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Reasonableness In Context: Taking Into Account Institutional Conventions In The Pragma-Dialectical Evaluation Of Argumentative Discourse

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ABSTRACT: In this paper, we raise the question of how to take institutional conventions into account in a pragma-dialectical evaluation of argumentative discourse. First, we describe the main steps of the pragma-dialectical evaluation procedure and provide an explanation of the types of norms and rules involved. Then, we present an overview of various types of discrepancies between institutional conventions and pragma-dialectical norms and discuss their implications for the pragma-dialectical evaluation of argumentation in context.

KEYWORDS: argumentation, deontic rules, evaluation, fallacy judgments, institutional conventions, non-deontic rules, pragma-dialectics.

1. INTRODUCTION

Over the last couple of years, the pragma-dialectical research program has focused on the development of tools for the analysis and evaluation of argumentative discourse in specific institutional contexts, such as the domains of legal, political, medical, and academic communication.[1] An important reason for taking the institutional context into consideration is that the aims and conventions of a certain context of argumentative activity may influence the evaluation of the argumentation put forward in that context. Within the pragma-dialectical approach, fallacy judgments are considered to be context-dependent. At the same time, the norms to be applied by the evaluator are regarded as generally applicable to all contexts of argumentative activity:

> 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

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[1] For a short overview of this research program and its collaborators, see Van Eemeren et al. (2014, pp. 517-519).

limited to one particular type of argumentative activity. (van Eemeren and Houtlosser, 2007, p. 64)

A consequence of the point of view that the norms expressed in the rules for critical discussion are generally applicable is that the influence of the institutional conventions on the evaluation of the argumentation cannot be situated at the level of these rules themselves. In some pragma-dialectical analyses of specific institutional contexts, however, cases do occur in which the aims and rules for the argumentative discourse in a particular context seem to differ in some respects from the rules of critical discussion. An example is to be found in Feteris's analysis of the legal setting, where a discrepancy can be noted between the legal procedures and one of the rules for critical discussion. 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).[2]

In this paper, we address the question of how the possibility of such a discrepancy between institutional conventions and rules for a critical discussion can be reconciled with the abovementioned claim that the pragma-dialectical rules express general norms that are applicable to all contexts of argumentative activity. First, we describe the main steps of the pragma-dialectical evaluation procedure and provide an explanation of the types of norms and rules involved. Then, we present an overview of various types of discrepancies between institutional conventions and pragma-dialectical norms and discuss their implications for the pragma-dialectical evaluation of argumentation in context. Finally, we briefly recapitulate and discuss our findings.

2. TYPES OF NORMS IN THE EVALUATION PROCEDURE

Institutional conventions may influence the pragma-dialectical evaluation of argumentative discourse in various ways. In this section we address the question which types of norms play a role in such an evaluation and how they may relate to the norms expressed in institutional conventions. We will start with a short explanation of the pragma-dialectical evaluation process.

A pragma-dialectical evaluation is preceded by an analysis of the discourse in terms of the so-called 'model of a critical discussion'. Such an analysis is aimed at providing a reconstruction of the discourse containing all the elements that are relevant to the evaluation (van Eemeren & Grootendorst, 2004, pp. 95-122).

In order to determine the reasonableness of the reconstructed discourse, the evaluator makes use of two different types of norms. First, the evaluator needs to determine which standards of reasonableness should be projected onto the reconstructed discourse. A proposal for such standards is expressed in the so-called 'code of conduct for reasonable discussants', a set of ten rules (or 'commandments') that is derived from a

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[2] 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).

larger set of fifteen rules that constitute the 'procedure of a critical discussion', which is an integral part of the 'model of a critical discussion' (van Eemeren & Grootendorst 2004, pp. 123-186).

Second, the evaluator needs to determine which criteria should be used in order to decide whether a specific discussion move constitutes a violation of the standards just mentioned. For in order to determine the reasonableness of such a move, it is not enough to know which rule of the code of conduct is at issue. According to van Eemeren and Grootendorst (1992, p. 106), the norms that are at stake in these rules need to be supplemented with criteria for deciding whether or not a certain speech act satisfies the norm. As to these criteria, van Eemeren distinguishes between general and specific criteria:

> I make a distinction between general criteria for judging fallaciousness that are context-independent and more specific criteria that may be dependent on the macro-context in which the strategic maneuvering takes place, because this specific context requires a well-adapted implementation of the general criteria. (van Eemeren, 2010, p. 201)

This means that when justifying a particular fallacy judgment, the evaluator does not only refer to the rule that is violated, but also to the (general or specific) criterion that is used to establish that the rule is violated.

