

## Normative Statements and Correction Claim in the Logical Comprehension Domain

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### Abstract

*The scope of the just judicial decision identifies the conceptual solidity not only of the legal order within which the decisional act is inserted as a category but also of the degree of rational recognition that this normative order socially communicates as fair. In this context, a judicial decision issued rationally within a contractually signed system is always pure positive law, but positive law, after all, is characterized by the fact that the act of issuing a sentence will always be a representation of the jurisdictional power of the State. It will then be the State as a positive institution that, fulfilling its duty of subjection to the principle of the rule of law, assumes as its mandate the linguistic communication of the normative text. A normative decision (judgment), legally binding, issued in the aforementioned circumstances, always runs the risk of being qualified as intolerable, or, as Radbruch puts it, an unjust decision. It is there, where, in principle, lies the purpose of this essay, trying to establish what is the basis for the rational validity of the fair judicial decision.*

**Keywords:** *Claim of correctness, argument, practical discourse, prescriptive statements, descriptive statements, propositions, truth value, verification, Jørgensen's dilemma and reasoning.*

### Introduction

The issuance of a judicial decision constitutes, on the one hand, the expression of the mandatory application of a system which, without being at odds with the legal certainty created by precedent decisions, establishes a system of timelessly valid concepts and, on the other hand, the guarantee of compliance with regulatory expectations.

The attempt to offer an answer to the question formulated by Alexy (2001) must start from Alexy himself, who formulates the concept of pretension of correctness as a determining argument to establish the nature of the normative statements that structure the proven basis of legal sentences. However, it is only a matter of beginning to follow

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the path indicated by Alexy, to find oneself face to face with the untimely presence of Jorgensen's reasoning, who argued that from prescriptive propositions or propositions of ought to be it is not possible, with criteria of logical validity, to infer reasoning with analogous statements. Such a dead end can only be overcome by considering, in each concrete formulation, that not all norms can be verifiable with assertive truth value criteria or  $[V(v)]$ , since there are other types of propositions, descriptive ones, which are verifiable and which respond - clearly - to being qualified as true or false or, what amounts to the same thing, as  $[V(v)]$ .

If in any community of speakers, a person expresses: "it is raining", such a proposition is descriptive because his assertion manifests a certain state of affairs (that it is raining at that moment), which is fully verifiable. Thus, an utterance formulated may admit an approval, expressed through its qualification as true, or its rejection, affirming its falsity.

#### CASE I

P(x): M1 states: "It is raining".

P(x1): M2 can assert: that it is not true that "it is raining".

#### CASE 2

P(x): Freedom of speech must be protected by a state whatever its form of government.

P(x1): Any democratic society must guarantee freedom of expression.

This would imply, in the first two cases, assigning to P(x), according to what is affirmed by P(x), a certain truth value. But in the case of prescriptive propositions (third and fourth examples), the differentiating criterion is not an empirically verifiable verification value, but a criterion of interpretation: the argument on its validity.

#### Introduction

Alexy (2008, p. 23), citing Larenz in the initial part of his study, states that the judicial decision, like the legal norm in particular and the normative order in general conceived as a system is characterized by constituting a linguistic emission of legal content and by recognizing that the decision is not necessarily the result of a hermeneutic process of subsumption of proven logical assumptions. In this sense, one might ask, how is the content of a rationally just judicial decision justified? Alexy posits that a judicial decision, which he calls (U) is derived from the issuance of legally binding norms (N1):

P(x): N1, N2 ...: N3 are legal forms that are assumed to be in force.

P(x1): A1, A2s ... A4 are empirical statements denoting concrete actions.

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C: U is foundable from N1, N2 ...: N3 and A1 ... A4.

Alexy himself wonders what happens when the legal decision does not derive from subsumption as an argument, to the point of determining that subsumption as a methodological mechanism of interpretation is insufficient to identify the criteria on which the just rationality of a decision is based. Such a situation starts from the consideration of the existence of prescriptive propositions, which reflect the ought to be of the mandate.

However, to approach the question posed by Alexy in this way implies running headlong into Jorgensen's formulation - Jorgensen's dilemma - which, in turn, is in the face of the so-called naturalistic fallacy, which warns of the impossibility of deriving, with criteria of logical validity, prescriptive statements from statements that also ought to be.

This study considers that descriptive propositions reflect legally relevant states of affairs - M(x)- that can be derived from previous mandates -N(x)- since the universality of these

statements allows individualizing the set  $N(x)$ , particularizing the conditions that allow placing  $M(x)$  in the universality  $N(x)$ .

