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Title: Are all the pragma-dialectical rules pragmatic?

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1. Introduction

In the course of this paper it is my intention to press the argument that Van Eemeren and Grootendorst's presentation and general characterisation of their pragma-dialectical rules for argumentation along tightly construed pragmatic lines paints a misleading picture with respect to their second pragma-dialectical rule. This rule simply states that: "Whoever advances a standpoint is obligated to defend it if asked to do so". (Van Eemeren and Grootendorst 1988a: 281). This particular probative obligation on the part of a speaker is also commonly referred to as the burden of proof. My concern is that the casual reader on this subject can be left with the impression that the notion of the burden of proof is merely part of a pragmatic apparatus geared specifically to "resolving disputes". What I want to propose is that this notion has deeper normative roots than a pragma-dialectical treatment of the subject would have us believe.

In order to make this proposal plausible I want to employ a simple three-part strategy. First, I want to take some time to review Van Eemeren and Grootendorst's stance with regard to their pragma-dialectical rules where a tightly focused pragmatic emphasis appears to be their overarching theme. Second, I want to voice some reservations that I have with this stance as it relates to the second pragma-dialectical rule which speaks to the subject of the burden of proof and lay out a rudimentary case for the existence of a more commonplace or universal burden of proof. Third, in hopes of fleshing out this rudimentary case I want to introduce for consideration Jurgen Habermas' theory of communicative action. If Habermas' account has anything to contribute to this dialogue on the burden of proof, and I am inclined to think it does, then it offers a viable alternative perspective that challenges Van Eemeren and Grootendorst's account.

2. The "Pragma" Dialectical Rules for Argumentation.

Before I begin I should put my methodological cards on the table, so to speak. In interpreting Van Eemeren and Grootendorst's comments on the subject I have adopted the simple *prima facie* rule of taking Van Eemeren and Grootendorst's comments on their pragma-dialectical rules in general to apply *a fortiori* to their second pragma-dialectical rule unless anything is presented that would suggest specifically that this particular rule should be treated in an exceptional manner. That being said, I want to turn the reader's immediate attention to some of the statements that Van Eemeren and Grootendorst make throughout their writings which set the stage for an assessment of just how they intend their pragma-dialectical rules to be understood.

In their 1984 work *Speech Acts in Argumentative Discussions* Van Eemeren and Grootendorst assert the following statement of purpose:

We have therefore made it [our] statement of purpose to draw up a code of conduct for rational discussants. The practical value of the rules to be proposed depends on the degree to which they further the *resolution of disputes*. (Van Eemeren and Grootendorst 1984: 151).

They then go on shortly after to add:

The rules formulated in this chapter are designed to further the resolution of disputes about expressed opinions by means of argumentative discussions. In other words, they are intended to enable language users to conduct themselves as rational discussants, and they are also calculated to prevent anything that might hinder or obstruct the resolution of a dispute. (Van Eemeren and Grootendorst 1984: 151).

These comments, I submit, set the general theme concerning how the pragma-dialectical rules are to be understood. It is a goal-oriented picture of rule utility that also suggests why such rules should be considered normative for participants in argumentation. However, pragmatic considerations are not the only feature of the pragma-dialectical rules which renders them normative for parties engaged in reasonable argumentation. In their 1988 article 'Rules for Argumentation in Dialogues' Van Eemeren and Grootendorst state that "the argumentation rules form an adequate procedure for resolving disputes which is intersubjectively valid for discussants wishing to solve their disputes (Van Eemeren and Grootendorst 1988b: 508). In fact, this additional feature of the pragma-dialectical rules contributes to the adoption of Van Eemeren and Grootendorst's "two part criterion" for the reasonable resolution of disputes; namely, that of *problem solving validity* and *conventional validity*¹. In this context these parts are explicated along the following lines:

This means that the discussion and argumentation rules which together form the procedure put forward in dialectical argumentation theory, should on one hand be checked for their adequacy regarding the resolution of disputes, and on the other for their intersubjective acceptability for the discussants. With regard to argumentation this means that soundness should be measured against the degree to which the argumentation can contribute towards the resolution of the dispute, as well as against the degree to which it is acceptable to the discussants who wish to resolve the dispute. (Van Eemeren and Grootendorst 1988a: 280).

