



Treatise

Explicative and Ascriptive Justification of Human Rights

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Abstract

In this article I discuss the so-called ascriptive argument developed by Tomáš Sobek in his text *Explikativní zdůvodnění lidských práv*. Sobek's argument is conceived as an extension of Alexy's explicative-existential justification of human rights. Alexy's justification is based on the idea that whoever denies human rights within a discourse is in fact implicitly acknowledging them through their very participation in the discourse. This can be resisted by refusing to participate in the discourse and rejecting the existential part of Alexy's argument. Sobek's argument is based on the autonomy of choice of moral view, the effective production of which, according to ascriptivism, requires discursive participation. Alexy's argument is thus kept going by the very fact that moral views are ascribed to the agents. Thus, while the human rights denier may refuse to discursively defend his thesis and refuse to make Alexy's existential decision, he is unlikely to deny that he has a moral view of his own. I analyse the ascriptive argument in terms of its connection to Alexy's argument and to discursivism more generally, and then critically contrast it with the possibility of forming one's own moral view within an internal quasi-discourse. I also present a temporal critique of the discursive justification of human rights and reduce the impact of the ascriptive argument by presenting discursive deserters as non-autonomous in terms of their choice of moral view.

Key words: explicative-existential argument, discursive justification of human rights, Alexy, ascriptive argument, formulation of moral opinion, discursivity, commitment theory of assertion, social theory of assertion

Introduction

Alexy's discursive justification of human rights attributes dignity to persons who are recognized as free and equal, and therefore autonomous¹. It is through their dignity that it is then inferred that these persons have human rights. This justification of human rights is discussed in the literature under the label of the explicative-existential argument.

This argument has recently been addressed in scientific community, among others by Tomáš Sobek in his text *Explicativní zdůvodnění lidských práv*.² There he introduced the so-called ascriptive argument, which, in his words, aims to significantly narrow the metaethical scope in which Alexy's argument can be avoided.³ Sobek's article is undoubtedly a valuable contribution to the broader discussion of the implications of the explicative-existential argument, and I believe that the ascriptive argument deserves closer analysis.

The aim of my article is not only such an analysis, but above all a critical response. Indirectly, some of the conclusions of my article can also be used against Alexy's original argument.

In the second section, I briefly summarize Alexy's argument and its well-known, most frequently commented upon weaknesses. This will allow me to build on this ground in the third section to present in more detail Sobek's extension of Alexy's argument, which aims to eliminate some of the problems. I will also point out here the relevant differences and similarities between Alexy's and Sobek's argument. Section four will already be concerned with a critique that will be conducted partly as a direct response to the reasons that should lead to the execution of the ascriptive argument, and partly as an examination of whether there are any escape routes for those who do not wish to be automatically affected by the argument.

1. Alexy's explicative-existential argument

1.1 The explicative part of the argument and typical problems of the argument

Alexy's argument is based on the fact that it puts the sceptic in a corner who is trying to make an argument that human rights do not exist.⁴ The assumption of the sceptic's participation in the argument leads to a meta-argument against him, which is that by the very act of arguing, the sceptic implicitly recognizes the debating partner as free and equal. This sets off an inferential cascade that leads to the conclusion that the sceptic is in fact ultimately recognizing the human rights of the debating partner, as demonstrated by his discursive practice, despite the explicit proclamations he makes within that practice. This contradiction between the content of discourse and its presupposition is referred to as performative

¹ I would like to sincerely thank the reviewers for their suggestions on the paper.

² The article is called *Explicative Justification of Human Rights* in English. SOBEK, Tomáš. *Explicativní zdůvodnění lidských práv*. *Právník*, 2022, roč. 161, č. 8, s. 713-728.

³ *Ibid.*, s. 714.

⁴ It is relevant to mention that when this text talks about the justification of human rights, it is not about human rights granted by a catalogue as a standard source of law, but about rights in the moral sense, that is, the idea of rights that we have, regardless of whether it is written down somewhere or guaranteed by someone.

contradiction. Alexy captures the inferential cascade that leads to the recognition of human rights as follows:

*To recognize another individual as free and equal is to recognize him as autonomous. To recognize him as autonomous is to recognize him as a person. To recognize him as a person is to attribute dignity to him. Attributing dignity to someone is, however, to recognize his human rights.*⁵

Traditionally, several objections have been raised against this conception, some of them anticipated by Alexy himself.⁶ The most important are probably the following two groups:

(i) The inability to conduct a discourse

The discursive conception is challenged by this objection from the position of the universalism that assumes that every human being has human rights.⁷ If the explicative argument is based on the conduct of discourse, which is supposed to imply autonomy, and from there human rights are to be inferred, then the question arises whether individuals who are incapable of conducting discourse, and thus cannot be understood as autonomous according to the explicative argument, also have human rights. The universalist answer is that, trivially, they do, because they are also humans. The answer from a discursivist position should be, at least without further supplementary argumentation, rather negative. However, the pressure of the universalist objection is quite strong, which creates a motivation to seek a discursivist conception that will accommodate universalism. A typology of possible attitudes towards the universalist objection is presented by Sobek in his article, to which I take the liberty of referring in this regard.⁸

(ii) Limitation on discursive commitments

This category includes, on the one hand, objections based on the limitation consisting in varying degrees of recognition of the transferability of discursive commitments to contexts other than discourse, and on the other hand, objections based on varying degrees of participating in discourse.

