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Jean H.M. Wagemans
University of Amsterdam

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Institutionalized argumentative reasonableness: Commentary on Menno Reijven's 'Institutional and institutionalized fallacies: Diversifying pragma-dialectical fallacy judgments'

JEAN H.M. WAGEMANS
Argumentation and Rhetoric
Amsterdam Centre for Language and Communication (ACLC)
University of Amsterdam
j.h.m.wagemans@uva.nl

1.   Introduction

Menno Reijven in his paper entitled *Institutional and institutionalized fallacies: Diversifying pragma-dialectical fallacy judgments* positions himself in the debate about the level of generality of 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 very problem that is at the core of this debate. By adding an extra dimension to fallacy judgments, Reijven differentiates the answer to the question "Is this a good argument?" As the table presented in his paper (p. @) makes clear, instead of just the traditional "yes" and "no", this differentiation provides the evaluator of argumentative discourse with the following four possibilities (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 attempt of elucidating 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 concluded, certain argumentative moves performed in institutionalized contexts are fallacious according to pragma-dialectical evaluation standards, although they seem perfectly reasonable or even institutionally required when viewed from the perspective of the conventions or rules applicable in the communicative domain. Reijven's paper can be seen as proposing a solution that avoids the undesirable consequences of that observation: if we don't want institutions to be promoting fallacious moves, we should differentiate our fallacy judgment. But is that really necessary? Isn't it just a matter of what perspective the evaluator has chosen?

I think 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 problem of contextualized fallacy judgments. But it also brings up an even more fundamental issue in thinking about the question of whether argumentative moves are to be judged as reasonable. That fundamental issue is: what is the source for making fallacy judgments 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? Reijven's solution does not seem to make a real choice, but rather to combine the two standards, providing the analyst with four instead of two different judgments to choose from. It is an elegant solution, for sure, but isn't he throwing out the normative baby with the combinational bathwater?

In my comments, I shall first explain my views on the consequences of chosing 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 Walton's contextual approach generates the same results as van Eemeren and Grootendorst's generalistic approach. The comments give rise to two questions for Reijven, which can be found at the end of the respective sections.

2. The consequences of pragma-dialectical fallacy theory

In making fallacy judgments in a pragma-dialectical framework, 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), are 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 and 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 the 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 are judged as fallacious, while they seem reasonable in the sense that they promote the institutional goal of the communication.

But is this a problem? Theoretically, I do not see a problem here. It is simply a fact that in some cases, a pragma-dialectical evaluation might yield a negative result and an 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 that aim to be accomplished, while the assumed aim of a discussion in an institutionalized context is to promote the specific institutional aim. In general, the institutional aim runs parallel to the

argumentative aim, which means that trying to achieve institutional goals does not necessarily work against reasonableness in a purely argumentative sense (e.g, to make good arguments promotes justice). As Snoeck Henkemans and Wagemans (2015) have concluded, it is simply not possible to make exceptions to fallacy judgments on the basis of a move not complying with pragma-dialectical ruIes but complying with institutional rules. This is a consequence of the theoretical assumptions made in the kernel of the pragma-dialectical theory. The discourse is evaluated on the basis of the rules for a critical discussion, and not on the basis of institutional rules.

→ **My first question for Reijven is: "Why exactly do you think that judging moves as fallacious that are reasonable from an institutional point of view is an undesirable consequence of pragma-dialectical fallacy theory?"**

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. @)

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 develop are used. To explain this in a little 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 is an idealization of philosophical or scientific discussions that are aimed at finding the truth. If this is the institutional aim, you want the discussants to comply with the pragma-dialectical rules.

Now what exactly 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 the discourse that belongs to a different institutional context and that is put forth with a different aim in mind (e.g. promoting justice). 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 are more or less deviating 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 institutional aim of the practice, which is to come closer to the truth or to test 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* rule? Because this goes against the institutional aim of providing legal security. Unlike in philosophy and in science, in law a legal decision has to be taken and you can only reopen the discussion if there is new evidence.

Now the issue behind the issue is the following: it just a different type of argumentative reasonableness, not what pragma-dialecticians call argumentative reasonableness, that pervades argumentative discussions in institutionalized practices? In philosophical and scientific discourse, the pragma-dialectical rules may be instrumental for accomplishing the institutional aim. But in all other genres of communicative acticity, they are only partly instrumental.

So here is the non-straightforward answer to the question what happens when argumentative discourse in non-philosophical or non-scientific contexts is evaluated from a pragma-dialectical perspective. Such an evaluation only tells the analyst something about the "argumentative reasonableness" of the discourse in a very specific sense of that term, namely the type of argumentative reasonableness that is at stake in philosophical or scientific discussions. In fact, since the ideal model of a critical discussion is an idealization of the institutionalized practice of having a philosophical or scientific discussion, a pragma-dialectical

evaluation of other institutionalized discourse takes place by projecting the norms applying to one specific genre of argumentative practice – disputation – to another genre of argumentative practices. Performing moves that go against that paragon of argumentatively reasonable behavior means committing a fallacy.

To sum up. In a pragma-dialectical evaluation, the norms for philosophical or scientific discourse are used to evaluate non-scientific discourse that is produced with a different aim in mind. If the judgment about a specific move is fallacious, this means the move does not promote another institution's aim. Or, in Walton's terms, it means that there has been a 'dialogue shift'.

→ **My second question for Reijven is: "Do you agree that the debate between Walton and van Eemeren and Grootendorst about the contextuality of fallacy judgments can be resolved by equating the theoretical notion of a 'critical discussion' with the empirical notion of a 'inquiry dialogue' or 'disputation'?**

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