



# The Irish Public Discourse on Covid-19 at the Intersection of Legislation, Fake News and Judicial Argumentation

Davide Mazzi<sup>1</sup>

Accepted: 24 March 2022 / Published online: 11 April 2022  
© The Author(s), under exclusive licence to Springer Nature B.V. 2022

## Abstract

This paper aims to perform a multi-level analysis of the Irish public discourse on Covid-19. Despite widespread agreement that Ireland’s response was rapid and effective, the country’s journey through the pandemic has been no easy ride. In order to contain the virus, the Government’s emergency legislation imposed draconian measures including the detention and isolation of people deemed to be even “a potential source of infection” and a significant extension of *An Garda Síochána*’s power of arrest. In April 2020, journalists John Waters and Gemma O’Doherty initiated judicial review proceedings before the High Court to challenge such legislation, which they defined as unconstitutional, “disproportionate” and based on “fraudulent science”. The proceedings attracted widespread media coverage in what soon became a debate on the legitimacy of emergency legislation and the notion of ‘fake news’ itself. After a brief survey of the legislative background to Ireland’s Covid response, the argumentative strategy is analysed through which the High Court eventually dismissed Mr Waters and Ms O’Doherty’s challenge. Focusing on the process of justification of the judicial decision, the paper provides a descriptive account of the argument structure of the Court’s decision. This sheds light on the pattern of multiple argumentation through which the Court interpreted relevant norms in the Constitution and at once re-established the primacy of “facts” informing political decision-making at a time of national emergency.

**Keywords** Argumentation · Discourse · Structure · Ireland · Covid

---

✉ Davide Mazzi  
davide.mazzi@unimore.it

<sup>1</sup> Dipartimento di Studi Linguistici e Culturali, Università degli Studi di Modena e Reggio Emilia, Largo Sant’Eufemia, 19, 41121 Modena, Italy

## 1 Introduction

On 11 June 2020, the World Health Organization's special envoy, Dr David Nabarro, was invited to take part in a sitting of the *Oireachtas*.<sup>1</sup> Special Committee on Covid-19. On that occasion, he rated the Republic of Ireland's response to the ongoing epidemic "to a high level".<sup>2</sup> By then, the country's epidemic curve had flattened and the disease's  $R_0$  was well below 1. Despite widespread agreement that this had been achieved through rapid and effective response in March 2020, Ireland's journey through the pandemic was no easy ride. In order to contain the virus, the Government's emergency legislation imposed draconian measures including the detention and isolation of people deemed to be even "a potential source of infection" and a significant extension of *An Garda Síochána*'s power of arrest.<sup>3</sup>

The mixed reception of the Irish State's reaction to the pandemic was a strong motivation for this research, aimed at performing a multi-level analysis of the Irish public discourse on Covid-19. In Sect. 2, to begin with, the legislative background to Ireland's Covid strategy is briefly described. In Sect. 3, secondly, judicial argumentation is discussed as the research area closest to the investigation undertaken here. Section 4 is actually devoted to the analysis of the Irish High Court's argumentative discourse in *O'Doherty and Waters v. Minister for Health and Attorney General*, a case that made headlines as a symbol of the controversial nature of anti-Covid legislation. Section 5, finally, assesses the relevance of the study in the context of the EU public debate on Covid response.

## 2 Health Emergency and Legislation: Ireland's Battle Against Covid-19

Although suspicions were raised in parliament that the virus may in fact have reached Ireland from France between December 2019 and January 2020,<sup>4</sup> the first case of Covid-19 in the Republic was confirmed by the health authorities on 29 February 2020.<sup>5</sup>

As cases were soon to be notified from the whole of the country's 26 counties, the Government shut schools, colleges, childcare facilities and cultural institutions such

<sup>1</sup> The Irish noun *Oireachtas* literally translates as "deliberative assembly" (Ó Dónaill [1, p. 926]) and denotes the Irish Parliament in Dublin.

<sup>2</sup> "WHO envoy praises Ireland's response to Covid-19" (*The Irish Times*, 11 June 2020). URL: <https://www.irishtimes.com/news/who-envoy-praises-ireland-s-response-to-covid-19-1.4276533>. Last accessed: 7 December 2020.

<sup>3</sup> This is the Republic of Ireland's national police and security service (see <https://www.garda.ie/en/>). Last accessed: 7 December 2020).

<sup>4</sup> The hypothesis, based on initial reports made available to the Government, was formulated by then *Taoiseach* [Prime Minister] Leo Varadkar during the *Dáil Éireann* debate of 7 May 2020. Source: *Houses of the Oireachtas* (URL: [https://www.oireachtas.ie/en/debates/debate/dail/2020-05-07/2/#spk\\_2](https://www.oireachtas.ie/en/debates/debate/dail/2020-05-07/2/#spk_2), last accessed: 7 December 2020).

<sup>5</sup> "First case of coronavirus in Republic of Ireland" (BBC News, 29 February 2020). URL: <https://www.bbc.com/news/world-europe-51693160>. Last accessed: 7 December 2020.

as libraries and museums, while at the same time recommendations were issued to cancel large gatherings. After St. Patrick festivities were duly called off, the vast majority of businesses, venues and amenities were shut on 24 March.<sup>6</sup> In response to repeated calls to Leinster House for appropriate public health measures, the (by then) outgoing Government, led by *Fine Gael* and headed by Leo Varadkar TD, brought in two Acts of the *Oireachtas* in quick succession, i.e. the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020<sup>7</sup> and the Emergency Measures in the Public Interest (Covid-19) Act 2020.<sup>8</sup>

Interestingly, the language of both Acts invokes broad principles such as “common good”, “compelling reasons of public interest” and the “exigencies of public health”; goals like the “beneficial, effective and efficient use of resources” and “the need to act expeditiously”; and the constitutional “duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity”. It is in the name of such principles, goals and duties that it was allegedly “necessary to introduce a range of extraordinary measures and safeguards” and take “extraordinary measures” during an emergency period the Government reserved the right to extend “for such period as they consider appropriate”.

There is no denying the potentially ambiguous and highly controversial nature of phrases such as *common good* and *public interest*, let alone *extraordinary measures*. To begin with, the notion of common good is inherent in a view of society as a community whose members jointly pursue shared values and goals. As such, the common good “refers to that which constitutes the well-being of the community—its safety, the integrity of its basic institutions and practices, the preservation of its core values” (Jennings et al. [2, p. 6]). In this vein, the common good is by definition presented as an end the members of the community should strive to attain. Public interest has often been used interchangeably with common good. Yet although the two notions are somehow inter-related, a distinction seems worth drawing between them.