As far as the recognition of transferability is concerned, the default situation is that the individual in question participates in the discourse and also recognises the freedom and equality of the discourse partner within it. Until then, the explicative argument is unthreatened. But subsequently the question is raised as to why this individual should also recognize the autonomy of the discussion partner outside the discourse?

In the case of limitation on discursive commitments based on varying degrees of participation in discourse, it is useful to further distinguish two subcategories: partial and complete withdrawal from discourse.

Complete withdrawal from discourse consists of the individual simply refusing to participate in discourse altogether. By refusing to argue, he or she naturally blocks the impact of the

⁵ ALEXY, Robert. Law, Morality, and the Existence of Human Rights. *Ratio Juris*, 2012, Vol. 25, No. 1, p. 11.

⁶ Ibid.

⁷ GILBERT, Pablo. *Human Dignity and Human Rights*. Oxford: Oxford University Press, 2018, pp. 181-182.

⁸ SOBEK. *Explikativní...*, s. 720-721. I will not deal with this objection in this text. While it is perhaps the most serious objection raised against the explicative argument, the ascriptive argument is not developed to respond to it directly, but rather to objections falling under the second category.

explicative argument, since for the argument the participation in the discussion is constitutive. If there is no implicit practice, there can be no explicit explication of that practice.

Partial withdrawal from discourse is usually understood as a personal restriction of the circle of argumentative partners to some specific group, where within this group discursive commitments operate in accordance with the explicative argument, but outside this group the effect of granting autonomy no longer occurs.

1.2 The existential part of Alexy's argument and the "solution" of objections

The common denominator in attempting to answer objections related to the limitations of discursive commitments, and in some sense also those related to the inability to conduct a discourse,⁹ is the "existential" part of the explicative-existential argument.

In order for Alexy's explicative-existential argument to work, it is necessary to avoid, as far as possible, limitation of discursive commitments. This, according to Alexy, should be achieved by making an existential decision, which consists in choosing to be discursive being; to consciously develop our discursive potential. Failure to do so would result in the sanction of not recognizing an important aspect of our humanness and losing the possibility of self-knowledge and self-identification.¹⁰

If we evaluate with Alexy the existential part of the argument in terms of its impact on objections related to different kinds of limitations on discursive commitments, it should be said that, according to Alexy, the existential part of the argument works best against the objection of complete withdrawal from discourse. The threat of the sanction mentioned above seems to him so serious that this objection should eliminate so-called true discursive deserters.¹¹

However, it has less impact, in Alexy's eyes, on the objection of partial withdrawal from discourse and in relation to the transferability of discursive human rights commitments to other contexts. In the case of the latter, one can help oneself with additional supporting arguments, namely those from autonomy, consensus and democracy.¹² In the case of partial discourse desertion, however, Alexy considers that the price paid by such a partial discursive

⁹ Indeed, objection connected with the inability to conduct a discourse can also be formulated as a limitation of discursive commitments. The inability to participate in discourse in the optic of some higher degree of generality may not be so different from the individual's unwillingness to participate in discourse. In both cases, however, it seems to me that there is a rather usual tendency among discursivists to approach the universalist position in such a way that neither so-called discursive deserters nor those unable to participate in discourse are excluded from having human rights.

¹⁰ ALEXY, *Law, Morality...*, pp. 12-22.

¹¹ Individuals completely withdrawing from the discourse.

¹² I will not deal with these arguments in detail here and refer the reader to a brief and understandable summary of their dynamics in: HAPLA, Martin. Explicative-existential Justification of Human Rights. Analysis of Robert Alexy's Argument in Context of Is-Ought Problem. *The Age of Human Rights Journal*, 2020, Vol. 8, No. 15, pp. 105-116.; HAPLA, Martin. The Problem of Recognition of Human Rights: Does Explicative-Existential Justification Really Work? *Archiwum Filozofii Prawa i Filozofii Społecznej*, 2021, Vol. 27, No. 2, pp. 5-15.

deserter is not so high as to be a deterrent, since he or she does, after all, realize her or his human potential even in partial discourse.¹³

But the problem Sobek addresses in his article goes a bit further. Sobek asks the question: What if the sceptic does not make the existential decision (despite Alexy's threat)?¹⁴ By asking this question, he brings back into play the genuine discursive deserters and the objection of complete withdrawal from discourse.

On this basis it is possible and, in my opinion, appropriate to look for the motivation of Sobek's text. His ascriptive argument is directed primarily against those who refuse to enter the discourse and refuse to make Alexy's existential decision.

