accused, who plays the role of the interviewee. The accused is thus forced to take a stand, affirming of denying what he is questioned about. In such a dialogue, the dignity and the privacy of the interviewee are at risk, unless appropriate safeguards are taken. There is even the risk that the questions become threats so that the dialogue shifts into mental or bodily abuse, namely, into *torture*.

Also in an accusatorial process the information-seeking mode is adopted when a person is called to contribute his information (as a witness). The skill of the interviewer consists in facilitating the interviewee in bringing out his entire story, by asking the right questions in the right order. However, if the interviewee is not cooperative, the interviewer may try to force him into contradiction: the interviewee is committed to his answers, in the sense that he is not allowed to provide a contradictory version of the facts. If this happens, the interviewee will have to pay the penalty possibly established for falsehood, and withdraw one of the contradictory statements. Moreover, after detecting a contradiction, the interviewer will probably assume that the interviewee lied in order to protect his interests (or the interests of the party he is trying to support). Thus the interviewee's falsehood may support the conclusion that the version of the facts that less corresponds to his interests (or to the interests of that party) holds true.

A legal process organised as a pure *negotiation* dialogue would usually take place as an alternative way of resolving a dispute (as when mediation takes place). This also happens in criminal cases when the accused negotiates with the prosecutor the conditions for *pleading guilty*.

There are also some instances of legal proceedings being developed as *reconciliation* dialogues. Here *truth and reconciliation committees* need to be considered, which found one of their highest examples in the South African experience. In such proceedings, the wrongdoer's repentance from his or her faults and the victim's forgiveness are at the foreground. The focus is on psychological attitudes, since the grounds for future cooperation are at issue.

What would make a reconciliation process fall apart is the impression that an exploitative view is taken by the parties to be reconciled, and especially by the wrongdoer: he does not really want to start future cooperation on new bases, detaching himself from his past actions, but simply tries opportunistically to avoid punishment for his wrongful behaviour. Thus the "defendant," when put before his wrongs, should provide evidence of his change of attitude, his rejection of his past, and his commitment for future cooperation, a commitment that should be trusted by the victim, in first place, and by his other fellows too. The prosecutor (better, the victim) either is satisfied or asks for further admissions and commitments. However, her request should not be viewed as a way of humiliating the wrongdoer (for stigmatising his person, rather than his action), or even of rewarding him for his past wrongs, but rather as a way to ensure that the wrongful damages are restored and to extract evidence that a real change has taken place within the wrongdoer.

Similar kinds of dialectical interactions partially characterise also models of the criminal process inspired by the idea of *restorative justice* (Braithwaite and Pettit 1990).

10 Legal Dialogues, Cognition, and Consent

The above discussion of dialogue types in legal debates is by no means intended to provide an exhaustive review.[8] However, it should sufficiently justify the thesis that legal reasoning has a collective (interactive) dimension, in regard to which diverse dialectical patterns may be required, according to the goals to be achieved and the context in which they are to be pursued.

The teleological context of such dialogues is quite complex, since on the one hand the goals of the dialectical institution must be distinguished from the goals of the participants, and on the other end the intended goals of a participant (the objectives having a motivational function with regard to the participant's behaviour in the dialogue), must be distinguished from non-intended but possibly accepted (and even positively valued) by-products of participant's action, and from the constraints under which the participant assumes that his or her action is to take place. Moreover, we must distinguish the goals participants endorse individually, from the goals they share collectively, or to which they are collectively committed to.

For instance, winning the case is certainly the main goal for a party in a legal case (the goal which mainly motivates her behaviour within the proceedings). However, the party may reasonably assume that by pursuing that goal (given the adversarial framework in which she is acting, and the partiality which such a framework requires in its participants) she contributes to produce a valuable by-product, namely, the correctness of the outcome of the case. And both parties may share the positive appreciation of this by-product and indeed accept certain constraints on their behaviour (like the prohibition of dishonesty and fraud), possibly under the condition that they are shared with the other party, in order to maintain a certain connection between the pursuit of their opposed individual goals (winning the case) and this valuable side effect.

In the following pages I shall consider the connection between the behaviour of the participants in a legal debate and two possible collective goals they may share with other participants in legal debates: (*a*) contributing to legal knowledge, seen as a common (social) asset, and (*b*) finding an agreement of a legal outcome.

