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# The Pragma-Dialectical Reconstruction of Teleological-Evaluative Argumentation in Complex Structures of Legal Justification

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**ABSTRACT:** I give a pragma-dialectical reconstruction of the role of teleological-evaluative argumentation referring to goals and values in the justification of judicial decisions. I establish the role and place of this form of argumentation in complex forms of justification in which the argumentation interacts with other forms of legal argumentation. I will do this by integrating the insights from legal theory and legal philosophy into a pragma-dialectical framework for the analysis and evaluation of argumentation.

**KEYWORDS:** complex argumentation, interpretation of legal rules, legal argumentation, rationality, teleological-evaluative argumentation.

## 1. INTRODUCTION

In the law, judges often use arguments in which they justify their decision by showing that this decision has desirable consequences in relation to the purposes and values the rule is intended to realize. Because legal rules are an instrument to realize certain legal, social or economic goals and values, so-called teleological-evaluative arguments referring to the goals and values of a legal order play an important role. According to Bankowski and MacCormick in MacCormick and Summers (1991, p. 385), such arguments often form the finally justifying arguments in cases which transcend legal technicality and engage the fundamental values of the legal order. However, there is also a proviso with respect to this form of argumentation. As MacCormick and Summers (1991, p. 530-532) make clear in their model of various forms of statutory interpretative arguments, teleological-evaluative arguments are the last in the hierarchical order and only come into play if other interpretative arguments such as linguistic arguments and systemic arguments do not generate a clear interpretation, or if there is a sufficient reason to depart from this order. This implies that a judge cannot restrict himself to only using teleological-evaluative argumentation but will have to put forward a combination of different forms of argumentation. The question that arises then is what the *role* and *place* of teleological-evaluative argumentation is in such a complex argumentation, that is, what the exact relation is between this form of argumentation and other forms of argumentation.

The purpose of this paper is to give an analysis of the role and place of teleological-evaluative argumentation in the justification of judicial decisions. I will establish what the structure is of the complex argumentation used, and under what conditions a judge meets his obligation to give an adequate justification of the way in which he has used his discretionary power to interpret and apply the law.

For this purpose I will develop a model for the analysis in which I explain the content and structure of this form of argumentation and the relation between this form of argumentation and other forms of argumentation. The aim is to provide a heuristic and critical tool that can be used in the analysis and evaluation of this form of argumentation by making explicit the underlying assumptions and choices so that they can be submitted to rational critique.

The method I will use will be provided by the pragma-dialectical theory of argumentation that functions as a theoretical background for the reconstruction of teleological-evaluative argumentation from the perspective of a rational critical discussion. I will use this theory to develop the model for the rational reconstruction, implementing it with insights from legal theory, such as those by MacCormick and Summers (1991), regarding the role and function of various forms of interpretative argumentation in the justification of judicial decisions.

In 2, first I will discuss the role of teleological-evaluative argumentation in the justification of judicial decisions and the way in which it interacts with other forms of argumentation. Then, in 3 I will develop the model for the rational reconstruction, describing the various forms of complex argumentation underlying the various forms of justification in which teleological-evaluative argumentation is used.

## 2. THE ROLE AND PLACE OF TELEOLOGICAL-EVALUATIVE ARGUMENTATION IN THE JUSTIFICATION OF JUDICIAL DECISIONS.

### *2.1 The content and structure of teleological-evaluative argumentation*

In order to establish the content and structure of teleological-evaluative argumentation it is important to take into account the rationale for using this form of argumentation. This rationale can be found in considering legal rules as an instrument for realizing certain legal, social and economic goals. As Fuller (1958, p. 665) states it, the meaning of a legal rule should be established on the basis of the good the rule aims to promote or the evil it seeks to avert.<sup>1</sup> Legal rules are designed to promote certain values that are considered essential from the perspective of justice or public good.