2. Ascriptive argument

So, to recap, we are now in a situation where we have an individual who has at least a reserved relationship to human rights, and who avoids the impact of Alexy's argument by limiting discursive commitments primarily by refusing to enter the discourse. The individuals Sobek targets are mainly sceptics, relativists, and nihilists. In what follows, we will focus only on relativists, but the ascriptive argument should apply *mutatis mutandis* to other groups.

Sobek uses two definitions of relativism. Harman's definition is:

*[...] [M]oral right and wrong (good and bad, justice and injustice, virtue and vice, etc.) are always relative to a choice of moral framework. What is morally right in relation to one moral framework can be morally wrong in relation to a different moral framework. And no moral framework is objectively privileged as the one true morality.*¹⁵

The second is Kelsen's definition:

*[Moral relativism] means that there is not one moral system, but that there are several different ones, and that, consequently, a choice must be made among them. Thus, relativism imposes upon the individual the difficult task of deciding for himself what is right and what is wrong.*¹⁶

At this point, let me point out that the two definitions have in common, above all, that they both, in what is probably their most natural interpretation, refer to concept of choice. This is crucial to the ascriptive argument because, through autonomy of choice, the argument is, as we shall see below, ultimately constructed. However, it should also be noted that this is also perhaps its most serious deficiency. For in defining relativism, we can easily bypass the

¹³ Sobek, *inter alia*, resists this conclusion of Alexy's, i.e. his fear of partial withdrawal from discourse. At the relevant point - when I mention the commitment conception of assertion as the basis of discursivity - I will point this out in more detail.

¹⁴ SOBEK. *Explikativní...*, s. 713.

¹⁵ HARMAN, Gilbert. Moral Relativism. In: HARMAN, Gilbert. THOMSON, Judith J. *Moral Relativism and Moral Objectivity*. Cambridge and Oxford: Blackwell Publishers, 1996, p. 3.

¹⁶ KELSEN, Hans. *What is Justice? Justice Law and Politics in the Mirror of Science*. Berkeley and London: University of California Press, 1971, p. 22.

choice,¹⁷ thereby significantly diminishing the actual impact of the argument itself. We will come more closely to this in section four when criticizing the ascriptive argument.

2.1 Formulation of ascriptive argument

The ascriptive argument is as follows: An individual takes his own moral views seriously only if he also takes seriously the moral views of others.¹⁸

At first glance, it is obvious that the foundations on which the argument is based need some explanation. What does it mean, then, that an individual takes his own as well as others' moral views seriously?

A minimal interpretation might consist in understanding the moral views of others, and our own, as chosen. We would further infer that since I can choose (make an act of choice), and since I infer my own freedom from this, then I must also attribute this freedom to others if I understand their choices as acts of choice. To take others' moral views seriously on this interpretation, then, is to take them as the results of acts of choice.

This alone should be sufficient to trigger Alexy's inferential cascade even for a relativist who is defined, among other things, in terms of choice, as is the case in both Harman's and Kelsen's definitions. On this interpretation, I take it that we could theoretically completely avoid discursivism as the basis of the explicative argument. Sobek, however, does not seem to entirely accept such a straightforward, minimal interpretation.

The ascriptive argument, according to him, is supposed to function as "a hammer against anyone who wants to *discursively* isolate his moral view."¹⁹ An even stronger connection to discursivity than is given by this identification of opponents who should be subject to the "hammer" of the argument is the connection conveyed by the argument from the utility of discourse for the formulation of moral view. Sobek notes, as he develops the ascriptive argument, that he sees the only effective way to take one's own moral views seriously is to compare them with the moral views of others in discursive confrontation.²⁰ I read this statement as indicating that Sobek would like to keep the link to discursivism in some sense in his theory.

In order to fully develop the connection between the possibility of formulating one's own moral views and discursivism, it will be useful to first look briefly at the connection between discursivism and commitment theory of assertion. A brief examination of this connection will also allow us to understand why Sobek believes that Alexy need not worry about the partial discourse withdrawal objection.

¹⁷ After all, at least some of the variants of moral relativism to which Sobek refers in footnote 44 of his article are variants that do not operate with autonomous choice.

¹⁸ SOBEK. *Explicativní...*, s. 713, 725.

¹⁹ Ibid, s. 725. Emphasis added.

²⁰ Ibid, s. 713, 724, 728.

2.2 Discursivism and commitment theory of assertion

The discursive justification of human rights in Alexy's conception rests on the rules of discourse that follow from the so-called commitment theory of assertion.²¹ This consists in an interpretation of the speech act of assertion and the belief that discursive commitments are created by the realization of assertion.