According to Jennings et al. [2], the concept of public interest became fashionable across the seventeenth and eighteenth centuries, when it was used in relation to goals such as national security and prosperity enlightened monarchs were expected to work towards through their foreign and economic policies. Later on, it became more intimately linked to the social philosophies of liberalism, utilitarianism and democratic pluralism. Behind such semantic shift, as it were, was a vision of society “as a rational alliance of primarily self-interested individuals whose own ‘good’ is made up of a complex of private interests. The public interest then refers to the aggregation of the private interests of individuals” coming together in an attempt to gain mutual advantage (Jennings et al. [2, p. 6]). While safeguarding the integrity of

<sup>6</sup> “Coronavirus cases now confirmed in every county in Ireland” (*The Irish Times*, 22 March 2020). URL: <https://www.irishtimes.com/news/health/coronavirus-cases-now-confirmed-in-every-county-in-ireland-1.4209389>. Last accessed: 7 December 2020.

<sup>7</sup> *Emergency Measures in the Public Interest (Covid-19) Act 2020*. URL: <https://data.oireachtas.ie/ie/oireachtas/act/2020/2/eng/enacted/a0220.pdf>. Last accessed: 15 December 2020.

<sup>8</sup> *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020*. <https://data.oireachtas.ie/ie/oireachtas/act/2020/1/eng/enacted/a0120.pdf>. Last accessed: 15 December 2020.

the social arrangements that regulate social life in an orderly manner, the promotion of public interest is therefore designed to advance individual interest by balancing competing benefits (Douglass [3, p. 112]).

At the outset, the reason why common good and public interest have sparked heated disputes in legal theory, political decision-making and public opinion is twofold. First of all, they have consistently posed genuine dilemmas because of their inherent vagueness (cf. also the adjective *reasonable* later in this section). In other words, they all too often appeared to be used as signifiers whose meaning is wide and whose boundaries (if any could be said to exist) have been blurred as a result. Quoting Federal Court of Australia's Tamberlin J. in *McKinnon v. Secretary, Department of Treasury* [2005], for instance, Wheeler [4, p. 14] draws attention to the indeterminate nature of the concept of public interest: "the expression 'in the public interest,'" the Justice argued, "directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances".

By virtue of their considerable flexibility, secondly, common good and public interest may be skilfully used to enhance the combined impact of 'loaded language', i.e. language that draws on connotative meaning so as to strengthen the speaker's position, and the deliberate effort to put forward propositions likely to be received favourably by a specific audience. In this respect, Zarefski [5] stresses the role of persuasive definitions, through which an entity is characterised in a wilfully biased manner, so that positive or negative attitudes are expressed about it while naming it. The name chosen to refer to the entity embeds an argument that the thing itself should be viewed from a certain perspective. Furthermore, the argument is never explicitly raised: rather, "the definition is put forward as if it was uncontroversial and could be easily stipulated. The argument in behalf of the proposed definition is simply 'smuggled in' through the use of the definition itself" (Zarefski [5, p. 404]). In our case, more specifically, controversial legislation may be pushed through and made more palatable to the public opinion by rebranding it as a set of measures designed to pursue the common good and public interest.

This has been typical of legislation containing "extraordinary measures", another phrase one comes across in the text of both acts discussed here. The implementation of such measures looms large in Giorgio Agamben's [6] theorisation of 'state of exception' in modern parliamentary democracies. Following the Italian philosopher, the First World War and its aftermath served as a laboratory to experiment with and put in place legal procedures that would soon lead to the state of exception as routine government practice, its distinctive traits being a temporary abolition of the division of powers. Underlying the state of exception has been the hypothesis that the balance of powers underpinning democratic regimes is devised to work in 'normal' circumstances, so to speak. In times of crisis, therefore, constitutional government can be altered to whatever extent is required to avert dangers and restore normality. By definition, such alterations almost invariably imply stronger government action.

Against this backdrop, the state of exception may result in the adoption of measures which by themselves and at first sight appear to be contrary to the rule of law and therefore "illegal" yet they are somehow perfectly "constitutional" in that they

are instrumental in establishing the new legal order dictated by the emergency (Santi Romano 1909, in Agamben [6, p. 38]). When this is taken to extremes, the state of exception is created on the grounds of emergencies arising less from substantiated facts than subjectively and arbitrarily. This is the case of exceptional circumstances declared as such by governments inclined to artificially and deliberately create gaps in the legal order that can only be filled through extraordinary measures. Accordingly, these are presented as a suitable remedy and one to be resorted to to eventually justify their ongoing implementation even as normality has been reinstated. Hence a trend, which Agamben [6, p. 16] sees as growing well into the late twentieth century if not beyond, to establish the state of exception more as a governance model and a paradigm than a mere ruling technique, as it were.

This is not to say that such was the state of emergency declared by the Irish Government in March 2020. However, the debate shaped by the issues raised above seems very relevant to Ireland as well as all other EU Member States where Covid-19 posed grave threats to the lives and livelihoods of so many people. If nothing else, it demonstrates the importance of compelling evidence based on scientific facts as a solid background to the emergency response coordinated by governments in the context of countries' legal order. This will be apparent from the analysis in Sect. 4 of the judgment mentioned later in this section.

Yet what were the concrete steps taken by the Irish Government through the two Acts of the *Oireachtas* introduced earlier on? On the one hand, the Emergency Measures in the Public Interest (Covid-19) Act 2020 mainly contained detailed provisions in relation to wage subsidy schemes, rent increases, evictions and skills shortages during the emergency period. As a result, for instance, landlords were not allowed to serve notices of termination in relation to the tenancy of dwellings and all proposed evictions were prohibited during the operation of the Act, while rent increases were prevented from taking effect over the same period. Moreover, with a view to the prospective deployment of the army with contact-tracing tasks, among others, people who had served in the Permanent Defence Force could be re-enlisted to "address a deficiency, within the Defence Forces, of necessary skills or expertise" (p. 27).

On the other hand, the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 introduced a range of truly radical measures. At the outset, these were adopted to provide for powers for certain medical officers to order, in certain circumstances, the detention of people suspected to be even potential sources of infection, along with enforcement measures in that regard. In such a context, considerable powers were thus conferred on the Government, with a particularly prominent role for the Minister for Health, while *An Garda Síochána's* power of arrest was significantly extended.

By partially amending the Health Act 1947 (Sects. 31, Sect 1), first of all, the Minister for Health was granted the right to impose restrictions upon travel to or from the State as well as from or within specific locations of the State, prohibit any event likely to pose a risk of infection and require "persons to remain in their homes" (p. 8), to name but a few. Secondly, any person found to contravene the provisions of a regulation made under Subsection 1, or established to have obstructed, interfered with or impeded a relevant person (e.g. authorised officers, medical officers of

health, officers from the Department for Justice and Equality) in the course of exercising a power conferred by such regulation—including, but not limited to, failure to provide information in their knowledge or provision of false or misleading information—would be deemed “guilty of a criminal offence” (p. 11). In relation to such behaviours, the discretionary powers of *An Garda Síochána* were to include more than directing people violating the rules to take steps to comply with the relevant provisions, as can be seen from the excerpt in (1) below<sup>9</sup>:

(1): (7) A member of the Garda Síochána who suspects, *with reasonable cause*, that a person is contravening or has contravened a provision of a regulation made under subsection (1) that is stated to be a penal provision, *may* [...] *direct the person to take such steps* as the member considers necessary *to comply with the provision*.