Various authors in legal philosophy and legal theory such as Bell (1983), Eskridge (1994), Fuller (1958), Gottlieb (1968), Lyons (1993, pp. 41-63), MacCormick and Summers (1991, pp. 518-519), Nozick (1993, pp. 13ff), Summers (1978), Wróblewski (1992, pp. 103-107) contend that in the application of legal rules judges should apply and interpret them in such a way that the consequences are conducive to realizing the

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<sup>1</sup> According to Fuller (1958, p. 665) the meaning of a statutory provision should be established in the light of the purpose, objective, goals or the rationales underlying a legal rule. In a pure version of the purpose theory of interpretation the meaning of a rule should be established on the basis of 'the good the rule aims to promote or the evil it seeks to avert', even if this would imply deviating from the plain meaning of the words of the rule.

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purposes, goals and values the rule is intended to realize. The purpose of a statute so understood forms an evaluative ground for considering the consequences of possible interpretations as favourable or unfavourable for realizing the postulated purpose. Application of a rule that would lead to consequences that are contrary to its purposes would be undesirable from this perspective.

In their international research project on the interpretation of statutes, *Interpreting statutes*, MacCormick and Summers (1991, pp. 524 ff) call the forms of argumentation used in the context of the interpretation of statutes when referring to purposes and values *teleological-evaluative* argumentation. Within this category various forms of argumentation can be distinguished: teleological argumentation, functional argumentation, argumentation from consequence, and *reductio ad absurdum*. The common aspect of these forms of argumentation is that they refer to the consequences of the application of a legal rule in light of the goals and values that are underlying the branch of law the rule belongs to.

Translating these ideas into an argumentative model, the basic form of a fully-explicit teleological-evaluative argumentation consists in pragma-dialectical terms of two levels of subordinate argumentation:

(1)

- 1 Application of rule X in interpretation X is (un)desirable
- 1.1a Application of rule X in interpretation X leads to consequence Y
- 1.1b Consequence Y is (un)desirable
  - 1.1b.1a Consequence Y is (in)compatible with goal Z
  - 1.1b.1b Goal Z is a rational goal objectively prescribed by the valid legal order

The first level of argumentation consists in pragma-dialectical terms of pragmatic argumentation in which interpretation X is justified by referring to the consequence Y of applying the rule in that interpretation (in law this form of argumentation is called 'consequentialist argumentation' because the judge refers to the consequences of application). The second level consists of symptomatic argumentation justifying the desirability of consequence Y by referring to the fact that it is compatible with goal Z which is objectively prescribed by the valid legal order (in law this form of argumentation is called 'teleological argumentation because the judge refers to the goal, *telos*, of the rule).

In legal practice, various elements of this complex 'deep structure' of teleological-evaluative argumentation often remain implicit. Often the surface structure either consists only of consequentialist argumentation (where the teleological aspect remains implicit), or of teleological argumentation (where the consequentialist aspect remains implicit). From the perspective of a complete justification, however, all elements underlying the interpretation must be made explicit to be able to subject them to rational critique.

This reconstruction of the basic form of teleological-evaluative argumentation already shows that it is more complex than a simple single argument, but consists of a combination of two arguments that build on each other. In most hard cases, the complete argumentation is even more complex because the decision to apply rule X in interpretation X is defended in the context of a discussion about two or more rival

interpretations. So, a complete reconstruction would also imply that the rejection of the alternative interpretation is added. In the following section I will establish the various possible relations between teleological-evaluative argumentation and other forms of argumentation.

## *2.2 The relation between teleological-evaluative argumentation and other forms of argumentation*

In order to establish the relation between teleological-evaluative argumentation and other forms of argumentation it is important to take into account insights from legal philosophy and legal theory regarding the various forms of argumentation to be used in the justification of legal decisions and the possible relations between these forms of argumentation. In law we find two distinct traditions regarding the justification of legal decisions. First, there is the tradition that conceives legal justification as a particular form of rational discourse and approaches the justification of judicial decisions from the perspective of practical rationality. Second, there is the tradition that studies judicial justification from the perspective of the methods of legal interpretation. I will give a short characterisation of both approaches with the aim of establishing how they conceive the relation between teleological-evaluative argumentation and other forms of argumentation.