However, even with this, no approach has been outlined that attempts to respond to Alexy's formulation, the questioning of which, like a sword of Damocles, carries a logical danger due to the possibility of its non-answer. To this end, it is necessary to provide a vehicle to address the structure of the argument that entails the alleged logical impossibility of validly justifying a conclusion without an element that rationally permits it.

This vehicle is found in Alexy's argument of the pretension of correctness that the same author develops in his work and that today is at the center of the debate concerning the theory of practical discourse. To attempt an approach to the problem of the rational justification of a just judicial decision implies, from the argument of the pretension of correctness, trying to understand that although it is true that descriptive propositions are verifiable with criteria of truth  $-V(v)-$ , not all of them are, since only a different sphere of interpretation can be predicated of prescriptive statements, that of their validity.

That is what this essay is all about!

#### The Starting Point: Hegel and His Dialectical Perception of the Norm

The conceptual exercise aimed at promoting the rational foundation of a legal order in general, of its norms in particular, or its judicial decisions as a whole, is only feasible in terms of discourse theory. Accepting as a starting point that Alexy's thesis of legal discourse is a special form of presentation of general practical discourse, it is also worth asking, in an attempt to go a little further, what can be rationally grounded as a legal issue with a binding linguistic sense, understanding as practical legal argument all that verification of actions in empirical (circumstantial) terms concerning which a judgment of validity or legitimacy can be structured for some, and of verification for others. Hegel (1968) proposes the dialectical relationship between norm and penalty (Victoria et al., 2022, p.125), in such a way that resorting to the logical principle  $(- * - - = +)$  he proposes that when a consequent (Pm) denies the antecedent (PM) what is happening is that the denied antecedent is being affirmed (in the sense of vindication). If a speaker denies with a proposition a statement that in turn has denied another proposition, what has occurred in logic is a negation of the negating act, or what is the same, a vindication of the first proposition. An example is the following:

PM: Crime is an act that denies the norm.

(p)

Pm: The rule is a crime-denying act.

(q)

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C: The penalty affirms the standard.

(r)

On this point, Hegel concretely conceives crime as a dialectical relationship between an individual will and the law, a dialectical relationship that comprises a thesis, the intervention of a typically unlawful act that breaks the structure of a given normative order, an antithesis, as a contradictory element that expresses the negation or rejection of the positive law in force, and a synthesis, which as an affirming act, claims the intangibility of the normative system. In sections § 90, § 91, § 92, and § 93, man is considered a living being, i.e. as a subject that can be subjected, but also judged, not voluntarily but using a law (Hegel, 1968, p. 103-104). The normative will is synonymous with freedom, but force and violence that in principle may seem unjust entail in their application, the cancellation of the first violence (the one caused by the offending act).

It is then a pedagogical, controlled violence, which cancels the state of barbarism in which the first violence was produced. Hegel's approach leads to consider two (2) types of violence: first violence, originated in an action or omission, which is the one that is directed against the contract, the law, education, or the family (concept with ethical content) that violates the law with the individual will and therefore violates the existence of man's freedom through crime and second violence (Hegel, 1968, p. 106), which occurs as a consequence of the other and which through law annuls the freedom of man through crime. 106), which appears as a consequence of the other and which through law annuls the first will, denies it, and reaffirms itself (self-awareness).

What would seem, then, to be a vindictive response of an evil that is caused (consequent) to one who has caused another evil (precedent), must be understood in its logical dimension, consisting in that the crime is denied by the affirmation of the right as a right - normatively established- guaranteeing the reestablishment of the violated provision (Hegel, 1968, p. 107-108). Consequently, the negation of evil is a reaffirmation of freedom (Hegel, 1968, p. 106).

In a logical diagram, the Hegelian argument is expressed as follows:

$$\boxed{\text{Si } - * - = + \rightarrow \text{Si P. Q} \rightarrow \text{R}}$$

In a different sense, this dialectical relationship had already been addressed, basing it on the principle of contradiction explained as follows: the violation of freedom as a negative act is prevented by another negative act, coercion, which is the power to constrain the will and force it to respect the law, leading to a reaffirmation of freedom according to universal laws (Hegel, 1968).