These paired senses of validity and a sense of exactly how they are to be taken are explicated later on in the same commentary with the following affirmation:

The claim of acceptability which we attribute to these rules is not based in any way on metaphysical necessity, but on their suitability to do the job for which they are intended: the resolution of disputes. The rules do not derive their acceptability from some external source of personal authority or sacrosanct origin. Their acceptability should rest on their effectiveness when applied. Because the rules were developed exactly for the purpose of resolving disputes, they should in principle be optimally acceptable to those whose first and foremost aim is to resolve a dispute. This means that the rationale for accepting these dialectical rules as conventionally valid, is philosophically speaking, *pragmatic*. Pragmatists judge the acceptability of rules on the extent to which they appear successful in solving the problems they wish to solve. In fact, to them a rule *is* a rule only if it performs a function in the achievement of objectives set by the pragmatist. (Van Eemeren and Grootendorst 1988a: 285).

This, as clearly as any statement offered by Van Eemeren and Grootendorst, appears to encapsulate the general attitude that we are encouraged to adopt with respect to the pragma-dialectical rules. These rules are normative simply because they "do the job for which they are intended" and (as we have seen) the specific job for which they are intended is the resolution of disputes. Add to this the suggestion that in order for the pragma-dialectical rules to even be seen as rules *per se* they must be intersubjectively ratified among the participants and the picture of how we ought to receive Van Eemeren and Grootendorst's pragma-dialectical rules is more or less complete.

3. Some Reservations

Since Van Eemeren and Grootendorst identify the probative obligation contained in their second pragma-dialectical rule with the notion of the burden of proof my particular interest in this subject leads me to ask, what do these comments tell us about the notion of the burden of proof? At first glance, the upshot of Van Eemeren and Grootendorst's pragmatic approach to argumentation norms appears to be that the burden of proof is something that speaker's must satisfy in order to resolve a dispute in a reasonable fashion. If this particular theme is where Van Eemeren and Grootendorst make their stand on the subject, then I find nothing in this that is objectionable. But I don't think this is where Van Eemeren and Grootendorst rest their case.

Their firm anti metaphysical position on the pragma-dialectical rules, their eschewing of any authoritative necessity with respect to the same and their emphasis on the pragmatic validity of their rules with respect to their specific ability to resolve disputes would seem to imply a strong particularist stance regarding their normativity. The implied message seems to be that the pragma-dialectical rules (and *a fortiori* the burden of proof) are normative *to the extent that* these rules give speakers the capacity to facilitate the resolution of disputes insofar as speakers are interested in achieving this

particular goal.

Even if we grant that disputational or argumentative discourse is vastly representative of the cases where the burden of proof is a conspicuous issue, I would contend that there is a case to be made for the existence of a more commonplace burden of proof that is not restricted to the domain of argumentation and not necessarily oriented to the resolution of polemical differences. In an effort to flesh out this suggestion let me introduce the hypothetical example of a high school guidance counselor who is advising a student on which university to go to. Suppose further that the choices, for one reason or another, have been narrowed down to two alternatives. The student asks the guidance counselor which is the better university, U. of A. or U. of B. The counselor replies that the U. of A is the better of the two. The student then asks, understandably, the obvious question, why? At this point I don't think it entirely untoward to ask, does the counselor have an obligation to substantiate his or her assertion that A is superior to B?

My own intuition leads me to suggest that the answer is, yes. I think there is a probative obligation to be met here and that this obligation has emerged in a context that could only be construed as disputational or argumentational by an overreaching extension of these notions. Not every request for grounds or substantiation of a speaker's statements has to be construed as a dispute or a segue to a dispute. Now unless this hypothetical example can be rendered exotic, I think it suggests the possibility, if not plausibility, of a burden of proof that exists outside of argumentational discourse. It also leaves us with a question. On what basis is this burden of proof obligatory?

Perhaps as a means of getting to an answer to this we could push this hypothetical case just a little. Suppose that the exchange goes as mentioned above and that after being asked by the student to substantiate his or her assertion of A's superiority over B the counselor does not do so. How should our hypothetical student construe such a refusal? On the one hand, the temptation is toward inferring that by not discharging the burden of proof the counselor has reasons but is not inclined to present them. On the other hand, if the counselor gave the student absolutely no reason to suspect that reasons of any kind were being withheld then the student is faced with another possibility; namely, that the counselor may not be making sense.

