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**Argumentation and Disagreement:**

**A Pluralistic Approach**

**Diego Castro**

**Argumentation and Disagreement:**

A Pluralistic Approach

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university of  
groningen

# Argumentation and disagreement

A pluralistic approach

**PhD thesis**

to obtain the degree of PhD at the  
University of Groningen  
on the authority of the  
Rector Magnificus Prof. C. Wijmenga  
and in accordance with  
the decision by the College of Deans.

This thesis will be defended in public on

Tuesday 14 June 2022 at 11.00 hours

by

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*Someone will observe that the conclusion certainly preceded the "proofs". But who is resigned to looking for evidence of something not believed by him or whose preaching does not matter?*

*Jorge Luis Borges - Three Versions of Judas*

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## Acknowledgements

Five years ago, I decided to make a bold move in my life. I was 32, with a nice job as a public service attorney in Chile, a great marriage and a newborn baby girl. And yet, something was odd. I majored both in law and philosophy but never got serious about an academic career as a philosopher. My job was Ok, but it was not something that moved me or helped me wake up in the morning; I had other intellectual interests that were not being fulfilled there. If I wanted to give it a shot with philosophy, it was maybe my last chance. Fortunately, two years before, I had met Jan Albert Van Laar during a short stay in Groningen, so it wasn't that hard to decide where to pursue my academic career and on which topic. I wanted to research argumentation theory in a Philosophy Faculty, and the University of Groningen seemed like the perfect place. So I talked to Jan Albert, applied and got a scholarship, and the plan was on.

I will not lie: moving the whole family to another continent, with a scholarship that was barely enough to sustain us, to a country with another culture where people speak a language we didn't understand was not easy. But it was worth it, every single day of it. After five years, my wife is doing her PhD at TU Delft, our daughter goes to school and speaks native Dutch, and we also have a son. It is still difficult to balance everything, and the Covid-19 pandemic made it worst. But the decision we made five years ago, as a family, was the right one, and the freedom that a PhD gives you has allowed us to give time and attention to our children.

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## Introduction

This thesis is about disagreement. More precisely, it is a thesis about what we should do to overcome disagreements, especially when those disagreements are hard to face. The question that lies at the heart of this thesis is the following: “how can we overcome disagreements reasonably, especially when they are persistent?”. The general approach for answering this question is to look at it from the rich tradition of argumentation theory. My answer, then, goes along the following lines: I will argue that argumentation is the most reasonable response to disagreement. But that does not mean that those who disagree always need to try to rationally persuade each other to arrive at a consensus that counts as a resolution of the disagreement. It may also mean that they aim to overcome their disagreement in other ways because next to argumentation that aims to resolve disagreements rationally, argumentation can also serve other goals. Some of them may help the parties overcome disagreements reasonably. And, even when we resolve disagreements by *persuading* the other party (and sometimes we need to, as I will argue), the circumstances of the dialogue might need us to expand what some argumentative schools like *pragma-dialectics* or *informal logic* might call reasonable. I will call this position a *pluralistic approach to argumentation*. To explain it better, we need to briefly introduce the problem of disagreement and the challenge it raises for argumentation theory and philosophy in general. In a way, my whole conception of argumentation is prompted by the observation that disagreements are usually *not* resolved.

### 1 The Problem of Disagreement

I was halfway through this project when the COVID-19 virus started spreading through the Chinese city of Wuhan, then through China, and finally worldwide. By the time I’m writing this, the crisis is still ongoing, but it seems to be getting slowly under control. The main reason why it is being controlled is thanks to a worldwide effort to develop, produce and administrate multiple vaccines at an unprecedented speed: if the world needed three decades to eradicate polio from most countries (De Quadros, Andrus, Olive, Guerra De Macedo, & Henderson 1992), it has just taken two years to develop multiple vaccines for COVID-19, and vaccinate half of the world population with them<sup>1</sup>.

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<sup>1</sup> According to the site <https://ourworldindata.org/grapher/share-people-fully-vaccinated-covid> by the time I consulted (26-12-2021), 48% of the world population was fully vaccinated against Covid 19. But this number hides huge inequalities: while 60% of Europeans were vaccinated to that date, only 8% of Africans were.

But the pandemic is not over, and one of the reasons it has been so hard to fight is that it has revitalised the trend of vaccine scepticism. According to a recent poll, 1 in 3 people in the United States was unwilling to get COVID-19 shots<sup>2</sup>.

But this scepticism and the scepticism about vaccines in general (by the so-called anti-vaxxers) are not isolated and are somewhat related to other phenomena of our time. Some people talk about the “post-truth era” (Sismondo 2017), others about the “misinformation age” (O’Connor & Weatherall 2019). In any case, we have climate-warming sceptics (Coady & Corry 2013), anti-vaxxers (Ceccarelli 2011), conspiracy theories (Cassam 2019), fake news (Gelfert 2018), political polarisation (Aikin & Talisse 2020), echo chambers, epistemic bubbles (Nguyen 2020), political radicalisation, and so on. Are these phenomena connected in any way? Is their increase related to the use of the internet? What philosophical problems do they give rise to? Are they new, or we are just witnessing Socrates’s struggle against the sophists all over again?

These questions have a broad scope, but I want to focus only on disagreement and the inability to overcome it. In the COVID-19 vaccine case, the authorities cannot persuade a significant part of the population that the vaccines are safe. And this even with the backing of the scientific community, official media, international organisations and local health advisers, in a situation that resembles previous anti-vaxxer movements and global warming scepticism. In other words, there is a disagreement on a public issue that resists resolution.

By *disagreement*, I will refer, in chapter 1, to a “dialogical and externalised clash of commitments between two or more parties”. The fact that the disagreement is *dialogical* means that it occurs within a dialogue. *Externalised* means that it does not come into being until the parties express their clashing points of view. The disagreement is about *commitments* (Hamblin 1970; Walton & Krabbe 1995), which means that the parties clash about the propositions they are publicly committed to defending.

But the COVID-19 example is not any disagreement: it is a disagreement that might be called persistent. This concept has been used before by Elgin, who describes it as a disagreement “where no easy or obvious resolution is available” (2010, p. 53). I understand this as a disagreement that endures even after the parties’ best efforts for resolving it.

Let me provide a personal anecdote to understand the problem better. Last Christmas, my family organised a gathering after a year without seeing each other. My family members are vaccinated against COVID except for my youngest sister and her partner, who refuse the vaccine. She offered to have a PCR test before the gathering, but my oldest brother argued that he, his wife

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<sup>2</sup> <https://apnews.com/article/ap-norc-poll-3rd-adult-skeptical-vaccine-3779574a6d45d38cfc1d8615eb176b2d>. retrieved on 26-12-2021.

and kids were not attending if she was going, even with a negative PCR. My brother argued that even though the risks were limited because of the PCR and the gathering was outdoors<sup>3</sup>; he didn't want to take any chances. My sister argued that he was being "ideological" that he "didn't respect her way of life", and this was a "personal issue against her rather than a health concern". None of the parties yielded, and my sister decided not to attend the Christmas gathering. The disagreement, then, is persistent: even after the parties have presented their best available arguments, it is not possible to resolve it.

Generalising my little family anecdote, this is the problem that many countries face. Scientists tell us that if a substantial portion of the population gets vaccinated and receive reinforcement shots when necessary, we could save many lives and have family gatherings, concerts, classes or conferences again. But, for whatever reason, part of the population is hesitant towards the vaccine, delaying the return of those activities. And for people unwilling to get vaccinated, its imposition disrespects their freedom or "way of life" (as my sister claimed). The disagreement is persistent, with no parties able to persuade the other and no simple solution on the horizon.

It just appears that some disagreements are here to stay: people can present multiple arguments and counter-arguments, think about their problems deeply and, yet, go on for years without reaching an agreement. And some of these disagreements are very relevant. People disagree persistently about cutting carbon emissions to combat global warming, about the correct number of immigrants, about making COVID-19 vaccines mandatory, about the acceptability of tax-heavens, about the attendance of unvaccinated people to family gatherings, about allowing noisy dogs in their neighbourhood and so on.

How to proceed, then, how to persuade people of getting a COVID-19 shot? Or politicians to get serious about global warming? My focus is not related to these specific questions but to the structure of disagreement itself: What does it mean to disagree? What is a disagreement in general? And, especially, what sorts of resolution can disagreements have?

There are four basic answers for resolving these questions that I present now.

### **1.1 The Epistemic Answer**

When faced with the problem of vaccine hesitancy, proponents of this answer would argue that disagreement only arises because one party lacks enough knowledge about the issue. A proponent of this approach would argue: "If people refuse to vaccinate, it is only due to lack of information. They don't know what viruses are, what vaccines do and how they work. The solution is to provide them with such information, and they will agree. If they still refuse,

---

<sup>3</sup> This was in Chile, so we have nice and warm summer Christmas.

they are just irrational people”. The general message of this solution is the following: when parties disagree, they need better knowledge. Good knowledge ends disagreement.

An epistemic approach to disagreement was defended by Descartes when he argues:

Whenever two men come to opposite decisions about the same matter, one of them at least must certainly be in the wrong, and apparently there is not even one of them who knows; for if the reasoning of one was sound and clear he would be able so to lay it before the other as finally to succeed in convincing his understanding also. (Descartes, as cited in Perelman & Olbrechts-Tyteca 1969, p. 2)

Following Descartes’s idea, when we encounter a disagreement, not only is one of the parties wrong, but they both probably are. For him, to know is to get something sound and clear so that when another party is exposed to such a piece of knowledge, it is irresistible to agree, and a party who resist is irrational. In other words, more than *persuading*, a party who knows should be able to *demonstrate* his point. In the COVID-19 vaccine case, we just need to demonstrate that there is no better solution for people hesitant towards vaccination. And if we are unable to, we just don’t *know* the topic well enough, so we need to gather more evidence.

While this seems true for some disagreements, it is not for all of them. The question “why do people disagree?” cannot be only answered by lack of knowledge alone, as I will show now.

Proponents of the epistemic answer would argue that disagreement arises from a different *exposure to evidence*: “if we could just have access to the same evidence, we would surely agree”. But this is not the whole story because some disagreements cannot be resolved by having the same evidence. Two students, for example, when facing the exact chemistry assignment with the same evidence to work with, can get different results (Frances 2014, pp. 19–20). And people who have roughly the same knowledge towards vaccination might also disagree regarding, for example, COVID-19 shots.

Then, the proponent of the epistemic answer will need to broaden his idea of “knowledge”: “We can also look at background knowledge, general education, overall experience or abilities. Therefore, the problem might not be the particular evidence we are exposed to but our capacity to assess it”. The disagreement regarding the chemistry assignment might arise because one student is better prepared or has better natural abilities than the other. And the disagreement with an anti-vaxxer might arise from her lack of general understanding of how science and vaccines work. Therefore, maybe what we need is basic education. In fact, it has been proved that hesitation towards vaccination is related to lower education levels (Benoit & Mauldin 2021). However, this is not definitive: some highly educated people still refuse the vaccine, and my college-educated sister is among that group.

Another example that overall education is not the whole answer is the case of judges. They are highly trained professionals and have the same access to the evidence and roughly the same capacity to assess it, but often disagree when ruling cases. In fact, for ruling cases, “absence of consensus is the norm” (Kahneman, Sibony, & Sunstein 2021, p. 15)

To keep maintaining that disagreement is merely an epistemic problem, the defender of the epistemic answer would need to provide an even broader definition of knowledge, and probably bring in some of the work on cognitive biases (Kahneman 2011): “the problem is that we are cognitive misers, so disagreement might arise because some of us are unable to think clearly in some particular circumstance. We might be stressed, hungry, tired, hurried, or fall prey to cognitive biases. But if we could overcome those problems, we should resolve our disagreements”. Then, the disagreement would need to be resolved by standardizing the circumstances that produce them. For example, in the vaccine hesitancy case, if we could just make sure that as many circumstances as possible are equal, the parties should resolve their disagreements, and people should agree to vaccinate. But people just don’t have the same circumstances, and overcoming cognitive biases has proven to be very difficult. And even when they do have pretty much the same circumstances, many disagreements can persist. We can argue that the problem is that they are related to our *values*. So, even if the parties have roughly the same evidence, abilities, experience, and circumstances, they can still disagree because they hold different values about what is right, fair, or appropriate. Other things being equal, those different values can turn the scales towards one side or the other. So, in the case of the COVID-19 vaccines, some people hold values that clash with vaccination: religious beliefs, their idea of freedom, their will to keep their body without intervention, etc.

Finally, the only way to maintain that disagreements are merely an epistemic problem would be to argue that disagreements in *value* are disagreements in *knowledge*. But that would be very controversial. So the epistemic answer can’t be the whole story, despite Descartes’s good name. Disagreement can arise from many sources, and knowledge can’t always help us to agree. And even when it does (as in the differences in overall abilities), it requires a long and sometimes unsuccessful path. So, we can take the opposite answer to the question of disagreement: a sophistical one.

## **1.2 The Sophistical Answer**

Proponents of this solution would argue that many disagreements (and especially the important ones) arise from differences in values. But people just happen to hold different values, so there’s not much we could do to change their minds through a rational process. Therefore, we either try to persuade them through rhetoric and propaganda, or we just force them if that doesn’t work. In the end, this is about who holds power and not who is right about the

issue. Regarding the vaccination example, they would argue: “Vaccination is important; our vaccination programme should not be thwarted by hesitant people who hold different values. The government must persuade or pressure people to get a vaccine through propaganda, and force them if they still disagree”. From this perspective, persuasion is the same thing as propaganda: a way to move people into doing what we want. And if that doesn’t work, we can still force them because the people in charge have justice on their side.

This view also seems to be held by conspiracy-theory minded people, but from the opposite angle: “the COVID-19 crisis is an invention or creation of global powers and big corporations, and the vaccine is a device designed to make us sick or control us. Their insistence on vaccination has nothing to do with health, truth or knowledge, but with power, control and deception”.

This position is well known in philosophy, and it appears in Plato’s dialogues as the position of some sophists like Gorgias, Callicles and Thrasymachus. Those sophists argue that persuasion and knowledge are separate things, allowing them to teach their students to persuade anyone about anything without worrying about truth or justice. Also, they claim that persuasion is not necessary for the *polis* because justice is only about power and is unrelated to truth or good. In other words: if you are in charge, you don’t even have to worry about giving reasons.

Gorgias, for instance (*Gorgias* 453b–465e), argues that by using rhetoric, we can persuade people about anything without the need for it to be true and without the need for us even to know what we are talking about. Suppose that was the case in the COVID-19 vaccine example. If so, we don’t need to *resolve* the disagreement by presenting evidence: we just need the art of rhetoric to persuade (or deceive) the *anti-vaxxers*, even against their will.

For Callicles, the stronger must dominate the weaker because that is the law of nature (*Gorgias* 488a–489a). That being the case, the way to resolve the COVID-19 vaccine disagreement is the following: if the State is stronger than people refusing to vaccinate, then the State should force vaccination on them. It doesn’t matter what they think, and we don’t need to persuade them, just force them.

Similarly, Thrasymachus argues that justice is nothing other than the advantage of the stronger (*Republic* 338c). That being the case, knowledge, persuasion or demonstration are unnecessary because the stronger needs to do his will against those who disagree. The Sophists have different approaches to the matter, but we could say that they claim: first, we persuade through rhetoric, then we use force.

Another similar approach to disagreement comes from the Daoist thinker Zhuangzi (369-290 B.C), who, in a famous passage, argues:

Suppose you and I have had an argument. If you have beaten me instead of my beating you, then are you necessarily right, and am I necessarily wrong? If I have beaten you instead of your beating me, then am I necessarily right, and are you necessarily wrong? Is one of us

right and the other wrong? Are both of us right, or are both of us wrong? If you and I don't know the answer, then other people are bound to be even more in the dark. Whom shall we get to decide what is right? Shall we get someone who agrees with you to decide? But if he already agrees with you, how can he decide fairly? Shall we get someone who agrees with me? But if he already agrees with me, how can he decide? Shall we get someone who disagrees with both of us? But if he already disagrees with both of us, how can he decide? Shall we get someone who agrees with both of us? But if he already agrees with both of us, how can he decide? Obviously, then, neither you nor I nor anyone else can know the answer. Shall we wait for still another person? (Watson 2013, p. 17)

What is curious about this much-debated passage (see Ming 2020) is that one of the parties has *beaten* the other. This fact can mean anything, for example, one of the parties was persuaded, got tired, or decided not to argue anymore, but the effect is the same: we can never know if the party who *beat* the other was right about it. Also, the idea of calling successive judges reminds us of the *epistemic regress* problem as presented by Sextus and others (Groarke 1990, p. 132). The effect is similar to the sophists' case: truth and knowledge are disconnected from persuasion.

In the COVID-19 vaccine example, this means that the party who refuses vaccination can always argue that the reasons we give in favour of vaccination can be doubted. Nobody can *know* if the vaccine works, so there are no good reasons to follow their advice. So, if we want people to get vaccinated, we need to *deceive them* or *force them*; there's no other solution. But those solutions to disagreement have problems of their own.

To begin with, the idea that people are gullible and can be easily deceived has been strongly contested (Mercier 2020). If something, the opposite might be the case: people tend to be too vigilant, doubting even when not supposed to. That is precisely the case with vaccine hesitation. Therefore, it is unlikely to find a way to persuade people to get vaccinated, even using deception. And even if we *could* deceive people, the morality of such actions could be contested, which is Socrates's main line of argument against rhetoric in Plato's dialogues.

On the other hand, the use of pressure or force has moral problems. A simple thought experiment will help us spot them: imagine that a particular country's authorities believe that COVID-19 is a conspiracy. Therefore, they use propaganda, political pressure and ultimately a ban on vaccines. As a citizen who believes in the official World Health Organization stories about COVID-19, you would think that the government's rhetoric puts you and your family at risk. Consequently, what they do is unfair and immoral. So, at least from your perspective, justice cannot be the will of the stronger, as Callicles and Thrasymachus argue. Instead, being on the losing side, you would claim

that, for resolving disagreements, the authorities need to have good reasons and just cannot force their side of the argument upon you.

### 1.3 The Consensual Answer

Proponents of this solution argue that lack of knowledge cannot explain all disagreements, so we cannot demonstrate our point, just persuade people about it. But persuasion could be rational, and when rational persuasion is used, it might eventually lead to consensus. Regarding the disagreement about vaccines, they would argue like this: “To resolve the disagreement about vaccination, we need to present good arguments. They cannot demonstrate our point, but they are the best reasons available. We think that most people are rational so that they will accept vaccination.”

