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Crying Foul to Counter Questionable Tactics

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ABSTRACT: How do crying foul strategies, such as accusing an opponent of trying to "terrify" into a decision, pressure arguers to argue well? I submit that they work by (1) making a norm determinate and (2) making manifest the badness of the tactic. I explain why they generate pressure to repair or abandon questionable tactics, particularly when the norms converge with those of a broader political culture.

KEYWORDS: crying foul, fallacies, normative pragmatics, pragma-dialectics

1. INTRODUCTION

How do arguers pressure each other to argue well, and why may they expect the strategies they use to work? Answers to these questions depend on the situation, including the political culture. Van Eemeren and Houtlosser (2006) have suggested that arguers ought not to "automatically" counter fallacious moves by invoking rules with a "goody two-shoes response" (p. 436), and Jackson and Jacobs (2006) have suggested that making norms of argument determinate—by saying for example that "no reason has been given to suggest that those doubts are well-founded" (p. 96)—can be an effective countermove. I submit a theory that explains why.

Using the methods of a normative pragmatic perspective (e.g., Manolescu 2005, pp. 139-42), I propose to analyze "crying foul" strategies and explain why they may pressure arguers to repair or abandon questionable tactics and adhere to norms of argumentation in a particular situation. Examples of "crying foul" strategies include saying that an opponent has tried to "frighten" or "terrify" into a decision, has exclaimed "with uncommon vehemence," and the like. I submit that they work by (1) making a norm determinate and (2) making manifest the badness of the tactic. The force of or pressure generated by crying foul strategies to repair or abandon a questionable tactic derives from the fact that different kinds or levels of norms are built into them—both more transaction-level norms such as using relevant evidence and more procedure-level norms such as speaking in a manner that enables good judgment. The pressure increases as the norms of argumentation converge with those of a broader political culture. After outlining how a normative pragmatic approach to countering questionable tactics supplements comparable approaches, I analyze crying foul strategies used in a case of actual, high-stakes political argumentation.

2. A NORMATIVE PRAGMATIC APPROACH TO COUNTERING QUESTIONABLE TACTICS

Two ways that a normative pragmatic approach to countering questionable tactics supplements some of the leading scholarship on dialectically-oriented pragmatic approaches to fallacies are the following. First, a normative pragmatic approach works from the inside out; it begins by examining the transaction itself—by asking what strategies arguers use and why. This is in contrast to an approach that works from the outside in—by applying rules or norms to particular cases. So for example the pragma-dialecticians define fallacies as violations of rules or norms for a critical discussion—a theoretical ideal—and they bring theoretical coherence to the project of classifying fallacies by basing them on the stages—opening, confronting, arguing, concluding—of a critical discussion (van Eemeren and Grootendorst 1992, pp. 102-106).

Similarly, Walton (1992, 1995, 2000) has argued that critics ought to evaluate specific tactics by measuring them against the goals of the dialogue type such as a critical discussion. His research builds upon the pragma-dialectical research program by, first, expanding the number and kind of dialogues beyond critical discussions to include persuasion, negotiation, and more. These dialogue types serve as theoretical ideals; as Walton (2000) notes, actual discourse such as political argumentation may not be easily classified into a single dialogue type. For Walton fallacies occur as arguers shift from one dialogue type to another—from, say, a critical discussion to a negotiation dialogue; a tactic may be appropriate in one dialogue type because it helps to achieve the goal of the dialogue type, but the same tactic may be inappropriate in another dialogue type because it interferes with achieving the goal. Thus a second way that Walton's research builds upon the pragma-dialectical research program is by assuming that there are degrees of fallaciousness and that researchers ought to attend to the context of the argumentation in evaluating whether a questionable tactic is a fallacy or blunder amenable to repair.

Researchers working from a normative pragmatic perspective, in contrast, work from the inside out. A normative pragmatic theory explains how saying something makes it easier or more difficult to subsequently say other things. The explanation is neither limited to the particular case at hand nor an asituational account in the sense that the rules of a critical discussion are theoretical ideals regardless of the situation. They begin by asking what strategies arguers use and explain why arguers may reasonably expect the strategies to work in a given situation. Their research has shown that arguers use strategies that bring to bear in their particular situation norms of argumentation, and that the norms help to account for why arguers use particular strategies and may expect them to work (Goodwin 2001; Kauffeld 1998; Manolescu 2005).