In fact, the more chronic the disengagement, the more I would be inclined to opt for this explanation. In fact I don't think it would be too overreaching to suggest that analogous cases of chronic disengagement on the part of a speaker are, more often than not, taken as a sign that the speaker has lost, forfeited or never acquired the ability to speak competently and generate meaningful expressions. Linguistic competency and the ability to generate meaningful expressions requires a distinct degree of second level ability on the part of a speaker to recognise and respond to queries and possible queries from others in the domain of discourse. In short, speakers are responsible for discharging this commonplace burden of proof to the extent that they wish to

be regarded as competent speakers *per se*.

This is where I think the normative basis for what I have called the commonplace burden of proof lies. It also suggests why this burden of proof could rightly be equally called a universal burden of proof. Speakers are required to meet this commonplace burden of proof in order to function as competent communicators. The refusal to meet this commonplace burden results in a breakdown in communication, since the inability to meet this commonplace burden is, as likely as not, attributed to the inability to communicate *per se*. The sense of universality comes in when we reflect on the virtual impossibility of withdrawing or exempting oneself from communicative activity entirely.

I think this universal burden of proof stands separate and apart from Van Eemeren and Grootendorst's account and calls into question its claim to speak about what renders the burden of proof normative. Because of its dedicated commitment to the goal of dispute resolution, the pragma-dialectical account is at somewhat of a loss to account for proof burdens outside of its chosen scope. On the other hand, the universal burden of proof does appear to have some insight to contribute to the pragma-dialectical account. We are informed that the second pragma-dialectical rule is normative to the extent that it facilitates the resolution of disputes. Just how does following this rule serve to facilitate the resolution of disputes? If we take our cue from the universal burden of proof we are in a position to suggest that the mere *ability* on the part of a speaker to take up the burden of proof is tantamount to the capacity to speak intelligibly and meaningfully. In addition we can suggest that a speaker's *willingness* to take up the burden of proof is tantamount to the capacity to communicate in a co-operative fashion.

Perhaps at this point it might be helpful if I take a run at placing some of this in perspective by introducing a distinction Van Eemeren and Grootendorst make regarding categories of rules for language use. Under their scheme there are:

- (1) *Syntactic rules* for the production and interpretation of sentences and larger stretches of discourse.
- (2) *Semantic rules* concerning the meaning of the words and expressions which are used in these sentences and larger stretches of discourse.
- (3) *Communicative rules* for a recognisable and correct performance of the elementary and complex speech acts which are carried out in these sentences and larger stretches of discourse.
- (4) *Interactional rules* for an orderly and smooth conduct of the dialogues, conversations or other forms of (spoken or written) discourse constituted by the sequences of speech acts which are carried out in these sentences and larger stretches of discourse.

(Van Eemeren and Grootendorst 1988b: 500).

Their take on these categories is as follows:

The categories of syntactic and semantic rules (1 and 2) refer to grammatical rules, the categories of communicative and interactional rules (3 and 4) to pragmatic rules. If language users fail to observe the grammatical rules, they exclude themselves from the language community; if they fail to observe the pragmatic rules, they exclude themselves from the communicative community. (Van Eemeren and Grootendorst 1988b: 500).

Because Van Eemeren and Grootendorst regard argumentation as a speech act complex, the failure to observe the second pragma-dialectical rule would seem to fall into the second half of this division between the grammatical and the pragmatic categories. My argument, Van Eemeren and Grootendorst might argue, fails to recognise this distinction and attempts to paint a pragmatic rule as a grammatical one. I think this objection has weight provided these categories and the sub categories (grammatical vs. pragmatic) that Van Eemeren and Grootendorst propose are not questioned. As my thought experiment was intended to show, failure at the communicative level can also raise the possibility of exclusion from the language community. Consequently, I am inclined (depending on the circumstances) to regard the failure to perform an elementary speech act as more of a grammatical failing than a pragmatic one. Naturally this assessment is from a non-particularist view. In any particular situation the failure to perform an elementary speech act can have a myriad of results. But all of these results will be derivative upon this universal requirement for competent communication.