According to Woods (2004), the consensual answer has been defended by authors like Habermas (1984), Grice (1975), and van Eemeren and Grootendorst (1984, 2004). It argues that consensus building is possible and a normative ideal that allows us to distinguish rational from irrational arguments and actions. Therefore, the way to resolve these disagreements is to present *arguments* whose ultimate goal is to persuade the other party rationally. If that happens, we can resolve the disagreement through consensus. What is needed, then, is “a project of open, objective enquiry in which the parties behave (or are expected to behave) reasonably, honestly, helpfully and equably.” (Woods 2004, p. 65).

Take, for instance, the *pragma-dialectical* approach to argumentation<sup>4</sup> (van Eemeren & Grootendorst 1984, 2004). For them, in the example about COVID-19 vaccination, we need to provide arguments to persuade the other party to get vaccinated. If we do it reasonably, following a procedure they call *critical discussion*, and we succeed at persuading, we can resolve the disagreement *on the merits*. This resolution means that, given what the parties know and their arguments, the consensus reached is the best they could get under those circumstances, which makes it reasonable. Moreover, as one party needs to defend its position, that position improves. Therefore, it is not that we *know* beforehand the best way to resolve a disagreement and have a fixed standpoint about a subject; the process of argumentation itself helps us develop such a standpoint.

Against the *epistemic answer*, they would argue that a party doesn't need to *know* the standpoint she defends with *soundness and distinction* (to borrow Descartes's formula); she needs to have a good enough conjecture or hypothesis to put forward and test through the argumentative process, and that process will help her develop her position. Also, disagreement is not explained entirely by a lack of knowledge. The focus, then, is not on evidence, *data* or knowledge but good *arguments*, and *good arguments* could contain those

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<sup>4</sup> To be further explained later in this introduction.



elements but might change according to the circumstances of the dialogue. If the argumentative process is done right in the vaccination example, we would have better reasons for a COVID-19 vaccine than against a COVID-19 vaccine. In that case, we should defend vaccination, but being aware that future argumentative processes might force us to change our minds if the other party provides good reasons against vaccination.

Against the *sophistical answer*, they would argue that not being totally sure about my standpoint doesn't imply that I need to throw my beliefs overboard and argue that all that matters is power and manipulation. Here, Pragma-Dialectics takes some insights from Karl Popper (van Eemeren & Grootendorst 1984, p. 16) to argue that, just as we test scientific theories, argumentation helps us do *critical testing* of a hypothesis. Then, what we will get if we arrive at a consensus are not *true* or false but critically tested or not yet refuted propositions.

The consensual answer seems adequate in many ways. But it has a problem: it requires that the parties are collaborative, open-minded, not too biased, etc. But that is not always possible, so what to do in those cases? What to do with the anti-vaxxer, even when his refusal of the vaccine may jeopardise public health? Consensus theorists would argue that, since consensus is a normative goal, we must keep striving for it, even if it doesn't work, but there are some reasons to think that is a bad idea.

Those reasons give rise to a fourth answer that I label *argumentative pluralism*, which I will advocate for in this thesis.

#### 1.4 The Pluralistic Argumentative Answer

The epistemic answer argued that disagreements could be explained only by lack of enough knowledge, so they could be resolved by providing data or information. The sophistical answer argued that, since knowledge cannot resolve disagreements, the only way to do it is by using propaganda, pressure, and deception. The consensual answer takes a middle path by claiming that, by arguing, the parties can eventually arrive at a consensus through rational persuasion.

My position takes the consensual answer as its starting, but it adds a certain scepticism towards the possibilities for consensus. Many authors share this scepticism. Christian Kock, for instance, argues that in *practical* issues<sup>5</sup>, a consensus is not the primary goal, and there is healthy and legitimate dissensus:

I am not talking about any kind of dissensus, though. The kind of dissensus I mean is the kind that will not go away, even after prolonged discussion. This kind of dissensus I call legitimate because

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<sup>5</sup> The distinction between practical and theoretical issues is developed in chapter 4.

it may not only exist but also endure. Even while using our best tools for the sake of common understanding, we do not reach consensus. (Kock 2008, p. 180)

Along the same lines, Woods (2004, p. 185) argues that “consensus should not be considered essential to dialogical rationality”. Angenot (2008) claims that the idea that we could persuade each other is an axiom of argumentation that is never questioned, despite being contradicted repeatedly by observation. And, according to Doury (2012), persuasion is not even a necessary condition for argumentation because we might argue for many other reasons, even with people who are already convinced or who will likely refuse to be convinced, no matter the arguments we use (see also Micheli 2012). For Goodwin (2007), not only are consensus building and rational persuasion *not* the primary functions of argumentation, but argumentation doesn’t have a function at all. Finally, Paglieri (2009) argues that persuasive argumentation might *escalate* the level of disagreement instead of diminishing it; moreover, he claims that this escalation occurs *because* of the argumentation process and not in spite of it. Therefore, to argue that the solution for disagreement is persuasive argumentation ignores the fact that we might achieve just the opposite.

So, what should we make of this scepticism? How to move on from here? My answer could be formulated as follows: Argumentation is the only reasonable solution when facing a disagreement. But argumentation is more than rational persuasion; it is a social activity aimed at managing disagreement through the use of reasons. My position tries to expand the consensual answer, including other solutions to disagreement different from rational persuasion and expanding the concept of what rational persuasion is. It can also be presented in opposition to the other answers presented before:

- Against the epistemic answer, it claims that disagreement is not only about knowledge, so it cannot be resolved merely by providing data or information.
- Against the sophistical answer, it claims that argumentation is not only about pressure, propaganda and manipulation because there are reasonable and unreasonable ways of persuading.
- Against the consensual answer, it claims that consensus is hard to attain, so it cannot be considered the only way of resolving disagreements

This position is not entirely novel because, as I will explain later, it takes elements from different authors on argumentation theory (among others: Gilbert 1995; Goodwin 2007; Jacobs 1998; Kock 2017; Walton 1995; Woods 2004)

Regarding the vaccine example, what policy would be proposed by this position? It would be something along these lines: “We need to provide good arguments, so people get the vaccine. Even if we cannot persuade them, the argumentative process could still help us arrive at other reasonable solutions”. My solution then is to expand dialectical theories of argumentation like the

ones advanced by the pragma-dialecticians (van Eemeren & Grootendorst 2004) or Douglas Walton (1995, 1998). How do I intend to expand these theories?

First, by using different *types of dialogue* (Walton & Krabbe 1995): I claim that argumentation isn't only about persuasion but also about negotiation, deliberation and other settlement methods where parties *provide reasons*. If this is the case, then the possibilities for overcoming persistent disagreement are less restricted than if we only think about it in terms of persuasion. In other words, successful persuasion requires the *resolution* of disagreements, but other dialogue types require other, less demanding goals that could help the parties *overcome* disagreements. In this regard, I will give special attention to negotiation, as one of the dialogue types that is more apt for productively managing disagreements.

Second, by considering that even if we try to persuade the counterpart (and sometimes we have to), the norms for evaluating specific contributions as reasonable need to be broader when the dialogue settings are *sub-optimal*. If this is the case, then we can need more rhetorically oriented conceptions to argumentation (Gilbert 1995; Jacobs 2000) that allow emotional or physical arguments.

Third, by taking *fallacies* as a type of argument that, when presented, doesn't necessarily imply that the argumentation process is unreasonable and needs to be abandoned. Still, it can even help the parties to understand the situation better and ultimately contribute to overcoming the disagreement (as Jacobs 2006 argues).

## 2 Research Subject

The main topic of this research is *disagreement* and its relation to argumentation, especially, but not exclusively, *persistent disagreement*. Persistent disagreements defy the idea that argumentation can help us resolve disagreements. Other authors have used different concepts for roughly the same or closely related problems:

1. Robert Fogelin presented the term "deep disagreement" defined as a disagreement "generated by a clash of framework propositions" (1985, p. 8) or a disagreement where the parties clash about "a whole system of mutually supporting propositions (and paradigms, models, styles of acting and thinking)." (1985, p. 9).
2. John Woods coins the term "standoffs" for "arguments typified by their utter hostility to consensus" (2004, p. 185).
3. Richard Friemann refers to "intractable quarrels" which are "characterised by hostility and a marked resistance to perspective-taking or empathy" (Friemann 2002, p. 337)
4. Moira Kloster uses the term "recalcitrant" to refer to disagreements that are "intractable, or rationally unresolvable, due to the combination

of factors of accessibility of relevant reasons and the amount of trust in the situation” (Kloster 2018, p. 1190).

5. Christian Kock discusses “enduring dissensus”, which is dissensus of “the kind that will not go away, even after prolonged discussion”(Kock 2008, p. 180)

I use *persistent disagreement* as an umbrella term that captures the meaning of the concepts presented above. Specifically, I define persistent disagreement in chapter 1 as the case when “it is unlikely that the parties have the means to resolve them by persuasive argumentation.”

Fogelin claims that “a disagreement can be *intense* without being deep. A disagreement can also be *unresolvable* without being deep” (1985, p. 8). *Persistent disagreement* is a term that tries to capture what Fogelin calls “intense” or “unresolvable”. Those disagreements could, but need not to be deep, and therefore, deep disagreement is a special case of persistent disagreement.

Persistent disagreement is also more general than “standoffs”, which only refers to disagreements in the public sphere, while persistent disagreements can also occur in private. It is also more general than “intractable quarrels”, which is a disagreement in intimate situations, while persistent disagreement can also be related to the public sphere. It is very similar to “recalcitrant disagreement”, with the sole difference that those disagreements arise mainly because of a lack of trust. Still, persistent disagreement can arise for other causes (as I explain in chapter 1). Finally, it is more general than “enduring dissensus” that only refers to practical disagreements, while persistent disagreement is also related to theoretical cases (more on this distinction in chapter 4).

Besides persistent disagreements, there are other general topics whose meaning and limits are discussed in the thesis. The first one is “*dialogue types*” (Walton & Krabbe 1995). According to Walton and Krabbe, dialogues have many normative models, each with specific goals and rules. Each dialogue type serves a different purpose, but the parties can shift from one type of dialogue to another under certain circumstances. In this thesis, I want to focus on those circumstances because exploring different dialogue types can allow the parties to overcome disagreements reasonably.

Another critical topic is the concept of “*fallacy*”. I don’t develop a full-fledged theory of fallacies as other authors do (see Hamblin, 1970; Johnson & Blair 1994; van Eemeren & Grootendorst 2004; Walton 1995; Woods 2004). But I do analyse whether the occurrence of fallacies hinders the chances of overcoming disagreements and what the parties need to do in response to fallacies to avoid such effects.

Finally, I want to analyse the conditions for a reasonable exchange of reasons, or the pragma-dialectical tradition has called them the “*higher-order conditions*” (van Eemeren, Grootendorst, Jacobs, & Jackson 1993). These are supposed to be minimal conditions for engaging in dialogue that succeeds in

following the rules formulated in a normative model called “critical discussion” (van Eemeren & Grootendorst 2004). Still, if that model can be fully applied when the conditions are not present seems unclear.

### 3 Research Aims

This dissertation investigates the relationship between argumentation and disagreement, with particular focus on the case of persistent. Its research questions and theoretical objectives are the following,

#### 3.1 Research Questions

If I need to reduce the question of the thesis to a single question, I would say that it is: “how can we overcome disagreements reasonably, especially when they are persistent?” This question takes a lot of concepts for granted, so to answer it correctly, it is necessary to divide it into other questions that I present here:

*First*, what is persistent disagreement? I have described this term as an umbrella concept that encompasses different situations where the parties don’t have the means to resolve disagreements. What does this imply, and what are the different types of persistent disagreement? Is it an important concept for advancing our knowledge in the subject?

*Second*, how can argumentation help us overcome these disagreements? Is argumentation the proper tool for it, or do we need something else? To correctly answer this question, it would be necessary to answer the following one.

*Third*, what does the term “argumentation” mean? As some authors argue, is it a monistic term that refers only to rational persuasion? (Govier 1989; Johnson & Blair 1994; van Eemeren & Grootendorst 2004); or is it a pluralistic term that refers to persuasion and other goals like other authors argue? (Blair 2012; Doury 2012; Goodwin 2007; Micheli 2012; Walton 1998).

*Fourth*, if one of the solutions for persistent disagreements is, as I propose, to use different types of dialogue like persuasion, negotiation and deliberation (Walton & Krabbe 1995), then, what is a dialogue type and what are the conditions for shifting from one dialogue type to another?

*Fifth*, in persistent disagreements, the conditions for a reasonable exchange of reasons are not satisfied, so the setting is sub-optimal. For (van Eemeren et al. 1993), *there are unsatisfied higher-order conditions for critical discussion*. But then, then what is the normative model for these sub-optimal settings?

*Sixth*, what is the proper response to a fallacy? Does the use of fallacies from the other party necessarily hinder the possibilities for resolving disagreements? What is the best option if we want to overcome disagreements? To use a metadialogue (Krabbe 2003) to show that a fallacy has been committed, to respond with a counter-fallacy (Jacobs 2000) or to use

strategic manoeuvring (van Eemeren & Houtlosser 2007)? What is the proper answer if we want to overcome persistent disagreements?

*Seventh*, negotiation is presented as one of the best examples of overcoming disagreement without using persuasion, but what are the conditions for a reasonable shift from persuasion to negotiation dialogue? Is it right to be *permissive* about the shift (van Laar & Krabbe 2018a), or must we be *restrictive* (Godden & Casey 2020)?

### 3.2 Theoretical Objectives

I hope to achieve the following objectives in this thesis:

First, the initial question presented in the subsection above is a “how” question. It doesn’t aim to describe a concept but to understand a process. In that sense, it is a question about the effectiveness or the relationship between specific means and goals. The goal is to overcome disagreements, so the question asks the necessary and sufficient means to achieve that goal. In that sense, I can say that the first theoretical objective is to find an *effective* answer to the question. The first theoretical objective is, then, a *functional objective*.

Second, the main question also includes the term “reasonable”. The term shows that the main research question is largely a normative question, and the objective of answering the question is thus *normative*. Therefore, I am not only seeking tools that *work* but also tools that work in a certain manner that we can call *reasonable*.

This normative requisite is connected to ethical concerns. However, I will not discuss ethical issues of argumentation here, but only give some general orientations that go along the line of the work developed by authors like Habermas (1984). Summing them up, I would say that the idea is to understand how to overcome disagreements peacefully and honestly, avoiding lies (Kristiansen & Kaussler 2018), deceit, argumentative injustice (Bondy 2010), manipulation (Nettel & Roque 2012), and other solutions that could be harmful both for the parties and society in the long run.

Third, the thesis has a conceptual objective necessary to achieve the objectives above. This objective implies analysing concepts essential for understanding the problems posed and their pretended solutions. As a side benefit, that analysis is also desirable on its own. Among others, I pretend to analyse concepts like “persistent disagreement”, “fallacy”, “argumentation”, “resolution”, “settlement”, “negotiation”, “theoretical argumentation”, and “practical argumentation”.

## 4 Theoretical Framework

### 4.1 Argumentation Theory

This thesis is mainly a contribution to the field of argumentation theory. This field has a double membership: first, it is part of an academic effort that we

could label “argumentation studies”, which is an interdisciplinary field that combines contributions from philosophers, linguists, rhetoricians, legal scholars, computer scientists, cognitive scientists, political scientists and many others to understand the different dimensions of arguments and argumentation (Dutilh Novaes 2021). Second, argumentation theory is a philosophical field on its own, usually addressed from the analytical tradition of philosophy<sup>6</sup>. Its nearest philosophical disciplines are logic, epistemology (especially social epistemology, see Goldman 1994) and philosophy of language (especially speech act theory, see van Eemeren & Grootendorst 1984).

I believe that philosophical topics revolve around what we can call *focal questions*. Those questions are at the centre of a field, so scholars return to them repeatedly. They can be formulated in simple terms, but resolving them requires making many distinctions and answering related questions, which usually complicates things and gives rise to different doctrines. If epistemology revolves around the question “what is to know?” the philosophy of language tries to answer “what is meaning?” and ethics asks “what is good?” the focal question of argumentation theory is “*what is a good argument?*”.

There are three groups of answers to this question, each representing a different approach to the field: *logic, dialectics and rhetoric*. As it will become clear in what follows, these three approaches are also related to the first three answers to the question of disagreement given before. The *epistemic answer* is closer to a logical approach to argumentation, the *consensual answer* is closer to a dialectical approach to argumentation, and the *sophistical answer* is closer to a rhetorical approach to argumentation.

For logical approaches to argumentation, a good argument is an argument with true premises and “logical relations between propositions” (Copi, Cohen, & McMahon 2016, p. 85). Logical approaches focus mainly on propositions and their relation to each other and not so much on disagreement, persuasion, or circumstances surrounding the argumentation process. One of the most recent theories that follow this trend is the so-called “epistemological theory” (Biro & Siegel 2006; Lumer 2005). Regarding the focal question of argumentation theory, they claim: “an argument can be good in this specific sense of the epistemological approach even if it did not convince (...), and it can be bad in this sense even though it did convince because it was persuasive” (Lumer 2005, p. 225). Unsuccessful persuasion doesn’t make an argument wrong, and successful persuasion doesn’t make an argument good. From this perspective, if there are good arguments to get a COVID vaccine and some people refuse to do it, that doesn’t make the arguments bad, but the hesitant people are irrational.

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<sup>6</sup> But not exclusively. Authors associated with the continental tradition like Derrida and Foucault, from a very different perspective, have many things to say about arguments and argumentation (see Cherwitz & Darwin 1995; Hatcher 2017).

On the opposite side of the spectrum, *rhetorical approaches* focus primarily on persuasion or adherence from the auditorium. Logical or epistemological concerns can be a part of their story, and they usually are, but persuasion is their primary focus. In this spirit, Perelman and Olbrechts-Tyteca have stated that “the object of the theory of argumentation is the study of the discursive techniques allowing us to induce or to increase the mind’s adherence to the theses presented for its assent.” (1969, p. 4). Therefore, rhetorical approaches focus on many circumstances relevant for persuasion that are disregarded by logical approaches, for instance: the credibility of the arguer, the tone of voice used, emotional appeals, general political circumstances and so on. From this perspective, the arguments given for getting a COVID vaccine are not good if people refuse vaccination, and the authorities must find more persuasive ways.

Finally, *dialectical approaches* to argumentation could be located in-between logical and rhetorical approaches. Together with the rhetorical approaches, they recognise that persuasion is central to argumentation; and along with logical views, they establish that a good argument must abide by certain rules. Those rules arise from the normative standards of a *dialogue* between parties that want to resolve their disagreements reasonably. In essence, they think that a good argument *rationally persuades* the other party. The following definition of argumentation reflects this approach:

Argumentation is a verbal, social, and rational activity aimed at convincing a reasonable critic of the acceptability of a standpoint by putting forward a constellation of propositions justifying or refuting the proposition expressed in the standpoint. (van Eemeren & Grootendorst 2004 p. 1)

From this perspective, we must find a way of *rationally* persuading hesitant people to get a COVID vaccine because not *any* kind of persuasion can be allowed.

