

# Institutionalized argumentative reasonableness: Commentary on Menno Reijven's "Institutional and Institutionalized Fallacies: Diversifying Pragma-Dialectical Fallacy Judgments"

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## 1. Introduction

Menno Reijven in his paper entitled "Institutional and Institutionalized Fallacies: Diversifying Pragma-Dialectical Fallacy Judgments" positions himself in the debate about fallacy judgments, esp. in the situation where contextual issues play a role. His proposal is a very interesting one, because it seems to solve the problem that is at the core of this debate. By adding an extra dimension to fallacy judgments, Reijven is differentiating the answer to the question "Is this a good argument?" into four possibilities. Instead of the traditional "yes" and "no", the evaluator of argumentative discourse can choose between the following responses (my rephrasing):

- (1) yes, this move is reasonable from a purely argumentative point of view, and it also makes sense within the particular institutional context in which it is performed
- (2) yes, this move is reasonable from a purely argumentative point of view, but it does not make sense within the particular institutional context in which it is performed
- (3) no, this move is fallacious if you judge it from a purely argumentative point of view, but things always go this way within this particular institutional context
- (4) no, this move is fallacious if you judge it from a purely argumentative point of view, and it does not make much sense within the particular institutional context in which it is performed either

In diversifying pragma-dialectical fallacy judgments in this way, Reijven explicitly follows up on an elucidation of the consequences of the pragma-dialectical stance on the matter that Francisca Snoeck Henkemans and myself presented in our paper *Reasonableness in context: Taking into account institutional conventions in the pragma-dialectical evaluation of argumentative discourse* (Snoeck Henkemans & Wagemans, 2015). As we observed, certain argumentative moves performed in institutionalized contexts are fallacious when assessed from a pragma-dialectical perspective but seem perfectly reasonable or even institutionally required when assessed from the perspective of the conventions or rules applicable in the communicative domain at hand. Reijven's proposal of diversifying fallacy judgments can be seen as an attempt to avoid the undesirable consequences of that observation: if we don't want institutions to be promoting fallacious moves, we should differentiate our fallacy judgment.

In my view, Reijven has been very inventive and precise in working out this diversification. His solution of adding an extra dimension to fallacy judgments opens up new pathways of dealing with the tension between general and context-specific standards for assessing argumentative discourse (i.e., between van Eemeren and Grootendorst's approach and Walton's approach). But it also invites a reconsideration of an even more fundamental issue, namely the question of what makes an argumentative move fallacious in the first place. Where do our standards for the reasonableness of argumentative discourse come from? Do they come from some kind of theoretical ideal that is generally applicable, or do we derive

them from institutionalized practices? In his diversification proposal, Reijven does not make a choice between these two sources of normativity. Instead, he combines them, thus providing the analyst with four instead of two different fallacy judgments to choose from. It's an elegant solution for a difficult problem, for sure. But could it also be an example of throwing out the normative baby with the combinational bathwater?

In my comments, I shall first explain my views on the consequences of choosing a pragma-dialectical framework for evaluating institutionalized discourse, mainly on the basis of Snoeck Henkemans and Wagemans (2015). Then, I will reflect upon the more fundamental issue of where the standards for making fallacy judgments (should) come from, leading to the tentative conclusion that van Eemeren and Grootendorst's generalistic approach generates the same results as Walton's contextual approach. The comments give rise to two questions for Reijven, which can be found at the end of the respective sections.

## **2. Consequences of choosing a pragma-dialectical perspective**

In assessing argumentative discourse from a pragma-dialectical perspective, the analyst makes use of the norms expressed in the rules of a critical discussion. These rules, as indicated by the following quote in Snoeck Henkemans and Wagemans (2015, pp. 1350-1351), are deemed generally applicable:

Although we agree [...] that fallacy judgments are in the end always contextual judgments that depend on the specific circumstances of situated argumentative acting, we do not agree that the norms underlying these judgments are context-dependent. In our view, the norms expressed in the rules for critical discussion are general – who knows even universal – norms for sound argumentation that are not limited to one particular type of argumentative activity. (van Eemeren & Houtlosser, 2007, p. 64)

One of the consequences of this stance is that the evaluator works with context-independent norms for judging the reasonableness of the discourse and can never opt for making an exception to the rules in cases where a particular argumentative move is prescribed by institutional conventions. Examples of the latter quoted in Snoeck Henkemans and Wagemans (2015, p. 1351) are time limits in legal discourse and institutional burden of proof in medical consultation about treatment options:

According to Feteris, 'to safeguard legal rights, there are time limits within which an appeal must be taken. Otherwise the party who has won the trial can never be sure about his rights' (1990, p. 113). The existence of this time limit is not completely in accordance with the pragma-dialectical 'freedom rule,' according to which discussants have the *unconditional* right to put forward a standpoint or call into question the standpoint of the other party in the discussion (van Eemeren & Grootendorst, 2004, pp. 136, 190-191). [...] Another example is the medical consultation, where, according to Snoeck Henkemans and Mohammed, an institutional burden of proof is imposed on doctors 'to justify treatment options without patients having to express any disagreement about these options.' (2012, p. 30, note 3)

This leaves us with the observation that certain moves performed in institutionalized contexts should be judged as fallacious when assessed from a pragma-dialectical perspective, while they seem perfectly reasonable in the sense that they promote the institutional goal of the communicative activity in which they are put forward.

But why would this be a problem? In some cases, the pragma-dialectical evaluation yields a negative result and the institutional evaluation a positive one. So what? After all, the assumed aim of a critical discussion is to resolve a difference of opinion on the merits, and the rules for a critical discussion promote (but do not guarantee) the accomplishment of that aim, while the assumed aim of an institutionalized discussion is to promote the accomplishment of the institutional aim of the domain in which the communicative activity takes place. To a certain extent, both aims run parallel, which means that complying with institutional norms does not necessarily mean violating argumentative norms (e.g., in promoting justice or health, the arguer does not necessarily commit fallacies). In some cases, however, moves that comply with institutional norms do not comply with pragma-dialectical ones and should therefore be judged fallacious. As explained in Snoeck Henkemans and Wagemans (2015), this is a consequence of the theoretical assumptions made in the kernel of the pragma-dialectical theory. In the end, the discourse is evaluated on the basis of the rules for a critical discussion, which are generally applicable, and not on the basis of institutional rules, which are context-dependent.

These reflections give rise to my first question for Reijven, namely why he considers it an *undesirable* consequence of the pragma-dialectical approach that certain moves are judged fallacious while they are reasonable from an institutional point of view. Why is the fact that an assessment of an argumentative move yields two different answers when viewed from two different perspectives problematic in the first place?

### 3. The issue behind the issue

As Reijven notes, the difference between Walton's approach to fallacies and van Eemeren and Grootendorst's one lies in how they take into account the dialectical context in which the argumentative move is performed:

Thus, for Walton (1998), a fallacy is not a move which hinders critical testing of a standpoint, as presumed by pragma-dialecticians (Van Eemeren, 2018), but a move that hinders specific goal of the interaction one is engaged in. (p. 2)

As is indicated by the name of their respective approaches, both Walton's new dialectic and van Eemeren and Grootendorst's pragma-dialectics conceptualize argumentative discourse as a discussion. But the difference between them is not only a matter of how they theorize about argumentation, but also, and maybe more importantly, a matter of to what end the insights and models they have developed are used. To explain this in more detail, I now quote a summary of their ideas about 'dialogue types' and 'institutionalized communicative practices' (Wagemans, forthcoming).

Dialectical approaches study argumentation from the perspective of a theoretical framework that is premised on the idea of two parties having a discussion that minimally involves an exchange of arguments for and against a particular point of view. An influential taxonomy of such discussions is the one by Walton and Krabbe (1995), who distinguish between six different 'dialogue types'. According to them, a 'persuasion dialogue' is primarily aimed at resolving or clarifying an issue, an 'inquiry dialogue' at proving or disproving a hypothesis, a 'negotiation dialogue' at reaching a reasonable settlement both participants can live with, an 'information-seeking dialogue' at exchanging information, a 'deliberation dialogue' at deciding the best available course of action, and an 'eristic dialogue' at revealing a deeper basis of conflict.

The concept of 'dialogue type' mainly serves the purpose of evaluating the arguments put forward by the participants. For the outcome of such evaluation it makes quite a difference whether an argument is part of, for instance, an inquiry dialogue, which is aimed at determining the acceptability of a particular point of view, or of a negotiation dialogue, which is aimed at making a deal that optimally serves the interests of the parties involved. The evaluation, therefore, takes place by first identifying the dialogue type within which the argument under scrutiny has been put forward and by subsequently checking whether that particular argument contributes to accomplishing the specific goal that is characteristic of that type. If it does, the argument is evaluated as a good argument, but if it blocks achieving that goal, it is judged as fallacious.