In short, my position assumes a tighter relation between the semantic and communicative categories than that proposed by Van Eemeren and Grootendorst and that the boundary between what Van Eemeren and Grootendorst call the grammatical and the pragmatic is much more permeable than their account would suggest. I am also inclined to see what they call the semantic, communicative and interactional rules as parts of a single continuum of language competency the parts of which shade off into each other like the colours of a spectrum. At the very least, such a perspective appears to leave some room for the suggestion that what makes the burden of proof rule normative runs deeper than any description oriented toward a particular pragmatic concern.

In an effort, to flesh out this suggestion I want to end this paper by introducing some ideas on communication advanced by Jurgen Habermas. What makes Habermas' comments on this subject particularly applicable in this particular context is his rejection of the usual analytic break between what Van Eemeren and Grootendorst have called the semantic and the communicative. In the section to follow I want to quickly cover Habermas' critique of meaning theory which dismisses reference semantics and truth conditional semantics in the standard sense in favour of a more flexible condition which serves as a

prerequisite for understanding a speaker's utterances. From there I want to move on to Habermas' understanding of communicative action and the role played by "validity claims" where, I believe, the key to dealing with the burden of proof notion lies.

4. Habermas on Meaning Theory

In his essay "Toward A Critique of the Theory of Meaning" Jurgen Habermas carefully outlines where he sees himself moving within the domain of the philosophy of language. Taking Karl Buhler's schema of language functions as a *point de depart* he views language as serving three simultaneous functions when it is employed "communicatively".² It serves to "express the intentions (or subjective experiences (*Erlebnisse*)) of a speaker, to represent states of affairs (or something the speaker encounters in the world), and to establish relations with an addressee." Or to use Habermas' more succinct formulation: "The three aspects of a *speaker* reaching understanding / with *another person* / about *something* are reflected here" (Habermas 1998: 277).

Habermas finds this important because from his lights he sees the historiography of the philosophy of language as falling into three schools depending on which of these tripartite aspects of language one chooses to emphasise. Intentionalist semantics stresses the speaker's subjective intent, formal semantics focuses on the truth conditions of a sentence and the use theory of meaning focuses on the ambient social practises that inform the activity of linguistic exchange or language games. Each of these appears to attach to one of the aspects in Buhler's tripartite model of language function and press this to its limit.

Although Habermas is even handed in revealing the shortcomings of all of these approaches, I want to concentrate on his comments regarding formal semantics. Under this programme meaning is derived from the "formal properties of sentences themselves and the rules whereby they are constituted." (Habermas 1998: 280). Sentences and their propositional content are examined in abstraction to determine how they serve their signifying function. This bracketing out of the intentional and social dimensions of language is achieved, Habermas wryly remarks, at the cost of "limiting its analysis to the representational function of language." (Habermas 1998: 280).

Once this methodological path is taken toward the representational function of language "the relationship between language and the world, between an assertoric sentence and a state of affairs, moves to the centre of analysis." (Habermas 1998: 281). Reference semantics, which sees the relationship between language and the world as analogous to the relationship between a name and its object is critiqued by Habermas as too uncomplicated to account for the fact that a name can "stand for an object" and yet be placed within a sentence which does not serve the function of "standing for an object". (Habermas 1998: 281).

This gives Habermas room to move on to the idea that the representational

function of language must be explained along broader lines. It is *facts* that are represented by language, or to put it another way, states of affairs are what make assertoric sentences true. The elegance of this view is that in its purest expression it can take the analytical highroad and suggest that such facts (or truth conditions under which they can be determined to hold) can be articulated without reference to any particular speaker. It is a formal analysis in the most rigorous and elegant sense. Of course, for a sentence to be meaningful as a component of *de facto* language use it is necessary for a speaker to have knowledge of the truth conditions of a particular sentence.