These three approaches can be represented in the following figure:



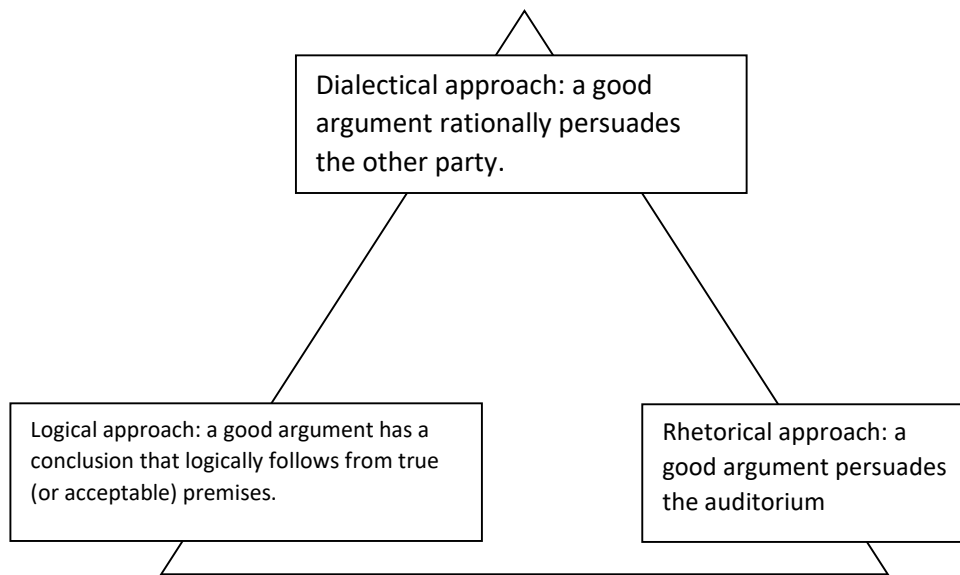


Fig. 1: argumentation from three perspectives

Probably, no approach to argumentation is representative of one corner alone. These three views are complementary, and different branches of argumentation theory only empathise with some of them over others. Another way of looking at it is by distinguishing argumentation as a *product*, *procedure* and *process* (Tindale 1999). Logical approaches are mainly worried about the product: the argument itself and its premises and conclusion. Dialectical approaches focus primarily on the proper *procedure* to conduct argumentation, as a set of rules previously established. Rhetorical approaches take the perspective of the *process*: they want to understand what happens when people argue.

Also, the approaches are better adapted to different sorts of problems. For instance, we would all agree that in sciences such as physics or biology, a “good argument” is one with premises that are as close to the truth as possible and conclusions that logically follow from them. “Persuasion” is necessary, but lack of it doesn’t make an argument *bad*. That is why we would say that Copernicus’s model was far more accurate than the Ptolemaic one: he presented *good* arguments, even though his book “*De revolutionibus orbium coelestiu*” didn’t persuade many scientists for decades after its publication.

On the other extreme, in *politics*, we could all agree that persuasion of the auditorium is of the essence. A well-mannered, well-intended, honest politician who cannot persuade anyone cannot be said to be a *good* politician, and their *not so convincing arguments* cannot be taken as good ones.

Finally, dialectics tries to balance these two extremes and is better suited for evaluating cases like legal argumentation, academic debates or deliberative dialogues. For example, in legal argumentation, the parties’ goal is to *persuade* the judge that their position should be considered tenable while

following specific rules that make such persuasion *rational* for that context. In this case, those are the rules of legal procedure.

In this thesis, I will mostly take a dialectic approach. The reason to do this is that it gives us a balanced approach that puts the resolution of disagreements at the centre. However, as I will try to *expand* the realm of argumentation to overcome difficult disagreements, that expansion will imply moving towards the *rhetorical approach*. In other words, I will not take a rhetorical approach to argumentation but a *dialectical, rhetorically-enriched* approach to argumentation.

Now I will briefly explain the four specific schools of argumentation that will be more prominent in this thesis: “Pragma-Dialectics” and “the New Dialectic” as representatives of the dialectical approach; and “Normative Pragmatics” and “Coalescent Argumentation” as representatives of the rhetorical approach.

## 4.2 Dialectical Approaches

The three theories just sketched were developed in the ancient world by a single author: Aristotle. Naturally, modern conceptions of logic, dialectics, and rhetoric differ from those presented by Aristotle, but they haven’t changed so much.

Regarding dialectics, both Aristotelian and contemporary conceptions of dialectics can be conceived as “the practice and theory of conversations” (Krabbe 2013, p. 205). The main difference between them is that while Aristoteles described a technique for arguing, contemporary dialectics provides a normative framework (Krabbe & Van Laar 2007). Contemporary dialectics gives us a set of rules or principles that tell us how to conduct argumentation to reach specific goals. In this thesis, I will take such a dialectical approach as a basis for understanding how to overcome disagreements reasonably. Specifically, I will give attention to two dialectic theories: *Pragma-Dialectics* (van Eemeren 2010b; van Eemeren & Grootendorst 1984, 2004) and *The New Dialectic* (Walton 1995; Walton 1998)

Pragma-Dialectics takes argumentation to be:

aimed at resolving a difference of opinion on the merits by means of a critical exchange of argumentative moves between the protagonist of the standpoint at issue and an antagonist who has doubt as to the acceptability of this standpoint or even rejects it. (van Eemeren et al., 2014, p. 520)

From this characterisation, we can understand some of the basic orientations of Pragma-Dialectics:

First, the *aim* of argumentation is to *resolve a difference of opinion*. A difference of opinion can be resolved “when the parties involved in the difference have reached agreement on the question of whether the standpoints

at issue are acceptable or not” (van Eemeren & Grootendorst 2004, pp. 57–58).

Second, the difference of opinion must be resolved *on its merits*. This implies that what is needed is “a reasonable exchange of argumentative moves that leads to an outcome based on the quality of the argumentation that is advanced” (van Eemeren et al. 2014, p. 527).

Third, the parties exchange moves in a dialectical game as Aristotle proposed (*Topics*). This exchange of moves can be evaluated using a regimented normative model called “*critical discussion*” (van Eemeren & Grootendorst 2004) so that the process can be deemed reasonable if it follows its norms, which serve as a sort of *blueprint* (Aakhus 2003).

Fourth, in the process of critical discussion, the parties go through four stages: opening stage, confrontation stage, argumentation stage and concluding stage. The parties have different dialectical obligations in each stage and are allowed to use different *speech acts* (van Eemeren & Grootendorst 2004, p. 68).

Fifth, pragma dialectics postulates “rules for critical discussion” as a normative model. A fallacy, then, is defined as “a discussion move that violates in some way a rule for critical discussion applying to a particular discussion stage” (van Eemeren et al. 2014, p. 523). They pretend to unify and provide a rationale for the myriad of fallacies that are usually explained in argumentation textbooks.

The pragma-dialectical model will be taken as a starting point in this dissertation. However, in many cases, I will conclude that it does not suffice to overcome disagreements, so new ways of dealing with them (for example, in chapter 1) or new normative models (for example, in chapter 3), must be explored. So now, let’s briefly explain what *the New Dialectic* is about.

The main difference between pragma dialectics and the *New Dialectic* is its scope. For Pragma-Dialectics, an argument can be evaluated as good if it fulfils the rules for critical discussion conducive to resolution. But for the New Dialectic, we need to distinguish different dialogue types with different goals. Therefore, “arguments are evaluated as correct or incorrect insofar as they are used either to contribute to or to impede the goals of dialogue” (Walton 1998, p. 3). For *persuasion dialogue*, the rules are pretty much the same as in critical discussion. Still, the rules are different for other dialogue types like negotiation or eristic dialogue because the goals are different.

For example, *ad hominem* attacks are usually considered fallacious in a persuasion dialogue. Still, when used in the context of an “eristic dialogue”, things are different: “ad hominem argumentation or personal attack in argument is a major characteristic of eristic dialogue as a type of conversational exchange” (Walton 1998, p. 182).

Another salient characteristic of the New Dialectic is its concept of fallacy. Among other things<sup>7</sup>, for Walton, a fallacy is “an argumentation technique used wrongly” (1995 p. 235). That is, a party puts forward an argument that looks like an argument scheme adequately used, but it just *appears* correct because it doesn’t fulfil what Walton calls “critical questions” for each argumentation scheme.

From *the New Dialectic*, I will take this idea of fallacy (especially in chapter 2) and the existence of multiple dialogue types so that “argumentation” is a concept that refers to all of them and not only persuasion dialogue. That’s why I develop the idea (especially in chapter 1) that we need to “overcome” rather than “resolve” disagreements. Resolving a disagreement amounts to a successful persuasion dialogue: one of the parties has convinced the other of the tenability of a standpoint. But “overcoming a disagreement” may refer to other ways of reaching an agreement, such as by negotiation, deliberation, mediation or arbitration.

But as said before, even with different dialogue types in play, I believe that we need, sometimes, a broader framework for overcoming disagreements, especially the persistent ones, that is why I will lean towards some rhetorically oriented theories of argumentation, specifically Michael Gilbert’s “*Coalescent Argumentation*” (Gilbert 1994, 1995, 1997; 2002) and Scott Jacobs’s “*Normative Pragmatics*” (Jacobs 1998, 2000, 2003, 2006).

### 4.3 Rhetorically Oriented Approaches

We could understand the difference between a logical, dialectical, and rhetorical approach to argumentation by thinking of it as a *zoom-out* process. While the first approach centres mainly on the relationship between propositions, the second approach considers more elements: the type of dialogue, the disagreement space, or the parties' commitments. Finally, rhetorical approaches zoom out even further, taking into account the parties' circumstances, emotions, history, gestures, or personality. This becomes clear from the following approaches to argumentation that qualify as rhetorical.

Michael Gilbert understands an argument as “an exchange of information centered on an avowed disagreement” (1995 p. 839). When people disagree, he argues, they not only disagree about a claim but, rather, about a certain position. A position is “a matrix of beliefs, attitudes, emotions, insights, and values connected to a claim.”(Gilbert 1995, p. 70). The claim is just the tip of the iceberg, while the position (that mostly remains underwater) produces the disagreement.

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<sup>7</sup> Walton provides many different approaches to the concept of fallacy. Besides the definition just presented, It could be an unlawful dialectical shift (Walton & Krabbe 1995); an heuristic mistake (Walton 2010); or an argument that misinterpret the specific goals of a dialogue (Walton 1998).

So, if the parties want to reach an agreement, they need to *understand* their respective positions. In that sense, argumentation is a process in which the parties uncover the positions that back or warrant their respective claims: “one must garner not only the facts that support the claim but the values, emotions and attitudes that go along with the outlook attached to the claim.” (Gilbert 1995, p. 835). To do so, they need to explore different *modes of arguing*. Gilbert claims that there are four modes: “In addition to the classical logical mode . . . there are the emotional, visceral (physical), and kisceral (intuitive [& non-sensory]) modes” (1997, p. 75). If the parties explore these modes, they are better positioned to agree. This process of mutual understanding through different modes has been called “Coalescent Argumentation”: “The aim of Coalescent Argumentation is to bring about an agreement between two arguers based on the conjoining of their positions in as many ways as possible” (Gilbert 1997, p. 70).

Gilbert’s theory will appear in chapter 3, where I argue that the ideas that motivate coalescent argumentation are necessary to overcome disagreements in *sub-optimal settings*.

Scott Jacobs has developed *Normative Pragmatics* and claims that argumentation theory should focus “on the communicative properties of actual argumentative messages”(2000, p. 262) rather than only on the arguments expressly presented. Messages are more complex than arguments. Arguments are what was said, but messages also include “the way it was said, when it was said, who it was said to, by whom; all in contrast to what could have been said but was not” (2000, p. 263).

So, according to Jacobs, when looking at arguments in this way, we cannot just label some moves as “fallacies” when they violate certain normative models such as critical discussion. Because when we consider the whole message, some rhetorical strategies that might appear as fallacious can be constructive for resolving the disagreement. For instance: “emotional appeals can play a constructive role in deliberation and may be positively required by the situation” (2000, p. 277). Or, elsewhere: “apparently fallacious rhetorical tactics can be defended as playing a constructive role in the debate that’s actually going on” (2000, p. 278). These strategies can be constructive because “They respond to the demand to find ways to place people in more open, critical, resolution-oriented frames of mind and to make the conditions for argumentation conducive to reasoned deliberation.” (2000, p. 281).

From *Normative Pragmatics*, I will take two things. In chapter 1, the idea that argumentation must accomplish an epistemic and a social goal (Jacobs 2003). From this, I conclude that to agree (the social goal), we must sometimes sacrifice our attempt to persuade rationally (the epistemic goal). Also, in chapter 2, I will take Jacobs’ idea that we can sometimes use rhetorical moves that some dialectical theories would call fallacious to compensate for an unbalanced situation. That same idea will be used again in chapter 3 to understand how to deal with sub-optimal settings in argumentation.

## 5 Research Methodology

Since this research is work on analytical philosophy, the reader expects that its method is mainly the *analysis* of specific concepts and phenomena. The word “analysis” has a rich history in philosophy, but it might be challenging to define it properly. However, it could be said that to analyse a concept, problem or phenomenon, we would need at least three things (Beaney 2021):

First, a *framework* of interpretation provides a conceptual map to locate the problem we are analysing according to our goals. For instance, if in fieldwork through the jungle I find an unknown plant, I can use different frameworks to analyse it: a botanical framework to understand how to classify it, a chemical approach to understand if it is poisonous; an esthetical approach to see how it looks; an anthropological approach to see if it is important for the locals, and so on. In this thesis, the analysis framework is argumentation theory and, more specifically, the dialectical and rhetorical theories just described.

Second, an *interpretation process* usually involves *regression* (thinking problems backwards until we find first causes) and *decomposition* (separating a problem into different parts). In this case, the *regression* is a normative one. That is, the first causes are normative principles such as: “we should overcome our disagreements peacefully”. When analysing the problem of disagreement, then, the *regression method* looks backwards but stops at such a principle. The *decomposition* implies distinguishing parts of a concept, cases, stages of a process, etc. For example, in chapter 1, I distinguish different types of persistent disagreements and different *processes* to overcome them.

Third, a *transformation process* requires putting the elements of analysis into a coherent and systematic language. Sometimes, this implies providing new definitions for specific concepts or systematising findings through tables, charts or figures that I present in most chapters.

The analytical method describes a very general process that still needs other tools to clarify ideas. I present the main tools here:

First, philosophy is about *arguing*. In this thesis, I will be providing arguments about why we should argue in a certain way. The main reason for this is that I support the idea that philosophy is *adversarial*. This idea means philosophers put themselves in different positions they argue for (Williamson 2020). If that is the case, then, to advance a particular philosophical position, it would be necessary to provide *arguments* for it. But adversariality doesn’t need to be violent or aggressive. Minimal adversariality (Govier 1999) implies that arguers take different theoretical positions regarding a problem. In this research, I will take a position *with* and *against* certain scholars on the field, according to this idea of adversariality.

Second, since this is not an experimental philosophy exercise, I will not conduct any experiments. But then, how to tell if my positions are better grounded than those taken by other parties? Nothing is definitive in

philosophy, but Wittgenstein's (2021) idea of "logical space" might help. The logical space amounts to the space of all possibilities in a particular case (Aranyosi 2013). A person we know could be either dead or alive: there are no other options. Likewise, when facing a philosophical problem, we can *map* the logical space, present all the available solutions to a problem and argue which solution seems more likely. For example, in chapter 3, I ask whether we need to follow the rules for critical discussion (van Eemeren & Grootendorst 2004) when the higher-order conditions for critical discussion (van Eemeren et al. 1993) are not met. There I cover the logical space with all the possible answers: "always", "never", and "sometimes", concluding that the best solution is "sometimes". The only reason to say that "sometimes" is a better answer is that it appears to be the most coherent to the normative principles presented before (that's why we need a regressive process). In this case: it is the best way to reasonably overcome disagreements. Of course, my appreciation could be wrong, but that is just how philosophy works.

Third, and linked to the above point, if the logical space can be covered, and if we have a normative orientation, we could formulate *policies*. The Merriam-Webster dictionary defines a policy as: "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions". In this case, a policy will tell us the better option in a given situation, considering the limitations that we have in each case. For example, chapter 2 presents five policies on responding to a fallacy. In chapter 3, I analyse three policies on how to argue in sub-optimal settings. And in chapter 4, there are three policies regarding shifts from persuasion to negotiation dialogue.

Fourth, in this thesis, I use many examples. I take the use of examples as an inherent part of conceptual analysis. It is thought that philosophy is developed through concepts, and definitions and examples only illustrate the previously developed concepts. But I think that such a picture is wrong. Examples could be arguments with the same argumentative value as concepts and definitions (Fernandois 2008). Indeed, in many cases, a philosophical intuition can only be reached through examples, and conceptualising that intuition becomes secondary (and sometimes very difficult). Wittgenstein (1958), for example, never gives a clear definition of what a "language game" is, but his examples are so rich that a definition doesn't seem necessary. Likewise, in chapter 4, for instance, I distinguish theoretical and practical disagreements mainly using examples. Of course, it would be worthwhile to conceptualise this distinction through definitions, but for the purpose of the chapter the examples suffice.

## **6 Research Structure**

The thesis deals with the problems sketched above in four chapters that work as separate papers and are structured as follows:

*Chapter 1*<sup>8</sup> presents the concept of persistent disagreement and reflects on the best way to deal with them. Persistent disagreements are, pretty much, immune to persuasive argumentation. If that is the case, I propose that we try to overcome those disagreements using other means than persuasion. More than *resolving* disagreements, we should try to *overcome them rationally*.

As a general theoretical orientation, the chapter argues for a dynamic and pluralistic version of argumentation instead of a monistic one like the one proposed by Pragma-Dialectics and others. Argumentation, then, more than a tool that uses persuasion to change the counterpart's mind, is a toolbox that contains persuasion, deliberation, negotiation, and other dialogical strategies that can be used to reach an agreement. Those dialogue types are taken from Walton and Krabbe (1995)

The different strategies for overcoming disagreements are represented in a *flowchart*. In it, the parties pick the best way to overcome their disagreements by analysing if some conditions are given. Some dialogue types, like persuasion or deliberation, are preferable to others like negotiation and, thus, are higher in the flowchart. The reason to make some dialogical strategies more preferable than others is that they balance better the *social* and *epistemic* goals of argumentation, a distinction taken from Scott Jacobs (2003).

Ultimately, this chapter shows that if we want argumentation to deal with persistent disagreements, we need a broad and pluralistic account of it.