In the legal philosophical tradition teleological-evaluative argumentation is conceived as part of a rational discussion that meets the requirements of practical rationality.<sup>2</sup> In modern legal philosophy the leading opinion is that in order to justify the application of a legal rule in a rational way, the judge must show that the application of the proposed interpretation 'makes sense in the world and in the context of the legal system'. He must show that it makes sense in the world by appealing to the effects or consequences of application of the rule in the concrete situation and in hypothetical future situations. It must make sense in the context of the legal system by showing that the decision is consistent and coherent with the rules, principles and values underlying the legal system. This implies that in hard cases in which the application of a legal rule in a concrete case is disputed and a judge must justify the interpretation of the legal rule, often both kinds of argumentation may be necessary for a complete justification and depend on each other.<sup>3</sup>

These two aspects of the justification correspond with two forms of argumentation. *Consequentialist* argumentation shows that the interpretation makes sense in the world, and *argumentation from coherence and consistency* shows that the interpretation makes sense in the context of the legal system. *Consequentialist argumentation*, according to authors as Bell, MacCormick, Summers, Wróblewski who also call it functional/goal/policy/teleological argumentation, is argumentation by means of which a judge tries to apply and interpret a legal rule in such a way that the consequences are conducive to realizing the goals that form the postulated purpose, the rationale, of the rule. *Argumentation from coherence and consistency* is argumentation by means of which a judge refers to a legal norm (a rule, a principle or value) that specifies the rationale for applying the legal rule (Summers calls them rightness reasons and Bell ethical reasons).

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<sup>2</sup> See for example Alexy (1978), Habermas (1996), MacCormick (1978).

<sup>3</sup> See for example MacCormick (1978).

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In light of these views, teleological-evaluative arguments can be considered as a form of argumentation in which a judge shows that the decision makes sense in the world by showing that the consequences of application are favourable from the perspective of the goal of the rule. By also bringing forward argumentation from coherence and consistency he shows that the decision makes sense in the context of the legal system by explaining that the goal ascribed to a rational legislator is compatible with the norms and values underlying the relevant branch of law.

In the legal theoretical tradition of the methods of interpretation the role of teleological-evaluative argumentation is approached from the perspective of legal interpretation and the question to be answered is what the place is of teleological-evaluative argumentation in the hierarchy of interpretative arguments. In their international research project on statutory interpretation MacCormick and Summers (1991) develop a model for the directives of interpretative arguments. According to this model, MacCormick and Summers (1991, p. 514-525) conclude that teleological-evaluative arguments can be considered as a sound justification in situations in which the meaning of the statute cannot be established in an acceptable way on the basis of linguistic or systematic interpretation. For this reason, teleological-evaluative argumentation often has a crucial role in the justification as the 'ultimate' argument in the sense that it offers the decisive reason if other reasons do not provide a satisfactory result.

In this role as an 'ultimate' argument teleological-evaluative argumentation can have the function of an 'outweighing' argument that supports a preference for one alternative. As such, it can be used to correct the meaning of a *prima facie* clear rule if its literal application would have absurd results inconsistent with the goal of the rule. Here the claim would be that the legislator would not have meant the rule to apply to the present case if he had foreseen it. According to MacCormick (2005, p. 133) 'relatively less "plain" or "obvious" interpretations of terms can be supported by reference to the injustice entailed by practical implications of an alternative interpretation'. As such the teleological-evaluative arguments function as an outweighing argument that outweigh the weight of the linguistic argument.<sup>4</sup>

From this perspective, a judge who uses teleological-evaluative argumentation has an obligation to justify why a strict literal application of a rule does not contribute to a favourable solution of the case. This implies that the weighing consists in showing that the strict literal interpretation based on a linguistic argument does not lead to a favourable result and that a teleological interpretation leads to a favourable result.