Assertion is conceived as an act that consists in presenting *A* as something objectively true, that is, as being true for all.²² It also means, according to this theory, that the one who asserts *A* is indicating that he or she has adequate reasons to think that *A* is true. And from here the commitment part of the theory is derived, which says that the speaker has a discursive obligation, on the one hand, to present reasons for *A*, and on the other hand, to put up with demands of others to provide reasons for *A*. Commitments are constructed here as universal, since this corresponds to the objectivist presentation of *A* as true. Thus, the obligation to provide reasons for *A* is an obligation that the speaker has in principle towards everyone, and the right to ask critical questions after evidence of *A* belongs in principle to everyone as well. The purpose of these commitments is to seek reasons for the possible correction or retraction of a statement if it turns out not to be true. Such a practice is intended to lead to the public cultivation of truth.

By now it should be obvious why Alexy, when he embraces the commitment theory of assertion as the basis of discursivity, need not worry about the partial limitation of discourse. If the sceptic were to try to restrict discursive commitments to a certain group of people, towards whom he would accept discursive commitments but not towards others, then he would be denying the commitment theory of assertion because he would not be prepared to defend his position against everyone, or he would not allow everyone to ask critical questions on the evidence of his position. Thus, if a discursive theory is built on a commitment theory of assertion, then one cannot restrict discourse to a particular group of people, for this would in fact completely eliminate it.

This conclusion can be further escalated by linking the denial of the commitment theory of assertion to a resignation not only to discursive commitments but also to the interpretive part of the theory that conceptually links assertion to truth. This results in the conclusion

²¹ I note that this is not necessarily a speech act theory of assertion. This is clear from Peter Pagin's famous article *Is Assertion Social?* Cf. PAGIN, Peter. *Is Assertion Social?* *Journal of Pragmatics*, 2004, Vol. 36, No. 5, pp. 833-859. In this article, Pagin challenges the commitment theory of assertion (whatever social commitments it invokes) in general terms, saying that all social definitions of assertion are too broad, since one can always construct speech acts that, while meeting the conditions for being assertions, will not be ones. It is worth noting that this does not, of course, undermine the core of discursive human rights justification, but it does undermine the connection between discursivity and the speech act of assertion, which should be replaced by some specific act of assuming particular discursive commitments when accepting Pagin's conclusions. In this way, Pagin's result may have a significant negative impact on the attractiveness of evidential support for discursivism. I also note in this context Philip Pegan's critique of Pagin and Pagin's response. PEGAN, Philip. *Why assertion may yet be social*. *Journal of Pragmatics*, 2009, Vol. 41, No. 12, pp. 2557-2562. PAGIN, Peter. *Assertion is not possibly social*. *Journal of Pragmatics*, 2009, Vol. 41, No. 12, pp. 2563-2567.

²² Here we will not explore whether *A* denotes a proposition (or something else) and how this *A* relates to reality, because we would run into the problem of whether moral beliefs are beliefs about "standard" propositions, or about some specific type of proposition, or about something else entirely. This otherwise interesting exploration would unfortunately lead too far from the main topic.

that the one who constrains discourse (and also the one who withdraws from it or does not enter it) supposedly resigns to the concept of truth as such. This escalation seems to be approved, at least in some form, by Sobek, but it does not appear to me to be a fortunate one because it is burdened with the problem of overlooking the irreducibility of truth to discursive justification.²³ Either way, the objection of partial withdrawal from discourse collapses into the objection of genuine discursive desertion, i.e., complete withdrawal from discourse.

2.3 Moral views and the commitment theory of assertion (commitment theory of the electiveness of moral views)

The ascriptive argument was developed to target sceptics, relativists, and nihilists. In order to reach them, it was important, among other things, to deal with the problem of the commitment theory of assertion in its claimed orientation towards objective truth. For discursive deserters typically deny that truth cultivated in discourse is something they care about if it is supposed to lead to a single objective truth.

In addition to modifications leading to address this problem, reconstruction also needs to keep the connection to discursivism in mind. This can be done through the preservation of discursive commitments even in a context in which they are not used to cultivate correctness and generate a supposedly objective discursive truth, but for some other purpose.

The ascriptive argument can achieve these desiderata by embracing what I will call a commitment theory of the electiveness of moral views, which is in certain structural respects resembling a commitment theory of assertion.

The basic scheme of the commitment theory of assertion can be represented as follows:

- (i) If I assert A, I present it as true.
- (ii) If I assert A, I indicate that I have adequate reasons to think that A is true.
- (iii) I have a commitment to provide reasons for A.
- (iv) I have a commitment to put up with demands to provide reasons for A.

By contrast, the basic scheme of a commitment theory of the electiveness of moral views might look something like this:

- (i) If I choose A, I present it as elective as a moral view.
- (ii) If I choose A, I indicate that I have my own reasons to think that A is elective as my moral view.
- (iii) I have a commitment to provide reasons for A.
- (iv) I have a commitment to put up with demands to provide reasons for A.

²³ Although elsewhere in his article Sobek explicitly states that he is aware of this irreducibility. I am unsure whether Sobek conceives of truth strictly as a discursive category. Cf. also SOBEK, Tomáš. Metaethics of Human Rights: An Expressivist Approach. *Rechtstheorie*, 2020, Vol. 50, No. 4, pp. 493-519.; SOBEK, Tomáš. Právní pozitivismus. In: SOBEK, Tomáš. HAPLA, Martin (eds.). *Filosofie práva*. Brno: Nugis Finem Publishing, 2020, s. 51-52.