*Chapter 2* aims at resolving the following question: how should a reasonable arguer respond to a fallacy? This topic is relevant for the discussion on disagreements because dialectical theories of argumentation claim that the use of fallacies hinders the chances of resolving the disagreement. However, it is unclear what the other party should do when a fallacy is presented if she wants to overcome the disagreement rationally.

I take a dialectical approximation to fallacies and consider their dialectical and rhetorical effects to answer the question. Then, I review the current literature on the proper answer to fallacies to conclude that, under certain circumstances, all the answers provided in the literature can be useful for the parties. Later, I attempt at providing some heuristic guidance to understand which response to a fallacy is adequate under which circumstance. To do that, I introduce two criteria for evaluating dialogues: the level of adversariality and the relevance of the epistemic goal. I will conclude by saying that these criteria can help us understand the adequate response to fallacies and could also be important for addressing other problems in argumentation theory.

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<sup>8</sup> This chapter has been published in the Journal *Informal Logic*: Castro, D. (2021). Argumentation and Persistent Disagreement. *Informal Logic*, 41(2), 245–280. <https://doi.org/10.22329/IL.V41I2.5580>



*Chapter 3*<sup>9</sup> deals with the problem of sub-optimal settings. When parties attempt to persuade their opponents of the tenability of a certain standpoint using reasons, they will often find that the circumstances of the dialogue hinder their chances of resolution. Power imbalances, cognitive biases, lack of time or hidden interests are some of the circumstances that they need to face. I will label these circumstances as *sub-optimal settings for argumentation*. According to the pragma-dialectical tradition, in sub-optimal settings the *higher-order conditions for critical discussion* are unfulfilled (van Eemeren, Grootendorst, Jacobs, & Jackson 1993). The main question of this chapter is the following: what is the normative standard that parties in a discussion need to follow to arrive at a resolution within such circumstances? I defend a middle-ground solution between two extreme ones. The first extreme position, the anything-goes policy, claims that, given that the conditions for a reasonable exchange of reasons are not satisfied, the dialogue stands outside the domain of reason, so anything goes for the parties. The second extreme position, the business as usual policy, claims that, since critical discussion is a normative model, the same rules should apply in sub-optimal settings. Finally, the supernormal policy that I defend claims that we need a more general and comprehensive norm referred to as a *supernorm* to evaluate these cases. The supernormal policy divides argumentation into a preparation and a resolution stage. In the preparation stage, the parties attempt to restore or compensate for the sub-optimality of the setting, while in the resolution stage, they attempt to resolve their disagreement. I contend that the preparation stage's moves should be evaluated using the supernorm instead of the rules for critical discussion (van Eemeren & Grootendorst 2004).

*Chapter 4* deals with negotiation as a way of overcoming disagreements. Negotiation is a type of dialogue where the parties begin with a conflict and a need for cooperation, and their main goal is to make a deal (Walton and Krabbe 1995, p. 72). It has been discussed whether differences of opinion can be shifted from persuasion to negotiation dialogue. That is: if two parties disagree, is it reasonable to overcome their disagreement employing negotiation?

Van Laar and Krabbe (2018) argue that negotiation is a correct way to settle disagreements when the parties arrive at a stalemate. Godden and Casey (2020) deny this. They argue that the goal of persuasion dialogue (to resolve a conflict by verbal means) can never be replaced by a bargaining procedure.

This chapter will argue that shifts to negotiation are reasonable, but only as long as two conditions are met. The practical condition requires disagreement to be practical rather than theoretical, and the sacrifice condition requires that the parties agree to shift the dialogue to negotiation. When the parties do not meet these conditions, they commit fallacies such as *ad consequentiam*, *ad baculum* or fallacy of middle ground.

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<sup>9</sup> This chapter is forthcoming at the journal *Argumentation*.

Finally, I argue that negotiation arises in practical argumentation when the parties assign different relative values to their goals. When this process occurs, we see negotiation as part of practical argumentation, in what I call meta-persuasion. This concept means an argumentative process that takes into account not only first-order reasons to defend a standpoint but also second-order reasons, which consider the reluctance of the other party to accept our standpoint.

This final chapter shows with clarity the general orientation of the thesis. Disagreement might be problematic, and the parties must do all that is in their hands to overcome it reasonably. Social considerations like the chances of persuading this or that party must be taken as part of the argumentative process.

In conclusion, I summarise the main results and provide guidelines for future research.

# Chapter 1: Argumentation and Persistent Disagreement

**Abstract:** Some disagreements seem to be persistent: they are, pretty much, immune to persuasive argumentation. If that is the case, how can they be overcome? Can argumentation help us? I propose that to overcome persistent disagreements through argumentation, we need a dynamic and pluralistic version of argumentation. Therefore, I propose that argumentation, more than a tool that uses persuasion to change the mind of the counterpart, is a toolbox that contains persuasion, deliberation, negotiation, and other dialogical strategies that can be used to reach an agreement.

**Keywords:** deliberation, dialogue types, negotiation, persuasion, persistent disagreement, settlement.

## 1 Introduction

Disagreement is a common phenomenon. People often disagree about diverse topics. And while sometimes we can deal with disagreement and reach an agreement easily, that is not the case on other occasions. Compare the following examples:

### *Example 1: Plans for Saturday*

*1.A. Gina and John have a picnic planned for next Saturday. Two days before, the following dialogue ensues:*

*(1) Gina: "John, I think we should cancel our picnic afternoon. There's rain expected."*

*(2) John: "I think we could go anyway, it's just some water."*

*(3) Gina: "Is not just some water, they're forecasting heavy rain."*

*(4) John: "Ok, you're right, maybe next time."*

*1.B. Gina and John have a party planned for next Saturday. Two days before, the following dialogue ensues:*

*(1) Gina: "John, I really don't want to invite Thomas to the party; you know how much I dislike his girlfriend."*

*(2) John: "But Thomas is one of my best friends! Is it so hard to tolerate his girlfriend for a couple of hours?"*

*(3) Gina: "Do you remember the insulting things she said to me last time?"*

*(4) John: "Yes, as I see it, they were not that bad!" (...)*

While both of these dialogues can be considered argumentative exchanges from the same genre (a domestic dialogue), there is a big difference between them. In the first case, Gina has been able to provide a compelling argument to persuade John, but in the second case, persuasion does not occur and probably never will; we can imagine dialogue 1.B. going on and on without a proper resolution, even with an escalation of the disagreement, as is sometimes the case (Paglieri 2009). That does not mean there is no way around the disagreement in that example; only that persuasion might not be the best option so, while the parties *have resolved* the issue in example 1.A, it is possible that they *cannot resolve* it in 1.B.<sup>10</sup>

Cases like 1.A do not seem too challenging for argumentation theorists. If we disagree, and one of us can come up with a sound argument that will rationally persuade the other, there is not much else that needs to be said. In this chapter, I want to focus on cases like 1.B. I will call such cases *persistent disagreements* (Elgin 2010). As I define it, a persistent disagreement is *a disagreement that likely cannot be resolved by persuasive argumentation*. That is, even after full disclosure of their arguments, or at least their readily available arguments, the parties will likely continue disagreeing. This definition brings us to the main question of this chapter: what can we do to overcome persistent disagreements rationally? By “overcoming”, I mean here a process that results in any agreement based on a dialogical exchange of reasons. Therefore, it is a broader concept than *resolution*, which is one kind of overcoming centred on persuasive argumentation.

As we will see, there are many things that the parties can do to overcome disagreements. In case 1.B, for instance, even if neither Gina nor John are persuaded by each other’s arguments, they can still negotiate their way out of the disagreement, call a friend to mediate, or even agree to toss a coin.

Thus, the main thesis of this chapter is the following. *There are various ways to overcome disagreements rationally. As long as the parties provide reasons, it is plausible to consider all of them as being covered by the term “argumentation.”* If that is the case, an argument should be considered as not only “a publicly expressed tool for persuasion” (Govier 1989, p. 177) but as *any tool for rationally and dialectically overcoming disagreements*.

This approach to argumentation, then, is pluralistic as opposed to monistic. Monistic approaches, like the *pragma-dialectical* approach to argumentation (van Eemeren and Grootendorst 2004), see all argumentation as

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<sup>10</sup> By resolution, I mean “that the argumentative discourse has resulted in agreement between the parties involved on whether or not the standpoint at issue is acceptable” (van Eemeren et al. 2014, p. 528); that is, a disagreement will be resolved only if one of the parties succeeds in rationally persuading the other that their standpoint is acceptable.

containing resolution-oriented attempts at persuasion.<sup>11</sup> In pluralistic approaches, on the other hand (see Blair 2012; Doury 2012; Goodwin 2007; Micheli 2012; Walton 1998), argumentation may have different specific functions: for instance, to persuade, to obtain knowledge, to make a deal, to impress the audience, or even to deepen the disagreement.

Both approaches have advantages and disadvantages. Monistic approaches have two main advantages: first, they have a clear-cut definition of what is and what is not argumentation. For them, any dialogical move that attempts to achieve the main goal of argumentation should be regarded as an argumentative move, and if the move does not target that goal, it should not be considered an argumentative move. Second, monistic approaches set a *normative standard*; they establish the conditions that would make an argument a good argument and evaluate real-life argumentation against those felicity conditions. In Pragma-Dialectics, for instance, the goal of argumentation is to convince a rational judge about the acceptability or unacceptability of a certain standpoint (van Eemeren and Grootendorst 1984). Arguments, then, could be evaluated as good or bad contributions towards that goal. The norms according to which the contributions must be oriented to the resolution of a disagreement have been specified with certain dialogue rules called “rules for critical discussion” (van Eemeren and Grootendorst 2004).

The risk of monistic approaches is that they may leave aside, or evaluate as wrong, some moves that fall under the colloquial term “argumentation” and that can help the parties overcome their disagreements based on reasons. For instance, when parties to a disagreement decide to shift from a persuasion dialogue to a negotiation dialogue, to examine whether a compromise is feasible after having discovered that a resolution is not, monistic approaches may tend to regard the reasoning within the negotiation dialogue as irrelevant from an argumentative perspective, or they might even classify the shift and the subsequent reasoning as “fallacious” (Godden and Casey 2020). As a result, monistic approaches could become more distanced from real-life argumentation. This risk increases when the parties deal with persistent disagreements.

On the other hand, pluralistic approaches give the parties different paths to overcome their disagreements and fulfil other goals. By characterizing more of these avenues as “argumentative,” argumentation theory is better positioned to understand the similarities and differences between various attempts to overcome disagreements and develop criteria for their rational evaluation. Therefore, this approach seems better connected to actual argumentative practices and might provide a more significant inventory of

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<sup>11</sup> Some accounts, while monistic, do not consider persuasion to be the main goal of argumentation. For instance, the epistemic approach to argumentation claims that the goal of argumentation is “to yield knowledge or reasonable belief” (Biro and Siegel 2006, p. 192).

instruments to overcome disagreements rationally. We can think of monistic argumentation as a hammer, useful only with nails but not with screws, while pluralistic argumentation is a sort of toolbox.

The risk of pluralistic approaches is twofold. First, it is not easy to know what is and what is not argumentation. For monistic approaches, one specific goal of argumentation provides that limit: any attempts at fulfilling the main goal should be considered argumentation, and only those. However, the limit is less clear for pluralistic approaches. Second, the evaluation of different argumentative moves is vaguer. Where monistic approaches can establish a clear-cut criterion for considering arguments as good or bad moves, in a pluralistic approach, it is harder to say when, for instance, a settlement process is a good or bad move.

However, looking at the issue with the problem of persistent disagreement in mind, I consider that the advantages of pluralistic approaches outweigh their risks, and the risks are not insurmountable. This chapter, then, will develop and deepen a pluralistic position that has been previously defended by Walton (1990; 1998). Besides developing different dialogue types that are relevant for the study of argumentation, he provides a more inclusive definition of “argumentation,” according to which argumentation is a verbal means intended to “resolve, or at least contend with a conflict” (1990, p. 411). The expression “contend with” suggests that argumentation can help us overcome disagreements in ways that are not restricted to resolution.

In the spirit of Walton’s approach, I suggest in this paper that argumentation, as a process, consists of providing *reasons to overcome disagreements*. This definition excludes processes where the parties do not provide reasons or provide reasons in situations where disagreements are not present. *Reasons*, here, should be understood as a certain type of inference, in which a premise is presented as providing a warrant to a conclusion (Mercier and Sperber 2011). As such, reasons are not an internal cognitive decision-making process but, rather, “are primarily for social consumption” (Mercier and Sperber 2017, p. 127).<sup>12</sup> As a result, parties are not said to be arguing when they overcome a disagreement through a fist fight (because they do not provide reasons) or when they provide reasons in situations where there is no disagreement, like in inquiry or information-seeking dialogues,<sup>13</sup> but they do argue in other circumstances that will be described.

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<sup>12</sup> For these authors, an internal process of decision making is not based upon reasons but rather, upon inferences that work as inferential “modules.” Reasons, then, are used when we want to do things like convince others, justify our actions, accuse others, report some information, deliberate, and so on (Mercier and Sperber 2017).

<sup>13</sup> Note that Walton labels dialogue types, such as inquiry, deliberation, or information seeking dialogue where there can but need not be a disagreement, as “argumentative” dialogue types (1998). My pluralistic approach is more limited since it includes only cases where there happens to be a disagreement of some sort.

In what follows, I will use the word “argumentation” to designate any reason-based method for contending with disagreements and the expression “persuasive argumentation” for reasoning specifically aimed at the resolution of disagreements through rational persuasion.

This paper proceeds as follows: I begin, in section 2, by characterizing *persistent disagreement* as the type of disagreement that is usually resistant to persuasive resolution and distinguish four different categories. In section 3, I argue that persuasive argumentation is, at least on paper, a good instrument for overcoming disagreements (including the persistent case) since it gives us epistemic advantages. This claim is contrasted in section 4, where I consider that—under certain circumstances—opting for persuasive argumentation is a bad idea. Section 5 sketches different dialogical solutions for persistent disagreements, partly following the dialogue types developed by Walton and Krabbe (1995). Section 6 presents a general pluralistic-dynamic model for overcoming persistent disagreements and anticipates some objections. Finally, I offer some concluding remarks.

## 2 Persistent disagreement

For the purpose of this paper, a disagreement can be defined as *a dialogical and externalized clash of commitments between two or more parties*.

The fact that the disagreement is dialogical means that it takes place within a dialogue. *Externalized* means that it does not come into being until the parties express their clashing points of view. Therefore, two parties might hold opposing views regarding an issue, but we would not say that they disagree unless they express it in a dialogue. When I say *externalized*, I am alluding to the *principle of externalization* (van Eemeren and Grootendorst 1984).

The fact that the disagreement is about *commitments* implies a clash regarding only propositions that the parties are publicly committed to. It refers to the concept of “commitment” as Walton and Krabbe (1995) use it, which derives from Hamblin (1970). It means that the parties clash regarding propositions that they are committed to *defending*, which does not always coincide with what they believe.<sup>14</sup>

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<sup>14</sup> For Hamblin, in a dialogical system, the parties put forward statements representing their commitments, thus forming a commitment store: “The store represents a kind of persona of beliefs: it need not to correspond with his real beliefs, but will operate, in general, approximately as if did” (1970, p. 257). Hamblin does not specify cases where commitments and beliefs do not match, but we can think of a few examples: in the case of advocacy, a party might defend a standpoint without really believing it. Conversely, a party may hold a belief without considering it worthwhile to defend it.

Disagreements, then, *will be persistent if it is unlikely that the parties have the means to resolve them by persuasive argumentation*. This could happen in, at least, the following situations:

## 2.1 Deep disagreement

Fogelin argues that certain disagreements are deep when they “cannot be resolved through the use of argument, for they undercut the conditions essential to arguing” (1985, p. 8). Therefore argumentation<sup>15</sup> can only occur if between the parties exists a context of “broadly shared beliefs and preferences” (1985, p. 6), which includes shared procedures for resolving disagreements. In such contexts, argumentation is *normal*, and the parties can reasonably expect to resolve their disagreement by rational persuasion.

However, sometimes the parties do not share the relevant background necessary for resolving disagreements. If that is the case, the parties face a *deep disagreement*. Deep disagreements are “immune to appeals to facts” and tend to “persist even when normal criticisms have been answered” (Fogelin 1985, p. 5). They tend to be persistent since they do not refer only to isolated propositions “but instead [to] a whole system of mutually supporting propositions (and paradigms, models, styles of acting and thinking) that constitute, if I may use the phrase, a form of life” (1985, p. 5). In other words, “we get a deep disagreement when the argument is generated by a clash of framework propositions” (1985, p. 8). The disagreement, then, rests on propositions that are fundamental to the fabric of the parties’ beliefs (Quine 1951). Therefore these disagreements are just “not subject to rational resolution” (1985, p. 11).

There has been much discussion on this topic. Some authors argue that it is unclear whether deep disagreements exist at all (Siegel 2013); some argue that even if they exist, it is usually not possible for the parties to realize when they are in one (Adams 2005), while others claim that even if they exist, a rational resolution is still available (Feldman 2005).

I do not pretend to address these problems but, rather, present a modest conclusion: at the very least, deep disagreements challenge the idea that we can resolve all disagreements by persuasive argumentation. In other words, “argument then ceases to be a tool for the rational resolution of disagreement; one of the primary functions of argument is undermined in such contexts” (Turner and Wright 2005, p. 27). However, according to Fogelin, even if deep disagreements exist, they are probably exceptional (1985, p. 9). Nevertheless, the situation is not so exceptional if we consider that a similar challenge exists in other cases that are persistent but not deep because “a disagreement can be intense without being deep. A disagreement can also be unresolvable without

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15 By “argumentation” Fogelin refers to what I have been calling “persuasive argumentation.”



being deep” (Fogelin 1985, p. 8). But which disagreements fall into this category? Fogelin continues: “I can argue myself blue in the face trying to convince you of something without succeeding. The explanation might be that one of us is dense or pig-headed” (1985, p. 8). Fogelin seems to be thinking about cases in which the disagreement is not deep, but the parties are just not up to the task of resolving them. They are, in a way, sub-optimal parties.

## 2.2 Sub-optimal Parties

It is a common experience to feel that disagreement cannot be resolved because the counterpart is not able or prepared to see your point. The problem here lies not in the disagreement’s *depth* but in the capabilities or willingness of the parties to resolve it. Some arguers are just not up to the task of presenting or acknowledging reasonable arguments, which makes those disagreements *recalcitrant* (Kloster 2018). Some people will discard arguments by falsely considering them personal attacks; some will disregard arguments based upon mere hatred for their counterpart; and others will be influenced by their confirmation bias, sticking to their guns even in light of significant amounts of evidence (Nickerson 1998). We are, more often than not, cognitive misers (Kahneman 2011), so it is no wonder that many disagreements are persistent. Naturally, this category could be mixed with the one presented before: an *anti-vaxxer*, for example, seems to be someone who is both incapable of acknowledging cogent arguments and in a deep disagreement with biologists.