This is an argument of the Tollendus Ponens model - that which negating affirms because if the antecedent (P) is denied by the consequent (Q), (R) is affirmed. What the antecedent -P- negated, in turn, is negated by its consequent Q. The structure of the conjunctive copula (.) expresses in logic what Hegel posits as a dialectical relation, contradictory but argumentatively reciprocal. However, this relation is merely formal - deductive- implying the correctness of the argument, which Alexy identifies as a pretension, more specifically as a pretension of correctness.

The Starting Point: Robert Alexy's Claim of Correctness

Several aspects are intended to be highlighted with the present research work: a) the formulation of a concept of pretension of moral correctness (Alexy, 2008; Alexy & Bulygin, 2001; Bernal Pulido, 2018; Dubon González, 2020; Vázquez, 1988) that is characterized by constituting an implicit condition of argumentation in practical discourse; condition from which rational processes of interpretation of the different institutional segments in which a rationally just order operates are derived, as is the case of its system of legal relations, integrated by a plexus of norms in particular and by the set of its judicial decisions issued by the competentially binding organs, b) the conceptual recognition of the pretension of correctness as an intrinsic condition of the discourse, which tends the possibility of constructing a link between the normative system of law and the normative system of morality and, c) the postulation of an approach where the pretension of correctness is perceived as a necessary condition of legal discourse, which can be explained from the structuring of a logical-modal reasoning that involves the following aspects: (i) moving the seat of the debate around the nature of the pretension of correctness, from the shifting fields of a perception of the moral (Augustine of Hippo, 2017; Alvarez Turienzo, 1958; Aristotle, 2017; Barp Fontana, 2008; Thomas Aquinas, 2016; Von Wright, 1968) as circumstance, towards the realm of modal (alethic) formulations (Alchourrón & Bulygin, 1991; Atienza, 2004; Bulygin, 2005, 2018; Rodríguez & Navarro, 2014; Von Wright, 1979, 2001), which allow understanding the correctness of the argument as a logical pretension; appreciating it from this point of view allows deriving descriptive propositions (to be) from prescriptive propositions (should be)

and, ii) recognizing that, although it is true that law sometimes develops moral contents, its teleology is not directed to the moral nor is it exhausted in it.

The concept of claim of moral correctness of the judicial decision or the legal rule must be contextualized from the classical debate that arose from the scope of the concept of unjust law or corrupt law that kept, until well into modernity, a thread of development that connected with the concept of eternal law, conceived as reasoning derived from the system of positive divine law. The eventual connection between law and morality has as its propulsion mechanism the pretension of correctness, which is characterized, being an Alexian postulation, as a necessary condition of the theory of practical juridical discourse. The concept of morality must be understood as the minimum justice that must surround every emission of the binding act. Since it is a moral argument (of justice), what is intended is to demand its application as a guarantee of the democratic balance that must implicitly be contained both in the legal system of society and in its norms and all its judicial decisions (Aponte et al., 2021).

Symbology

Table 1

Logical Operators

Sign	Name	It reads
$\neg$	Negator	no
$\vee$	Inclusive circuit breaker	or
$\cdot$	Conjunction	and
$\wedge$	Exclusive circuit breaker	or...or
$\rightarrow$	Conditioner or implication	yes, then
$\leftrightarrow$	Biconditioner or coimplicator	yes and only if
$\downarrow$	Binegator or Sheffer arrow	neither, ... nor
$ $	Anticonjuncter or Sheffer bar	Incompatible
O	Deontic operator	it is mandatory that
(x)	Universal quantifier	for all x

Note: The authors incorporate into this essay the table of logical symbols used by Professor Alexy (2008) in *The Theory of Legal Argumentation*, complemented with the symbolic notation system presented in Marquínez Argote & Sanz Adrados (1985, p. 47)

Table 2

Logical Notation Variants

no	AND	or	or...or	Sie	Sii	Neither...nor	Incomp.
—	•	v	w	$\rightarrow$	$\leftrightarrow$	$\downarrow$	$ $
$\neg$	$\wedge$		$\neq$	$\supset$	$\equiv$		
$\sim$	&		$\underline{\vee}$				
	Et						

Note. (Retrieved from Marquínez Argote & Sanz Adrados, 1985, p. 51)

Jørgensen's Dilemma or the Apparent Impossibility of Deriving Descriptive Propositions from Prescriptive Propositions

In the construction of the present research work, the starting point is the so-called Jorgensen's dilemma, which owes its name to the logical approach made by the Danish thinker Jorgen Jorgensen (1894-1969), who with the publication of two articles of his authorship: *Imperativer Og Logik* (Jörgensen, 1933) and *Imperatives and Logic* (Jörgensen, 1938), identified the existence of a contradictory argument (fallacy) derived from the impossibility of inferring with criteria of logical validity, prescriptive propositions from statements of ought-to-be (Alarcón, 1999). This approach would become evident with the later appearance of a third essay on the subject, of the same name (*Imperatives and Logic*), but written by Ross (1944), who is credited with having created the label - Jorgensen's dilemma - that identifies this specific form of reasoning.