In principle, in the evaluator's justification of fallacy judgments, institutional conventions may thus play a role on two different levels: the level of the rules and the level of the criteria. This raises the question as to how the evaluator may find out on which of the two levels a given institutional convention is operative. In order to answer this question, we will now analyze the difference between rules and criteria in more detail. As we already explained, the rules that constitute the 'code of conduct for reasonable discussants' are derived from a larger set of rules that constitute the 'procedure of a critical discussion'. Several differences exist between these two sets of rules. For our current purposes, it suffices to point at a difference concerning the nature of the rules involved.[3]

The first set of rules, which constitutes the code of conduct for reasonable discussants, entirely consists of 'deontic' rules, i.e. rules that are prescriptive in nature because they specify the rights and obligations of the discussants. In abstract terms, such deontic rules are formulated as 'X should do Y' or negatively as 'X should refrain from doing Y'. An example is the so-called 'freedom rule', which is listed as Commandment 1 of the code of conduct: 'Discussants may not prevent each other from advancing standpoints or from calling standpoints into question' (van Eemeren & Grootendorst, 2004, p. 190). Some of the deontic rules of the code of conduct specify *conditional* obligations. In abstract terms, such conditional deontic rules are formulated as 'if Z is the case, X should do Y' or negatively as 'if Z is the case, X should refrain from doing Y'. An example is the so-called 'obligation-to-defend rule,' which is listed as Commandment 2 of the code of conduct: 'Discussants who advance a standpoint may not refuse to defend this standpoint when requested to do so' (van Eemeren & Grootendorst, 2004, p. 191).

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[3] We summarize here the account of the nature of the pragma-dialectical rules as provided in Wagemans (2009, pp. 36-37; 41-42).

The second set of rules, which constitutes the procedure of a critical discussion, differs from the first set because it does not only consist of prescriptive rules, but also of rules that are definitional or constitutive in nature.[4] Such 'non-deontic' rules take the form 'X counts as Y' and they specify the conditions for the correct use of terms that occur in one or more of the other rules of the procedure. An example is the rule that defines what counts as a conclusive attack on a standpoint, which is listed as Rule 9b of the procedure: 'The antagonist has conclusively attacked the standpoint of the protagonist if he has successfully attacked either the propositional content or the force of justification of the complex speech act of argumentation' (van Eemeren & Grootendorst, 2004, p. 151). The need for specifying what is meant by the 'conclusiveness' of an attack follows from the occurrence of the term in Rule 14a, which is a deontic rule that specifies when the protagonist should withdraw his standpoint: 'The protagonist is obliged to retract the initial standpoint if the antagonist has conclusively attacked it […] in the argumentation stage […]' (van Eemeren & Grootendorst, 2004, p. 154).[5]

In some cases, the evaluator is only able to decide whether a discussant complied with a deontic rule by making use of the definitions of terms provided in a non-deontic rule of the procedure of a critical discussion. For instance, in order to answer the question whether an antagonist rightly demands that the protagonist should withdraw his standpoint after it has been attacked by the antagonist, the evaluator needs to establish whether the attack can be seen as successful by applying the rule for what counts as a successful attack. In this sense, we think that it would be in accordance with the pragma-dialectical distinction between 'rules' and 'criteria' to identify all the non-deontic rules that are part of the procedure for a critical discussion as general criteria for determining the reasonableness of discussion moves.

Since the non-deontic part of the procedure for a critical discussion only provides part of the criteria that are needed in order to justify fallacy judgments, van Eemeren and Grootendorst's aforementioned call for the supplementation of the 'rules' with 'criteria' is still in place. At several places in the pragma-dialectical literature one may find descriptions of such criteria. As an example of a context-independent general soundness criterion for assessing whether the argumentation scheme rule has been violated in the case of an argument from authority, van Eemeren (2010, pp. 203-204) mentions the critical question whether the authoritative source is quoted correctly. Van Eemeren (2010, p. 197) also mentions several specific criteria for fallaciousness, which may vary depending on the macro-context. We observe that these general and specific criteria are all 'non-deontic' in nature: They do not concern rights or obligations but specify which conditions have to be fulfilled in order for a discussion move to count as a violation of a particular deontic rule. The general criteria are of the form 'X counts as Y' and the specific criteria are of the form 'X counts as Y in context Z'.

