

ANALYSIS OF  
DIS/AGREEMENT –  
with particular reference to  
Law and Legal Theory

by

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KLUWER ACADEMIC PUBLISHERS

DORDRECHT / BOSTON / LONDON

A C.I.P. Catalogue record for this book is available from the Library of Congress.

ISBN 1-4020-1490-2

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Published by Kluwer Academic Publishers,  
P.O. Box 17, 3300 AA Dordrecht, The Netherlands.

Sold and distributed in North, Central and South America  
by Kluwer Academic Publishers,  
101 Philip Drive, Norwell, MA 02061, U.S.A.

In all other countries, sold and distributed  
by Kluwer Academic Publishers,  
P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

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Printed in the Netherlands.

**$I \leftrightarrow V$**

**Conclusion**



In this work I have demonstrated the existence, content and factual significance of a relatively well-delimited critically reflexive form (section I 4), in the discussion and decision aspect (section I 4) of analysis and argumentation formulated in everyday language (section I 5), and with a certain independence (section I 6). Through this I have also demonstrated the factual significance of dis/agreement analysis on the basis of this critically reflexive form.

The work has been essentially *descriptive*. I have mapped a set of fundamental proposition types; constellations of these proposition types into regularly occurring patterns; tenability criteria that are advanced in connection with the proposition types and patterns; and underlying interests that make themselves felt and can explain the language and argumentation. I have not recommended or rejected proposition types, proposition patterns, criteria or interests.

On certain points repetitions are necessary to a particularly high degree. The descriptive perspective is one of them, cf. the widespread propensity to interpret a writer's sentences as expressing normative propositions: as expressing rejection of or support for particular ways of acting. – The descriptive perspective has been emphasised in many ways: in headings, in introductory passages and in running text. In running text the descriptive perspective has been emphasised, for example, by linking the formulation “actually occurring” to the specific language and argumentation element that is being discussed.

I have sought to demonstrate the existence, content and factual significance of the critically reflexive form, in and through the *reader's own reality*. I have sought to do this, first, by letting the reader see the applicability of the concepts formed in this work to *his own language and argumentation*. I have sought to do this, secondly, by letting the reader see the applicability of the concepts formed in the work to the *work itself*: The critically reflexive form that is the topic of the work (“object language”), has been reflected into the work's own conceptualisations and analyses (“metalanguage”). The individual propositions and analyses in the work can be determined with respect to their kind and assessed with respect to their tenability in the same dimensions of which the work has given an account (section I 6; see for illustration, for example, section II B 9, where the work's definition theory is applied to the definitions in the theory itself).

The fact that the propositions and analyses in the work can be determined with respect to their kind and assessed with respect to their tenability in the same *dimensions* of which the work has given an account, does not mean that the *individual concepts* that the work has established, necessarily apply. First, it is not to be taken for granted that all concepts of *points or intervals in a dimension* apply: In the modality dimension I have distinguished between descriptive, normative and fused propositions (sections II A 5; F). In this dimension the propositions in the work are descriptive or normative, never fused, cf. section II F concerning the fact that the fused modality appears to be specific to lawyers' propositions *de lege lata*. Secondly, it is

not to be taken for granted that concepts of *combination of dimensions* apply: Under the name of “reconstruction and redefinition” I have introduced a concept of a distinct and widespread combination of the fundamental proposition types. None of the main analyses in the work has reconstruction and redefinition structure. For example, my definition analysis does not have such structure, since I do not take my point of departure in a presupposed denotation and say something about (the greater part of) this (sections II A 2 (1); B 2). And further, for example, my fusion analysis of propositions *de lege lata* does not have such structure either. True enough, in the fusion analysis I do take my point of departure in and say something about (the greater part of) a presupposed denotation, namely those propositions that lawyers call “propositions about what the law is”, “propositions *de lege lata*”, “legal dogmatic propositions” or “propositions about valid law”. However, I do not lay down through a new definition (a normative-innovative connotation specification) that fused modality shall be a criterion in a concept of ‘proposition *de lege lata*’ (section II F 2.1 (1)(b)(iii)).

For the reader to cognise the existence of the critically reflexive form in his own language and argumentation, I have linked my discussions to a broad spectrum of language and argumentation phenomena: in everyday life, in politics, in law, in other subjects, in science, and in philosophy. Only in this way has it been possible to give a *representative* picture of the area of application of the critically reflexive form, i.e. a picture of the *generality* of this form (section I 5.1). – It is not possible to give an exhaustive picture. I have, however, built on the assumption that the instantiations of the critically reflexive form given in this work will awaken *recognition* in the reader, in his capacity of himself being a participant in language and argumentation; and that the instantiations of the critically reflexive form given in this work will thus initiate in the reader, in relation to the reader’s own acts of language and argumentation, a process towards the cognition of the generality of the critically reflexive form. Such recognition requires that the reader qua reader at least to a certain extent *himself* exercises the critically reflexive form (the acts presented in the present work), i.e. does not only think about the critically reflexive form, but also *through* it. Only in this way is there created for the reader qua reader an instantiation here and now of the critically reflexive form, i.e. only in this way is there created for the reader that object of comparison in relation to his language and argumentation practice otherwise that is necessary for recognition to take place. A reader who qua reader is only willing to think about the critically reflexive form, who is only willing to be an observer, a reader who qua reader is not willing also to think through the critically reflexive form, who is not willing also to be a *participant*, will thereby deprive himself of a significant part of the evidence for the generality of the critically reflexive form.