(8) (a) A person who, without lawful authority or *reasonable excuse*, fails to comply with a direction under subsection (7) shall be guilty of an offence.

(b) A member of the Garda Síochána *may arrest without warrant* a person whom the member has *reasonable cause* for believing is committing or has committed an offence under this subsection.

(9) A member of the Garda Síochána who has *reasonable grounds* for believing that a person is committing or has committed an offence under this section *may require the person to state his or her name and address*. [...]

(11) *A member of the Garda Síochána may arrest without warrant* any person whom the member has *reasonable cause* for believing has committed an offence under subsection (10).

(12) A person who commits an offence under this section is liable on summary conviction to a class C fine, or to imprisonment for a term not exceeding 6 months, or both.

By going through the passage, one’s attention is drawn to two key elements. The first is the extent to which the limits of police action are pushed, not surprisingly expressed through the modal *may*: not only are *Gardaí* allowed to direct people towards the desirable course of action, but they may also require them to provide their name and address, let alone arrest them without warrant. The second element is the great flexibility behind *Garda* prerogatives offered by the extensive use of the adjective *reasonable*. There is no denying that the scope of noun phrases such as *reasonable cause* and *reasonable grounds* is potentially very wide, justifying as they may have to the suspicion that somebody “is contravening or has contravened a provision” and the belief that they are committing or have committed an offence under various subsections. Likewise, the notion itself of *reasonable excuse* is open to interpretation and is susceptible to leaving wide margins for *Gardaí* to establish whether someone is “guilty of an offence” and therefore “liable on summary conviction” to a fine and/or a term of imprisonment.

Finally, the Act established close liaison between relevant persons, as previously defined, and *Gardaí*. This is so to the point that a possible scenario was outlined in

<sup>9</sup> In all the numbered examples emphasis (italics), where present, is mine.

Sect. 14 whereby the former may request *Garda* officers to “assist in the exercise of the power or the performance” of their functions, “including by way of temporarily detaining any person, bringing a person to any place, breaking open of any premises, or any other action in which the use of force may be necessary and is lawful”, under which circumstances the *Gardaí* so requested “shall comply with the requirement” (pp. 12–13).

With the country under a blanket lockdown copper-fastened by such measures, in April 2020 journalists John Waters and Gemma O’Doherty initiated judicial review proceedings before the High Court to challenge the above legislation, which they defined as unconstitutional, “disproportionate” and based on “fraudulent science”. Amid tight security around the Four Courts complex, Mr Waters reportedly defined the case as “one of the most important in our history”, while Ms O’Doherty added that her and Mr Waters’ claims were arguable, so that the Court should grant them leave to bring the challenge.<sup>10</sup> As Justice Meenan declined to grant leave, stating that it was incumbent on the applicants to prove that the threshold for granting permission had been crossed, the proceedings attracted widespread media coverage in what soon became a debate on the legitimacy of emergency legislation and the notion of ‘fake news’ itself. By reason of the heated confrontation over the case, the argumentative discourse in the judgment eventually delivered by the High Court on 13 May is analysed in Sect. 4.

Between mid-April and early May the National Public Health Emergency Team, the group within the Department of Health that oversaw and provided advice on the national response to Covid, announced that the growth rate of the disease had slowed down substantially. With the curve flattening and the country ready to reopen, the Government published its staged “Roadmap for Reopening Society and Business”. Based on a three-week review process and starting from 18 May, this living document issued a set of guidelines to inform a slow, gradual, step-wise and incremental reduction of the public health social distancing measures in place until then, while at the same time enabling the gradual return of social and economic activity. Under each heading—i.e., community health measures, education and childcare, economic activity, retail, personal services and commercial activities, culture, transport and travel—a total of five phases were set out. As regards culture, for instance, Phase 1 would only allow access to open outdoor public amenities and tourism sites, where people are non-stationary and social distancing can be easily maintained, while Phase 5 would involve the reopening of theatres and cinemas.

The country moved through the first three phases as seamlessly as it possibly could, as a new Government eventually took office in late June. For a short spell, it appeared realistic to have the Irish economy bounce back earlier than expected, with Phase 5 within easy reach across the board. From around mid-August, however, the disease reproduction rate slowly began to increase again, ultimately causing a sharp

<sup>10</sup> “Gemma O’Doherty and John Waters’ challenge against coronavirus laws to be heard by High Court next week” (*Irish Independent*, 28 April 2020). URL: <https://www.independent.ie/irish-news/courts/gemma-odoherty-and-john-waters-challenge-against-coronavirus-laws-to-be-heard-by-high-court-next-week-39163911.html>. Last accessed: 8 December 2020.



rise in confirmed cases in settings such as meat processing plants. Not only did this result in a three-week regional lockdown for Counties Kildare, Laois and Offaly, but it came as a foretaste of the second wave of the pandemic between September and October 2020.

Under *Taoiseach* Micheál Martin, the Government replaced the extant “Road-map” with a new, comprehensive plan intended to navigate the country’s way across the remainder of the pandemic, at least until the rollout of a safe vaccine. This was to be the “Plan for Living with Covid-19”, a document that took a balanced approach to coping with the emergency by prioritising schools, early-childhood education and childcare services along with the protection of livelihoods, while at once enforcing public health guidelines as the need may arise. In this vein, a new framework of restrictive measures was introduced in the form of five levels, the country being categorised as at Level 2 when the plan was implemented.

As the situation further deteriorated and the number of daily cases stabilised around the 1,000 mark in the first half of October, the Government took the momentous decision to move the whole country to Level 5 from midnight of 21 October until 1 December. Under Level 5, people were requested to stay at home and only allowed to exercise within a 5-km radius of their homes, non-essential businesses and services were shut, public transport was downscaled to 25% capacity and pubs, cafés and restaurants were only permitted to run takeaway or delivery services. Yet in spite of all similarities with the spring lockdown, schools remained open.

With the number of confirmed cases receding to 200–300 a day by the end of November, Ireland went back to Level 3 (with modifications) in early December, in order to allow for inter-county mobility over the festive period and enable people to celebrate Christmas in a meaningful way. The Government was adamant that restrictions might have to be reintroduced at the end of the Christmas break, and the country would then move through the five-level system as appropriate, with hopes growing over the European Medicines Agency’s approval of vaccines to be distributed across EU Member States including Ireland from early 2021.