If in the context of a linguistically responsible community of speakers ( $Px$ )<sup>6</sup>, a prescriptive (should-be) provision is postulated, it is not subject to verification; that is to say, in the world of legal relations, such a mandate cannot be assigned any truth value  $V(v)$ <sup>7</sup> because its contents are not susceptible to verification. Such is the following logical scheme,

$P(x)$ : The maintenance of stability in a democratic legal order is based on respect for the rationally fair rule.

$P(x')$ : Some partner in this democratic legal order does not recognize (does not respect) the rationally just norm.

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$C(x, x')$ : (?)

The previous logical diagram presents the following reflections: (i) the formal structure of the premises is, as indicated, formally correct, since it responds to the logical laws of universality and singularity in each of its segments, recall that the minor premise ( $Pm$ ) is correctly inferred from the major one, if and only if it is contained in it or, it is a particular set of a universal set or, it is an element or individual of a universally larger set of individuals; (ii) no less, given the impossibility, on the one hand, of correctly identifying the middle term ( $Tm$ ) in both premises and, on the other hand, of rationally establishing the conclusion, it must be inferred that it is not possible, from a prescriptive proposition (of ought to be) to continue deriving -ad infinitum- more propositions of ought to be (prescriptive). The logical interpretation is the following:

$P(x) \rightarrow$  For all  $x$  a prescriptive (ought-to-be) proposition is formulated  $\rightarrow$  unverifiable (cannot be qualified as true or false).

$P(x') \rightarrow$  For all  $x'$  a prescriptive (ought-to-be) proposition is not correctly deduced.  $\rightarrow$  not verifiable (cannot be qualified as true or false).

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$C(x, x')$ : Impossibility of deriving from  $P(x)$  a logically correct concept.

However, the same does not occur with descriptive propositions denoting states of affairs, which, being subject to verification, are verifiable from the real. If we consider a modifying event of the external world, such as the unjustified breach of a contract by one of the parties who are bound by it, it can be determined, in each concrete case, whether or not the assertion is probably true. The example that supports our position is as follows:

$P(x)$ : In a democratic state, it is a duty to respect the contract concluded subject to the legal order.

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<sup>6</sup>  $P(x)$ : se lee: para todo  $x$  es válido que...

<sup>7</sup>  $V(v)$ : se lee: valor de verdad que puede ser verdadero ( $v$ ) o falso ( $f$ ) pero el criterio de identificación veritativa es el valor de verdad de la proposición.

$P(x^1)$ :  $M^1(x)$  unjustifiably transgressed the legal order by not complying with the contract it had previously entered into with  $M^2(x)$ .

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$C(x^1)$ :  $M^1$  transgressed the duty of contractual respect based on a democratic legal order.

If we consider the concurrence of other variables  $P(x^1)$  which take the form  $P(x^2)$  or  $P(x^3)$  the reasoning would be as follows:

$P(x)$ : In a democratic state, it is a duty to respect the contract concluded subject to the legal order.

$P(x^1)$ :  $M^1(x)$  unjustifiably transgressed the legal order by not complying with the contract it had previously entered into with  $M^2(x)$ .

$P(x^2)$ :  $M^1(x)$  injured the legal interests of  $M^2(x)$ .

$P(x^3)$ : The standard  $N^1$  valid for the civil breach of contract provides for the obligation to repair.

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$C^8(x^1)(x^3)(x^4)$ :  $M^1(x^1)(x^2)(x^3)$  must repair the damage caused following a standard  $N^1$  valid for civil breach of contract.

In this context, it is shown that a prescriptive rule or should-be rule can give rise, from its formulation to reasoning presented in logically correct chains. The development of legally relevant contacts for guaranteeing the exercise of democracy is expected as a duty to act.

Note the approach used in the following example:

$P(x)$ : Any contract with a lawful purpose and cause must be respected by the parties.