Some legal dialogues contribute only indirectly to shared legal knowledge, in the sense that providing such a contribution is not the goal which is pursued by the participants, but nevertheless a socially beneficial by-product of their action. For instance, a party in judicial proceedings is usually focused on the goal of winning the case, but his pursuit of this goal may lead him to provide valuable legal information and arguments. These arguments (possibly through their uptake in the judicial opinion), besides contributing to the correctness of the decision of the specific case, may have a further socially advantageous by-product, namely, contributing to the advance of legal knowledge, with regard to how to approach such a kind of cases.

On the contrary, the goal to contribute to legal knowledge—namely, to increase the information society has at its disposal for approaching legal issues, and to improve the correctness, coherence and usability of such information—should represent the main and overarching goal of legal doctrine. It seems to me that consent, or even reasoned consent, cannot represent such a overarching goal: a researcher should not be worried about the possibility of bringing for-

[8] As another possible kind of dialogue, consider for instance a *brainstorming* or *heuristic* dialogue, namely, a dialogue whose purpose is to generate new interesting ideas, rather then testing their merit. In such a dialogue there is no obligation to provide reasons supporting the theses one states ("I don't know" would be an appropriate answer to a why question), nor to provide the theses one believes to be more justified. There is rather the obligation to provide thesis which have not been advanced before, and whose analysis or implementation may lead to interesting developments.

ward new ideas which may question existing widespread consent, and create new discussions and divisions within legal scholars and practitioners.

We can indeed view legal doctrine as a kind of dialectical *practical inquiry*, namely, as a dialogue whose participants share the purpose of contributing to social cognition concerning a practical issue—the choice of what values, rules, decisions their collectivity should adopt—through sharing their ideas. The reasoners engaged in such an inquiry would publicly express their beliefs on such matters, and also state their critical observations on views by others. Expressed opinions would become part of a common pool of hypotheses to be reasoned about, tested, discussed communally, and consequently, accepted or rejected by each participant independently (no shared decision is required). Here the focus is on collective inquiry, namely, on each one's availability to contribute one's own ideas concerning the best solutions to communal problems, and on each one's availability to take into account impartially the views of others. Practical inquiry is a very appealing kind of interaction with regard to collective choices, there included legal choices: not only does practical inquiry allow for shared advances in practical knowledge, but it also emphasises the participants' active citizenship, their dignity (each being considered as a valid contributor and evaluator of ideas concerning the common good), and their sense of community (each being involved in the collective enterprise of practical cognition).

Some philosophers, and notably Arendt (1958) have focussed on political action (which is sometimes identified with action tout court, in its fullest sense) as the proper domain in which these attractive features can emerge, as opposed to theoretical or technological inquiry. I rather believe that the characterising features of practical inquiry derive from its being a form of collective cognition, an aspect it shares with theoretical science and technological research (for instance, in physics or in software engineering), as long as they are developed according to the principles of an open research community. The common purpose of addressing cognitive problem (be it epistemic or practical, scientific or technologic, theoretical or applied) and the availability to provide and consider (according to its merit and its relevance) any input which may be significant to this purpose are common to any collective cognitive enterprise, both in the epistemic and in the practical domain.[9]

Dialogues where the fundamental purpose (and collective goal) is increasing common knowledge can be distinguished from those dialogues which aim at reaching consent between their participants (given that a shared or collective determination is required). This goal may influence indeed the dialectical behaviour of parties involved in deliberation: one will provide the argument for what one views as the best choice and against choices one views as inferior, but when the prospect of agreement is near one may reasonably refrain from advancing good arguments if one anticipates that such arguments will be rejected by other participants, and produce new divisions or doubts.

The goal of agreement has a paramount importance when negotiation is at issue. In regard to negotiation, however, we need to distinguish negotiation concerning private interest, and negotiation between concerning the common good. As example of the first kind of negotiation, consider bargaining for establishing contractual terms or for settling a private dispute. In this case, as we observed above, each party, within the available negotiation space (possibly under some fairness constraints), tries to maximise the achievement of his or her individual private objectives.

In the second kind of negotiation on the contrary, each participant tries to achieve the agree-

[9]Consider, for instance, the view of science advanced by Merton 1973, for whom communalism (the common ownership of scientific results) and universalism, together with disinterestedness and organised scepticism, are the characterising aspects of scientific research.

ment that maximises the realisation of his or her view of the common good.[10] Thus this is the context where people having different views on what constitutes the common good and on what collective choices most contribute to its realisation, and being aware that such differences are not likely to be eliminated through reasoning and discussion, at least within the available constraints, try to converge with one other into a shared solution, and accept a negotiated outcome, though this outcome to each (or to most) of them appears to be inferior to the solution he or she would have preferred.[11] For instance, to find an agreement on a law on reproductive technologies, a bargain may be reached which allows for artificial insemination, but only when the request comes from a stable couple (given that some would ban all forms or artificial insemination and other would always admit it), and which allows for modifying genes, but only to prevent hereditary diseases (when some would reject all intervention on the human genome and others would also admit ameliorative interventions). Similarly, in a decision concerning affirmative action, the agreement may consist in admitting it, but only under restricted conditions (no fixed quotas, no single criteria, and so on).