Although the second (and indeed, the subsequent) surges of the pandemic fall outside the analysis performed in the rest of this paper, they were briefly discussed here in order to chronicle the whole of the country’s journey through Covid-19. By virtue of the extreme gravity and unprecedented nature of the first wave of the emergency, however, the focus of this investigation will be on the controversy fuelled by the extraordinary measures adopted by the Irish Government in March 2020. Since the case study was conducted on the High Court proceedings mentioned earlier on, the next section briefly introduces the study of judicial argumentation as a major research area relevant to the paper.

### **3 The Study of Judicial Argumentation: Insights from Legal Theory and Argumentation Analysis**

According to Bernard Jackson [7, p. 12], the agenda of legal semiotics is “largely set by the concerns of legal philosophy: the nature and structure of the legal system and the argumentation used to resolve difficult issues of law”. This view is shared



by Balkin [8, p. 1835], whose assumption is that “one of the most common methods of legal semiotics is studying the recurring forms of legal argument”. Although this paper does not implement legal semiotic methods, the core of the investigation definitely lies in a study of argumentative discourse in judicial settings.

In liberal and democratic countries, it is well known that in interpreting and applying the law, judges make decisions they are expected to justify. The central questions addressed by legal theorists and legal argumentation scholars concern the discretionary space judges make use of as they interpret and apply legal rules: do judges actually take up and benefit from a discretionary space? If so, how can this be best described? To what lengths are judges allowed to go to exercise their discretion and how are they held accountable for the decisions they make in justifying their rulings? More specific questions on the modes of justification delve into the methods and forms of reasoning in legal interpretation across legal contexts and legal cultures. With regard to the role of argumentation in legal justification, burning issues typically concern the types of argumentation underlying the justification of decisions made in the process of interpretation.

From a legal theoretical perspective, scholars have been discussing how legal decisions can be justified rationally, which steps should be taken in justifying a legal decision and, finally, how these steps may be defended. A dominant theme in Robert Alexy's [9] research on legal argumentation is precisely the way normative statements instantiated by legal decisions can be justified rationally. In Alexy's view, a normative statement is not true or acceptable unless the judgement could be the result of rational discourse. The underlying notion is that the rationality of the justification of legal decisions goes hand in hand with the quality of procedures in the justification process. Since the acceptability of normative statements is correlated with a certain procedure, Alexy's theory is by all means a normative procedural theory. In this context, he defines legal argumentation as a form of practical argumentation and formulates a general theory of rational practical discourse that can be adapted to the domain of legal argumentation.

The theory of general practical discourse indicates the procedure for a rational discussion. As an ideal model, this in turn forms the normative standard for the assessment of actual discourses occurring in everyday practice. In the general theory of rational practical discourse, the procedural rules lay down the conditions under which normative statements can be justified. By definition, rules of general practical discourse cannot ensure the consensus fundamental to legal discourse, so that the general theory requires adjustment for legal discourse. Of note, Alexy outlines the specific legal implementations and adaptations demanded by a theory of rational legal discourse, which is viewed as a special case of general practical discourse.

Following Peczenik [10], the justification of legal decisions requires proof that these are acceptable on both legal and rational grounds. It follows that two modes of justification are necessary: first of all, a contextually sufficient legal justification; secondly, a deep justification. Based on the first mode of justification, evidence is provided that decisions can be adequately defended within the context of the legal tradition. As for deep justification, conclusive arguments should be advanced that the legal starting points and argumentation rules are defensible in the light of general moral grounds. Peczenik therefore puts forward a theory behind the two modes

of justification. On such grounds, he suggests that the two forms of justification are associated with two components of the theory. One is designed to elucidate the requirements a legal justification must meet, so that a specific legal rule underpins a legal decision, while the other outlines the requirements that a deep justification is to fulfil.

In his account of justifications of legal decisions, MacCormick [11] also identifies two levels. In the first place, decisions are defended through the interplay of legal rules and the facts of cases. Where these have been established to satisfy the conditions of the rule, the argument supporting the decision can be seen as a deductively valid one. MacCormick refers to this kind of justification as deductive justification. In hard cases, however, where it is debatable whether facts are actually encompassed by the legal rule, deductive justification is only enabled after interpretative problems have been sorted out.

Accordingly, a second level becomes relevant, whereby the interpretation is justified by taking its consequences into account alongside the coherence with rules and values at work in the legal system. At this level, two forms of argument may be detected: the first is inherently consequentialist and serves the purpose of defending the decision in that the rule that is part of the interpretation has desirable consequences. The second form of argument upholds the decision by showing that the ruling is in keeping with the valid legal order. Essentially, what is argued is that there is consistency between the ruling and a wide range of legal principles and rules.

In the field of mainstream argumentation studies, the justification of judicial decisions has been thoroughly investigated from the disciplinary angle of pragma-dialectics. The pragma-dialectical theory has developed a flexible framework for the analysis of argumentative discourse in a wide range of contexts including politics, medicine, the academia as well as judicial disputes. In this regard, it views legal justification as an argumentative activity type and focuses on the role of judges in their capacity as officials entrusted with the resolution of differences of opinion on the merits [12]. Different argumentative patterns in legal justification are reconstructed and characterised as prototypical configurations arising from the obligations of courts to justify their decisions. At the core of the pragma-dialectical programme is the identification of those argument schemes with a function in the justification. For each scheme, therefore, the investigation scrutinises the way courts' reactions to different critical questions contribute to different argumentative patterns.

Argument schemes are forms of reasoning that create "a specific justifying relationship between the applied argument or [...] the applied arguments and the standpoint at issue" (Van Eemeren et al. [13, p. 137]). Schemes are "based on a causal relation, a comparison relation, and a symptomatic relation and it is specified what the critical questions are that are relevant as evaluation criteria for the application of the schemes" (Feteris [14, p. 349]). In turn, the range of options available to arguers as constellations of schemes lead to the reconstruction of patterns, namely sets of "argumentative moves in which, in order to deal with a particular kind of difference of opinion, in defence of a particular type of standpoint a particular argument scheme or combination of argument schemes is used in a particular kind of argumentation structure" (Van Eemeren [15, p. 4]). The reconstruction of schemes and patterns leads to uncover the structure of argumentative discourse, notably the

overall articulation of schemes into multiple or coordinative argumentation supporting a standpoint.

It is noteworthy that pragma-dialecticians are interested in evaluating argumentative discussions or texts, in order to determine “whether the argument schemes that the defender of a particular standpoint uses are in fact appropriate and correctly applied” ([Van Eemeren et al. [13, p. 137]). In this work, by contrast, the approach is primarily descriptive rather than normative [16, 17]: in the following section, therefore, the emphasis is on the retrieval of the main argument schemes through which the High Court of Ireland addressed the challenge brought by John Waters and Gemma O’Doherty against the Irish Government’s Covid-19 legislation, and it justified its decision to refuse their application seeking leave to bring judicial review proceedings.