But even this concession to the pragmatics of language is not enough since such knowledge is unproblematic only if the assertoric sentences are carefully chosen. As Habermas notes:

... the knowledge of truth conditions is, at most, unproblematic only in the case of simple predicative observation sentences, whose truth can be tested in easily surveyable contexts with the help of readily accessible perceptual evidence. At any rate, there are no correspondingly simple tests for predictions, counterfactual conditional sentences, nomological statements, and so forth. (Habermas 1998: 287)

No simple test equates to no simple knowledge of truth conditions and this impairs any story about meaning based explicitly on knowledge of truth conditions. Habermas then goes on to refer to Michael Dummett with approval when Dummett notes that for a collection of sentences as those listed above:

... simple rules of verification for these [see quotation above] are not at our disposal. It is therefore not sufficient to render the Fregean thesis more precise to the effect that one understands an assertoric sentence when one knows its rules of verification. (Habermas 1998: 287)

Habermas then adopts Dummett's suggestion that a move should be made toward a broader condition that could prove more resilient and more useful in explicating linguistic understanding when he refers to Dummett as:

Relying on the pragmatic distinction between truth and "assertability" – that is between the truth of a sentence and the entitlement to make an assertion with that sentence – Dummett replaces knowledge of the truth conditions (or knowledge of the verification rules of a justification game geared toward observation situations) with indirect knowledge: the hearer must know the kinds of reasons with which the speaker could, if necessary, vindicate his claim that particular truth are satisfied. In short one understands an assertoric sentence when one knows the kinds of reasons a speaker must provide in order to convince a hearer that the speaker is entitled to raise a truth claim for the sentence. (Habermas 1998: 287 288).

This replacement of the knowledge of truth conditions with indirect knowledge of the reasons a speaker could muster in support of their assertions has three outcomes. First, it solves the shortcomings of formal semantics by broadening the notion of what it means to understand the conditions under which an assertion could be deemed true or false since the mere knowledge of truth conditions is not sufficient to account for a robust linguistic competency that encompasses a broad range of language use. Second, it incorporates the pragmatics of language use in a fashion that sets it squarely apart from the classical analytic tradition. Third, this transition from the standard analytical outlook to a more inclusive perspective prepares us to see why Habermas' validity claims play more than a mere communicative role in his theory and sets the stage for showing what his theory of communicative action can contribute to dialogues on the burden of proof.

5. Habermas on Communicative Action and Validity Claims

With Habermas' critique behind us let us turn to his theory of communicative action. For Habermas "communicative action" refers to those forms of action that are oriented towards achieving understanding. Understanding is achieved according to Habermas when a hearer is in a position to take up a stance with respect to what a speaker is saying. Based on Habermas' critique above it would not be unseemly to infer that such an understanding cannot occur in exchanges that are limited simply to the exchange of syntactically well formed utterances. Habermas' critique and the subsequent move toward a more lenient condition that could account for meaning is what appears to underpin Habermas' standpoint regarding what it means to engage in communicative action oriented towards achieving understanding. In a situation oriented towards acting communicatively a hearer, in order to understand a speaker's utterance, needs to be in a position to where he or she can give their yea or nay to a speaker's statement. Conversely, a speaker, who wishes to engage in communicative action, must stand ready to provide the grounds for a hearer to take up such a stance if the need should arise.

This is where Habermas' notion of a validity claim comes into play. As we noted with Dummett's contribution to Habermas' critique above, in order to understand a particular utterance issued by a speaker, a hearer needs to be able to access the reasons or grounds that a speaker would (if asked) give in support of this utterance. This anticipates a kind of "fiduciary" attitude on the part of a speaker that if called upon to do so, he or she would be ready to provide their hearer with these grounds.³ This implicit commitment to provide grounds on the part of a speaker is called a validity claim by Habermas and all statements of a communicative nature involve the implicit presence of validity claims. (Habermas 1976: 52).

Taking a page from speech act theory Habermas singles out three main types of speech action: constatives, regulatives and avowals. Each particular type has its own theme that determines the type of validity claim that is incurred when each one is employed by a speaker. Constatives are thematically related

to truth, regulatives are thematically related to rightness or appropriateness and avowals are thematically related to truthfulness. (Habermas 1976: 58). By invoking any one of these speech acts a speaker places him or her self under what Habermas calls a "speech act immanent obligation" to make good on or be ready to "redeem" (if necessary) these thematized validity claims. (Habermas 1976: 63-65).