In order to prevent terminological confusion, we will reserve the term 'rules' for all the deontic rules and reserve the term 'criteria' for the non-deontic rules of the procedure of a critical discussion and other general and specific criteria. This helps us to characterize the two levels of norms used in the pragma-dialectical evaluation process in a consistent way.

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[4] Like some of the rules of the code of conduct, some of the rules of the procedure specify *conditional* obligations. This is for example the case in Rules 3, 4, and 14.

[5] Other examples of such non-deontic rules are Rules 7, 8, and 9a of the procedure, which define terms that play a crucial role in Rules 10, 11, and 14b of the procedure.

On the one hand, there is the deontic level of the rules, and on the other hand, there is the non-deontic level of the criteria.

The terminological distinction between 'rules' and 'criteria' also helps us to answer the question as to how the evaluator may find out on which of the two levels a given institutional convention is operative. If the convention is deontic in nature, it operates on the level of the rules, and if the convention is non-deontic in nature, it operates on the level of the criteria.[6]

3. JUSTIFYING A RULE ADAPTATION

As we have established in Section 2, institutional conventions can be deontic or non-deontic in nature. If a non-deontic convention needs to be taken into account in the evaluation of the argumentative discourse in a certain activity type, this convention functions as a context-specific criterion for deciding whether a rule has been violated. Such a type of contextuality does indeed not imply that the rules for critical discussion themselves are context-dependent. Since the criterion is context-dependent, a particular move may be fallacious in the one context but not in the other. It is this type of contextual dependency of fallacy judgments that van Eemeren and Houtlosser are referring to:

> The context-dependency of judgments of argumentative discourse lies in the way in which the conduct of argumentative discourse is conventionally disciplined in a certain activity type by specific criteria for determining whether or not a certain type of maneuvering agrees with the relevant norm, which criteria may vary to some extent per argumentative activity type— in a law case, for instance, different criteria apply to making a legitimate appeal to authority, e.g. by referring to a certain law code, than in a political debate. (van Eemeren and Houtlosser, 2007, p. 64)

An example of such a contextual criterion can be found in the activity type of Prime Minister's Question Time in the British House of Commons. As Mohammed points out, as representatives of a certain party, politicians may be held accountable not just for standpoints which they have put forward personally, but also for positions which are central to their political party:

> In principle, it is necessary, in order to hold political parties to account, to consider that the commitments that can be attributed to a certain MP are not restricted to those deriving from his own positions. It should be possible, to different degrees of justifiability, to attribute to MPs from a certain political party commitments

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[6] Although it is theoretically possible to convert a non-deontic rule into a deontic one, such a conversion always results in the description of an obligation that the arguer is free to take upon himself or not. For instance, the abovementioned non-deontic rule 9b concerning the requirements for a conclusive attack may be rewritten as the following conditional deontic rule: 'If the antagonist wants his attack to count as a conclusive attack, he is obliged to successfully attack either the propositional content or the force of justification of the complex speech act of argumentation'. Conversely, rewriting a deontic rule as a non-deontic rule requires a formulation of the form 'X counts as obligation Y'. Such conversions therefore show that the distinction between 'rules' and 'criteria' still holds.

deriving from positions that have been assumed by the leaders of their parties, election manifestos, or other public expressions of opinion made in the name of the Party. (Mohammed, 2009, p. 132)

In consequence of their political party obligations, politicians may be required to account for a position that they have not put forward themselves, but which is an official viewpoint of their political party. In such a case, an attack on the point of view ascribed to the politician does not necessarily constitute a violation of the so called 'standpoint rule', which forbids attacks on a standpoint 'that has not actually been put forward by the other party' (van Eemeren & Grootendorst, 2004, p. 191).[7] In a different context, a discussant attacking a standpoint that the opponent had not put forward himself would be accused of committing a straw man fallacy. In the context of Question Time, however, such an accusation would not hold if the attack concerns a central party commitment of the opponent.

From the example it becomes clear that the deontic rule expressing the general obligation that discussants have to account for those standpoints that they can be held committed to remains in force. The institutional convention only gives rise to a specification of the non-deontic criterion for determining when exactly this deontic rule is violated in the specific context.

There are, however, also cases in which the institutional conventions are deontic in nature and express rights or obligations that differ from the ones expressed in the pragma-dialectical rules for a critical discussion. The rights or obligations of the discussion parties in the institutional context are then in some respects restricted or extended in comparison to the rights or obligations attributed to the parties in the rules for critical discussion. We will now address the question how this possibility can be reconciled with the claim that the pragma-dialectical rules express norms that are generally applicable to all contexts of argumentative activity.