#### **4 O’Doherty and Waters v. Minister for Health and Attorney General: A Case Study on Judicial Argumentation in the Covid Era**

The Irish High Court was established in 1961 in accordance with Article 34 of *Bunreacht na hÉireann* (the Irish Constitution). It comprises the President of the High Court, notably the second most senior judge in the state, “and such number of ordinary judges as may from time to time be fixed by Act of the Oireachtas” (Byrne et al. [18, p. 151]). The Court operates as a superior court of record: as such, it has full original jurisdiction in as well as power to determine all matters of law or fact, civil and criminal. It hears appeals to Circuit Court judgments in civil matters and, most importantly, it has the power to assess and determine the validity of any law in light of the letter of the Constitution. It is in this last capacity that the Court was to hear submissions by Mr Waters and Ms O’Doherty as the applicants in case *O’Doherty and Waters v. Minister for Health and Attorney General*, as anticipated earlier on.

The applicants sought the leave of the Court to bring judicial review proceedings challenging the constitutionality of the emergency legislation discussed in Sect. 2. Moreover, they challenged the steps taken and the procedures adopted to enact the legislation, to the effect that *Dáil Éireann* and *Seanad Éireann* (the Houses of the *Oireachtas*) as well as the *Ceann Comhairle* (the Speaker of the Lower House) were also involved in the case as notice parties.

In this section, the applicants’ arguments are reviewed and the argumentation in Justice Meenan’s judgment of 13 May is reconstructed. Yet it is instrumental in the analysis to begin by briefly reconstructing the immediate health-emergency, political and legal context of the case. The health-emergency context, first of all, has been broadly provided in Sect. 2. In detail, however, it was as follows at the time the applicants’ case was heard before the High Court: by 6 May, a total of 22,248 confirmed cases of Covid-19 and 1375 deaths from the disease had been recorded in the State. The political context, secondly, was inevitably dictated by the outcome of the general election held on 8 February 2020. With a hung parliament unable to forge a strong coalition and therefore to elect a new *Taoiseach* straight away, under Article 28.11.1 of the Constitution the outgoing *Taoiseach*, Mr Varadkar, and the members

of the outgoing Government continued to carry on their duties. In fact, this was the Government that enacted the provisions which were to be the bones of contention in the case examined here.

The legal context to proceedings, finally, was represented by the case law relevant to filing actions before the High Court. This is extensively reported between paragraphs 27 and 31 of the Court's own judgment. As Charleton J. argued in *Esme v. Minister for Justice and Law Reform*, first of all, "a point of law is only arguable within the meaning of the relevant decisions if it could, by the standards of a rational preliminary analysis, ultimately have a prospect of success" (p. 12). Unless the thrust of the argument indicates that reasonable prospects of success have been demonstrated, therefore, the Court should not even grant leave to commence proceedings. Cases found to be contrary to case law or the clear wording of constitutional provisions have by definition no chance to be brought to court and the burden of proof to show that cases are arguable in law is placed upon applicants.

Secondly, O'Donnell J. clarified in *Mohan v. Ireland* that permission to challenge the constitutional validity of a piece of legislation primarily depends on applicants' status as being "adversely affected in reality" (p. 14). In other words, Courts should not be drawn into generalised review of the validity of legislation, nor are they to turn into judicial fora where someone that lost the argument in parliament is allowed to have it replayed somewhere else. In order for courts to justifiably exercise their jurisdiction, there must plausibly be an adverse effect upon applicants' interests.

In this kind of political and legal context, the applicants sought the Court's leave and aimed at one main relief. This was an order to have the Government's Covid legislation declared and rendered null and void on two grounds: to begin with, its repugnancy to a variety of provisions of *Bunreacht na hÉireann*; in addition, its enactment, which from the applicants' perspective was invalid in that it contravened Dáil Standing Orders of business 2020, the Interpretation Act 1937 and the Statutory Instruments Act 1947.

Moving on to the applicants' submissions in support of their case, at the outset they issued a lengthy 34-page statement. The first few pages came under the heading "background facts": it is noteworthy that the facts they reported to sustain their narrative about the spread and consequences of Covid-19 in the Republic only covered the period until 16 March 2020. No new additional facts were therefore deposed to by the applicants as occurring between that date and early May, when the case was due to be heard.

The substance of the applicants' arguments, furthermore, was that the legislation enacted by the *Oireachtas* was "wholly disproportionate" (p. 16) to the incidence and effects of the virus, especially in those sections restricting people's movements. No state of emergency ever having been declared, they contended, such provisions had neither legal nor clinical justification, and there was no evidence that they had actually worked in comparable situations. Article 28.3.3 of the Constitution identifies "war or armed rebellion" [19, p. 96] as the sole situations to be classified as 'emergencies', they added: Covid-19 may be categorised as neither of the two. In a trenchant critique of the Government's *modus operandi*, the applicants then disputed the accuracy of the figures related to the number of people infected by the virus as well as the number of deaths. Finally, they referred to the first named respondent,

i.e. Minister for Health Simon Harris TD, “as acting on ‘fraudulent science’” and causing “the arrival of a ‘police state’”, to such an extent that they drew a parallel between Ireland and Nazi Germany (p. 18).

From a constitutional perspective, the articles putatively breached by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the Emergency Measures in the Public Interest (Covid-19) Act 2020 were as follows: Article 40, intended to defend the personal rights of citizens such as, among others, personal liberty and the right not to have one’s inviolable dwelling forcibly entered; Article 45 safeguarding citizens’ right to “find the means of making reasonable provision for their domestic needs” [19, p. 178] through their occupation; and Article 15.2.1 which, in so far as it confers the “sole and exclusive power of making laws” [19, p. 38] on the *Oireachtas*, allegedly showed that the Minister for Health was not entitled to legislate on his own initiative.

In considering the applicants’ submissions, the High Court noted that the two disputed Acts set out the statutory basis for restrictions on the free movement of people, the closure of premises and the prohibition of certain events. These were imposed to halt the spread of Covid-19 and as such were to affect the lives and potentially the livelihoods of every person residing in the State. Not surprisingly, this included the applicants, to the effect that at least one of the tests of admissibility recalled earlier on—namely the applicants’ status as being “adversely affected in reality”, as per O’Donnell J.—was met. Consequently, Mr Waters and Ms O’Doherty had standing to challenge the constitutionality of the relevant sections of both Acts. This being the case, the High Court moved on to consider whether their case was otherwise arguable along with the merits of their arguments. On the Court’s behalf, the judgment was pronounced by Meenan J., who dismissed the application seeking leave to bring judicial review proceedings. The rest of this section analyses Meenan J.’s argumentation to justify this decision.

Overall, the Court’s argumentation is composed of two main strands. The first addressed the applicants’ claim that Government legislation was disproportionate and in breach of *Bunreacht na hÉireann*; the second dealt with the veracity of the data on which Government action was based. A third, lower-level, strand was related to the procedures through which the *Oireachtas* passed the two Acts at stake.