For argumentation theory, specifically in the pragma-dialectical tradition, this situation has been described as failing to satisfy the *second-order conditions for critical discussion* (van Eemeren, Grootendorst, Jacobs, and Jackson 1993). The *second-order conditions* refer to an “idealized set of attitudes and intentions.” That these conditions have been satisfied implies that the parties “wish to resolve, and not merely to settle, the disagreement” (p. 31). But besides a lack of willingness, they might also be cognitively incapable of resolving the issue due to their lack of “ability to express their opinions, to listen to the opinions of others, and to change their own opinions when these fail to survive critical examination” (p. 33).

Therefore, the reason disagreements are persistent might, for example, be that at least one of the parties does not want to admit when they are wrong, is unable to follow complex arguments, or is merely serving their hidden interests.<sup>16</sup>

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<sup>16</sup> Zenker (2007) provides an extensive list of second order conditions, the non-fulfillment of which may provide explanatory reasons for the persistence of disagreements.

But even if the disagreement is not deep and the parties are not sub-optimal, the disagreement might still be persistent if the context of the dialogue is sub-optimal.

### 2.3 Sub-optimal Contexts

Some contexts hinder the possibilities for the parties to arrive at a resolution, even when they have good dispositions and abilities. A good example of this kind of case is what has been called *epistemic injustice* (Fricker 2007), which, when it is applied to argumentative practices, has been coined *argumentative injustice* by Bondy (2010). Argumentative injustice can be defined as the phenomenon of “attaching reduced or excessive credibility to the premises of an argument, or to the strength with which an argument’s premises support its conclusion, due to an identity prejudice attaching to the arguer, in the minds of the audience” (Bondy 2010, p. 263). Accordingly, sometimes the circumstances of the dialogue make it the case that, even inadvertently, the parties will increase or decrease credibility to some arguments due to structural injustice. If that is the case, an argument that in other circumstances would have had an easy resolution could end up being persistent, for example, if one of the parties does not believe that their counterpart is telling the truth.<sup>17</sup>

But many other circumstances can turn disagreements persistent. Time constraints in broadcasting media, for instance, put pressure on the parties involved that might hinder their chances to fully develop their arguments and resolve the disagreement (Jacobs 2003). The format of social media communication tends to be polarizing and favours the spread of emotional rather than rational content (Brady et al. 2017).

For the pragma-dialectical school, these circumstances are labelled as *third-order conditions for critical discussion* (van Eemeren et al. 1993) and describe enabling conditions in the social or political context. These conditions imply that the parties “must be enabled to claim the rights and responsibilities associated with the argumentative roles defined by the model”<sup>18</sup> (p. 33). Therefore, to put forward standpoints and criticize them, a party needs to “have the right to advance his or her view to the best of his or

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<sup>17</sup> In this case, the boundary between sub-optimal parties and sub-optimal context might be blurry. For example: if in a certain culture people tend to give less credibility to the testimony of women over men, a disagreement could end up being persistent because one of the parties does not believe an argument given by a woman. Is that a problem regarding the party or the context? This depends on how internalized the practice of giving less credibility to women is in that society.

<sup>18</sup> “The model” refers to *critical discussion*, which is an ideal dialectical model in which “the parties attempt to reach agreement about the acceptability of the standpoints at issue by finding out whether these standpoints are tenable against doubt and other criticism, given the mutually accepted starting points” (Van Eemeren et al. 2014, p. 528).

her ability” (p. 33). This right can be infringed upon in many ways. Besides the cases just presented, there might be taboo topics, authority relationships between the parties, or dogmatic issues.

## 2.4 Other Cases

We might still think about disagreements that are persistent and do not fall into any of the categories presented above: shallow moral disagreements, disagreements over taste, disagreements over policies, predictions, and so on. Case 1.B. is a good example of this kind.

Considering these different types of persistent disagreements, in some cases, the parties might try to overcome their disagreement through other means—for example, by shifting the dialogue to a negotiation (van Laar and Krabbe 2018). However, there still are pretty good reasons for sticking to persuasive argumentation.

## 2. Why Argue?

Argumentation and disagreement are deeply intertwined. On the one hand, we typically cannot explain the need to argue if there is not an existing disagreement<sup>19</sup>; on the other hand, when trying to overcome disagreement, persuasive argumentation seems to be the standard and preferred device (even in the persistent case), and there are good reasons for that.

The relationship between disagreement and argumentation can be traced in the literature. Jacobs and Jackson point out that “arguments are disagreement relevant speech events; they are characterized by the projection, avoidance, production or resolution of disagreement” (1980, p. 254). For Walton, as we saw, an argument is defined as “a social and verbal means of trying to resolve or at least contend with a conflict or difference that has arisen between two parties engaged in a dialogue” (1990, p. 411). Van Eemeren and Grootendorst consider that “argumentation is adduced in reaction to, or in anticipation of, a difference of opinion, and serves a role in the regulation of disagreement” (2004, p. 53).

But the fact that persuasive argumentation appears to be a proper response to a disagreement does not imply that it is the only way to manage disagreement successfully. There are many ways to overcome a disagreement, and some of them are based on an exchange of reasons that cannot be reduced to persuasive argumentation. Consider the following example:

### *Example 2: Dinner night*

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<sup>19</sup> Some authors, though, claim that argumentation can still exist without disagreement (Doury 2012; Micheli 2012). I do not deny that fact, but in this chapter, I am focusing on cases where a disagreement does exist.

*Jack and Leyla want to go to a restaurant but disagree on whether to pick “The Rose Garden” or “Chez Martin.” To overcome the disagreement, they have at their disposal, at least, the following means:*

*2.1 Provide persuasive arguments for why one restaurant is a better choice than the other (food quality, price, location, etc.).*

*2.2 Negotiate a compromise: “We’ll go to ‘Chez Martin’ this time and ‘The Rose Garden’ next time.”*

*2.3 Toss a coin and let fate decide.*

*2.4 Call a friend and let them decide.*

All these options seem reasonable, so is there a motive to prefer persuasive argumentation over the rest? There might be.

Jacobs (2003) considers argumentation to serve two main functions: cognitive or epistemic and social. The cognitive or epistemic function implies an individual effort for *belief management*, and it has to do with arriving as close as possible to the truth of the matter. If we define argumentation solely by that function, we should say that argumentation is something like “a social quest for true belief and error avoidance” (Goldman 1994, p. 28).<sup>20</sup> But that is not the only function of argumentation.

The social function implies a quest for *disagreement management*; therefore, it has to do, among other things, with arriving at an agreement or, at least, some understanding.

In the non-persistent case, these functions typically go together: I can resolve the disagreement with good arguments, which will allow the parties to agree on a solution (see Example 1A). Since reasons have backed that solution, the chances of it being close to the truth<sup>21</sup> are higher than, let us say, the result of tossing a coin.

But when facing persistent disagreements, the parties will typically need to make a trade-off, and they should ask themselves: what is more important to me, truth or agreement? Suppose they consider truth to be the more important value. In that case, they might insist on trying to persuade their counterpart to fulfil their epistemic goal, even at the expense of arriving

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<sup>20</sup> Also see Biro and Siegel (2006); Goldman (2003); Lumer (2005).

<sup>21</sup> It could be argued that argumentation is not always related to *truth* or *knowledge* and does not always have an *epistemic* or *cognitive* value. In practical argumentation, for instance, parties disagree about what to *do*, not about what is truth. However, even in those cases, arguments can be reconstructed from an epistemological point of view: “practical arguments, like other arguments, are to guide the addressee to cognize the (epistemic) acceptability of the thesis” (Lumer 2005, p. 233). That is also true for ordinary language. It makes sense to say things like: “you do not know what you are doing” or “it is true that this is the best course of action.” In this chapter, I do not want to take a strong position about the epistemic value of practical and other kinds of disagreements, but only say that it does make sense to use some meaning of the words “truth” or “epistemic.”

at an agreement. If they consider the social aspect of agreement to be more important or urgent, they might look for other strategies, such as mediation or negotiation.

Another way of looking at this is to consider the difference between *belief* and *commitment*. When we argue, we defend certain commitments that are normally (but need not be) aligned with our beliefs. Therefore, when we trade truth for agreement, we are also (normally) trading such a belief-based commitment for a commitment that is disconnected from that belief. For example, if I try to persuade my partner to go to a certain restaurant, it is because I *believe* that such a restaurant is the best option for us, and I have a belief-based commitment to defend that position.<sup>22</sup> But if I cannot persuade her and we decide to toss a coin, I will still believe in the superiority of my preferred option, but I will be committed to following whatever option the coin dictates. Thus, while my *beliefs* are intact, my *commitments* have changed.

Persuasive argumentation, then, is an attempt to hit the *social and epistemic* optimum: if we manage to persuade rationally, we will arrive at a solution that fulfils both the epistemic and the social function—that is, the parties arrive at an agreement while believing that the solution at which they arrived is true<sup>23</sup>: their commitments are aligned with their beliefs.

In Example 2, 2.1 represents such an optimum. If one of the parties manages to persuade the other, they will both agree on the solution that seems closest to the *truth of the matter*, which could be something like “choosing the best restaurant in town for us.” However, even if Jack is completely sure that “The Rose Garden” is the best restaurant in town, he might be willing to sacrifice his epistemic goal to fulfil his social goal. That will happen if reaching an agreement is more important to him than what (he thinks) is true. In this case, he might choose one of the other alternatives to maximize the social function by sacrificing the epistemic function to a certain extent.

In the end, it could happen that after the trade-off, the parties get closer to the truth, but each one of them sacrificed their epistemic goal. For instance, if after a disagreement, A and B decide to flip a coin, and the coin favours A’s position, which in the end happens to be the true answer, the parties would have come closer to the truth, but B would have traded *their* epistemic goal nevertheless (that is, their idea of what the true answer was).

But, if persuasive argumentation is such an optimum, why give it up? Would it not be advisable to always aim for it? I will address that concern in the following section.

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<sup>22</sup> With some exceptions, such as *advocacy*. For example, as a lawyer in a criminal trial, I might believe that my client is guilty, and yet be committed to defend his innocence.

<sup>23</sup> Of course, the solution could end up being false, but both parties are *convinced* that is true.

## 4 Why not argue?

There is some scepticism about the idea that persuasive argumentation can resolve disagreements. This scepticism has been specifically directed to the idea that argumentation as *rational persuasion* is useful for overcoming disagreements. In other words, we can say that, sometimes, persuasive argumentation is ineffective at achieving the social goal.

Some authors have objected that no evidence has ever shown that people actually reach a resolution when they argue (Goodwin 2007). Others think that some arguments can “backfire” (Cohen 2005). That is, an argument that is incapable of persuading a counterpart of a certain conclusion does not only leave the counterpart where they were before but in a worse position. Paglieri (2009) claims that—under some circumstances—the level of disagreement between the parties escalates because of the argumentative practice, not despite it.

On the same note, Paglieri and Castelfranchi (2010) analyze the costs and dangers of (persuasively) arguing. They claim that the main reason why we should refrain from arguing in some circumstances is strategic: “we do not engage in argument when doing so is likely to have an overall negative outcome” (2010, p. 71). An unfavourable outcome can arise from the *costs* or *dangers* of arguing. The costs can be *direct costs* (time, social exposure, cognitive resources, etc.) and *opportunity costs* (that is, things I could have done instead of arguing). The dangers refer to adverse outcomes produced by the act of arguing: escalation of disagreement, deterioration of emotional well-being and personal relationships, among others.

In conclusion, there are many circumstances in which engaging in persuasive argumentation is a bad idea. To argue might not only be useless when facing persistent disagreement, but also arguments might backfire, disagreements might escalate, relationships might suffer stress, and we might just be wasting time and resources that could be of better use elsewhere.

Therefore, when faced with persistent disagreement, if we want to avoid persuasive argumentation for the reasons mentioned, is there anything else we could do to overcome those disagreements? Yes: “there are many ways of skinning a cat and arguing is just one of them” (Paglieri and Castelfranchi 2010, p. 74).

## 5 Argumentative Strategies for Overcoming Disagreements

When facing a disagreement, the parties can ignore the issue or do something about it. And if they do something about it, they can use dialogical or non-dialogical strategies. Dialogical strategies revolve around the use of reasons in a dialogical context. Therefore, trying to persuade or to negotiate is a dialogical strategy, while hitting someone is non-dialogical. Dialogical strategies can be reason-based or non-reason-based. Along with rational

persuasion, the parties can use means that most people would call irrational, like manipulation or coercion (Nettel and Roque 2012). I will call those strategies that are dialectical and rational “argumentative strategies” and those that are non-dialogical or non-rational “non-argumentative strategies.”

Here, I explore the conceptual hypothesis that argumentative strategies are dialogical attempts to *overcome* disagreements. But when can we say that an attempt is successful? It is useful to recall here the distinction between epistemic and social goals of argumentation.

We would say that the *social goal has been fulfilled when the parties, who used to disagree on an issue, now agree on that same issue*. Naturally, a way to do this is to persuade and arrive at a resolution rationally, but that is not the only way. If, for instance, when facing a persistent disagreement, two parties decide, based on reasons, to toss a coin to decide, we would also say that they have *agreed* on a solution. Therefore, negotiating, tossing coins, and calling arbitrators are all means to fulfil the social goal of argumentation, and they are argumentative if the parties arrive at such solutions by providing reasons.

We would say that the *epistemic goal has been at least partially fulfilled if the parties put forth their best efforts to arrive at their best estimate of the truth of the matter and agree on carrying out the proposed solution*. Of course, that would be the case when the parties resolve their disagreement through persuasion but also when they use other overcoming strategies. For example, in a negotiation, one of the parties thinks that the solution is “100” while the other thinks it’s “0.” If they negotiate, they will split the difference and accept, for instance, “50,” thus fulfilling half of their epistemic goal. But since it is not possible for both of them to completely fulfil their epistemic goals, we could say that they have overcome their disagreement if they accept the outcome. But even beyond that case, if, for instance, the same parties decide to externalize the solution through an arbitrator, and the arbitrator rules that the solution is “100,” we can say that the epistemic goal was also partially fulfilled if both parties accept that outcome. To fulfil an epistemic goal, epistemically limited agents may partially aspire to their epistemic goals, as when compromising or deferring to a third party.<sup>24</sup>

Overcoming a disagreement will occur, then, *when the parties to a disagreement agree, based on an exchange of reasons, on a method for totally fulfilling their social goal and, to a greater possible extent, fulfilling their epistemic goal*. At this point, I can identify four methods for trying to overcome disagreements: persuasion dialogue, deliberation dialogue,

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<sup>24</sup> By epistemic limitations I mean not only those limitations given by our cognitive incapacity to know the truth, but also our ability to account for the knowledge of others and persuade and be persuaded by them. In that sense, this approach is close to a social epistemological standpoint (Goldman and O’Connor 2019).

negotiation dialogue, and settlement dialogue. I will call these ways of overcoming disagreements *argumentative strategies*, and—except for settlement dialogue—they are based on Walton and Krabbe’s dialogue types (1995).

In the following sub-sections, I will consider only ways in which these strategies are used to overcome persistent disagreements, which does not mean that they cannot also be used to overcome non-persistent disagreements or even used in cases when there is no disagreement at all.

## 5.1 Persuasion Dialogue

Even though there are reasons to avoid persuasive argumentation to overcome persistent disagreements (see section 4, *supra*), persuasive argumentation is still useful and necessary in some cases. If that is the case, the parties will choose a *persuasion dialogue*. In this type of dialogue, the initial situation is a conflict of points of view, and the goal of the parties is to resolve the conflict by verbal means (Walton & Krabbe 1995, p. 68). Overcoming a disagreement by rationally persuading the counterpart implies hitting the social and epistemic optimum.

When is persuasion dialogue unavoidable? There are at least two cases: first, the disagreement might have to do with what the parties “believe” rather than with a course of action. In that case, solutions like negotiation or compromise do not seem to be at hand. Nobody can change our minds by “offering” us something but can do so only by convincing us that their standpoint is correct.<sup>25</sup>

Second, one of the parties might be so certain about their view that they are not willing to sacrifice (not even partially) their epistemic goal, even if the issue is of a practical nature. Consider the following case:

### *Example 3: Forest walk*

*Rosa and Lilian are walking through the forest when they get lost at a crossroad. Rosa argues that they should go left, Lilian that they should go right:*

- (1) Rosa: I know this forest; we should take the right path.*
- (2) Lilian: I disagree. The left path goes north, which is where we are going.*
- (3) R: You are wrong, the left path goes to the river.*

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<sup>25</sup> Which is what makes the following joke, attributed to the Marx brothers, funny: “these are my principles, if you don’t like them I have others.” We think that principles are not something that can be *traded* or *negotiated*. In a dialogue, we would only be persuaded to change our principles if the counterpart convinces us that they are wrong. This will be further explained in chapter 4 of this thesis.



- (4) *L: Ok, let's do something, let's flip a coin to decide.*  
(5) *R: No way, I'm totally sure we need to take the right path.*

In this case, the parties will, presumably, keep trying to persuade each other. But how would persuasion look in a persistent situation? The four types of persistent disagreements presented in section 2 can help us shed light on this issue.

### *5.1.1 Deep disagreement*

According to Fogelin, deep disagreements “by their nature, are not subject to rational resolution” (1985, p. 11). So what would the resolution of a deep disagreement look like? Godden and Brenner (2010) provide a good approach: in cases of deep disagreement, the parties understand fundamental concepts differently. Therefore, using those concepts as a framework for persuading others is useless. In other words, since the parties clash regarding framework propositions, those same propositions cannot be taken as common ground when arguing. What the parties should aim for instead is the transformation of those concepts. That transformation can be achieved, but it is “dialectical rather than demonstrative, amorphous rather than uniform, indeterminate rather than binary, it is neither fraudulent nor relativistic nor arbitrary” (p. 77). Resolution of deep disagreements should be a long, non-linear, holistic process in which people slowly change their minds regarding an issue, just as people change their views on politics or religion over time. It is difficult, but not impossible, to achieve.

### *5.1.2 Sub-optimal parties*

If the problem lies in the sub-optimality of the parties, we can aim to improve the sub-optimal situation<sup>26</sup>. If a party does not have the ability or the will to produce or acknowledge cogent arguments, the counterpart should try to modify that situation. But, as in the case of deep disagreement, straightforward argumentation regarding the topic of disagreement might not be the best approach. What else can we do?