$P(x^1)$ :  $M^1(x)$  breached the contract agreed with  $M^2(x)$ .

$P(x^2)$ :  $M^1(x)$  breached the legal duty not to disregard the voluntary agreement.

$P(x^3)$ : The standard  $N^1$  valid for the civil breach of contract provides for the obligation to repair.

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$C^9(x^1)(x^2)(x^3)$ :  $M^1(x^1)$  must repair the damage caused according to a valid  $N^1$  standard for the civil breach of contracts.

The conclusions reached, after constructing a logical chain of reasoning of a descriptive nature, starting from a single universal prescriptive premise (duty sr), are: a) from a duty to be, the mandate to respect the contracts entered into by the parties and which have the characteristics of having a lawful object and cause, concrete acts of normative execution (the obligation to repair, the existence of a civil rule of conduct that regulates the agreement and the unlawful action of the parties, the existence of a civil rule of conduct that regulates the agreement and the unlawful action of the parties, the existence of a civil rule of conduct that regulates the agreement and the unlawful action of the parties, the existence of a civil rule of conduct that regulates the agreement and the unlawful action of the parties, the existence of a civil rule of conduct that regulates the agreement and the unlawful action of the parties  $M^1(x)$  on the interests of  $M^2(x)$ .

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<sup>8</sup> For all  $x$ :  $P(x)$  and for all  $M$ :  $N(x)$ . the conclusion could then be extended to all the hypotheses  $x$ :  $(x^1)(x^3)(x^4)$ :  $M^1(x^1)(x^2)(x^3)$ .

<sup>9</sup> For all  $x$ :  $P(x)$  and for all  $M$ :  $N(x)$ , the conclusion could then be extended for all hypotheses  $x$ :  $(x^1)(x^3)(x^4)$ :  $M^1(x^1)(x^2)(x^3)$ .

## The Logical Nature of Normative Statements

It is from the critical approaches made by Ross that we perceive the need to transcend the scope of understanding of discourse conceived as an argumentative entity, which in Alexy (2008) acquires the connotation of a special case<sup>10</sup>. Legal discourse will then be presented as a special expression of the general practical discourse based on the following postulates; the first one considers that legal relations (argumentative structures with a normative sense) orbit around practical issues (Alexy, 2008, p. 207), understanding by practical issues all those contacts that in law refer to what must be done or omitted (Alexy, 2008) or, in other words, what can (or must) be done<sup>11</sup>. The second recognizes the existence of a claim for correction of a necessary nature that underlies the legal order in general, the legal rule in particular and the individual judicial decision.

The general system of argumentation has a scope of understanding fixed by the theory of practical legal discourse that is perceived in Alexy as a manifestation of general practical discourse, but where it is necessary to state that the scope of non-formal logics (Gamut L. T., 2010; Jansana, 2014; Remon, 1999; Trelles Montero, 2001) or alethic logics (deontics in particular), acquires a singular importance because it serves to address the understanding of prescriptive propositions from the formulation of descriptive events (or conversely), resorting to the identification of special operators that make visible the formulation of deontic relations, such as due-permitted and its counterfactual correlate, not due-prohibited, which drive the advent of a new concept of modal logic: deontic logic (Neri Castañeda, 1953).

In order to understand the meaning of the construction of possible answers to this philosophical problem and its implication in the process of logical foundation of an argument, it is necessary to start from the following elements: (i) the so-called Jorgensen's dilemma is a surrogate reasoning of the well-known naturalistic fallacy which is based on the fact that from prescriptive statements cannot be derived, with criteria of logical validity, equally prescriptive statements, for Alarcón Cabrera Jorgensen's dilemma has been misunderstood because in reality what the Danish logician intended to highlight was not the error of deriving an ought to be from a being but the error of deriving an ought to be from another "ought to be" (Alarcón, 1999, p. 207). (Alarcón, 1999, p. 207)(Alarcón, 1999<sup>12</sup>; (Infrans Cibils, 2021; Sueiro Paz, 2018) without causing an undue extension of the formal structure of reasoning and, (ii) not all statements can be attributed a truth value, i.e., not every proposition -empirical or legal- can be deduced from linguistic propositions verifiable as true or false.

The debate begins by situating the center of interpretation around two aspects, the first of which consists in determining, as a base point, whether legal norms, understood as statements with a communicative meaning, are prescriptive or descriptive propositions, and the second consists of identifying the presence of legally relevant interventions that, referring to these norms, can be verified in the sphere of socio-legal reality.