A second way that a normative pragmatic approach to countering questionable tactics supplements some of the leading scholarship on dialectically-oriented pragmatic approaches to fallacies is that it lends itself to asking how arguers try to pressure opponents to repair or abandon questionable tactics and why they may reasonably expect such strategies to work. For dialectically-oriented pragmatic approaches to fallacies, such moves would be viewed as secondary to the argument proper. Dialectically-oriented pragmatic approaches analyze argumentation with an eye toward how it achieves the goal of a given dialogue type, and countering questionable tactics at least at first glance seems to be less relevant to issues at hand in any given dialogue than to the procedure by which

decisions are made and justified. At best strategies designed to counter questionable tactics may be treated as a sub-discussion within the argument proper and at worst may be outside of the scope of analysis altogether. But given the ubiquity of questionable tactics, it is worth studying how arguers themselves characteristically attempt to counter them.

Since a normative pragmatic perspective begins with the transaction itself, its analytical methods involve examining strategies arguers actually use. In addition, the perspective views the context not in terms of a dialogue type from which goals are deduced, but instead as something created by speaking itself (Goodwin 2007). It explains how saying something enables and constrains how auditors may respond and what arguers themselves may subsequently say. In the course of explaining why strategies may be expected to work, researchers analyzing argumentation from a normative pragmatic perspective also explain why, other things being equal, questionable tactics do not generate force or pressure (Manolescu 2005, pp. 146-47; Manolescu 2007, pp. 391-93). This research has shown that the weak pressure or lack of pressure of questionable tactics involves deviating from norms. In this study I continue that line of research by explaining why arguers can expect crying foul to counter questionable tactics to pressure opponents to make repairs or abandon the tactic.

A fundamental assumption that a normative pragmatic perspective shares with pragma-dialectical perspectives is that researchers ought to consider how arguers balance goals that may at times be at odds with each other. The pragma-dialecticians' recent research on strategic manoeuvring involves analyzing how arguers balance the goals of a critical discussion with individual success, and evaluating how they do so against the rules of a critical discussion (van Eemeren and Houtlosser 2006, p. 436). In this study I supplement that line of research by using a different analytical method—asking what strategies arguers use and why rather than reconstructing the argumentation as a critical discussion or analyzing strategic manoeuvring in terms of topic potential, audience adaptation, and presentational devices—and by examining what norms arguers bring to bear on the situation rather than applying a predetermined set of norms.

3. CRYING FOUL

To explain why arguers may expect crying foul about questionable tactics to pressure opponents to repair or abandon them, I analyze crying foul strategies in the 1788 Virginia ratifying convention debates. The debates are a circumscribed case of actual, high-stakes civic argumentation in which participants use and call each other on the use of questionable tactics. The issue was whether Virginia should ratify the proposed United States Constitution, and upon arrival to the convention delegates were almost evenly split (Briceland 1988, pp. 212-13; Einhorn 1990, pp. 148-49). But delegates did not argue only to garner support from those few who were amenable to persuasion. The debates took place before a viewing public in the galleries; in fact the venue for the debates was changed to accommodate more spectators. Moreover, the debates were published. Delegates therefore argued with an eye not only toward their peers but also toward constituents, a broader reading public, and posterity. For these audiences, delegates say they argue for other purposes including representing their constituents' views (e.g., Elliot 1891, pp. 21, 63) and showing posterity that they did everything possible for the benefit

of Virginia and the Union (e.g., Elliot 1891, pp. 56, 637, 652). These purposes are easier to separate analytically than practically; saying they argue for posterity, for example, may be a way of persuading peers or garnering support from constituents. The point is that the arguers had multiple purposes for multiple audiences—not only or primarily persuading to believe the proposed constitution should or should not be ratified, or to vote for or against its ratification.

There is any number of ways to cry foul, but I submit that core features are that crying foul (1) makes a norm determinate and (2) makes manifest that the opponent is damaging the deliberations. I call these core features because, as I explain in the discussion to follow, they both define crying foul strategies and give them force—that is, pressure opponents to repair or abandon the questionable tactic.

Making a norm determinate

First, consider a case where a speaker counters a questionable tactic by stating a claim and providing evidence only—without any meta-discussion or sub-discussion about the propriety of the tactic or, put differently, without crying foul. In the best case, the speaker can count on the merit of her argument to "speak for itself." She can count on her opponent and spectators to see that she adheres to norms of argumentation while the opponent does not; and therefore can count on the opponent to hold himself to a higher standard and on spectators to hold the opponent to a higher standard. However, these assumptions seem risky in a context where questionable tactics are ubiquitous. In such contexts, if logical coherence alone pressured arguers to repair or abandon questionable tactics, then we would expect arguers to bring to bear on the situation the force of the better argument only.