Gilbert presents an interesting proposal in his concept of “Coalescent Argumentation” (1995; 1997). He defines it as “the implementation of methods and techniques that increase the heuristic element and decrease the eristic element while at the same time maintaining a realistic attitude to the essentially goal-oriented nature of most argumentation” (1997, p. 107). The heuristic element implies openness and willingness from the parties to change their minds, while the eristic element implies confrontation and competition. In Coalescent Argumentation, then, arguers use a multi-modal approach that includes not only logico-rational arguments but also emotional, visceral, and

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<sup>26</sup> Chapter 3 deals extensively with this hypothesis.

kisceral (intuitive) ones. To be successful, then, arguers should be empathic and try to understand where the counterpart is coming from (their *position*). Then, they should use multimodal argumentation to build mutual understanding and, ultimately, change the way in which they approach the situation.

Another interesting solution for these cases is given by Kloster (2018). She defines *recalcitrant disagreements* as disagreements that, without necessarily being deep, are difficult to resolve “because real reasoners have difficulty making full or accurate use of the rational resolution resources which are available to them” (2018, p. 3). For her, most of that difficulty can be explained by a lack of mutual trust. Trust, then, is a “measure of affective and social obstacles to reason” (2018, p. 7).

She proposes that the parties of disagreement should *build trust* among each other. That is, they should consider not merely the logical and rational dimension but also “the affective, procedural, and social dimensions of disagreement” (2018, p. 17). By building trust, the parties might be on the path to changing their sub-optimal attitude towards each other and the disagreement.

In summary, resolution in these cases could be achieved through cooperative (rather than adversarial) activities that includes multimodal techniques.

### 5.1.3. *Sub-optimal context*

If the persistence of disagreement arises from the context of a dialogue, an intuitive solution would be to modify such context. But modifying a sub-optimal context is not always possible. The problem of authority is a good example. If one of the parties is an authority with respect to the other, a disagreement that under other circumstances could be non-persistent might become persistent.<sup>27</sup> But changing that relationship might not be possible. What to do then? The parties are the ones who need to be extremely vigilant. For example, in the case of disagreement between a boss and an employee, the boss should be careful to listen charitably to their employee's opinions.

A similar problem arises in cases of argumentative injustice. Despite the best efforts of the parties, the injustice of the situation might be difficult to eliminate. For Bondy, then, the solution is the use of *metadistrust*—that is, “self-doubt regarding our credibility judgements” (Bondy 2010, p. 272). In other words, the parties should doubt their standpoints and try to develop a solution in a cooperative manner. Thus, when doubting our own standpoints, a persistent disagreement might prove to be resolvable after all.

### 5.1.4 *Other cases of persistence*

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<sup>27</sup> Lack of authority relationships is one of the 3<sup>rd</sup> order conditions for critical discussion (Zenker 2007).

Since this category is a ragbag of different cases, it is expected that the ways in which parties might persuade each other might also vary.

Practical disagreements, which refer to the desirability of states of affairs (Lumer 2005), are usually linked to moral evaluation<sup>28</sup>. In such cases, a cooperative instead of an adversarial approach seems to be a good idea. Therefore, more than looking to win the argument, the parties should accept that there is no perfect solution for their common problem and look for a cooperative solution.

At least in some cases, disagreements over taste should not even be considered disagreements since the parties talk past each other by giving their own preferences (Sundell 2011). However, in other cases, it might be the case that the parties do hold clashing commitments regarding esthetic evaluation, for example, a disagreement regarding the beauty of a painting by Van Gogh versus the drawing of my daughter. If that is the case, one of the parties might hold a standard that turns them into a sub-optimal party (they do not really know about art history), which calls for the kind of approach described in section 5.1.2.

Disagreement about moral issues, which seems structurally different from disagreement about taste (Stojanovic 2019), can also fall under the categories above. But in the case of shallow moral disagreements, persistence might not be attributed to the categories just described. So how can the parties persuade each other in such situations? It is difficult to tell, but, presumably, they should understand the root of their disagreement and see if an empathic and cooperative approach is feasible.

Another scenario that falls into this category is lack of information. For example, two palaeontologists might disagree persistently over the faith of the Neandertals (Elgin 2010). If the palaeontologists had the proper information, they should be able to resolve the disagreement, but under their current circumstances, the disagreement remains persistent. In such cases, and following Feldman (2006), it is probably advisable to suspend judgement.

To summarize, persuasion dialogue is still necessary for some circumstances. It could lead to the resolution of a persistent disagreement if the parties take a more cooperative and less adversarial approach.

## **5.2 Deliberation Dialogue**

Another dialogue type that can be used to overcome persistent disagreements is deliberation dialogue. Deliberation can be defined and . In deliberation, the parties analyze the pros and cons of certain decisions. Therefore, rather than trying to persuade each other (as in a persuasion dialogue) or making offers

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<sup>28</sup> In chapter four I will develop a full account of the particularities of practical argumentation.

(as in a negotiation dialogue), they will typically make *proposals* regarding the best course of action (Ihnen Jory 2016).

Walton and Krabbe (1995) suggest that the initial situation of deliberation is an open problem. The parties have a decision to make together, and they argue cooperatively to find a solution. At first glance, it appears that deliberations are not suited to overcoming persistent disagreements. As shown before (section 2 *supra*), the parties hold clashing commitments in a persistent disagreement, whereas in deliberation, they do not since the problem is still open.<sup>29</sup>

However, it could happen that, realizing the persistence of the disagreement, the parties are willing to *provisionally suspend judgement* over the issue and then start deliberating.<sup>30</sup> Consider the following example:

*Example 4: Risky business*

*Bob and Joe own a construction company. A client asks them to construct a building. Bob argues that it is a bad idea to take that job since they are overbooked, and they risk losing part of their reputation if they do not deliver on time. Joe argues that they should take it because they have managed to handle this much work before, and this contract could secure incomes for the next year. After they reach a stalemate, the following dialogue ensues:*

- (1) Joe: Ok, let's hold back. We need to find a way to solve this.*
- (2) Bob: That's right. I propose that we go back to the client and tell him that we accept only if he offers \$1 million and gives us three more months.*
- (3) Joe: Ok! That would do it. What if he refuses?*
- (4) Bob: We'll see what to do then.*

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<sup>29</sup> According to Lewiński (2017), however, we can also understand deliberation as a role-based exchange of reasons. In such cases, the parties do hold clashing commitments for which they advocate during the deliberation process; thus, deliberation does not only occur when there is an *open problem* but also when there is a practical disagreement. These commitments can have a strong, neutral, or weak illocutionary force. If the parties hold weak commitments, they will only make tentative “suggestions” (or “proposals” to use Ihnen Jory’s terminology). But if they hold neutral or strong commitments, they will defend their standpoint during the process. Accordingly, a deliberation dialogue in which the parties defend a strong or neutral commitment looks a lot like a persuasion dialogue, and, in fact “It might be hard to say where deliberation (as opposed to persuasion or negotiation dialogues) starts and ends” (Lewiński 2017, p. 106). As I will argue in the following section, such *confusion of dialogue types* is not problematic for the main argument of this chapter, but quite the opposite.

<sup>30</sup> Or, in Lewiński’s (2017) model, the parties do not even need to suspend their judgement but merely take advocacy roles for or against the courses of action suggested.

In the example above, the parties do not keep trying to persuade each other. Instead, they put their standpoints on hold in (1), turning the disagreement into an open problem. After that, Bob makes a *proposal* in (2) that Joe accepts in (3). In other words, they broaden the scope of possible options by considering why their earlier standpoints put them in a deadlock situation.

This type of deliberation differs from persuasion dialogue in that it requires the provisional suspension of standpoints. It also differs from negotiation regarding the type of speech act the parties use: proposal versus *offer* (Ihnen Jory 2016). However, the difference between these three dialogical strategies seems blurry, and someone could consider Example 4 a case of persuasion or negotiation dialogue. But this only reinforces the central thesis of this paper. Since it is difficult to tell when a dialogue type begins and ends, it makes sense to call all these processes *argumentation*.

Suppose the parties succeed in reaching agreement after deliberation. In that case, we can say that they have overcome their disagreement because they have used dialogical means to fulfil the social goal of argumentation (they now agree) while making their best effort to arrive at the truth of the matter. It could also happen that, in the end, the parties arrive at the conviction that the course of action chosen was the best one. If that is the case, some deliberation dialogues may help the participants, just like a successful persuasion dialogue, to realize a social end epistemic optimum.

### 5.3 Negotiation Dialogue

Negotiation is a dialogue type where the parties begin with a conflict of interest and a need for cooperation, their main goal is to make a deal, and the parties aim at getting the best for themselves (Walton and Krabbe 1995, p. 72). This does not pertain only to conflicts of interest, but dialogues starting from differences of opinion might also be shifted to negotiation (van Laar and Krabbe 2018).

For a negotiation to work as a disagreement management strategy, the parties must be willing to trade truth for agreement. That is, they still think that the right answer is P or Q, but since they are not capable of persuading their counterpart, they are willing to settle for a middle-ground solution: keeping their beliefs, they lower the bar for their commitments. Consider the following example (Van Laar and Krabbe 2018):

#### *Example 5: Greenhouse emissions*

*Party A and Party B disagree about the level of renewable energy that should be used by 2020. Party A proposes 18% and party B 14%. After trying to persuade each other by providing several reasons,*

*they arrive at a stalemate: no party has been able to persuade the other. Therefore, they decide to split the difference at 16%.*

In this case, the parties have arrived at a stalemate. Insisting on a persuasion dialogue seems like a bad idea. A deliberation is also an option if the parties provisionally suspend their judgement over the issue. But if they do not want to, they can still lower their expectations and seek a middle ground. That middle ground implies that they have traded truth for agreement: people in party A still believe that 18% is the right level, and people in party B still believe it is 14%, but both are willing to split the difference.

But not every author looks favourably upon shifts to negotiation. For Godden and Casey (2020), shifting from persuasion to negotiation dialogue implies performing a fallacious move (in addition, it incentivizes rational hazards)<sup>31</sup>. Their criticism is directed towards shifts to negotiation, but since some of their arguments can also be applied to other types of shifts described in this paper, it makes sense to spend some time considering some of them.

One of the main claims that they make is that shifts to negotiation violate the principle of *retrospective evaluation* (Godden and Casey 2020, p. 7; see also Walton 1998, p. 201). This principle indicates that we need to evaluate contributions to the “shifted-to dialogue” (e.g., a negotiation dialogue) through the norms that were operative in the “shifted-from dialogue” (a persuasion dialogue). A move in the new dialogue will be illicit when it is detrimental to the realization of the main goal of the initial dialogue. According to Godden and Casey, the principle of retrospective evaluation applies to shifts from persuasion dialogue to negotiation dialogue in those cases where the outcome of the shifted-to dialogue, for example, a compromise agreement, is to fulfil the same function as the initially aspired outcome of the initial persuasion dialogue: namely, a resolution of the disagreement. As a result, when the parties shift from persuasion to negotiation and start making offers, they violate this principle and commit the *fallacy of bargaining* by “substituting offers for arguments” (p. 19).

For example, if Jack and Leyla’s goals are to go to the best restaurant in town, and they cannot reach an agreement on which restaurant that is, then shifting to negotiation would be an illicit move. But if they just wanted to go to a restaurant and negotiate which restaurant they should go to, then for Godden and Casey, the move is not illicit but redundant; the persuasion dialogue is a *false* start, and they should have started with negotiation in the first place.

But once we consider both the social and epistemic functions of argumentation, these criticisms lose strength. There are three different cases to consider here, and in none of them do the parties seem to be committing a fallacy:

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<sup>31</sup> In chapter 4 I develop an extensive critique of Godden and Casey’s position.

- a) No shift to negotiation: If the parties' goals are to go to "the best" restaurant in town, they disagree persistently over it, and they refuse to change their original goal, then they will probably stick to their guns and avoid the shift. In other words, they consider that their epistemic goal is not worth sacrificing (so, no problem for Godden and Casey here).
- b) Shift to negotiation: If both parties want to go to "the best" restaurant in town but arrive at a deadlock situation, they might consider a shift to negotiation. To do that, they need to change their original goals. Going to "the best" restaurant in town is not so important for them now, and they are willing to sacrifice part of their epistemic goal. In other words, the principle of retrospective evaluation does not preclude the parties from changing their original goals.
- c) False start: If, finally, the parties discover that, more than wanting to go to the best restaurant in town, all they wanted was to go to a good enough restaurant, the move might not be redundant. The parties did not know in advance that the persuasion dialogue was not going anywhere, so they needed to start to understand that it was reasonable to give up their epistemic goal.

In summary, if the negotiation succeeds, we can say that the parties have overcome the disagreement since the social goal would have been fulfilled, and the epistemic goal would have been fulfilled to the extent that the parties consider possible in the circumstances at hand.

#### 5.4 Settlement Dialogue

Besides engaging in persuasion, deliberation, or negotiation dialogue, people usually do many other things to overcome disagreements. There is mediation, arbitration, voting, civil court cases, and even coin-flipping. There is no specific name for dialogues in which the parties reason about those kinds of solutions, so I will call them *settlement dialogues*, and they are necessary when the parties conclude that there is no way to arrive at a consensus (*cf.* Woods 2004, p. 187)

Settlement dialogues may occur when the parties consider that their disagreement is persistent, but they realize that some shared arrangement is better than violence or definitive suspension of judgement. The initial situation, then, is disagreement, and the goal is to agree on a solution that is at least better than violence or no decision at all.<sup>32</sup> A settlement dialogue can take

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<sup>32</sup> Especially if we consider that, in some practical situations, not making a decision implies making a decision (e.g., if my ex'girlfriend asks me out and I do not answer, that is a way of saying "no")

many forms. It could imply voting, flipping a coin, or calling an arbitrator, mediator, or judge. The common feature of all of these solutions is that the parties reason about how to *outsource* the solution. Then, in a settlement dialogue, the parties trade truth for agreement by *taking a chance*.<sup>33</sup> Outsourcing the solution implies that they could end up on the losing side, so the risk is greater than in negotiation, where parties maintain control of the situation and split the difference.

However, it could be argued that in some cases, no reasons are given, so it is hard to qualify such solutions as argumentative according to the definition given in section 1. For example, if the parties flip a coin, outsourcing of the decision is not argumentative in any way. That claim will be true in some cases, but in other cases, reasons *are* given at *first-order* and *meta-dialogical* levels.

People use first-order reasons when they defend their standpoint. That happens in a settlement dialogue if they give their arguments to a third party who acts as an arbitrator and the parties give their reasons to that arbitrator. It is also common to provide reasons to back a vote (for example, in parliamentary debates). But reasons can also be given at the *meta-dialogical* level. In that case, the parties will be conducting *meta-dialogues* or “dialogues about a dialogue” (Krabbe 2003). For instance, if the parties realize that they have reached a stalemate, they can say: “since there’s no other way to decide, let’s flip a coin,” “let’s ask my brother to decide for us because we are unable to,” or “at this point, we should vote because there’s nothing left to do.” In any case, they will be providing reasons at the first order or meta-dialogical level.

But, if the risk of losing is greater, why would the parties prefer a settlement method over other methods like negotiation? Consider the following example:

*Example 6: Emergency room*

*Philip and Rose are doctors who are performing a very complicated surgery when the patient starts having complications. The following dialogue ensues:*

- (1) Philip: We are losing him! We should give him 100 millimetres of drug X.*
- (2) Rose: I disagree! Drug Y would work better.*
- (3) P: We should call Doctor Jones, as he has more experience with this kind of complication.*
- (4) R: Ok then, let’s call him. Whatever he says, I’m ok with it.*
- (5) P: Me too.*

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<sup>33</sup> With the exception, maybe, of mediation. That could be also considered as a kind of negotiation.



In this case, (1) and (2) represent an unsuccessful persuasion dialogue. But a negotiation would be odd; it does not make sense, for example, to give the patient both drugs or to offer money to settle the issue. But it does make sense to look for arbitration, which is a settlement method, so (3) and (4) are part of a settlement dialogue.

If a settlement dialogue is successful, the parties overcome their persistent disagreement since they have fulfilled the social goal while doing their best to fulfil their epistemic goal. Sometimes, the best the parties can do is outsource the solution and take the chance of losing.

Summarizing this section, a persistent disagreement might be overcome by a variety of types of dialogues that represent a sort of *toolbox*. The limitations of persuasive argumentation could then be supplemented by other argumentative strategies, as long as the parties are willing to sacrifice part of their epistemic goal.

## **6 A Dynamic Pluralistic Approach to Argumentation**

The *toolbox* of argumentative solutions presented is a dynamic system. Aiming to overcome a disagreement, parties can try different argumentative strategies, shifting from one dialogue type to another and mixing them in the process. We can call this proposal a *dynamic, pluralistic approach to argumentation*.

If the parties do not overcome the disagreement, they can suspend judgment or look for non-dialogical or non-rational agreements (for instance, manipulation, violence or censorship). A possible model for how to deal with persistent disagreements using this approach is the following:

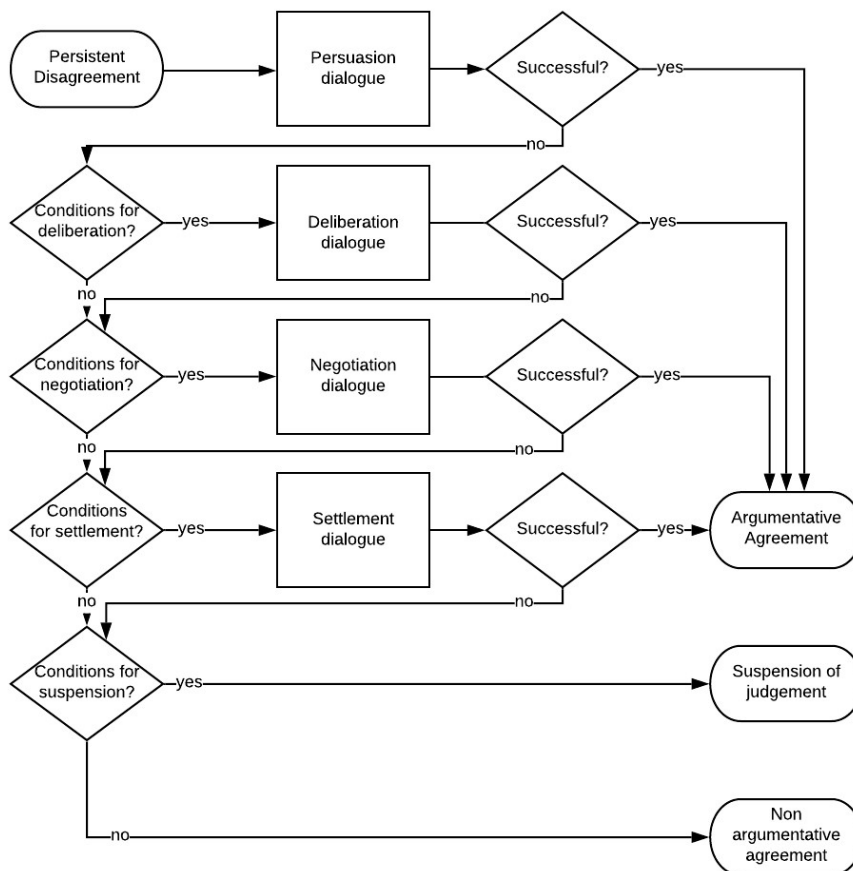


Figure 1: Flowchart of strategies for persistent disagreement

This flowchart is just one approach to a process that might take different shapes.<sup>34</sup> Some parties could go straight for negotiation and look for a suspension if it does not work; others could use mixed dialogue types. However, the flowchart does show how a dynamic, pluralistic approach works. The different strategies are ordered according to the extent to which the epistemic goal is or may be sacrificed. As we go down the chart, the parties sacrifice their epistemic goals more and more. So even if the solution is true after a settlement, if they are on the losing side, the decision will go against their initial epistemic goal.