On the basis of these views it appears that there are different types of relations between teleological-evaluative argumentation and other forms of argumentation that depend on the different kinds of considerations underlying the use of teleological-evaluative argumentation. In the next section I will translate these types of relation into different models for a reconstruction of complex forms of argumentation in which teleological-evaluative argumentation plays a central role.

### 3. THE ANALYSIS OF THE INTERACTION BETWEEN TELEOLOGICAL-EVALUATIVE ARGUMENTATION AND OTHER FORMS OF ARGUMENTATION

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<sup>4</sup> As MacCormick and Summers (1991, p. 532) say, the model as such forms a procedural directive in the sense that it offers *prima facie* guidance about the order in which one should apply first order arguments, not about the weight (etcetera) that one should ascribe to them.

In order to reconstruct the interaction between teleological-evaluative argumentation and other forms of argumentation, I translate the requirements for a complete justification discussed in the previous section into a pragma-dialectical perspective that analyses argumentation as part of a critical discussion in which the decision is defended against various forms of critique. For the analysis it is important to establish the context of the discussion in which the argumentation occurs and the different forms of critique the judge anticipates or reacts to in order to be able to determine the underlying structure of the argumentation from the perspective of the burden of proof.

From a pragma-dialectical perspective, the complexity of the argumentation depends on the obligations of the judge regarding a complete justification. The forms of critique he must react to are formed by the requirements of a rational legal justification.

From the perspective of the rational justification of a legal decision, the requirement that the decision must 'make sense in the world and in the context of the legal system' may result in three different argumentation structures which are based on the choices a judge makes and on the obligations that are associated with these choices.

In the first case (A), that forms an extension of the basic form, the judge chooses to use consequentialist argumentation as the main argumentation, and the complete argumentation consists of a chain of vertically linked levels of *subordinate* argumentation consisting of arguments from coherence and consistency.<sup>5</sup>

In the second case (B), the judge chooses to use a complex main argumentation consisting of consequentialist argumentation and argumentation from consistency. In this case the argumentation is a combination of horizontally linked *cumulative coordinative* arguments in which a consequentialist argument and an argument of coherence and consistency together constitute a justification of the decision.<sup>6</sup>

In the third case, (C), the judge chooses to weigh an application based on teleological-evaluative considerations against a solution based on a literal application. Here teleological-evaluative argumentation forms part of a combination of horizontally linked *conflict-setting coordinative* arguments. The relation is based on the solution of a conflict in which the application based on teleological-evaluative considerations is preferred to the other on the basis of the relative weight of the arguments.<sup>7</sup>

### 3.1 Form A:

*Subordinate argumentation: Teleological-evaluative argumentation supported by argumentation from coherence and consistency*

In hard cases, the judge cannot rely on the literal meaning of the rule alone, but he will have to look for a solution based on an interpretation of the rule that makes the decision fit in the world and in the context of the legal system. Starting from the basic form of teleological-evaluative argumentation described in section 2, in such a context a complete justification of a judicial decision may consist of a chain of three levels of argumentation:

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<sup>5</sup> For this form of argumentation Alexy uses the term 'regressive' argumentation and MacCormick and Summers 'linear argumentation'.

<sup>6</sup> For this form of argumentation MacCormick and Summers use the term 'cumulating' argumentation.

<sup>7</sup> In this context Alexy (2003, p. 527) uses the term 'weighing and balancing' and MacCormick and Summers the term 'conflict-settling pattern of justification'.