In the demonstration of the area of application of the critically reflexive form, I have throughout returned to *lawyers’ language and argumentation*, including their language and argumentation *de lege lata* (language and argumentation concerning what the law is). – Seen from the point of view of the critically reflexive

form, lawyers' language and argumentation de lege lata is *only one* instantiation. Seen from the point of view of lawyers, the critically reflexive form is *constitutive of their legal power of judgement*:

Unity and continuity in lawyers' language and argumentation de lege lata are created in and through a continual *definitional process*: a process with denotation specifications as an institutionalised and central means of structuring (sections II B 5.4.2; V 2.4, 4.2.2 (1)), and with connotation specifications in the form of evaluation prescription (section II B 6.1) and accompanying factors to be weighed and balanced (section II B 6.2). This definitional process is tightly interwoven with *characterisations*: via persuasive definitions (sections II B 7.3 cf. III 2.4.2), via linking-terms (section IV 3.3.3), and via reconstructions and redefinitions (sections V 2.1–2.4). In this interweaving, both elements, both definitions and characterisations, often have a *fused descriptive and normative modality* (section II F): a modality that makes it possible for even a small group of lawyers to transform their personal standpoints into law by referring to one another (sections II F 2.1 (1), (3), cf. III 2.4.2). In this process of transformation, *evaluations and choices* play a large part (section II F 2.1 (2)), and *action influencing* is an actually widespread *interest* (sections III 2.2.5, 2.4.2, 3.2.3; V 4.2.2 (3)). These evaluations, these choices and this interest in influencing action are, however, throughout *clothed in language* that is *polysemous* between the descriptive, logical and normative, or that is *one-sidedly descriptive or logical* (sections III 2.4.2; IV 3.3 cf. 2–3).

By way of introduction in the present work I emphasised that the critically reflexive form that constitutes the perspective and topic of the work, has a *certain independence* in relation to controversial philosophical, moral, legal, political or similar questions; cf. the absence of certain univocal connections between the critically reflexive form and the answers to such controversial questions (section I 6). – The *process of proceeding through* the present work to its conclusion demonstrates this independence.

The independence of the critically reflexive form, inter alia in relation to the level of fundamental philosophical positions, is another point with respect to which repetitions are necessary to a particularly high degree, cf. the widespread propensity to interpret a writer's sentences as necessarily in conformity or conflict with philosophical "...isms". – On this point, however, there are no simple keywords that can serve as reminders, in the way that, for example, "actually occurring" can serve as a reminder of the descriptive perspective. Instead, I have linked to some discussions, in the case of which I assume there may be a particular risk of misunderstanding, a reminder of or an in-depth treatment of the perspective and topic of the work (see the subject index under "independence").

My use of the means mentioned, or of other means, for the emphasising of the descriptive (first indent above) or the independent (the present indent) cannot be interpreted antithetically. They provide reminders, and, as the case may be, treatment in greater depth in a particular context, of the perspective

and topic laid down by way of introduction (Chapter I). Perhaps there ought to have been more reminders. Relevant here are the two propensities of thought mentioned: to interpret a writer's sentences as expressing normative propositions, and as necessarily being in conformity or conflict with philosophical "...isms". The element of reminders of *another* perspective must inter alia rest on an estimate of readers' ability and will to follow the work on its own terms.

Now that the work is finished, there may be reason to state more precisely what the independence of the critically reflexive form *does not entail*. – Its independence does not entail that the critically reflexive form cannot be *totalised*. By "totalising" I am referring to asserting *that* the critically reflexive form is a fundamental and exhaustive rationality structure, and to justifying this assertion with *other* arguments than demonstration of the factual existence and more detailed content of the form, i.e. in other ways than in the present work. I neither assert nor deny totalising; this lies *outside* the perspective and topic of the work.

This may be illustrated by means of a *contrast* with Wittgenstein's discussions. – I use in regularly occurring critically reflexive statements (see the first and third indents above) inter alia formulations that Wittgenstein too uses (all references to him in what follows are to *Philosophische Untersuchungen*, Part I), for example "description" and "actually occurring language and argumentation" (compare section 124: "tatsächlichen Gebrauch der Sprache ... nur beschreiben") and "mapping" (compare section 122: "übersichtlichen Darstellung"). – However, the fact that totalising is not part of the perspective and topic of the present work, means that I do *not* share Wittgenstein's superordinate argumentation strategy: on the one hand of maintaining that he only demonstrates what everybody knows (compare sections 89, 109, 124, 126–29, 415), and that in philosophy one cannot say anything with another degree of necessity (compare section 599: "Es muß sich doch so verhalten!" ist kein Satz der Philosophie. Sie stellt nur fest, was Jeder ihr zugibt"), and on the other hand of delimiting his own work against empirical problems and against science (compare section 109) and clearly purporting that his own work says something with a particularly strong ("philosophical") necessity. – The consequence of Wittgenstein's argumentation strategy is that the terms "description", "actually occurring language and argumentation" and "mapping" are ascribed a new and controversial role: to mediate between on the one hand what can be said, and on the other hand that which is truly interesting, and which cannot be said but can only be shown. The fact that totalising lies outside the perspective and topic of the present work, means that such terminology is not part of the work.