### The Specific Case of the Criminal Type of Unfair Administration (Art. 250 B)

Let's start with an example: under the principle of normative subjection, the national legislator has enshrined in Article 250 B (Law 599 of 2000) the penalty for anyone who

<sup>10</sup> Cfr. Alexy, R. para quien la comprensión Alexyano el discurso jurídico se presenta como caso especial del discurso práctico general (2008, p. 205).

<sup>11</sup> La acción de poder hacer, tal y como los autores la contextualizan en este artículo, no comporta un contenido voluntarista, es decir, no es el fruto de la irrupción de una decisión racional del deseo libre fundada en circunstancias; no, es la actuación de esa misma motivación racional pero sujeta a normas previamente establecidas y es la capacidad de orientar la primigenia voluntad conforme a esos fines ético-sociales.



disloyally administers an asset that has been previously entrusted to him/her under discerned functions, a provision whose literal wording is as follows:

ART. 250B.— Added. L.1474/2011, art. 17. Unfair administration. The de facto or de jure administrator, or partner of any corporation incorporated or in formation, director, employee, or advisor, who for his benefit or that of a third party, with abuse of the functions inherent to his position, fraudulently disposes of the assets of the corporation or contracts obligations to be paid by it, directly causing economically assessable damage to its partners, shall incur a prison term of four (4) to eight (8) years and a fine of ten (10) to one thousand (1,000) legal monthly minimum wages in force (Ley 599, 2000, art. 250B)

Following the foregoing, the rule that punitively punishes the breach of the duty of care in the modality of loyalty in the management of a previously entrusted patrimony structures a duty not to fraudulently breach the same (by the irregular disposition of the assets or by the unauthorized constitution of encumbrances on the company), determining something, staging a concrete action that describes a state of things (being). The fixation of that state of things (in particular) configures the content of a behavior that in the future can be qualified as true or false.

Let's see its logical notation:

$P(x)^{13}$ : It is the duty of Todo (x) not to dispose of an asset whose administration has been previously conferred to him/her.

$P(x^1)$ :  $M^1(x)$  constituted encumbrances on the assets of a company of which he was a director, with an assessable economic and economic loss to  $M^2(x)$ ,  $M^3(x)$ , and  $M^4(x)$ .

$P(x^2)$ :  $M^1(x)$  fraudulently disposed of the assets entrusted to its administration with assessable economic damage to  $M^2(x)$ ,  $M^3(x)$ , and,  $M^4(x)$ .

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$C^{14}(x^1)(x^3)(x^4)$ :  $M^1(x^1)(x^2)(x^3)$  commits the crime of disloyal administration provided for in Article 250 B of Law 599 of 2000, incurring a normatively specified penalty.

In other words, the prescriptive structure (should be) of proposition  $P(x)$  that establishes the reproach to the conduct of an administrator of patrimony  $M^1(x)$ , establishes a duty to act to the contrary, thereby establishing a negative rule of action. But if we were dealing with a purely deontological system, in the supposed realm of duties, those (the prescriptions<sup>15</sup>) could not be objects of evaluative but argumentative verification, through the verification of their legitimacy using their validity. While a descriptive proposition does not order anything, it only represents a state of things where the characteristics of that state of things are detailed and identified using language<sup>16</sup>.

#### The Nature of Normative Proposals

If, for example, a speaker (P) expresses: "it is raining", such a proposition is descriptive because it denotes a state of affairs in the real world, an assertion that can be verified as true or false. That is, it can be established whether when the utterance is uttered: it is raining, it is indeed raining or not. But, if for a community of speakers (Px), it is expressed in a binding way: "freedom is a value that must be respected by all", the proposition becomes prescriptive because it implies a mandate whose violation is punished by jurisdictional rules in concrete cases where its disregard operates, but it

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<sup>13</sup>  $P(x)$ : for all x. For any director, de jure or de facto, partner, officer, employee or advisor.

<sup>14</sup> For all x:  $P(x)$  and for all M:  $N(x)$ , the conclusion could then be extended for all hypotheses x:  $(x^1)(x^3)(x^4)$ :  $M^1(x^1)(x^2)(x^3)$ .

<sup>15</sup> The authors, for the full expression of this context, refer to the meaning attributed to the vb., trans. *prescribir* in its first and third meanings of the *Diccionario de la Real Academia Española*. 23rd edition (2014).