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### Level 1

- 1 Application of rule R in the meaning of R' is desirable
- 1.1a Application of rule R in the meaning R' leads to consequence Y
- 1.1b Consequence Y is desirable

### Level 2

- 1.1b Consequence Y is desirable
- 1.1b.1a Consequence Y is desirable from the perspective of goal Z
- 1.1b.1b Goal Z is desirable

### Level 3

- 1.1b.1b Goal Z is desirable
- 1.1b.1 Goal Z is coherent/consistent with general legal principles, goals and values P underlying the legal system

The rationale for this model as an 'ideal' model from the perspective of rationality is based on various theoretical considerations. On the first and second level we have the basic form of the teleological-evaluative argumentation. The consequentialist argumentation on the first level is supported by a subordinate chain of argumentation. The reason for the support of argument 1.1b regarding the (un)desirability of the consequences is that the judge has to react to critical doubt with respect to the acceptability of this argument because he must not only show that the decision makes sense in the world but also that it makes sense in the context of the legal system. In order to do so, he can support the argument by means of teleological argumentation showing that the consequences are (un)desirable in the light of the legal goal Z. In its turn this argument 1.1b.1b must be defended against critical doubt regarding the legal basis of this goal by referring to the explicit intention of the legislator expressed in parliamentary materials or to the objective intention of a rational legislator by argumentation from principles clarifying the underlying general principles and values of the law.

This reconstruction shows that the basic form of teleological-evaluative argumentation consisting of two levels of argumentation can be explained on the basis of the requirements of a rational legal justification. For a complete justification, from the perspective of the ideal situation, a judge must support the second level argumentation with third level argumentation consisting of argumentation from principles referring to the legal basis. Sometimes, even a fourth level may be necessary if there are different competing principles which have to be weighed against each other. On this level it must be established on the basis of what weighing formula, incorporating various weighing criteria, a preference for a particular principle is made.<sup>8</sup>

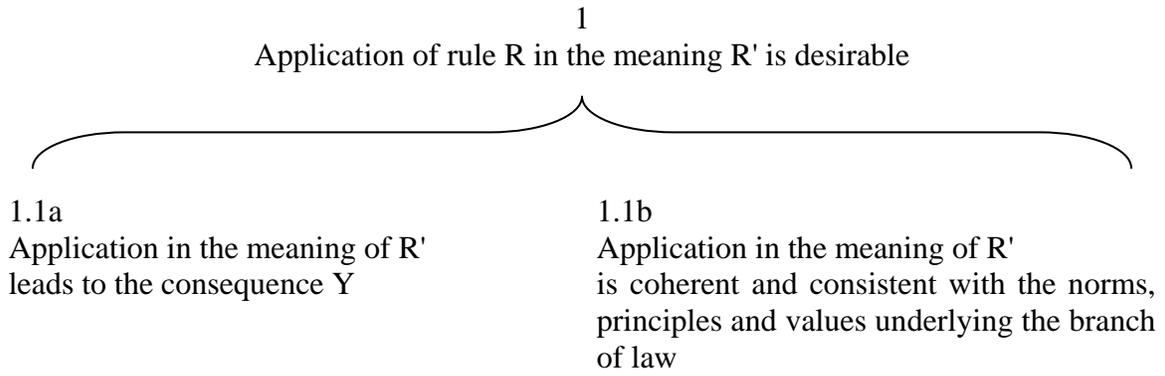
### 3.2 Form B:

*Cumulative coordinative argumentation: Teleological-evaluative argumentation complemented by argumentation from coherence and consistency*

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<sup>8</sup> For the application of such a weighing formula see Alexy 2003.

In hard cases, another possibility to meet the requirement that the decision must make sense in the world and in the context of the legal system is to put forward cumulative coordinative argumentation consisting of consequentialist argumentation and argumentation of coherence and consistency. The reconstruction of the cumulative coordinative structure is as follows:



Here the consequentialist argument 1.1a can in its turn be made into a complete teleological-evaluative argument of the basic form of (1), that can be supported as in (A). In that case the argumentation becomes more complex.

Cumulative coordinative argumentation reconstructed in this way may be used if the judge chooses an interpretation that can be based on different considerations that all point in the same direction. From the perspective of a complete justification, these considerations must be reconstructed as cumulative because they are all required on the basis of the requirement that the decision must make sense in the context of the world and in the context of the legal system.