In case of a discrepancy between an institutional convention and a pragma-dialectical rule, the consequences for the evaluation of a discussion move made within the context at hand depend on what the rationale for this discrepancy is. Sometimes, the difference between the convention and the rule can be interpreted as a way of 'repairing' the non-fulfillment of one or more higher-order conditions.[8] These are conditions that need to be fulfilled in order to enable the discussants to comply with the 'first-order' discussion rules. One such type of condition relates to the state of mind of the participants in the discussion, while the other type relates to the external circumstances in which the discussion takes place:[9]

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[7] In fact, the rule does not forbid attacks on a standpoint that has not actually been put forward by the other party, but rather on a standpoint that the other party cannot be held committed to.
[8] Feteris (1990, p. 111) mentions this as one of the reasons why some rules in the legal process deviate from the pragma-dialectical rules: 'The distinction between the rules for discussion and the conditions which have to be fulfilled in order to conduct a rational discussion, forms an analytical distinction which makes it possible to explain why legal proceedings differ on one level in certain respects from a critical discussion and why these differences are compensated on a higher level in order to make the procedure a rational one.'
[9] For a description of these conditions, see also van Eemeren and Grootendorst (2004, pp. 189-190) and van Eemeren, Grootendorst, Jackson and Jacobs (1993, pp. 30-34).

The 'internal' mental states that are a precondition to a reasonable discussion attitude can be regarded as 'second-order' conditions for a critical discussion, while the presupposed 'external' circumstances in which the argumentation takes place apply as 'third-order' conditions. (van Eemeren & Grootendorst, 2004, pp. 36-37)

If a specific convention can be interpreted as a way of 'repairing' the non-fulfillment of one or more higher-order conditions, moves that are in accordance with the institutional convention but not with the rule for critical discussion may still be judged as reasonable. The point of the adaptation of the institutional convention is then exactly to further the reasonable resolution of the dispute, by overcoming the restrictions posed by the non-fulfillment of particular higher-order conditions.

An example of an institutional context in which a deviating deontic convention applies is the medical consultation. As Goodnight (2006) and Snoeck Henkemans and Mohammed (2012) have pointed out, in doctor-patient consultations, the doctor has an institutional obligation with respect to the burden-of-proof. Ideally, a physician needs to present all the available treatment options and provide evidence in favor of and against each of these options (Snoeck Henkemans & Mohammed, 2012, p. 22). The main reason to impose this burden of proof upon the physician is that in medical consultations there usually is an 'asymmetric' relationship between the discussants: In most cases, the physician will be an expert and the patient a layman.

According to van Eemeren, Grootendorst, Jackson and Jacobs, 'the ideal model assumes skill and competence in the subject matter under discussion and on the issues raised' (1993, p. 32). The specific burden of proof that is imposed on the doctor is thus motivated by the fact that a second-order condition pertaining to the abilities of arguers to engage in critical discussion cannot be taken to be automatically fulfilled. Since such higher-order conditions need to be fulfilled in order for a discussion to lead to resolution, the extension of the obligations of one of the discussion parties in a medical consultation may be seen as a deviation from the pragma-dialectical 'burden-of-proof rule' that does not endanger the resolution of a dispute, but, on the contrary, promotes it.

There are, however, also cases in which the discrepancy between institutional conventions and the pragma-dialectical rules cannot be explained as a way of creating the conditions for reasonable discussion, but only as a means of achieving specific other institutional goals. An example of this third possibility of how institutional conventions may relate to pragma-dialectical norms is the restriction of the obligation expressed in the pragma-dialectical 'obligation-to-defend rule' in the context of the legal civil process. As van Eemeren and Grootendorst make clear, 'unlike a legal dispute, an argumentative dispute can in principle never be settled once and for all. The discussion can always be reopened' (2004, p. 138). In accordance with this starting-point, the 'obligation-to-defend rule' states that 'discussants who advance a standpoint may not refuse to defend this standpoint when requested to do so' (2004, p. 191). But as we have seen, in the civil process, the right to reopen the discussion is limited in order to guarantee that specific legal aims can be achieved. The legal rules limit the obligations of the party who has won

the trial to defend his point of view to a certain time span.[10] Imposing such time limits is a measure that is taken to achieve the legal aim of safeguarding parties' legal rights. Aiming for this type of security is, strictly speaking, not conducive to a maximal critical testing of the acceptability of a standpoint. From the perspective of a critical discussion, this type of limitation can therefore be seen as unreasonable, even though it is defensible from a legal perspective.