<sup>34</sup> Woods (2004) proposes a different model to overcome what he calls “standoffs of force 1 - 5” (cases that could be assimilated into persistent disagreements). Based on that model, depending on the circumstances of the disagreement, different strategies are advised.

Regarding this model, it could be argued that, in the end, there is continuity between the proposed solutions. Take *Example 4*, for instance. It is supposed to be a deliberation, but it could also be taken as a persuasion dialogue, where the parties agree on a new standpoint that was not their initial one. But it could also be seen as a negotiation; the parties simply split the difference and agree on a middle-ground solution. The same thing happens with *Example 6*; it is supposed to be a settlement dialogue, but it could also be seen as a persuasion, negotiation, or deliberation dialogue.

This criticism can be extended to the dialogue type theory as well. Dialogue types are often mixed (Walton and Krabbe 1995), and the parties are usually unable to understand in which dialogue type they are actually engaged (Goodwin 2007).

However, I do not see the problem of the “confusion of dialogue types” as an objection to the model I am presenting. Quite the opposite; if dialogical strategies to overcome persistent disagreements represent a sort of *spectrum*, then it makes even more sense to call the reasoning that takes place at every level of the spectrum *argumentation*.

## 7 Conclusions

I aimed to present the problem of persistent disagreement as a challenge for argumentation theory that can be addressed in a cogent way through a dynamic and pluralistic approach. The introduction of the concept of “persistent disagreements” is the first step towards that goal, and I think it is clear enough thanks to the taxonomy of disagreements presented in section 2. The arguments for and against persuasive argumentation serve a double purpose: they identify the advantages of persuasive argumentation and also its limits. The argumentative strategies presented in section 5 are intended to provide the arguers with more alternatives for overcoming disagreements, given the limitations of persuasive argumentation presented before. Finally, section 6 tries to put all the above strategies into a dynamic system represented by a flowchart and address some objections.

Several problems are yet to be resolved: I have not said anything about normative standards. That is important because it allows us to distinguish between rational and non-rational agreement. Can, for instance, a deliberation or settlement dialogue be unreasonable? Under which circumstances? Are those circumstances different for every dialogical strategy, as Walton and Krabbe (1995) claim? Are there common normative standards for all of them? What are the precise conditions for the use of dialogical strategies? When should we prefer one over the other? What are the requisites that every solution has? These questions should be addressed in future research.

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## Chapter 2: How to respond to a fallacy?

**Abstract:** This paper aims at resolving the following question: how should a reasonable arguer respond to a fallacy? To answer it, I take a dialectical approach to fallacies and consider their dialectical and rhetorical effects. Then, I review the current literature on the proper answer to fallacies to conclude that, under certain circumstances, all the answers provided in the literature can be helpful for the parties. Later, I attempt at providing some heuristic guidance to understand which response to a fallacy is better under which circumstance. To do that, I introduce two criteria for evaluating dialogues: the level of adversariality and the relevance of the epistemic goal. I will conclude by saying that these criteria can help us understand which is the adequate response to fallacies and could also be important for addressing other problems in argumentation theory.

**Keywords:** fallacies, disagreement, counter-fallacies, meta-dialogues, strategic manoeuvring, adversariality, epistemic goals, heuristics.

### 1 Introduction

When we argue reasonably, we expect the counterpart to act in the same way. But that is not always the case. Our reasonable and well-thought arguments might provoke lies, threats, scorn, or violence. What can we do in that case? An old solution is suggested in The Bible: “Answer not a fool according to his folly, lest you be like him yourself” (Proverbs, 24:6, The New King James Version). According to the biblical principle, our counterpart arguing unreasonably should not encourage us to act in the same way.

One of the standard ways a counterpart can act unreasonably is by using fallacies. Should we apply the same principle in that case and retort in kind? It is not so simple. If the counterpart uses fallacies, but we refuse to, maybe we are giving them an unfair advantage<sup>35</sup>, or by abandoning the argumentation process, we are giving away something important. But if we answer unreasonably, we are just decreasing the level of reasonableness, so the difference of opinion will not be reasonably *resolved*. Therefore, either we forgo realizing our individual aim to convince the interlocutor with good reasons, or we forgo realizing the shared goal to resolve the disagreement. The purpose of this paper is to tackle this dilemma by addressing the following question: how should a reasonable arguer respond to a fallacy?

This topic has already been considered in the literature. Some claim that we need to point out the fact that a fallacy has been committed (Krabbe 2003); others argue that we need to “manoeuvre strategically” (van Eemeren

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<sup>35</sup> See Van Laar and Krabbe (2016) for the concept of “fairness” in argumentation.

& Houtlosser 2007), or suggest that we need to respond with a *counter-fallacy* (Jacobs 2000).

The purpose of this paper is not to provide just another additional answer to the same question or to argue that the answers provided before are wrong. On the contrary, I will argue that all these answers (and others that I present) can be reasonable and useful for fulfilling the parties' goals in different circumstances. But what is lacking in the literature is some rationale or heuristic principle to decide which response to fallacies is adequate in a given circumstance. I pretend to provide such heuristic guidance in this paper, using two criteria.

The layout of this paper is the following: In section 2, I start by introducing a dialectical concept of “fallacy” and the dialectical and rhetorical effects of fallacies. In section 3, I present five answers to the problem, which are found in the literature. Section 4 introduces the two criteria that, I propose, serve as heuristic guidance for responding to fallacies. In section 5, I illustrate, with examples, how the two criteria work. Finally, in section 6, I give some concluding remarks.

## **2 What is a Fallacy, and What are its Effects?**

This paper takes a dialectical approach to fallacies (in line with Jacobs 2006; Van Eemeren & Grootendorst 2004; Walton 1995; Woods 2004, among others). According to that approach, a fallacy is a sort of misstep in a dialogue. A party presents an argument that is evaluated as faulty from a normative and dialectical perspective since it hinders the chances of realizing the shared goal of a given dialogue. In other words, fallacies occur in a dialectical situation, where one of the parties does not fulfil the normative standards of that situation.

But even if faulty, when a party produces a fallacy, she puts her interlocutor (that, henceforth, I will call “the opponent”) in a difficult position. This difficulty happens because of two plausible effects of fallacies that I will explain now: a dialectical effect and a rhetorical effect.

### **2.1 The Dialectical Effect of Fallacies.**

The dialectical effect implies that the opponent will have the *burden of proof to show that a fallacy has been committed*, and such a burden could be, sometimes, hard to discharge. I will call that effect the *burden of the fallacy*, and to understand its effects, we need to compare it with the standard *burden of proof* produced by argumentation schemes.

According to Walton (1998), arguers present their arguments using *argumentation schemes*, which create a *presumption* favouring the

conclusion<sup>36</sup>. If I say, “tomorrow it’s going to rain because the weatherman said so”, I’m using an argument scheme called “*appeal to expert opinion*”. If properly used (see Walton 1997), it will create a *presumption* favouring the conclusion “tomorrow it’s going to rain”. Then, it is not *necessarily true* that it will rain (weather forecasters sometimes make mistakes). Still, it is *presumed* that it will rain, so in the absence of any contrary evidence, I better bring my umbrella to the park. However, if the addressee refuses to accept the conclusion (she believes it’s not going to rain), she will need to advance some appropriate counterevidence, because a mere questioning attitude no longer suffices.

According to Walton, a fallacy is “an argumentation technique used wrongly” (1995 p. 235). Therefore, a party uses what seems like a proper argumentation scheme but without satisfying all its requirements. Since the argument seems like a proper argumentation scheme, people could get confused and think it has produced a presumption favouring its conclusion (Walton 2010). So now we have an apparent presumption of something being the case. Suppose the opponent realizes that the counterpart produced a fallacy. In that case, she will have the *burden of the fallacy*: she needs to prove that a fallacy has been committed, and if she doesn’t, the apparent presumption created by the fallacy remains.

But the problem is that proving that a fallacy has been committed is not easy. Contrary to the textbook examples, real-life fallacies tend to be hard to spot and, even if spotted, hard to debunk. And the counterpart can always present arguments on why the argument is not fallacious after all (a metadialogue doesn’t always lead to an agreement, as I will show). Therefore, if an argumentation scheme generates a presumption in favour of its conclusion, creating a burden of proof for the counterpart who doesn’t want to accept the conclusion, a fallacy produces an apparent presumption creating a burden of the fallacy for the counterpart who doesn’t want to accept the fallacy. And the burden of the fallacy is challenging to discharge, because it entails a burden of proof: it includes the obligation to prove that a fallacy has been committed (see Walton 1995 p. 238). Moreover, charging the counterpart of using fallacies is a severe accusation and might further escalate the disagreement (Paglieri 2009), thus making resolution more unlikely.

## 2.2 The Rhetorical Effect of Fallacies.

Even if a party can adequately discharge the burden of fallacy, there is still another effect of fallacies that needs attention: its rhetorical effect. Consider the following example:

*Example 1: Margaret Thatcher*

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<sup>36</sup> Or, in Walton’s words, “presumptive reasoning” (1995, p. 133).

*On November 22, 1990, in one of her last speeches at the House of Commons as Prime Minister of the United Kingdom, Margaret Thatcher (M.T.) discussed with the representative Simon Hughes (S.H.) the matter of inequality in the following terms:*

- (1) S.H.: “There is no doubt that the Prime Minister, in many ways, has achieved substantial success. There is one statistic, however, that I understand is not challenged, and that is that, during her 11 years as Prime Minister, the gap between the richest 10 per cent and the poorest 10 per cent in this country has widened substantially (...). Surely she accepts that that is not a record that she or any Prime Minister can be proud of.*
- (2) M.T.: “People on all levels of income are better off than they were in 1979. The hon. Gentleman is saying that he would rather that the poor were poorer, provided that the rich were less rich. That way, one will never create the wealth for better social services, as we have.”*

The transcript of the speech<sup>37</sup> does not capture the heat of the moment. Thatcher's supporters were exultant at the reply from the Prime Minister, shouting approval at her words, while Hughes looked uncomfortable, expressing with his face: “that is not what I said!”. But if that is not what Hughes said (or implied), Thatcher produced a *straw man fallacy*. However, for Hughes, the damage was done, and there wasn't too much he could do to win the crowd, even if he had an opportunity to reply and claim that he never said that.

Following Jacobs (2000), we can say that arguments produce rhetorical effects on people. Maybe Thatcher used a fallacy, but at the same time, she communicated other messages, for instance, that she is tough and relentless, that she cares about poor people, that the left-wingers are inherently socialists, that her party is the only one capable of developing social services, and so on. Even if, afterwards, a rational judge decides Thatcher committed a fallacy, the message has been conveyed, and the damage is done.

The rhetorical effects of fallacies are, then, the messages that the production of the fallacies convey. They don't have to do with the dialectical effect but with all other effects that have a strategic significance for the parties. Then, if a party produces a very sloppy fallacy, the message might be that she is not a good or serious arguer. But if the fallacy is well crafted, with a good chance of deceiving the audience, it might produce an “imbalance” in the rhetorical situation (Jacobs 2000).

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<sup>37</sup> Available at <https://publications.parliament.uk/pa/cm199091/cmhansrd/1990-11-22/Debate-3.html>



Considering the dialectical and rhetorical effects of a fallacy, we can see why the opponent might be in a problematic situation. If she ignores the occurrence of the fallacy, then she is not contesting the presumption in favour of the conclusion, and the conclusion, apparently, holds. If she ends the discussion, she gives up on resolution, but maybe resolving the issue was important. If she points out the occurrence of a fallacy, she might succeed at discharging the burden of the fallacy, but the rhetorical effects can't be taken back. If she responds with another fallacy, she might be compensating the rhetorical effects, but at the same time escalating the disagreement and making the dialogue more unreasonable. What to do, then? Let's take a look at five solutions found in the literature.

### 3 One Question, Five Answers

In this section, I intend to present the main answers to how to respond to a fallacy. To do that, I will begin by introducing the following example:

#### *Example 2: Immigration*

*Anna and Jake are senators from opposite parties arguing about illegal immigration at a T.V. show. They have the subsequent dialogue:*

*(1)Anna: "For me, the solution is simple. If people are living and working in our country without the proper documentation, they are not supposed to be here. All we can do is deport them."*

*(2)Jake: "Well, it is not so simple, illegal immigrants are a very important part of our economy, we can't afford to lose them. Besides, many of them have been here for decades, they don't have anywhere to go. The only solution is to regularize their situation if they meet some conditions."*

*(3)Anna: "You only say so because your family owns a company that employs many illegal immigrants, you just want the advantages of cheap workers."*

The argument presented in turn (3) is an *ad hominem attack*. That is, the "kind of argumentation that argues against somebody's argument by attacking the person who put forward the argument" (Walton 1995 p. 37). More specifically, it is a *circumstantial* type of *ad hominem* because, rather than referring to the character of Jake, Anna is referring to Jake's circumstances.

But is an *ad hominem attack* always fallacious? Not necessarily. Ultimately, the problem has to do with the *relevance* of the argument. In some cases, the circumstances of a person making an assertion are relevant, while others are not.

Regarding argument (3), to tell if this is a fallacious move, we need to understand the circumstances of the dialogue, especially, what are the parties' goals. Suppose the parties aim at resolving the difference of opinion on the merits. In that case, their main aim is to test the tenability of the advanced standpoints in a dialogue called "critical discussion" (van Eemeren & Grootendorst 2004). In this case, the standpoint advanced by Jake in turn (2) can be reconstructed as "we should regularize illegal immigrants". He backs his standpoint with two independent premises: "immigrants are good for our economy" and "they don't have anywhere to go now". By those standards, move (3) is fallacious because the personal circumstances of Jake, even if they are true, are irrelevant for the tenability of the standpoint advanced.

But it could be the case that the parties do not want to resolve the disagreement or they have other goals in mind. In politics that happens often. Maybe Anna just wants to be seen as *tough* towards her constituents. In that case, it could be argued that the move wasn't fallacious since the dialogue appears to be eristic (Walton & Krabbe 1995).

But for the sake of argument, let's assume that this is not the case. Both parties sincerely want to find a solution or pretend to find a resolution for the problem of immigration. Therefore, they want to answer the question: "what should be done about illegal immigration?" If that is the case, then (3) is an irrelevant argument and, thus, a fallacy. But what can Jake do next? Let's see.

### 3.1 Ignore the Fallacy

When the proponent advances a fallacy, an option is always to ignore it. In the example above, Jake can keep arguing and give reasons why the Government should regularize the situation of illegal immigrants without responding to the personal attack received by Anna. In that case, *example 2* would look like this:

(3) *Anna: "You only say so because your family owns a company that employs many illegal immigrants; you just want the advantages of cheap workers."*

(4) *Jake: "At this point, we have a humanitarian duty towards the people living within our borders, illegal or not; we need to regularize their situation."*

This dialogue looks odd. Anna has raised concern over Jake's interests, so Jake seems to be dodging her argument by not engaging with it. Anna's fallacy has produced a *dialectical effect*: she has used a personal attack that seems to undermine Jake as a credible source, because he is supposedly acting out of personal interest. If Jake doesn't discharge the burden of the fallacy, the presumption that he only acts out of personal interest holds. And there might also be rhetorical effects not taken into consideration. Additionally, ignoring fallacies sounds like a bad idea in the long run: it will give the parties and the

onlookers the message that fallacies can be freely used without harmful consequences.

But ignoring a fallacy could also bring some strategic advantages. Not engaging in an alleged personal attack could be helpful to de-escalate the conflict. This strategy is sound, especially when the counterpart just wants to offend and is not committed to resolving the issue. Some annoying arguers, usually called “trolls” when they populate the internet, are an excellent example of this. They can be described as arguers that show a lack of argumentative virtues and show “distance from the goals of arguments” (Cohen 2017, p. 186). Therefore, the general rule for dealing with them is “don’t feed the trolls”, which, in this case, can be translated to: “ignore fallacious moves”. Also, in some circumstances, ignoring the fallacy might counterbalance the rhetorical effect by conveying the message: “I will ignore this personal attack because I want to stress that my counterpart doesn’t have good arguments”.

Summing up, ignoring a fallacy is a solution that doesn’t discharge the dialectical burden of the fallacy but, in some cases, can counterbalance the rhetorical effects of fallacies.

### 3.2 End the Discussion

If you and I are playing chess and you knowingly unlawfully move a piece, the game is over. Clearly, you don’t want to play this game seriously, so there’s no point in going on. It could be argued that, with argumentation, it should happen the same. Grice’s (1975) “principle of cooperation” comes at hand. As Van Eemeren and Houtlosser (2015) claim, If one of the parties is using fallacies, it could be assumed that she’s not behaving cooperatively and, therefore, cooperation has gone by the board.

In *example 2*, this solution would look like this:

(3) *Anna: “You only say so because your family owns a company that employs many illegal immigrants; you just want the advantages of cheap workers.”*

(4) *Jake: “That’s offensive. This discussion is over!”*

The advantage of this solution is that it rules out uncooperative counterparts. Sometimes, saying “this discussion is over” seems like the best way to go. It could also promote argumentative virtues in the long run since it sends the following message: “I will not tolerate this kind of behaviour”. In a future encounter, then, the uncooperative party might change her behaviour. Also, ending the discussion is a good way to avoid *feeding the trolls* (Cohen 2017). Finally, it may discharge the burden of the fallacy by explicitly pointing out that something is wrong with the dialogue. If the fallacy is very clear, that could be enough to discharge the burden.

Regarding the rhetorical effects, it might be helpful sometimes: the party that uses the strategy is saying, “I’m a serious arguer, but my counterpart is not”. However, that will only happen when it is clear to the audience that a fallacy has been used and not when it isn’t.