The structural resemblance is obvious and I think it may mediate the connection of the ascriptive argument to discursivity. The key theoretical concept of electiveness is that:

- a) various choice contents are assumed which satisfy the minimum requirements for what is *prima facie* choice content at all (i.e., if used for an ascriptive argument, these requirements must ensure that it is a moral view)²⁴, and
- b) various reasons are assumed here, which serve the respective contents as evidence.

Given that truth is not the primary goal in the theory of moral electiveness, it is difficult to establish a criterion for evaluating individual justifications. This is also why I drop the word “adequate” from the reconstruction. But why do I replace it with the phrase “my own”?

The dynamics of reasons is important for the ascriptive argument, that is, to ensure that the performer of the act of choice would not choose randomly, but on the basis of reasons relevant to him or her. The relevant reasons proper to the one who makes a choice are those which, from the pleiad offered, he or she accepts as his or her own in an informed way, or those by which he or she has previously supported the content of his or her choice and, in the present case, has informedly corroborated it. Discursive deliberation leading to the adoption of new reasons for a particular choice content, as well as the corroboration of reasons for a particular choice content, results, according to the theory of electiveness of moral views, in an increase in the degree to which a given choice content is the choice-maker’s own moral view.

Possible choice contents and possible justifications for these contents, according to this theory, can be recruited most effectively in discussion with other moral agents and in confronting those agents’ moral views and reasons. This is also consistent with the discursive commitments that are part of the commitment theory of the electiveness of moral views. The purpose here, however, is not to find the best reasons for the public good of discursive truth, but a kind of perfection as to one’s own reasons for accepting a particular elective content of moral view choice.

This kind of perfection is turned into the slogan “to take seriously” in the formulation of the ascriptive argument. To take one’s own moral view seriously, then, is to discursively consider elective contents and the reasons for them, thereby increasing the degree of perfection of one’s own chosen content and reasons for such a choice.

Why should the contents of choices and their justifications be effectively recruited primarily from the moral views of others, from the justifications they offer, and from confrontation with those reasons and contents? In answering this question lies the pragmatic vein of the ascriptive argument, which in turn brings the ascriptive argument closer to the existential vein of Alexy’s argument.

²⁴ Here, we need only stipulate that the contents of the choice meet such minimum requirements, without having to (and wanting to) specify what those minimum requirements are. However, these will probably include at least the requirements for an appropriate semantic category of choice contents, for an appropriate formulation of the content corresponding to its ontology, but they may also theoretically be substantive requirements, e.g. axiological etc.

2.4 Ascriptive argument as an existential argument

I believe that, with not too much misrepresentation, the ascriptive argument can also be seen as an extension of the existential vein of Alexy's original argument. After all, the general structure of the existential argument can be reconstructed in economic language: the price we pay if we do not choose discursivity, namely the loss of an important aspect of humanness, is too high. And it is this potential for intimidation that (usually) leads to the existential decision.

The ascriptive argument can be read similarly. The price for not taking seriously others' moral views along roughly the lines sketched in subsection 3.3 above, and thus not taking seriously one's own moral views, are certain threats, which thus also represent, on a positive level, pragmatic reasons for, for example, the relativist's acceptance of the background of the ascriptive argument.

The locus of attack for the ascriptive argument in relation to the relativist is that he or she has a moral view of his or her own. Indeed, a relativist who actively resists entering a discourse in which Alexy's inferential cascade would be directly activated is more likely not to deny that he has his own moral view. The very ascription²⁵ of a moral view, then, given the mechanisms described in subsection 3.3, and provided with the existential force of the ascriptive argument, is the basis for the belief that the relativist has, or has had in the past, reasons to take other people's moral views seriously, and is thus already steeped, figuratively speaking, in discursivity from the time of the formulation of his own moral view. Even if he or she does not actively enter into discourse, it is still possible to activate Alexy's inferential cascade through the autonomy of the relativist's choice of his or her own moral system, which, according to ascriptivism, is discursive.

Among the deterrent consequences that will occur if we do not take seriously the moral views of others, and thus our own, Sobek includes the following:²⁶

- a) the choice of a moral system will be irrational,
- b) it will be impossible to understand the reasons for one's own (moral) actions,
- c) there will be a resignation to one's own moral autonomy,
- d) there will be a resignation to one's own moral responsibility,
- e) it will be impossible to have one's own moral views.

Prima facie, these are extremely serious reasons, which are indeed to be feared on the part of a relativist. But is this really the case? I will take a closer look at the critique of the ascriptive argument in the next section.

3. Critique of the ascriptive argument

The critique of the ascriptive argument can be developed in several directions, each of which will provide different responses to the deterrent implications listed above. We can challenge

²⁵ Hence the name "ascriptive" argument.