Viewing this through the lens of argumentation theory (Sect. 3), Meenan J.’s standpoint is supported by a pattern of complex argumentation, in which the combination of two argument schemes—i.e. causal and *ad hominem* argumentation—is used. As we will see, the articulation of schemes supporting the main standpoint (S) is one of multiple argumentation. In addition, Meenan J. avails of a simple legal syllogism to dismiss the applicants’ qualms over the parliamentary procedures that led to the adoption of the two Acts.

In relation to the first strand, the Court began by pointing out that the personal rights comprised under Article 40 of the Constitution are not absolute. Indeed, the fact that they may be restricted is inherent in the wording of the various paragraphs of the Article: inserted in or appended to these are important provisos formulated through adjuncts such as *save in accordance with law*, *as best it may* and *as far as practicable*, which qualify their normative scope. Furthermore, Meenan J. advanced causal argumentation in defence of the sub-standpoint  $s^1$  that the

applicants' case on the disproportionate nature of the restrictions in the Acts is unarguable, as can be seen from example (2) below:

(2) The applicants accept this but maintain that the restrictions and limitation of rights provided for in ss. 31A and 38A are “*disproportionate*”. To begin to make an arguable case that these restrictions and limitations of rights are disproportionate, it was necessary for the applicants to put on affidavit some facts which, if proven, could support such a view. There was a complete failure by the applicants to do so. The narrative in their “*statement required to ground application for judicial review*” ended on 16 March 2020 when some 268 cases of Covid-19 and the deaths of two persons were reported. The application for leave was made *ex parte* four weeks later, on 15 April 2020, without the narrative being updated. The applicants' grounding affidavit was sworn on 5 May with still no update in the narrative. This was, now, some seven weeks after the date on which the applicants had ended their narrative. It is worth noting that on 5/6 May, the Department of Health stated that there were some 22,248 cases of persons having Covid-19 and 1,375 deaths. The applicants made no reference to this.

In causal argumentation, “the argument is presented as if what is stated in the argumentation is a means to, a way to, an instrument for or some other kind of causative factor for the standpoint or vice versa” (Van Eemeren and Grootendorst [20, p. 97]). As a result, the scheme takes the form reported below (Van Eemeren et al. [21, p. 101]): in its application to the case at hand, X is ‘the applicants’ case that restrictions and limitations are disproportionate’; Y is the property of ‘being unarguable’; and Z equals ‘not being based on updated facts’. In other words, a causal link is argued to exist between a lack of facts corroborating the applicants’ case and the fact that the case itself is unarguable in Court:

Y is true of X.  
because Z is true of X.  
and Z leads to Y.

In order to evaluate the effectiveness of the scheme, a number of critical questions are suggested by pragma-dialecticians (Van Eemeren et al. [13, p. 165]): 1. Does the established cause, in fact, lead to the mentioned result? 2. Are there any other factors that must be present together with the proposed cause to create the mentioned result? 3. Could the proposed result be caused by something else as well? The answers to such questions are crucial to the arguer determining whether or not to put forward any other scheme in support of the main standpoint.

While there is little doubt that question 1. can be answered in the affirmative—in a modern democratic State, it would be hard to believe that unsubstantiated narratives can be sustained in Court—the answer to questions 2. and 3. tends to shift the focus towards other factors as well. One of these is the competency profile of the subjects involved in the State’s Covid narrative, namely the Minister for Health as opposed to the applicants, who alleged he was acting on the basis of “fraudulent science”. While the Minister acted on data from the Department

of Health sanctioned by NPHET (National Public Health Emergency Team, cf. Section 2) as an independent body, any lack of reliability on the applicants' part would definitely be the nail in the coffin for their case. For this reason, Meenan J. decided to consider the applicants' background, which led him to enhance the causal argumentation in (2) above with the direct *ad hominem* argumentation in (3) below:

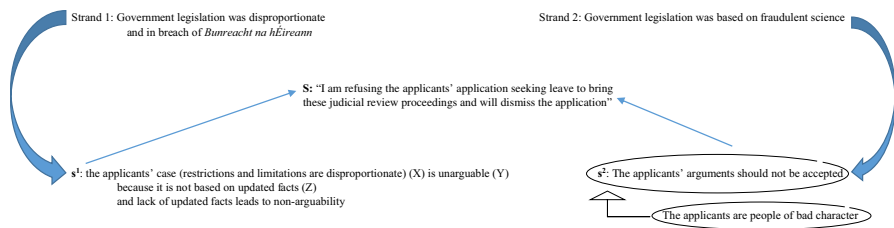
(3) Unfortunately, in making their case for leave the applicants, who have no medical or scientific qualifications or expertise, relied upon their own unsubstantiated views, gave speeches, engaged in empty rhetoric and sought to draw an historic parallel with Nazi Germany—a parallel which is both absurd and offensive. Unsubstantiated opinions, speeches, empty rhetoric and a bogus historical parallel are not a substitute for facts.

With argumentation *ad hominem*, someone attacks somebody else “either directly by depicting them as stupid, bad or unreliable (abusive variant) or indirectly by casting suspicion on the opponent’s motives (circumstantial variant) or pointing out a contradiction in the other party’s words or deeds (tu quoque—you too!—variant)” (Van Eemeren [22, p. 143]). In keeping with Walton’s [23, p. 8] theorisation on the matter, therefore, the applicants would be people “of bad character”, who accuse others of acting on “fraudulent science” when they themselves *have no medical or scientific qualifications or expertise*. It follows (sub-standpoint  $s^2$ ) that their misleading arguments should not be accepted, based as they are on *unsubstantiated views, speeches, empty rhetoric* and an altogether absurd parallel with Nazi Germany.

The articulation of causal and *ad hominem* schemes supporting the main standpoint (S) is one of multiple argumentation, where arguers make more than one attempt to defend their own standpoint. This accounts for an option in implicit discussions too, where the antagonist is not necessarily present and “the arguer can only anticipate an opponent’s criticisms” (Snoeck Henkemans [24, p. 408]). More precisely, multiple argumentation is seen as complex argumentation, whereby “the only connection between the first argument and the new argument is that each of them is advanced as a defence for the same standpoint” (Snoeck Henkemans [24, p. 411]). Moreover, the arguments advanced do not need each other to adequately support the standpoint: rather, “the only reason for undertaking a new attempt at defending the standpoint is that the previous argument has failed or that the arguer expects that it might fail” (Snoeck Henkemans [24, p. 411]). The overall structure of Meenan J.’s argumentation justifying the decision to refuse the application seeking leave to bring judicial review proceedings is schematised in Fig. 1.

In relation to the third strand in the applicants’ submissions, which came together as the ancillary argument that the *Oireachtas* passed the two Acts in breach of Dáil Standing Orders of business 2020, the Interpretation Act 1937 and the Statutory Instruments Act 1947, Meenan J. retorted that such criticisms are in principle non-justiciable. They may not be raised in court as they concern the internal procedures of the *Oireachtas*: were the Court to pass judgment on such matters, this would constitute a blatant violation of the principle of the separation of powers. Interestingly, however, Meenan J. hardly restrained himself from rejecting the applicants’ contention on the merits, as he did through a simple legal syllogism.