For example: in issuing the constative "John is a high school graduate" a speaker is also implicitly advocating that the propositional content of this statement is in fact the case. In this example the validity claim to "truth" is emphasised. What makes this sound stranger than it is owes to the fact that in the context of ordinary language use validity claims for the most part go unchallenged and are for the most part inconspicuous. It is only when a speaker and a hearer depart from a shared basis or background for communication that breakdowns occur and validity claims become problematic, thereby becoming the subject of attention in and of themselves or becoming "thematized" as Habermas puts it. In such cases, communicative action between speakers is suspended in favour of "theoretical discourse" where particular validity claims are bracketed and theoretically examined in a co-operative fashion in order to resolve the impasse and perhaps re-establish communicative interaction between speaker and hearer. (Habermas 1976: 64).

This is where I want to stand in suggesting that Habermas has a significant contribution to make in the ongoing conversation concerning how we ought to understand the notion of the burden of proof. Although I have never come across any reference in his works that explicitly relates the notion of the burden of proof with his idea of validity claims, I think the proposal that these notions ought to be identified with each other is not without merit. The most immediate advantage being that Habermas' account stands ready to account for what I have called the universal burden of proof outside the specific domain of argumentation proper. The existence of such a universal burden leads me to suspect that the burden of proof is more ubiquitous and more integral to communication than the pragma-dialectical account leads us to believe. I am inspired in this regard by Alfred Sidgwick, who wrote the following in his 1883 work on Fallacies:

Lastly, it follows that even he who asserts the most widely accepted doctrine cannot escape the 'burden' of supporting it by reasons. The burden of proof rests, for example, on those who maintain the theory of gravitation or of the rotundity of the earth, just as truly as on any one who should set up for his thesis the denial of either: the difference is that in asserting such truths as these the burden is apt to pass unnoticed, from the fact that the evidence is strong enough to shift it easily, while in denying them the burden might really be felt as a serious weight. (Sidgwick 1883: 154).

I think this intuition concerning the ubiquity of the burden of proof is more

profound than that provided by the narrow explication of the notion of the burden of proof from the pragma-dialectical perspective. I am not convinced that the normativity of this notion is essentially linked to argumentative success, at least not in any deep sense. If, as I have argued, we identify the burden of proof with Habermas' notion of a validity claim, then we are at the beginning of a view that moves in a very different direction. I think that explicating the burden of proof along Habermasian lines can help account for the widespread role that probative obligations appear to play in ordinary language. If we bear in mind Habermas' permeable division between the grammatical and the communicative, we can even see the burden of proof as constituting (at least in part) what it means to regard a speaker as linguistically competent.

For Habermas, unless something like a validity claim or burden of proof is taken on by a speaker and presumed by a hearer, sentences capable of conveying meanings cannot emerge as units of communication. This more than anything, I think, gives us a sense of where the normative basis of the burden of proof must be sought. Once this move is made, then (I am inclined to speculate) more particular applications of the burden of proof could be articulated. But, as I mentioned earlier, I think it is a mistake to let any particular contextual description dictate how we ought to understand the burden of proof and what sense of normativity we ought to attach to this notion.

6. Conclusion

This is where my proposal comes to an end, with the modest suggestion that what renders the burden of proof normative for speakers is not exclusively (or perhaps not even primarily) attributable to its role as part of a particular pragmatic apparatus for argumentative success. Beneath this particular goal lies a more universal requirement upon speakers to exercise semantic and communicative competence at the most basic level of language use. Speakers need to be both able and willing to place themselves under the speech act immanent obligation to redeem their validity claims (to use Habermas' terminology) or to discharge the commonplace burden of proof that incurs from normal language use. Once this universal language requirement is satisfied, then all kinds of language games can follow. Speakers can then decide on which particular language games they wish to play and the specific commitments they wish to place themselves under in order to participate in them successfully. But at the heart of all this diverse linguistic activity it is this more universal rendering of the burden of proof notion, more than any particular pragmatic application of it, that makes the burden of proof a serious weight for conscientious communicators both in and outside the domain of argumentation to contend with.

Endnotes

¹Van Eemeren and Grootendorst attribute this criterion to Barth and Krabbe

(1982: 21-22).

2For Habermas an action (language use) is "communicative" when it is done in order to achieve understanding. (Habermas 1976: 1).

3I am indebted to Michael Polanyi for the legal metaphor. (Polanyi 1962: 28).

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