Another example of a dialectical conceptualisation of argumentative discourse is van Eemeren's (2010) theory about conventionalised argumentative practices that links specific genres of communicative activity to the institutional goals of the domains in which they are implemented. The genre of 'adjudication' is instrumental in the domain of legal communication, that of 'deliberation' in political communication, 'mediation' in problem-solving communication, 'negotiation' in diplomatic communication, 'consultation' in medical communication, 'disputation' in scholarly communication, 'promotion' in commercial communication, and 'communion' in interpersonal communication.

Different from the concept of dialogue types, which is used for evaluative purposes, that of communicative activity types is primarily used for providing a contextualised analysis of concrete speech events as tokens of particular communicative activity types that implement one or more of the genres just mentioned. The subsequent evaluation of the contributions of the discussants to this speech event takes place by checking whether they comply with a set of rules specified in the 'ideal model of a critical discussion', which embodies a critical rationalist view on reasonableness and is generally deemed applicable to all types of argumentative activity.

Of all the different genres of communicative activity mentioned, 'disputation' is most closely related to the 'inquiry dialogue'. And it does not come as a surprise that both types of discussion resemble a 'critical discussion.' The ideal model of a critical discussion can be interpreted, after all, as an idealization of philosophical or scientific discussions aimed at finding the truth.

Now what happens when argumentative discourse situated in a non-philosophical or non-scientific context is evaluated from a pragma-dialectical perspective? The straightforward answer to this question is the following: what happens is that the rules for a critical discussion, in which a philosophical or scientific ideal of reasonableness is embodied, are projected onto a discourse that belongs to a different institutional context and that is put forth with a different aim in mind (e.g., promoting justice or health). What is then judged is the extent to which the discourse can be said to promote (or, at least, not hinder) the accomplishment of the *purely* argumentative aim of resolving a difference of opinion on the merits.

But it is not for nothing that institutions have rules that might deviate to a greater or lesser extent from the rules for a critical discussion. In a philosophical or scientific discussion, after which a critical discussion is modeled, participants are allowed to open the discussion over and over again. This promotes the accomplishment of the institutional aim of the practice, which is to come closer to the truth by critically testing the acceptability of a particular point of view. But why is it that in legal discussions, you only have six weeks to

come up with a reply, and every opinion of the other party you do not refute is taken as a concession? Why can't you start over again from the beginning? Why can't you go to same court with the same case after the judge has taken an unfavorable decision – the *ne bis in idem* principle? Because this runs against the idea that the procedure should provide legal security. Unlike in the fields of philosophy and science, where discussions can continue forever, in the field of law a decision has to be taken and discussions can only be reopened if there is new evidence.

Now the issue behind the issue is the following. When taking a pragma-dialectical perspective, we only label the type of reasonableness embodied in philosophical and scientific discussions as 'argumentative'. But what if we also label the types of reasonableness embodied in other institutionalized practices as 'argumentative'? What if we stop taking the genre of 'disputation' as the paragon of argumentatively reasonable behavior?

Well, if we do so, the question of what happens when argumentative discourse in non-philosophical or non-scientific contexts is evaluated from a pragma-dialectical perspective, should be answered in a slightly different way. For in this case, such evaluation does not inform the analyst about the extent to which the discourse can be said to promote (or, at least, not hinder) the accomplishment of the *purely* argumentative aim of resolving a difference of opinion on the merits but yields a comparative verdict. When every type of institutionalized reasonableness can be called 'argumentative', deviating from the norms for a critical discussion means deviating from norms that govern a different genre than the one under scrutiny. As a consequence, if a specific move is judged as fallacious, that move does not promote *another* institution's aim. Or, in Walton's terms, there has been a 'dialogue shift'.

This brings me to my second question for Reijven, namely whether he agrees that when the theoretical notion of a 'critical discussion' can be equated with the empirical notion of an 'inquiry dialogue' or 'disputation', the difference between Walton's and van Eemeren and Grootendorst's approaches is reduced to a mere difference in terminology.

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