²⁶ It is possible that there are even more in Sobek's article, but I don't think that more reasons would dramatically increase the "existential" price already presented as very high.

the discursive nature of the ascriptive argument, asking in particular whether the same result, i.e., the confrontation of reasons and elective contents, can be achieved with sufficient quality by other means than discursive practices. I will address this possibility in subsection 4.1 below. A second line of critique can be directed directly against autonomy as such. Here, the question is whether the ascriptive argument actually reaches as large a set of persons as it is being presented.

3.1 A critique of discursivity understood as a means for the development of autonomy

In the context of the critique of discursivity, I find it worth recalling the narrow line that can be drawn between argumentation and reasoning. Indeed, this line may be highly relevant here.²⁷ If we understand the relativist's reasoning, which is what the ascriptive argument is aimed at, as a kind of argumentation, that is, ultimately as an excerpt of discourse with the other, it is clear that we will remain more on the side of the ascriptive argument. If, however, we understand reasoning as an activity distinct from argumentation and taking place primarily within the individual sphere of the relativist, nothing in principle prevents us from holding an autoreferential conception of "discursive" commitments.

We can achieve this specifically, for example, by allowing the relativist to engage in internal quasi-argumentation with himself or herself. Such a relativist would make demands on himself or herself to justify hypothetical elective contents (i.e., moral views) and would also meet them. The conclusion of Alexy's cascade, on such a conception, would again involve the relativist alone, but that does not on first sight correspond to the discursive justification of human rights, from which we normally expect at least intersubjective character, universalist qualities, etc.

However, the informedness and choice of one's own reasons for adopting a moral view is not diminished by this conception, since the only mechanisms that are supposed to confer the desirable properties of "one's own" view and "one's own" justification are operative even in the context of hypothetical discourse. Thus, even such a relativist "takes seriously" his own moral view without having to enter the actual discourse.

This, of course, has direct implications for the various threats of an ascriptive argument based primarily on discursivism. I think it is worth a closer look at the deterrent consequence consisting in the irrationality of the choice of a moral system. In formulating this consequence from the position of the ascriptive argument, irrationality is highly likely to be understood as discursive non-justification. If this interpretation of what irrationality consists in is correct, then this conception has several separate difficulties:

(i) If the threat of irrationality is to be used to support discursivism, as required by the ascriptive argument, it should not also be defined in terms of discursive justification, since it is a circular reasoning.

²⁷ For relevant literature on the distinction between argumentation and reasoning, cf. for example the last paragraph of the first section of Catarina Dutilh Novaes' review article on argumentation. NOVAES, Catarina D. Argument and Argumentation. *The Stanford Encyclopedia of Philosophy*, published on 16.7.2021, cited 12.4.2023. Available online: <https://plato.stanford.edu/entries/argument/>.

- (ii) If the relativist is forbidden to rationally falsify discursivism, because any rational argument must by definition be discursive, then this is an immunization of discursivism.
- (iii) In the extreme case, if discursive rationality is understood as a personal quality that the relativist cannot satisfy by definition, and whose lack defames the person in question as insufficient in some respect, the deterrent consequence can also be understood as an *ad hominem* argument.
- (iv) In adopting a self-referential conception of discursive commitments and method of reasoning in quasi-discourse, the relativist still has the option of rationally choosing non-discursively, while preserving the maximum possible (and above all essential) of rationality understood as discursive justification. Thus, the choice of a moral system by the method of reasoning in quasi-discourse will not be irrational, and at the same time will not lead to the execution of an ascriptive argument.

As to the objection that if the relativist does not take seriously the moral views of others and, by implication, his own, he runs the risk of misunderstanding his own moral conduct, and as to the other objections, I leave it to the reader to modify point (iv) above so that it can be directly used against those objections. Such a modification is quite straightforward.

I would also note at this point that the critique of discursivity within the ascriptive argument, but also within Alexy's explicative argument, can also be conducted from a temporal perspective. It is not a complete critique, however, because it does not ultimately call into question the existence of discursive human rights as such. What is contested however is the permanence and thus the practical usability of such rights.

Even if we admit the impact of the ascriptivist argument on relativists, this in itself does not necessarily mean that the resulting theory will lead without further elaboration to the result to which it is intended to lead, i.e. a workable justification of human rights. The fact that for the moment in which the relativist formulates his or her moral view under the conditions of the ascriptive argument, the relativist finds himself or herself in a performative contradiction, and thus momentarily recognizes human rights, does not mean that at the next moment his or her recognition does not automatically cease.²⁸ The possible solutions and connections of discursive justification (whether Alexy's or Sobek's) to related theories, such as some form of institutional theory of rights, are not integral to the theory behind the ascriptive or explicative argument. A closer analysis of this objection is unfortunately beyond the scope of this paper.