**Fig. 1** Argument structure of Meenan J.'s judgment in *O'Doherty and Waters v. Minister for Health and Attorney General*

The use of legal syllogism has been investigated in association with the standards of soundness legal argumentation is required to meet to be an acceptable justification of a legal decision. For a start, the argumentation must be materially acceptable: the facts must therefore be generally known or proven, while the legal norm must be a rule of valid law or a reasonable interpretation of a rule of valid law. Moreover, the argumentation must be formally correct. Briefly, the decision must follow from the reasons set out in the justification. From a logical perspective, "the decision follows from the justifying reasons if the argument underlying the justification is based on a *logically valid* argument" (Feteris [14, p. 24]). A prime example of logically valid argument can be found in legal syllogisms, where the first two sentences are the premises of the argument and the third serves as the conclusion (see 6 below).

In the current case, Meenan J. referred to Articles 15.11.1 and 28.11.1 of the Constitution, to which Mr Francis Kieran BL drew attention on behalf of the *Oireachtas*. The salient points in the two Articles have respectively been included in (4) and (5) below:

(4) All questions in each house shall, save as otherwise provided by this constitution, be determined by a *majority of the votes of the members present and voting* other than the chairman or presiding member.

(5) If the Taoiseach at any time resigns from office the other members of the Government shall be deemed also to have resigned from office, but *the Taoiseach and the other members of the Government shall continue to carry on their duties until their successors shall have been appointed*.

It was not disputed that both Houses of the *Oireachtas* had not convened in plenary session, as public health advice (social distancing) demanded. Likewise, it was a fact that the Government that rushed Covid legislation through parliament was not only headed by a resigning *Taoiseach*, but also included Ministers not re-elected as TDs after the general election of 8 February. Nonetheless, Meenan J. highlighted that such terms as 'caretaker *Dáil*' and 'outgoing *Seanad*' have no meaning in law. Demonstrably, in addition, the two Acts being challenged were passed through a majority of the votes of the members present and voting, while the *Taoiseach* and his Ministers did in fact legislate as part of the duties they were entitled to *carry on [...] until their successors* were duly appointed. These

aspects may be included in the legal syllogism underlying Meenan J.'s reasoning and reported in (6), where  $q$  follows from the justifying reasons  $p$  and  $p'$ :

(6) If a legal norm has been introduced through a majority of the votes of the members present and voting in parliament ( $p$ ), and on the initiative of a legitimate government ( $p'$ ), then the norm is valid ( $q$ ).

$p$  and  $p'$ .

Therefore  $q$ .

## 5 Discussion and Conclusions

Delivering a lecture at the Cornell Law School in April 1941, high-profile American lawyer John Lord O'Brien noted that freedom in expression of opinion was being suppressed in a major part of the civilized world. He went on to say that only twenty years before, attempts had been made in the United States itself to invoke the powers of government to curtail freedom "in the expression of honest opinion": such freedom, he was then to suggest, "is not inconsistent with the right of the nation in time of grave national danger to protect itself against utterances intended to weaken its power of self defense" [sic] (Lord O'Brien [25, p. 529]). However blurred the boundary line of limitation may seem at times, he acknowledged, the distinction is a valid one and should be there.

The world has gone a long way since the calamitous years of Lord O'Brien's words. Nevertheless, the debate over legislatures' restraints upon individual freedom in times of national emergency has remained lively, and it has been more than ever over the past two years. Indeed, the dramatic spread of the Covid-19 pandemic across Europe led EU Member States to enact a range of emergency measures in order to suppress the virus as effectively as possible. The vast majority of EU governments have availed of emergency powers to limit internal and international travel, implement sanitary controls, shut schools and universities, shops and public places and confine citizens at home. This resulted in restrictions to individual freedom of movement and assembly, while contact tracing, location tracking and data analysis measures had a perceived impact on privacy and data protection standards. To various extents, fines and prison terms were given serious consideration and, if necessary, imposed on persons for violating restrictive measures. The right to apply for asylum was temporarily suspended throughout the EU and restrictive measures were instituted in relation to visits to detainees. At the same time, vulnerable individuals were increasingly exposed to risks of discriminations and violence as legal proceedings were called off in many countries and deadlines were extended.

Some governments have been accused of playing the emergency situation as a card to secure the approval and enactment of controversial pieces of legislation that militate against freedom of expression and may be seen as irrelevant to the battle against Covid-19. Because European history provides ample evidence that states of emergency can turn democratic governments acting on the rule of law and enforcing fundamental rights into oppressive regimes, such worries appear genuine. As Marzocchi [26, p. 3] argues,

State of emergency and similar regimes importantly imply an increase of the powers of the government (sometimes also of the police and the army) and a diminishing of the powers of Parliaments and of the judiciary, with a serious blurring of the lines separating executive, legislative and judicial powers and causing a disbalance in the system of checks and balances that are at the basis of democracy.

In this context, a few Member States—i.e., Estonia, Romania and Latvia—issued a declaration to the Council of Europe expressing their wish to derogate from the European Convention on Human Rights, while sensible approaches to deal with the scourge of fake news and disinformation campaigns have also raised public awareness over national initiatives to actually criminalise fake news, as in Hungary.

The necessity to scrutinise the adequacy and proportionality of emergency legislation during the pandemic deserves to be firmly on EU countries' political agenda. The fact that, as an independent body, the judiciary might have had weighty responsibility on the matter has been an inspiration to this paper, devoted to monitoring the introduction and reception of as well as the debate on relevant emergency legislation in Ireland, instantiated by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the Emergency Measures in the Public Interest (Covid-19) Act 2020.

The paper has provided a brief account of the interplay of health emergency and legislation at the heart of the country's fight against the pandemic (Sect. 2). It then chose argumentation studies as the approach to the Irish public discourse on the national response to the crisis, with reference to the first wave of the disease (Sect. 3). In more detail, through the valuable analysis tools developed by pragma-dialectics (Sect. 4), a case study was carried out to describe the arguments advanced by journalists John Waters and Gemma O'Doherty to challenge the Government's emergency measures, and to undertake an in-depth examination of the argument structure of Meenan J.'s High Court judgment in the case they brought.

An overview of the applicants' submissions and the accurate reconstruction of the constellation of argument schemes—i.e., causal and *ad hominem*—underlying the High Court's argumentative discourse have enabled us to shed light on the different commitments of the subjects involved in the dispute. Thus, not only was the Court's discourse elucidated in terms of its response to the applicants' submissions, but the argumentative pattern highlighted in Sect. 4 also showed the Irish judiciary's commitment to key principles underpinning the country's institutions at a time of national emergency. These included both the importance attached to the separation of powers, as lay behind the Court's views on procedural matters within the *Oireachtas*' sole remit, and the prominent role assigned to *facts* in Meenan J.'s reasoning.