4. CONCLUSION

A pragma-dialectical evaluation of argumentative discourse takes place on the basis of standards of reasonableness that are expressed in the rules for critical discussion. These rules are deontic in nature, because they specify the rights and obligations of the parties involved in the discussion. A fallacy is a violation of such a rule, and in order to establish whether a particular discussion move should be evaluated as fallacious, general and specific criteria may have to be applied. These criteria are non-deontic in nature, because they either specify the meaning (or scope) of the terms that occur in the rule or specify which context-specific conditions have to be fulfilled in order for a discussion move to count as a rule violation.

The influence of institutional conventions on the pragma-dialectical evaluation of argumentation in context depends on several parameters. As a first step, the evaluator should establish whether a particular convention is deontic or non-deontic in nature and whether it deviates from the deontic rules of the code of conduct for reasonable discussants. If there is no conflict, the convention may still play a role in the evaluation. For in this case, the convention may be used to (further) specify the context-dependent criteria on the basis of which the evaluator can decide whether a particular rule has been violated or not. If the convention is deontic in nature and deviates from one or more of the rules of a critical discussion, the evaluator may have to adapt the rules on which his fallacy judgments are based. As we have argued, such a rule adaptation can only be justified by showing that the adaptation compensates for the non-fulfillment of certain higher-order conditions for resolving a difference of opinion. Only in this way can it be maintained that the norms that are used in the evaluation further the realization of an argumentative aim. If such a justification for the adaptation of the institutional convention cannot be given, the pragma-dialectical rule should be decisive for the evaluation.

In our view, a rule adaptation cannot be motivated only by referring to specific institutional aims that the activity type has to bring about. For in this case, the norms that are used in the evaluation are not necessarily conducive to a reasonable resolution of a dispute. This does of course not preclude them from being effective in bringing about other institutional aims, such as the need to provide legal certainty to one of the parties. And given the fact that such other aims need also to be realized, within the context at hand the adaptation can make it possible to approach the ideal of a critical discussion as much as possible, without sacrificing competing institutional aims. In such cases, one could say that there is not a *maximal* but, given the institutional constraints, only an *optimal* critical testing of the acceptability of the standpoint at issue.

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[10] At the same time, this means that the rights of the party who has lost the trial to challenge his opponent's standpoint (Rule 1, Freedom rule) are also limited to a certain period of time.

On a more general level, our discussion of the influence of institutional conventions on the pragma-dialectical evaluation of argumentation in context relates to the much debated issue of the context-dependency of fallacy judgments. Some scholars in the field of argumentation theory take it as a starting point that in different contexts, different standards for the reasonableness of the discourse apply. According to Walton, for instance, an argument that is reasonable in one context may be fallacious in a different context, because the norms to be applied by the evaluator depend on the goal of the type of dialogue at hand:

> In order to evaluate whether an argument in a particular case is relevant or irrelevant, reasonable or fallacious, and so forth, it is necessary to determine whether the argument has been put forward in a deliberation, for example, as opposed to a negotiation or persuasion dialogue or other type of dialogue. For the goals and the rules for each type of dialogue are quite different. (Walton, 1998, p. 254)

In the pragma-dialectical approach, as emphasized below, the rules for critical discussion are context-independent standards of argumentative reasonableness:

> The difference between Walton and Krabbe's approach and ours is that between 'a good argument is one that contributes to the specific goal of a type of dialogue' (Walton and Krabbe) versus 'a good argument is one that complies with the general rules of critical discussion' (van Eemeren and Houtlosser). Using the rules for critical discussion as a context-*in*dependent standard, we take the peculiarities of the various argumentative activity types into account when we start evaluating whether these rules have been obeyed or violated. (van Eemeren & Houtlosser, 2007, p. 65, original italics)

As we have shown, the claim that the rules for critical discussion are generally applicable to all contexts of argumentative activity can be maintained even in cases where deontic institutional conventions deviate from these rules. Moreover, our discussion of the consequences for the evaluation of adaptations of the pragma-dialectical rules due to institutional aims competing with the aim of maximal critical testing has made it clear that we do not believe that the notion of reasonableness differs per institutional context. In our view, regarding the reasonableness of argumentative discourse as dependent on the aims of the institutionalized context in which the discourse is situated amounts to confusing argumentative reasonableness with institutional efficacy.

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