3.2 Critique focusing on autonomy in the ascriptive argument

At the beginning of section 3 I gave a transcript of the definitions of relativism used by Sobek. What they had, among other things, in common was that a choice was made between moral systems from the relativist's position. As has been shown, the interplay between the autonomy of this choice and discursivism subsequently forms the background of the ascriptive argument and determines the range of persons on whom the argument applies and

²⁸ Here, in a way, the criticism of the late Kelsen resonates by analogy. In his late theory, it is not clear how norms are maintained in *sollen* if there is no one currently performing the volitional act. Cf. Kelsen, Hans. *Allgemeine Theorie der Normen*. Wien: Manzsche Verlags und Universitätsbuchhandlung, 1979.

thus the extent of the narrowing of the metaethical space in which the explicative argument can be avoided.

However, there is another escape route for relativists, which is to redefine relativism such that it does not depend on the concept of choice of moral system, thereby challenging the relativist's need to make autonomous choices.

If we use the neutral position to define relativism, which focuses on moral views and moral systems rather than on the persons of relativists, we can define relativism by three theses:

- (i) What is evaluated as right or wrong is always evaluated as such in terms of a moral system.
- (ii) There are several such moral systems.
- (iii) None of them is privileged.

In this definition, it is sufficient for the relativist that the point of view of a particular moral system exists and need not be actively chosen as, in Sobek's sense, a his or her "own" point of view. Choice is reinterpreted in this conception as something that happens to the relativist rather than something that he or she does.

Against such a reinterpretation, however, it can be objected that it is merely a technical adjustment motivated solely by the desire to avoid a natural interpretation of how the relevant moral system is activated. But the philosophical motivation behind this conception of relativism may be²⁹ more honest. Scepticism, especially epistemic scepticism, is commonly understood in a rather negative way, but here it may nevertheless be based on a modesty stemming from the possibility that the moral state of affairs (and indeed the ordinary state of affairs) may be different from what the discursive or, if you like, ascriptive moral view presupposes. This can be embodied in a reluctance to make a choice under a state of epistemic scepticism, which, after appropriate generalisation, translates into the idea that autonomy in the ascriptivist sense is not given.

The deterrent consequences of the ascriptive argument are significantly mitigated in this conception of relativism, and the price the relativist must pay is much lower. The irrationality of choice does not bother the non-autonomous relativist because he or she does not seek to discursively justify his or her own position. He or she understands the reasons for his or her moral actions because they are given by the system from which the non-autonomous relativist departs. He or she does indeed resign his or her own moral autonomy, but this does not bother him or her in the least. Again, moral responsibility is given by the default moral system, so the objection that he or she resigns his or her moral responsibility does not fall on him or her. The objection that he or she couldn't have his or her own moral views only applies on the assumption that moral views are necessarily discursive, which the relativist denies. So even this objection is not effective against him or her. The attack on autonomy, then, is primarily a challenge to the pragmatic implications of the existential interpretation of the ascriptive argument.

Sobek, within his article, anticipates the possibility of reinterpreting relativism so that it is not burdened by the choice of a moral system. Within the example where he assumes this reinterpretation, he then makes the relativist demand respect for the choice of his

²⁹ Unless we want to uncharitably suspect relativists of thereby preparing a free ticket to whatever moral views are ordinarily seen as problematic.

moral system and implicitly asks what the relativist's demand for respect is based on. Sobek's example goes like this:

Suppose [a moral relativist] says the following four sentences:

[(1)] I have chosen the moral system MS1.

[(2)] I have not considered any alternative to MS1.

[(3)] I am not interested in any alternative to MS1.

[(4)] Respect my personal choice of MS1.³⁰

Sobek eventually interprets sentence (1), even though it contains the word "choice", to mean that it may be a system not chosen by the relativist, a default. He then interprets sentences (2) and (3) to mean that the relativist is "locked into a moral system MS1 that he has not actually chosen."³¹ And in the context of this reading, he concludes that the demand for respect contained in (4) does not make good sense, because here the relativist is demanding respect for something that, in his own words, does not exist.

I suspect that this conclusion remains halfway there, because Sobek is not following his own reinterpretation of sentence (1). That a relativist cannot want to respectfully protect his own choice, the existence of which he explicitly excludes, is trivial. However, I believe that the relativist can make sense of this example, and especially of his or her demand for respect, at least if he or she is reasoning with an ascriptivist.

Since he or she does not regard any moral system as privileged, he or she is allowed to understand the moral system of the ascriptivist as binding and default for the ascriptivist. Given this position, the relativist can demand respect for his or her person from the ascriptivist because he or she recognizes that the ascriptivist may believe that there is autonomy from which the demand for respect can be derived. Thus, without the relativist having to proceed to his or her own beliefs about autonomy, the relativist is allowed to demand respect from the ascriptivist because the ascriptivist is obligated by his or her own system in which he or she ascribes moral views to the relativist. The operation of the ascriptivist argument here is thus asymmetrical.

If the relativist were to consider a general demand for respect, it would presumably be necessary to interpret sentence (4) in accordance with concepts outside the autonomy of choice, i.e., as a demand for respect for the fact that the relativist has a moral system, and since he or she did not choose it, he or she cannot not have it. Respect here, then, will consist more in a demand that the relativist not be discursively persuaded, since it can have no effect on him or her.