Negotiation on the common good is different from negotiation on private interests: while in the latter each party aims at maximising his or her gains, in the first each party aims at maximising the implementation of his or her view of the common good, which is different from the view of others. This way of bargaining may take place, for instance, between the political parties forming a coalition government, or between the judges in a panel. A mostly important kind of such negotiation takes often place when a new constitution is adopted. For instance, when the Italian constitution was adopted after the Second World War, different political parties, having very different ideologies (Marxist, Christian-Democrat, Socialist, Liberal-conservative), converged in a constitutional arrangement that represented a compromise between the different values expressed by these ideologies. Each of these parties would have preferred, according to its own ideology (according to its peculiar view of the public good), a different arrangement from the one that was agreed and adopted, but they were able to converge on a satisfactory second best, which was acceptable to all of them. Such compromises often take place at the international level, where Declarations and Treaties on human rights—and first of all the 1948 Universal Declaration of Human Rights—provide the most significant, and most beneficial, example.

Also negotiation in the common interest presents appealing features: it assumes that participants in the interaction share the purpose of committing themselves to a shared vision of what values to pursue together in what ways, recognise their partners as sincerely expressing their views on the common good, take the views of others seriously, and identify what compromise might be appropriate for convergence.

The separation between the two kinds of negotiation may not always be complete. On the one hand a party's bargaining for her private interest can be constrained by her view of the common good, there including both her view of what a just or fair division of the benefits of the agreement should be, and her view of how the agreement most advances certain communal values (consider for instance how both commutative considerations concerning contractual justice and further considerations pertaining to social objectives, like increasing productivity or reducing

[10] By a view of a common good I just mean any opinion of what corresponds to the interests and objectives of the concerned collectivity or institution (like a university department or a political community, or even a sport team or a private company), as distinguished from the individual interests and objectives of a particular member of it.

[11] The importance of such dialogues is emphasised if we adopt a post-enlightenment view of reason in the practical domain (see Gaus 2003, chap. 1), namely, the view that, though reason can also be applied to practical choices, disagreement on practical matters cannot be reduced to ignorance, mistake, or bad faith (on disagreement on legal issues, see Waldron 1999).

unemployment, may influence negotiations in the labour domain). Moreover, being able to have a vision of the common good (in which her individual interests are to impartially balanced with the interests of others), and to sacrifice to such a vision certain individual interests of hers, can be advantageous to the party's individual goals in the long run (in particular, since this will contribute to reaching agreements, having a good reputation, reducing transaction costs, being reciprocated, and so on). On the other hand, the vision of the common good advanced by a party may often be influenced by what private interests of his are going to be advanced by that view. This may be done in bad faith (as when the party, with the hidden purpose advancing his private interests, argues that something is required for the common good, while he knows that this is not the case), but also in good faith (given our natural tendency to engage in wishful thinking, and to be guided in our inquiries by the need to integrate our views in a coherent whole).

However, it is important to keep these two kinds of negotiation distinct: while negotiation on private interests is in principle inappropriate within political and legal deliberation (unless one presents the satisfaction of one's individual interest as a component of a vision of the common good where everybody's interests are fairly balanced), negotiation on the common good appears to be a very important, and fully legitimate, component of it.

11 Conclusion

A teleological approach to the analysis of legal dialogues leads us to recognise the diversity of the goals which are pursued through dialogues in the legal domain, and thus emphasises the diversity of the dialectical systems which are appropriate to such goals, and the need to combine them, in order to implement legal values in different contexts and with regard to different problems and situations. Recognising the diversity of legal dialogues (and its teleological foundation) is indeed the precondition both for describing dialectical interactions taking place in legal practice, and for improving their performances.

Such diversity however, does not undermine the importance of a dialectical approach to legal issues. Thus it may possibly complement the analysis of rational legal argumentation that has been produced by Robert Alexy, and even provide a connection to his discussion of the role of values in legal reasoning.

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