In a worse case, if the speaker does not cry foul about the opponent's questionable tactic, the opponent will continue to use it because the speaker has not created any reason for him not to use it and because the opponent presumably used it in the first place because he believed it would achieve some purpose or purposes. In perhaps the worst case from the speaker's perspective, if the speaker does not cry foul about the opponent's questionable tactic, then she puts herself at risk of criticism by spectators for poor judgment--for not recognizing a questionable tactic or, if spectators think she recognizes the questionability of the tactic, for not trying to promote the legitimacy of the particular transaction or, more broadly, the procedure. And therefore, even and perhaps especially if the speaker can count on spectators to hold the opponent to a higher standard, she does not foreclose the possibility of spectators criticizing her for an oversight or omission.

Now, in contrast, consider a case where the speaker cries foul to counter a questionable tactic. In the Virginia ratifying convention debates delegates cry foul about different kinds of questionable tactics. For example, they cry foul about emotional appeals circumventing reason when they ask: "Are we to be terrified into a belief of its necessity" (Elliot 1891, p. 285; see also pp. 54, 62, 638). They cry foul about poor grounds when they assert: "It is a groundless objection, to work on gentlemen's apprehensions" (Elliot 1891, p. 427). They cry foul about mismatches between style and significance when they say that an opponent "has highly colored the dangers" (Elliot 1891, p. 466). Moreover, they cry foul frequently. Even Patrick Henry, the delegate who speaks most often (Briceland 1988, p. 211; Rutland 1966, p. 226, 233) and almost

certainly uses questionable tactics most often, complains about delegates who try to make spectators "intimidated by imaginary dangers" and to lead their minds "away by unfair misrepresentations and uncandid suggestions" (Elliot 1891, p. 140). What could Henry and other delegates expect crying foul to do and why?

Crying foul pressures delegates to adhere to a norm by making the norm determinate because, other things being equal, making the norm determinate makes it difficult for auditors to say they did not know the norm. In doing so they risk criticism for being ill-equipped to participate in the proceedings. The risk is particularly serious as such prerequisites are made manifest throughout the proceedings as delegates say, for example, that opponents' appeals are "trifling with the judgment of their fellow-citizens" (Elliot 1891, p. 48), or that politics are "too often nourished by passion, at the expense of the understanding" (Elliot 1891, p. 23), or that every delegate "comes with a firm resolution coolly and calmly to examine, and fairly and impartially to determine" (Elliot 1891, p. 42). To avoid the risks, auditors may repair or abandon the questionable tactic and adhere to the norm. Thus the force of or pressure generated by making a norm determinate—e.g., do not terrify into belief, do not make groundless objections, do not misrepresent facts—derives from bringing to bear in the situation and making determinate broader norms—e.g., do not interfere with the capacity to judge. This broader norm is both rhetorical and political, that is, a norm of political representation and citizenship: act in a way that enables good judgment. Making determinate this broader, political, procedural norm increases the risks to auditors of manifesting poor judgment on the level of a specific argument, because it makes manifest that localized flaws damage the proceedings and political process as well.

For similar reasons, making a norm determinate pressures the speaker to adhere to it. Doing otherwise would be a fallible sign that she is ill-equipped to participate in the proceedings—that she has an inappropriate understanding of what counts as terrifying, for example, or that she thinks the norm does not apply to her own actions. Again, the risk is serious in this case given that broader norms they are grounded in—display and act in a way that enables good judgment—are also made manifest in the proceedings and have political analogues. To avoid this risk, the speaker must also avoid using the questionable tactic and adhere to the norm.