I find it appropriate to note at this point that Sobek presents a more careful elaboration of the variant of relativism, which also loosens the connection between relativism and the autonomy of choice, in section 6 of his article. There he discusses the so-called multimundialism defended by Carol Rovane.³² In a nutshell, this is a relativist position

³⁰ SOBEK. *Explicativní...*, s. 724.

³¹ Ibid.

³² ROVANE, Carol. *The Metaphysics and Ethics of Relativism*. Cambridge and London: Harvard University Press, 2013.

according to which moral worlds are logically separate, so that logical relations between moral views (and reasons) exist only within the same moral world. Thus, two opposing moral views are not understood as inconsistent (or even consistent), even though they would be so if they occurred within the same moral world. The relativist in multimundialism does not choose his or her moral world, but the inhabitation of it is the result of cultural adaptation to the living conditions of a given society. Sobek develops another argument based on his exposition of multimundialism, which he argues complements the ascriptive argument.³³ This argument consists in the execution of Alexy's cascade non-discursively, specifically by refraining from discussion with another person while respecting that person because of his or her inhabitation of a different moral world.³⁴ This argument is reminiscent of what I identified in subsection 3.1 above as the minimal interpretation of the ascriptive argument. Sobek's multimundial argument, then, does revise, at least in part, the connection between the ascriptive argument and discursivism. However, a detailed analysis and the implications of such a revision are beyond the scope of this paper.

Conclusion

In this article I have been concerned with the explicative-existential argument, but especially with Sobek's extension in the form of the ascriptive argument. First, I explained the motivation for seeking to supplement Alexy's argument, namely, the objection consisting in a refusal to participate in the discourse and a refusal to make the existential decision proposed by Alexy. Then, in the analysis of the ascriptive argument, I linked this to autonomy of choice on the one hand, and discursivity on the other.

The connection to autonomy of choice in the analysis was mainly driven by Sobek's definition of relativism, where relativism was chosen to represent groups that actively refuse to participate in Alexy's discourse and refuse to make existential decision.

When analysing discursivity, I started from its original connection with the explicative argument through the commitment theory of assertion. As I hope is evident from my paper, I do not think this connection is the most felicitous, among other reasons, because of the dubious status of the commitment theory of assertion as such. For the ascriptive argument, the starting point of the commitment theory of assertion is also not very suitable, because of the delineation of the range of persons on whom Sobek's argument should operate. This is because these persons do not have a positive relation to moral truth conceived as a public good given by discursive justification and its cumulative refinement. But it is precisely such a tendency toward general intersubjective truth that the commitment theory of assertion is aimed at. Thus, I have taken the liberty of analysing the discursivism in ascriptive argument proposed by Sobek as the only effective way of proceeding in the formulation of moral view in terms of the so-called commitment theory of the electiveness of moral view, which does not connect the choice of moral view with a claim to objective truthfulness, but is content with a certain tendency to perfection of moral view (and its evidence) individually for the

³³ He refers to it as a *multimundial argument*.

³⁴ SOBEK. *Explikativní...*, s. 726-728.

moral agent himself. This has led to an explanation of the conditions under which, according to ascriptivism, it occurs that one takes his or her own moral views seriously.

In the following part of the analysis, I have tried to grasp Sobek's argument as a kind of ascriptive-existential argument and I have presented specific threats as elements that increase the cost of not accepting the idea of a discursive formulation of moral view as it is presupposed by the ascriptive argument.

In the critique section of the paper, I focused on the issue of the conjunction of the ascriptive argument with discursivity and presented an alternative conception of how one can take his or her own moral views seriously without further resulting in the execution of the ascriptive argument, namely the method of hypothetical discourse. In light of this alternative, I have also attempted to deal briefly with the existential threats posed by the ascriptive argument, and I have also, albeit somewhat non-systematically, suggested a possible temporal critique of the ascriptive (as well as the explicative) argument.

In the second part of the critique section of the article, I discuss the issue of the redefinition of relativism and its connection to the autonomy of choice. Some such redefinitions are anticipated in Sobek's text as well and indicate, on the one hand, a mitigation of the impact of the ascriptive argument and thus a reduction of its operational space, and, on the other hand, possible prospects for further development in this area of inquiry. The latter may consist in a detailed analysis of the implications of multimundialism for the ascriptive and explicative argument, which unfortunately goes beyond the scope of this text, but nevertheless holds some promise for the future.

In the light of the critique, Sobek's argument, at least in its original version, can be assessed as successful only to a small extent. But of course, this assessment assumes that the analysis of the argument presented is correct, which may not be completely true: it is of course possible that some parts of the analysis may suffer from simplifications that may ultimately affect the correctness of the reconstruction. However, even if the above assessment is accurate, this does not automatically mean that the ascriptive argument will not be applicable, at least as a step on the way to further developing the justification of human rights through a theory of autonomy.