<sup>16</sup> Cfr., the first meaning of the vb.. trans. *to describe* (DEL, 2014).

cannot be expressed whether it is true or false, only argumentatively, it can be referred whether it is valid or not in the world of the normative.

In the naturalistic perception, it is not possible to logically infer ontological conclusions (being) from statements of ought to be (prescriptive) since their content does not derive from the universality of a precept that does not contemplate social-legal relations. From the respect -in the genre- for freedom as an intangible value for all co-associates, it does not necessarily follow that in a concrete case, an individual (N) violated the freedom of M<sup>2</sup> because the universality of the premise is for all P (x) and its logical derivation, as a concrete description, is for all M (x). It is in all M (x) in which an imperative condition executable with a concrete action would be fulfilled.

What is correct, what is formally valid, would be for the major premise to indicate a universality:

P (x): All the inhabitants of a State must respect the freedom of the other.

Where truth cannot be derived from its structure, because it will only be discernible from the concrete juridical action:

M (x): M<sup>1</sup> does not respect the freedom of M<sup>2</sup>.

What follows is that if a person acts under certain conditions of circumstantiality (disloyally administers a patrimony that has been previously entrusted to him/her), he/she must respond judicially. This is not a prescription, it is a description of a state of affairs, the legally relevant state of affairs. The legal norms are valid or invalid and accordingly prove their legitimacy, the factual-legal situations are descriptive propositions and accordingly, there is no undue extension of the logical presuppositions to other fields. Jorgensen's dilemma is overcome by avoiding the performative contradiction assuming that logical-deductive reasoning must be given on descriptive events:

P (x): John is the perpetrator of the homicide, or,

P (x): John disloyally administered an estate.

Which would involve, then, truth-value considerations:

P (x): John is the perpetrator of the homicide [Vv (V-F)].

P (x): John has disloyally administered an estate [Vv (V-F)].

### The Structure of Practical Legal Discourse

Several authors, but especially two, throughout the development of the question, have tried to understand its categories differently, according to positions assumed from different philosophical perspectives from which they start, perhaps, with opposite epistemological bases. We are referring, with the significance of this context, to the approaches that have been formulated on this subject by Robert Alexy and Jürgen Habermas. While it is true that the debate on the nature of the basis of judicial decisions has not been peaceful and its legal relevance has acquired special connotation from the processes of reworking and restructuring of the different social fabrics (the institutional, the psychological, and the normative, the psychological and the normative), it is also true that it is a question of the legal nature of the judicial decision, psychological and normative, among others) that have taken place for ius-philosophy in general and for the theories of argumentation in particular, since the 1950s, after the fateful moments experienced by humanity under the aegis of national-socialist irrationalism.

The approaches of Alexy and Habermas are those that have most directly addressed the concept of decision rationality and those that, separately, have provided the most coherent (intra)systematic formulations from a theory of practical discourse.

Ab initio, the different schemes that have attempted, directly or tangentially, to legitimize the theory of practical discourse referring to legal discourse and that have tried to explain

it from the perspectives of the audience, the speaker, or the spectator will be addressed. The argumentative-legal discourse as a rational expression of the interpretation of intersubjectivity presents, from the outset, a methodological drawback; this drawback consists in knowing whether or not its nature is conceived as unitary, which is what led Feteris to ask himself whether it was a question of identifying a specific legal argumentation or, on the contrary, whether the problem consisted in identifying a general system of argumentation applicable disciplinarily to legal phenomena (Feteris, 2007). The uncertainty that arises when attempting to precede a possible answer becomes evident when one tries to approach the recognition of the different approaches that have been formulated on the subject.

Models such as Toulmin's, characterized by the consideration of insufficiency with respect to the concept of formal validity in the understanding of the argument and that the author raised, for the first time, in his *Uses Of Argument* (S. E. Toulmin, 1958) and developed in *An Introduction to Reasoning* (Toulmin et al., 1979), or the one posed by La Nueva Retórica, formulated by Perelman in association with Olbrechts-Tyteca in *La Nouvelle Rêthorique* (Perelman & Olbrechts - Tyteca, 1989), as well as the one developed in its *Logic and New Rhetoric* which devises convincing scenarios, or the one presented in *Factuality and Validity* by Habermas (2010), which considers that law cannot be based on morality, or at least exclusively on it, which is equivalent to basing it on principles, from which a connection can be inferred with the approach put forward by Alexy, postulating that these (principles) are configured as mandates for the optimization of practical argument, mediating the conception of Atienza (2013) who conceives argumentative discourse as a technique. They lead to consider a possible renunciation of the pretension of accepting the exclusive existence of the exemplary discourse, the model discourse, or the model discourse, to which, because of its connotation or its authority, all the processes of interpretation of intersubjectivity with legal significance should be redirected.