Making badness manifest

There is any number of ways that arguers can make norms determinate. Another core feature of crying foul strategies is that they make manifest the badness of the opponent's conduct. As with making a norm determinate, other things being equal, manifesting the badness of the opponent's conduct pressures both auditors and speaker to repair, abandon, or avoid the questionable tactic and adhere to the norm. By crying foul, a speaker manifests a commitment to the position that the opponent is acting in a way that damages the deliberations. By pointing to the badness of the deliberations, she makes manifest that she is upset by the conduct and therefore expects the opponent to answer and make amends; of course there is no need to make amends for doing something good (Kauffeld 1998, Goodwin 2002). Other things being equal, if an opponent were to continue arguing in the same way, he risks criticism for continuing to damage the proceedings. In the case of the Virginia ratification debates, the risk is serious given that delegates had pointed to

the need for good deliberations. For example, several had pointed to the need to avoid outside influence (Elliot 1891, pp. 7, 177) or the need to base their decision on "the force of reasoning" and not "declamation nor elegance of periods" which may "mislead the judgment" (Elliot 1891, p. 104). To avoid the risks, the opponent may repair or abandon the tactic and adhere to the norm. Thus the force of making manifest the badness of an opponent's conduct derives from bringing to bear on the situation converging rhetorical and political norms—e.g., act in a way that enables good judgment.

By making manifest the badness of an opponent's deliberations, a speaker also risks criticism. Crying foul licenses the opponent to retaliate, because the speaker has impugned his conduct. So by crying foul a speaker risks criticism for damaging the opponent's good name as well as for damaging the quality of the proceedings. Auditors could reason that the speaker would not want to put herself at risk for criticism unless she had made a responsible assessment of the situation, so the speaker undertaking additional risk for herself creates an additional reason for an opponent to repair or abandon the questionable tactic. Presumably others would see the conduct that the speaker saw but, by saying what she saw and manifesting its badness, the speaker brings to bear in the situation a norm of responsible conduct: do not unfairly impugn an opponent's conduct.

There are other ways that a speaker may make manifest that she has responsibly assessed the opponent's conduct. For example, she may make manifest that she has grounds for making the charge, or she may ask opponents to state exactly what grounds they have. In fact, throughout the debates delegates call for opponents to provide grounds (e.g., Elliot 1891, pp. 12, 66, 87). Giving them a chance to make their case shows that she is exercising forbearance. Again, this is a fallible sign that she has attempted to make a responsible assessment of the opponent's conduct and, thus, forestalls criticism that she has unfairly impugned the conduct. In short, the more a speaker makes manifest the badness of an opponent's tactics, the greater the risk to the speaker of criticism for her tactics and conduct, and therefore the stronger the force or pressure on both her and the opponent to repair or abandon questionable tactics and adhere to norms of argumentation.

4. CONCLUSION

In sum, crying foul pressures auditors to repair or abandon questionable tactics by making norms determinate and making manifest the badness of the opponent's tactics. Crying foul generates pressure by creating risks for both auditors and speaker if they continue using the questionable tactic. It creates serious risks by bringing to bear on the situation converging rhetorical and political norms. Making manifest that an opponent has used shaky grounds to work on auditors' fears, for example, and that in doing so the opponent damages the quality of the proceedings and the political process, increases the force of all norms.

This analysis helps to explain van Eemeren and Houtlosser's (2006) observation that arguers ought not automatically counter fallacious moves by invoking rules with a goody two-shoes response. The force of the tactic depends on the situation or context. In the context of a debate class, invoking rules could pressure opponents to adhere to them because the norms of argumentation align with norms made manifest in the broader classroom context. In some—perhaps many or all—civic contexts, in contrast, political actors probably cannot count on auditors having a uniformly good education in sound

reasoning. This may account for why in the Virginia ratification debates we do not see arguers invoking rules in a dialectical vein to counter questionable tactics.

If this is accurate, then there are two complementary explanations for why arguers in the Virginia ratification debates consistently counter questionable tactics by crying foul and do so by bringing to bear on the situation norms of argumentation that converge with political norms. First, consider the fact that crying foul makes a norm determinate. Arguers must bring to bear on the situation norms that auditors do know or ought to know. This is why they can count on them to pressure auditors to adhere to them. In the context of a debate by political elites before a broad citizenry, arguers may reasonably expect auditors to know the broader norms of the political culture. So making norms determinate both brings to bear on the situation norms that auditors know and coaches auditors in norms they ought to know.

Second, consider the fact that crying foul makes manifest the badness of the opponent's tactic. In a civic context, arguers may not be able to count on auditors acknowledging the badness of a tactic because by one measure it may align with a norm of effectiveness. In tension are norms of short-term, personal effectiveness and long-term, political and cultural effectiveness in the sense of promoting a desirable kind of political culture. These two senses of effectiveness need not be mutually exclusive, but political actors must balance short-term personal success with longer-term success and civic goods. Crying foul—making badness manifest—is one way arguers may tip the balance.

Link to commentary

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