Viewed pragma-dialectically (see Sect. 3), the Court's strategic maneuvering can be deemed acceptable. The notion of "strategic maneuvering" refers to "the continual efforts made in all moves that are carried out in argumentative discourse to keep the balance between reasonableness and effectiveness" (Van Eemeren [27, p. 40]). The term "maneuvering" typically indicates a planned movement produced to gain advantage over someone, and it appears well suited to argumentative contexts, where the participants' predicament to combine reasonableness and effectiveness in

principle gets them to maneuver strategically to bring about the intended perlocutionary effect of the interlocutor's acceptance of one's standpoint. Strategic maneuvering constitutes an integral part of the extended pragma-dialectical model, where it is to be understood alongside the rules of critical discussion pertinent to the resolution of differences of opinion on the merits.

In the concrete case examined here, the High Court could be observed to simultaneously pursue the inter-related aims of effectiveness, which it reached by defending its standpoint conclusively on the basis of appropriate argument schemes, correctly applied [20, 28], and reasonableness, i.e. in a way that stands up to scrutiny by reason of factual accuracy. In this respect, the narrative upheld by the High Court, whereby the proportionality of Government legislation needs to be assessed on the basis of updated facts as opposed to “unsubstantiated opinions, speeches, empty rhetoric and bogus” historical parallels (examples 2 and 3 above), seems a particularly compelling one in the era of fake news and overall Covid misinformation we have been living through. In this regard, the study of judicial argumentation provides a coherent framework to establish the structure of argumentative discourse and its capability to actively engage competing arguments in a country's public sphere [29, 30].

**Declarations** No funds, grants, or other support was received for the submitted work.

## References

1. Ó Dónaill, Niall. 1977. *Foclóir Gaeilge-Béarla*. Dublin: An Gúm.
2. Jennings, Bruce, Daniel Callahan, and Susan M. Wolf. 1987. The professions: Public interest and common good. *The Hastings Center Report* 17 (1): 3–10.
3. Douglass, Bruce. 1980. The common good and the public interest. *Political Theory* 8 (1): 103–117.
4. Wheeler, Chris. 2006. The public interest. We know it's important, but do we know what it means. *AIAL Forum* 48: 12–25.
5. Zarefski, David. 2006. Strategic maneuvering through persuasive definitions: Implications for dialectic and rhetoric. *Argumentation* 20: 399–416.
6. Agamben, Giorgio. 2003. *Stato di eccezione*. Turin: Bollati Boringhieri.
7. Jackson, Bernard. 2017. A journey into legal semiotics. *Actes Sémiotiques* 120: 1–43.
8. Balkin, Jack M. 1991. The promise of legal semiotics. *Texas Law Review* 69: 1831–1852.
9. Alexy, Robert. 1978. *A theory of legal argumentation: The theory of rational discourse as theory of legal justification*. Oxford: Clarendon Press.
10. Peczenik, Alexander. 1989. *On law and reason*. Dordrecht: Kluwer.
11. MacCormick, Neil. 1978. *Legal reasoning and legal theory*. Oxford: Clarendon Press.
12. Feteris, Eveline T. 2005. A survey of 25 years of research on legal argumentation. *Argumentation* 11: 355–376.
13. Van Eemeren, F.H., P. Houtlosser, and A.F.S. Henkemans. 2007. *Argumentative indicators in discourse: A pragma-dialectical approach*. Dordrecht: Springer.
14. Feteris, Eveline T. 2017. *Fundamentals of legal argumentation*. Dordrecht: Springer.
15. Van Eemeren, Frans H. 2016. Identifying argumentative patterns: A vital step in the development of pragma-dialectics. *Argumentation* 30: 1–23.
16. Mazzi, Davide. 2016. *The theoretical background and practical implications of argumentation in Ireland*. Newcastle upon Tyne: Cambridge Scholars Publishing.
17. Mazzi, Davide. 2020. *A discourse perspective on Bunreacht na hÉireann: A sound constitution?* Newcastle upon Tyne: Cambridge Scholars Publishing.

18. Byrne, Raymond, Paul McCutcheon, Claire Bruton, and Gerard Coffey. 2014. *The Irish legal system*. Dublin: Bloomsbury.
19. Constitution of Ireland – *Bunreacht na hÉireann* 2018 [1937]. Dublin: The Stationery Office.
20. Eemeren, Van, H. Frans, and Rob Grootendorst. 1992. *Argumentation, communication, and fallacies*. Hillsdale, NJ: Lawrence Erlbaum Associates.
21. Van Eemeren, F.H., R. Grootendorst, and A.F.S. Henkemans. 2002. *Argumentation analysis, evaluation, presentation*. Mahwah, NJ: Lawrence Erlbaum Associates.
22. Eemeren, Van, and H. Frans. 2001. *Crucial concepts in argumentation theory*. Amsterdam: Amsterdam University Press.
23. Walton, Douglas. 2010. Formalization of the ad hominem argumentation scheme. *Journal of Applied Logic* 8: 1–21.
24. Henkemans, A.F. 2003. Complex argumentation in a critical discussion. *Argumentation* 17: 405–419.
25. Lord O'Brian, J. 1941. Restraints upon individual freedom in times of national emergency. *Cornell Law Quarterly* 26 (4): 523–536.
26. Marzocchi, Ottavio. 2020. *The impact of Covid-19 measures on democracy, the rule of law and fundamental rights in the EU*. Strasbourg: European Parliament Policy Department for Citizens' Rights and Constitutional Affairs.
27. Van Eemeren, Frans H. 2010. *Strategic maneuvering in argumentative discourse*. Amsterdam: Benjamins.
28. Van Eemeren, Frans H., and Rob Grootendorst. 2004. *A systematic theory of argumentation: The pragma-dialectical approach*. Cambridge: Cambridge University Press.
29. Chambers, Simone. 2009. Rhetoric and the public sphere. Has deliberative democracy abandoned mass democracy? *Political Theory* 37: 323–350.
30. Harris, Clodagh, and Emmanuelle Schön-Quinlivan. 2009. Assessing the merits of deliberative processes in engaging and informing citizens: A case study of a deliberative event on Irish women's voices on Europe. *Irish Journal of Public Policy* 3. URL: [https://www.academia.edu/13023015/Assessing\\_the\\_merits\\_of\\_deliberative\\_processes\\_in\\_engaging\\_and\\_informing\\_citizens\\_a\\_case\\_study\\_of\\_a\\_deliberative\\_event\\_on\\_Irish\\_women\\_s\\_voices\\_on\\_Europe](https://www.academia.edu/13023015/Assessing_the_merits_of_deliberative_processes_in_engaging_and_informing_citizens_a_case_study_of_a_deliberative_event_on_Irish_women_s_voices_on_Europe). Last accessed: 15 December 2020.

**Publisher's Note** Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.