Law and judicial decision are not two intangible concepts located beyond the rational understanding of a society structured on minimum standards of consensus, nor are they statements from which syntactic contents can be derived, concerning which certain criteria of truth can be affirmed or not; neither are they, in short, mere institutional labels that leverage the justification of a control system; on the contrary, they are conceptual dimensions necessary to signify cultural phenomena institutionally located with a nature marked by the application of interpretation processes full of meaning.

In the case of the concept of law, as stated by Atienza (2013), it is a complex phenomenon whose full understanding has been approached from very different epistemological spheres. These range from an exclusive understanding of the structural, characterized by the presence of legal normativism in its contents, to legal normativism that claims to understand the law as a normative whole, where each of its parts, the legal norms, fit together, one with the other, to build a systematic framework that constitutes a whole, the integrated legal whole, to the realm of the ideal.

The scope of the ideal conceives the concept of law from its purpose, visualizing it as fair law, a segment from which it is intended to answer the question of what is sought with the formulation of a concept of fair law or that which is inserted in the consistency or not of its criterion of rational validity. The above, goes through a functional perspective that inquires about its nature, about its contents of adaptability to the environment, governed by a socio-legal approach. In this context, efficacy cannot be privileged over validity.

It is in the field of ideality that the irruption of expressing a defining concept of the authentic critical dimension of legal science occurs; a core statement from which the objective institutionalization of a fair justice inserted in democratic schemes based on the consensus on minimum standards of guarantee of expectations is derived.

This concept is constituted by Alexy's so-called claim of correctness which he links, necessarily, with morality from the concept of justice. It is also from this perspective that Atienza (2013) considers that one can try to answer the question about the validity of law from a pragmatic view of argumentation as a turn or change of direction observable in the philosophy of law in recent decades. In other words, the interpretative "turn" that, in the appreciation of the legal phenomenon, has been perceived as given in the philosophy of law, towards a rational theory of argumentation, is increasingly concurrent in social processes, understood as a special form of expression of practical discourse and must be based on the definition of the nature of the concept of validity.

The issuance of the concept of validity, on the determination or not of its necessity and sufficiency in the understanding of the legal phenomenon, is based on the rationality in the issuance of the judicial decision.

The first of these is to determine what is the basis for the validity of a just judicial decision in a rational legal system and, secondly, to try to answer the question of the basis of the claim of the correctness of the sentence as a rational emission of the will of the State. If these two questions were not addressed, the system of legal interpretation would continue to wander along paths of legal uncertainty, acting contrary to its axiological plexus. It is this context that determines the scope of both the claim to the rational rightness of the argument and the claim to the legitimacy of the discourse.

## Conclusions

The structure, both logical and argumentative, of the legal rule presents two fully differentiated spheres of understanding; on the one hand, they are constituted as prescriptive statements that entail mandates or semantic structures of ought to be and, on the other, they are presented as descriptive statements of states of affairs that, reflecting a concrete action, perceptible by reason, can be qualified as true or not.

The understanding of the justification of these statements must be carried out in accordance with Alexy's approach, that is, from the perspective of the pretension of correctness, an argument that formulates a necessary connection between law and morality but understanding morality as minimum justice. However, when traveling this path, Jorgensens' formulation regarding the logical content of normative statements is presented as an obstacle to be removed, a reasoning rooted in the so-called naturalistic fallacy. The truth values assigned to normative propositions of a verifiable nature simply confirm or reject their assertion, while in other types of premises, the prescriptive ones, the argument varies in its axis, it is no longer constituted by a verification but by an interpretation, which is framed in its judgment of validity.

The so-called claim of correctness becomes an insufficient criterion for the rational determination of the correctness of a norm or of a legally binding decision because the nexus with morality (justice) conditions its validity. If the judicial decision is conceived as an emission with a normative sense that communicates something, its rational justification cannot be identified on the basis of a moral connection of a necessary nature, but in the recognition of positive legal values. It will then be another claim, that of recognition, which, by resorting to deontically functional operators, such as prohibited or not permitted or not prohibited or permitted, provides a possible solution to the problem formulated by the well-known Jorgensens' dilemma.

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