### 3.3 Form C:

*Conflict-setting coordinative argumentation: An interpretation based on teleological argumentation is preferred to an interpretation based on other considerations*

In certain situations one of the previous two justifications may not suffice to give a complete justification. This may be so in hard cases in which a judge must make a choice between two rival interpretations of a legal rule (one based on linguistic and/or systematic considerations and one on consequentialist-teleological considerations) and chooses for the interpretation based on consequentialist-teleological considerations. Such a situation may also occur when a judge decides that the rule is clear but nevertheless decides to make an exception on the basis of teleological-evaluative considerations (and thus gives a new meaning to the rule for the concrete case). In these cases, from the perspective of the hierarchy of interpretations methods, if a judge prefers an interpretation or application that gives priority to an application based on consequentialist-teleological considerations, he has a burden of proof to show that the application based on linguistic and systematic considerations alone does not provide a satisfactory solution. Because his burden of proof is heavier, as a consequence his argumentation becomes more complex.

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In this form of complex argumentation, the preference for a particular application is defended in the context of a discussion about a choice between two alternative conflicting applications R' and R'', consisting of a combination of argumentation pro R' and argumentation contra R'' where R' is based on teleological-evaluative considerations and R'' on other considerations. The conflict is resolved on the basis of teleological-evaluative considerations. On the basis of the fact that R'' leads to undesirable results, the application in the sense of R' that has desirable results (and can on the second level be justified on the basis of the goal of the rule), is to be preferred to the other application on these grounds. The argument 1.1a-1.1b' is here the argument specifying the criteria for the preference for R' based on teleological-evaluative considerations.

Application of rule R in the meaning R' is to be preferred to application of rule R in the meaning R''

1.1a	1.1b	1.1a-1.1b'
Application in the meaning R' leads to the desirable consequence Y'	Application in the meaning R'' leads to the undesirable consequence Y''	If application in the meaning R' leads to a desirable consequence, and application in the meaning of R' to an undesirable consequence, application in the meaning R' is to be preferred.

For a complete justification, the argument 1.1a and 1.1b need to be completed with the subordinative argumentation described under (A) (for 1.1b in the negative variant of the basic form (1)) since the requirement that a complete justification consists of both forms of argumentation makes it necessary for the judge to refer to the goals and norms that may justify the preference for the application on the basis of teleological-evaluative considerations instead of an application based on linguistic and systematic considerations alone.

In this situation teleological-evaluative argumentation forms what could be called the finally justifying argument. However, this does not imply that other forms of argumentation do not play a role. It implies that the judge must show that an application based on teleological-evaluative considerations is preferred to an application based on other considerations. He must do this by justifying the bridging argument 1.1a-1.1b' with argumentation specifying that the rationale of a legal rule should be established on the basis of its function. This argumentation may, in its turn, be justified by further argumentation based on legal-philosophical considerations regarding the legal ideology in which a choice is made for a particular conception of the function of the law in society.

## 4. CONCLUSION

As I have shown, a justification consisting of teleological-evaluative argumentation consists of complex argumentation based on consequentialist and teleological

argumentation. For a complete justification, it must be combined with other forms of argumentation. The way in which the different forms of argumentation interact depends on the discussion context that is defined by the various forms of critique the judge must react to from the perspective of legal rationality. A choice for the use of teleological-evaluative argumentation in a particular discussion context has certain consequences for the form of complex argumentation that a judge must use in order to offer a complete justification. As I have indicated, the considerations underlying the need to put forward complex argumentation are based on the various requirements that a rational legal justification must meet, that is on the consideration that a legal decision must make sense in the context of the world and in the context of the legal system, and that if a judge departs from the literal meaning he has a burden of proof to justify why he chooses to do so.

These different considerations, in combination with the choices the judge makes in a concrete case, based on theoretical considerations, three main structures of complex argumentation can be distinguished. How these structures are implemented in concrete cases is subject for further research in which it is established how the actual context of discussion may influence the choices a judge makes for a certain form of complex argumentation.

[link to commentary](#)

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