Nor does the independence of the critically reflexive form entail that the form on its own terms (without totalising pretension) is without *philosophical significance* (section I 7). – Philosophy during the last hundred years has to a great extent focused on language and argumentation. In this, as in any other perspective and topic in philosophy, *knowledge of and contact with what exists* must be assumed to have significance for the quality of philosophy. For example, I assume that the



## CONCLUSION

quality of philosophy depends on knowledge of *the critically reflexive form* that constitutes the perspective and topic of the present work, and as part of this, knowledge of the following features of analysis and argumentation formulated in everyday language (some of these features are mentioned above in the summary of the role they play in the constitution of lawyers' power of judgement; in what follows they are mentioned in a more general form and in the order they have in the systematic presentation in the work): – modalities, functions and means of definitions (section II B); – different dimensions in the “relationship between the descriptive and the normative” (section II B 8 with further references), and more particularly, the occurrence of the phenomenon I term “fused descriptive and normative propositions” (section II F); – criteria that are used in the setting up of and choice between normative definitions, and criteria that are used in the setting up of and choice between descriptive characterisations (Chapter III); – “the flight from the normative proposition”, i.e. clothing evaluations and choices in language attire that is polysemous, or one-sidedly descriptive or logical (Chapter IV); – and how the fundamental elements of the critically reflexive form run together in certain language and argumentation patterns (Chapter V).

The present work has shown the diffusion and weight of this critically reflexive form. This diffusion and weight represent a *challenge* on the level of fundamental philosophical positions *too*. For even though I have claimed and demonstrated the absence of certain univocal connections between the critically reflexive form that the work brings into focus and the level of fundamental philosophical positions (section I 6 cf. the work as a whole), I do not claim the absence of any connection whatsoever. For one thing, absence of any connection whatsoever does not follow from the absence of certain univocal connections. For another thing, it is not very reasonable to assume absolute boundaries in thought; I have difficulty in seeing how thought might anywhere be able to escape the critically reflexive form that constitutes the perspective and topic of the present work: – By way of introduction and in relation to lawyers' propositions de lege lata I claimed that the conceptualisations in the work may be equated with a set of filters; for an apt picture of lawyers' propositions de lege lata, in contrast to an understanding of the individual aspects, one must look through several of these filters at the same time (section I 5.2). – By way of conclusion I shall as a hypothesis and in relation to language and argumentation more generally claim the same of the relationship between the perspective and topic of the work, and any other perspectives; for an apt picture of language and argumentation, one must always *also* make the perspective and topic of the present work part of one's reflections. – A philosophical position will therefore, other things being equal, *have a stronger footing* the more explicitly the position relates to and is able to integrate the acts of which the present work has demonstrated the existence and factual significance (compare section II G 2 (4)(c)(ii)).

However, the perspective and topic of the work, the critically reflexive form that has been discussed, is given *less attention* than the existence and factual

significance of this form would suggest. Neither in literature within general or legal philosophy, nor in any other literature have I been able to find any analysis of this form along the lines in the present work: no nuanced and coherent conceptual model for mapping the critically reflexive form, with accompanying demonstration of – the reality basis of the concepts – the internal coherence of the form (its system character and dynamics) – the independence of the form – and the factual significance of the form: what acts take place, and in what connections and for what language users these acts are significant. – In philosophy and logic the emphasis is more on totalising or idealising perspectives (see for example section II B 2.2). In psychology and sociology descriptive perspectives are no doubt adopted, but seldom in the form of mappings in the dimension of dis/agreement and tenability. *In theoretical respects* the critically reflexive form leads a *shadow existence*.

With the present work, and not until this, a *necessary condition* has come into being for discussion of what more nuanced connections might exist between the critically reflexive form that the work brings into focus and the level of fundamental philosophical positions: namely the condition that one *first* systematically maps the critically reflexive form. In this respect the work has a derived value.

In addition, the work has intrinsic value: In the title of the work I see the work as the analysis of dis/agreement. Since the topic is our own acts, viz. language and argumentation, the work can also be seen as *self-cognition*. The work has demonstrated acts we perform in our capacity of being participants in analysis and argumentation formulated in everyday language: be it in everyday life, in politics, in law, in other subjects, in science, or in philosophy. The work has demonstrated how in these different areas, in and through our own practice, we constitute and uphold the critically reflexive form that has determined the perspective and topic of the work. – With the present work we no longer relate blindly to a form in language and argumentation in and through which significant acts take place: a form at the core of our power of judgement.