Nevertheless, as van Eemeren and Houtlosser (2007) observe, ending the discussion is not always beneficial for the parties. If the parties wish to resolve, or at least settle, a difference of opinion, ending the discussion is of no use. Moreover, when we are facing practical disagreements (i.e. disagreements about what we should do), ending the discussion is impossible. We are forced to resolve or, at least, settle the dialogue because abandoning it is a way of deciding in favour of the party who wants to keep the *status quo*.

A historical example would clarify this latter point: Before the U.S. Civil War, several publications defending slavery appeared. One of the arguments used by those publications was the following: “slavery had existed throughout history and is the natural state of mankind.” (Ushistory.org 2020). This argument seems like an *appeal to tradition* fallacy. This is a fallacy that “occurs when the advocate maintains that we should follow a certain policy because we have ‘always’ done things that way” (Steinberg & Freeley 2009, p. 201). But if this discussion were taking place when a decision had to be made about slavery, ending the discussion would imply maintaining the legal status of slavery: a victory only for the party using the fallacy. Therefore, in these cases, it makes sense to *do* something when a fallacy is presented, for ending the discussion is of no use.

Summarizing: ending the discussion has both advantages and disadvantages. The main advantage is to rule out uncooperative counterparts, and the main disadvantage is that it lets the disagreement unresolved, which is especially useless for practical disagreements. Finally, this strategy partially discharges the burden of the fallacy and can bring rhetorical benefits in some cases.

### 3.3 Use a Metadialogue

For Aristotle, if a party uses a fallacy, the counterpart should expose her fault. He claims in the “Sophistical Refutations”: “a proper solution is an exposure of false reasoning, showing on what kind of question the falsity depends” (Soph. Ref. 18). The way to do this is by pointing out that a fallacy has been committed, which is done through a *metadialogue*.

A metadialogue could be defined as “a dialogue about a dialogue” (Krabbe 2003 p. 641). More than arguing about the propositions at issue, the parties argue about the dialogue itself: the rules that should be applied, how it has developed, etc. Then, when the counterpart uses a fallacy, a metadialogue can be started about the fallacy itself. The metadialogue would serve the purpose of examining the appropriateness of the argument. Then, at the metadialogical level, the parties will discuss if the argument was, indeed, a fallacy, and the party making the fallacy accusation will carry the burden of

the fallacy. If they agree it was, then the party who produced it must retract it, but the original argument can be considered valid if they agree that it wasn't. If they don't agree, then the metadialogue will remain unresolved.

In *example 2*, the start of the metadialogue could look like this:

(3) *Anna: "You only say so because your family owns a company that employs many illegal immigrants; you just want the advantages of cheap workers."*

(4) *Jake: "You are just making a personal attack without addressing the actual problem that we are discussing. Please stick to the original issue that's at stake."*

By discussing whether the rules of the dialogue have been followed, Jake has departed from the ground level of the argument to a higher level where the argument's legitimacy is being addressed. This higher level is also a dialogue where the parties could persuade each other or fail at doing it. For instance, Anna's answer could accept the defeat and retract the fallacy:

(5A) *Anna: "Ok, granted."*

If Anna responds by arguing (5A), the metadialogue is over because she has retracted the argument presented at the turn (3), and the parties can keep arguing at the ground level.

But she could also question the fallacy charge, saying:

(5B) *Anna: "Can you explain to me why what I just said is irrelevant to the issue?"*

Or even take the initiative and provide reasons why her argument was not a fallacy:

(5C) *Anna: "It's not just a personal attack; I'm saying that your opinion is biased by your family situation. Without it, you would probably think like me."*

If (5B) or (5C) are used, the metadialogue hasn't yet been resolved, so Jake needs to provide reasons why his fallacy attack was justified. He carries the burden of the fallacy and needs to discharge it, or if he is unwilling or unable to, he should retract his "fallacy" charge (argument 4) and go back to the ground level.

This solution has some advantages for the opponent. First, instead of ignoring it or discharging it only halfway, the opponent here intends to fully discharge the burden of the fallacy, which will boost her position if successful. Second, unlike *ending the discussion*, this solution promotes the resolution of the issue. Third, it promotes argumentative virtues: if dialogues were interrupted by metadialogues, then, in the long run, the parties would learn to argue reasonably.

But there are some disadvantages as well. First, as van Eemeren and Houtlosser (2007) note, the parties might keep arguing at the metadiological level without ever returning to the ground level. This might endanger the resolution of the ground level issue. Second, as the example above shows, the burden of the fallacy might prove to be heavy so that the metadiological argument could backfire (Cohen 2005) on the opponent: that is, he could end up in a worse position after making the fallacy attack. Third, calling out a fallacy “is a serious indictment that calls for a strong and vigorous response in rebuttal” (Walton 1995, p. 238) so the disagreement might escalate. Finally, even if successful, the metadiologue could discharge the burden of the fallacy, but the damage produced by the rhetorical effects of the fallacy might still be in place.

### 3.4 Re-rail the Discussion Using Strategic Manoeuvring

Strategic manoeuvring has been defined as “the continual efforts made in all moves that are carried out in argumentative discourse to keep the balance between *reasonableness* and *effectiveness*”<sup>38</sup> (van Eemeren 2010, p. 40). Reasonableness, here, must be understood as “using reason in a way that is appropriate in view of the situation concerned” (van Eemeren 2010, p. 29), and effectiveness has to be understood as being instrumental for the parties in “resolving the difference of opinion effectively in favour of their case” (van Eemeren 2010, p. 39).

In other words, to manoeuvre strategically, the arguers need to balance two different aims: their *dialectical aim*, which requires them to be reasonable at all times, avoiding fallacies and using speech acts appropriate for every stage of the dialogue, and the *rhetorical aim*, which demands that they put their best efforts to persuade the counterpart that their standpoint is correct.

Strategic manoeuvring is, then, an attempt at finding a sort of balance: if the parties lean too much towards their rhetorical aim, dismissing the dialectical dimension, they will proceed unreasonably. And if, on the other hand, they only care about the dialectical aim, they might commit strategic blunders by not producing arguments which fulfill their rhetorical goals. Under this light, fallacies can be conceived as “derailments of strategic manoeuvring” (van Eemeren 2010, p. 200), where one of the parties leans towards effectiveness, thus acting unreasonably.

So, what can be done when a fallacy is committed, according to this approach? According to van Eemeren and Houtlosser (2007), when a fallacy is committed, the type of answer that the counterpart should give will depend on the relevance of the fallacy. A fallacy that is only intended as a joke or doesn't hinder the counterpart's position could be ignored. On the other hand, a fallacy

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<sup>38</sup> The use of italics is my addition.

that implies a fundamental rejection of rationality will ask for a termination of the dialogue.

But most fallacies stand in between: they are not strong enough to require the termination of the dialogue, but they are serious enough to give one of the parties an unfair advantage. For these authors, then, the best option for the counterpart is to ask for the re-railing of the fallacious move, using the tools of strategic manoeuvring. Accordingly, instead of asking for the full retraction of the allegedly fallacious argument (as in a metadiologue), the opponent should ask the fallacy-monger to “readjust one or more aspects of his manoeuvring – say, the verbal presentation of the move – in such a way that the derailment is made undone and the manoeuvring gets re-railed.” (van Eemeren & Houtlosser 2007, p. 250). Therefore, she will ask her counterpart to re-rail the discussion using diverse strategies depending on the fallacy that has been committed (van Eemeren & Houtlosser 2015, pp. 639–640). In the case of *ad hominem* attacks, the opponent should ask the fallacy-monger something along these lines:

(c) Reformulating the presentational device so that the denounced move is rephrased in such a way that it is no longer fallacious—as is, for instance, the case when an abusive *argumentum ad hominem* is rephrased as a legitimate personal attack, or when an *argumentum ad baculum* is rephrased as a legitimate reference to the circumstances in which the discussion takes place. (van Eemeren & Houtlosser 2015, p. 640)

Accordingly, if Jake wanted to use strategic manoeuvring in example 1, he could ask for a reformulation of the presentational device:

- (3) *Anna: “You only say so because your family owns a company that employs many illegal immigrants; you just want the advantages of cheap workers.”*
- (4) *Jake: “Sorry, I don’t get it. Please clarify in which way that situation affects my main argument on illegal immigration.”*

The response asks the other party to re-phrase the presentational device. That is, to present the argument as a non-fallacious one, if that is possible. In this case, Anna could respond in two ways: by complying or not complying with Jake’s request. If she complies, she should reformulate (3) in a non-fallacious way. A possible rephrasing could be the following:

(3A) *Anna: “I’m saying that your opinion is biased because of your family situation. Without it, you would probably think like me.”*

But, if she does not comply, she could say something like:

(3B) *Anna: “You heard what I said!”*

If (3A) is presented, strategic manoeuvring succeeded. If the move is not fallacious anymore, then Jake needs to respond to it and has the burden of proof that his familiar situation didn't influence his standpoint. The solution is very similar to a metadialogue, and in some cases it might be indistinguishable. It is not clear what is the precise difference, but I would say that strategic manoeuvring is less explicit and tries to keep the argument at the *ground level*. But if (3B) is presented, then the strategic manoeuvring has failed, and the parties are back at the starting point.

The advantage of this approach is that it is likely to lead to a dialogue that is much more natural than the kind of metadialogue that we discussed above, so probably the relationship between the parties will not be stressed so much. In a way, this is closer to what we typically do when we encounter a fallacy. So, the counterpart might feel less offended or attacked than when facing a "fallacy!" charge. Secondly, it avoids the burden of the fallacy subtly. Third, it could help the parties resolve the issue, rather than terminating the discussion early or complicating it too much, as in a metadialogue.

The disadvantages of this strategy are two: first, as shown in the example, the fallacy-monger might just refuse the opponent's suggestion, so the strategy would be ineffective. Second, this strategy might not compensate for the rhetorical effects of fallacies. Once a fallacy is out there, its effects may still put the situation in favour of the party using it. As we will see, this is especially problematic when argumentation is more adversarial than cooperative. Therefore, in some circumstances, the parties might want to *compensate for* the rhetorical effects of the fallacy, and a way of doing that would be by using a counter-fallacy.

### **3.5 Use a Counter-fallacy**

Maybe, if we get hit, hitting back is the only way to regain balance. When the counterpart uses a fallacy, this approach will imply responding with another: a counter-fallacy. For Jacobs (2000, 2006), this is the right move when it makes a "contribution to the dialogue" (2000 p. 286).

Jacobs's approach is in the general framework of *Normative Pragmatics*. This theory seeks to bring together dialectics and rhetoric by focusing its attention on "the communicative properties of argumentative messages", and "on analysis and assessment of the functional properties of argumentation as an activity." (2000, p. 262). Jacobs thinks that strategic concerns are always part of argumentation, so there is no such thing as an argument that lacks rhetorical strategy. Then, the most relevant part of an argumentative exchange is the rhetorically conveyed message. Therefore, above the logical and dialogical level, there is a rhetorical level, from which analyzing arguments is much more complex than simply evaluating the fulfilment of certain dialectical norms (Jacobs 2006).

For that reason, Jacobs is sensitive to the possibility that, when someone presents an argument that could be evaluated as a fallacy, the



underlying strategic message of that argument could, nevertheless, be a reasonable contribution to the dialogue. Some situations allow for the use of arguments that could be considered fallacies, and one of those situations is the response to a fallacy. This thought's rationale is that the counterpart has already conveyed a message through a fallacy. That message has produced an imbalance in his favour (the rhetorical effect), so another fallacy is the only way to balance the situation. Therefore, it is legitimate to introduce a fallacy to "call and counterbalance the biases and defects in the argumentation of the counterpart" (2000, p. 278). An apparently fallacious move could be considered legitimate as long as it plays a constructive role in the debate. In other words:

Many of the rhetorical figures and tropes that have been traditionally viewed as dangerously volatile threats to reasoned deliberation can be seen as having constructive contributions to make in the right circumstances. They respond to the demand to find ways to place people in more open, critical, resolution-oriented frames of mind and to make the conditions for argumentation conducive to reasoned deliberation. (Jacobs 2000, p. 281).

So, for Jacobs, the use of fallacies can be constructive and help the parties resolve the issue. But what are *the right circumstances*? He doesn't clarify it. In fact, he never uses the term "counter-fallacy", a denomination introduced by van Eemeren and Houtlosser (2007).

Therefore, while thinking Jacobs is substantially correct, I believe that his proposal is too general. Thus, I want to present two possible uses of a counter-fallacy to contribute to a dialogue. The first one is the use of a counter-fallacy with a *metadiological function*; the second is the use of a counter-fallacy as a *sanction*.

A counter-fallacy with a metadiological function is an argumentative move that, through a seemingly fallacious move, serves the purpose of pointing out the fact that a fallacy has been committed. For instance, consider the following example:

(3) *Anna: "You only say so because your family owns a company that employs many illegal immigrants; you just want the advantages of cheap workers."*

(4) *Jake: "Anna, instead of arguing, you always make these kinds of personal attacks. I think that you are not a serious arguer."*

While (4) could be considered a fallacy (*ad hominem* or *hastily generalization*) for some normative approaches like Pragma-Dialectics, it could also be considered as a contribution to the dialogue. By pointing out that

Anna usually makes personal attacks, Jake is bringing attention to the shape of the dialogue. In such a sense, the move is similar to a metadialogue and more contentious than strategic manoeuvring. In that way, it could re-balance or a discussion that, otherwise, would be rhetorically inclined in favour of Anna.

The second use of a counter-fallacy as a contribution to the dialogue is to use it as a *sanction* against a party that is being unfair. A fair argumentative strategy implies being “balanced, transparent, and tolerant” (van Laar & Krabbe 2016 p. 331), so, by committing fallacies, one of the parties might act unfairly towards the other. A counter-fallacy, then, could function as a sanction to make the counterpart abandon or at least limit the subsequent use of fallacies. Consider the following example:

(3) *Anna: “You only say so because your family owns a company that employs many illegal immigrants, you just want the advantages of cheap workers.”*

(4) *Jake: “Anna, if you keep making those kinds of attacks, I will present a complaint to the authorities.”*

In this case, (4) could be seen as an *ad baculum* attack. However, if we consider (3) to be unfair, then (4) could be a good way to ask the counterpart to avoid using fallacies (van Laar & Krabbe 2016).

However, the reasonable use of counter-fallacies must be distinguished from its unreasonable use. Consider the following example:

(3) *Anna: “You only say so because your family owns a company that employs many illegal immigrants, you just want the advantages of cheap workers.”*

(4) *Jake: “And you are just a fascist, who wants to incarcerate foreigners!”*

Unlike the examples presented before, (4) is not contributing to the discussion. A *tu quoque* fallacy brings a new line of argumentation (is Anna a fascist?) and further complicates things. Moreover, it escalates the conflict towards an eristic dialogue. Therefore, this use of counter-fallacies should be avoided because, as in a boxing match, even the winner will get hurt (van Eemeren & Houtlosser 2007).

The main advantages of legitimate counter-fallacies are the following: first, they are very natural; this is the way people usually argue. Second, they can balance a rhetorical situation that was unfair because of the initial fallacy. Third, they can help the parties re-consider how they are conducting the dialogue and help them resolve their disagreement.

But counter, fallacies could also have disadvantages. First, we might be stretching the norms of a reasonable dialogue too much. If we allow the use of fallacies, then do we still have norms for reasonably resolving our disagreements? Are these just exceptions? Another problem with counter-

fallacies is that they can stimulate the escalation of the conflict. In other words, “It’s clear that threats provoke threats and reasonable considerations stimulate others to offer themselves some reasonable ideas” (van Laar & Krabbe 2016). Therefore, the counter-fallacy could be answered with another one and so on.

However, I think that at least in the two cases mentioned (counter-fallacies with a metadiological effect and counter-fallacies as a sanction) its use should be considered a reasonable move. And the main reason to say that is the fact that they can counter the rhetorical effects of the fallacy.

## **4 How Should We Respond to a Fallacy, Then?**

I’ve reviewed five different answers to fallacies but, how to make sense of them? In other words, how should we respond to a fallacy when it is presented? The circumstances of the dialogue will imply that, sometimes, it is best to ignore a fallacy, sometimes it would be better to end the dialogue, and on other occasions, we should manoeuvre strategically or use a metadiologue. To make a well-considered choice, some principled guidelines would come in handy. The criteria that I want to develop depend on two factors: the level of adversariality and the relevance of the epistemic goal.

### **4.1 Fallacies and Adversariality**

Adversariality has become a *trendy topic* among argumentation scholars during the last few years (Casey 2020). The main question about adversariality is whether arguing is an adversarial enterprise or a cooperative one. In other words, does argumentation resemble more war or a brainstorming session? (Cohen 1995).

This question is relevant to the topic of this paper. If argumentation resembles a war, where parties want to defeat each other, then it makes sense for them to use fallacies. And if they realize that the counterpart is using fallacies, it makes sense not to forgive them or let them get away with it. But if argumentation is a cooperative enterprise that resembles a brainstorming session, it doesn’t make sense to use fallacies, and if one of the parties (maybe inadvertently) uses them, it could make sense to forgive the misstep. So, what is argumentation about? Competition or collaboration?

I will use Govier’s (1999) framework to answer this question. According to her, argumentation is always adversarial in some way. The mere fact that a party is defending P while her counterpart is doubting it implies that they compete on who’s right about P. She calls that principle “minimal adversariality”, and it implies that “people occupy roles that set them against one another, as adversaries or opponents.” (1999, p. 242).

But besides minimal, there is another kind of adversariality that she calls “ancillary”, and could be defined as “lack of respect, rudeness, lack of empathy, name-calling, animosity, hostility, failure to listen and attend

carefully, misinterpretation, inefficiency, dogmatism, intolerance, irritability, quarrelsomeness, and so forth” (1999, p. 245). This kind of adversariality appears as a personal opposition rather than a mere opposition with respect to a subject. I consider these two types of adversariality as a sort of continuum. It is not that the parties are minimally or ancillary adversarial; they could also be adversarial at some intermediate level. Also, a dialogue that starts closer to one of the poles can approach the other under certain conditions. To simplify things, I will say that one of the poles is “cooperation” and the other is “adversariality”. Cooperative parties are inclined towards finding a solution to a disagreement, while adversarial parties are more inclined to get an advantage by any necessary means.

When a party uses a fallacy, the apparent level of cooperation or adversariality should indicate the proper response to it. I say “apparent” because that’s what the opponent can know; they can’t know the exact level of cooperation, but only what it seems to be. So it might be in the end that their judgement was wrong, which could lead to mistakes regarding the proper response to a fallacy. We should expect that the party using a fallacy in more cooperative dialogues would be more willing to retract or revise her fallacy than in a more adversarial one. For instance, in the section above, we saw that one of the possible answers to a fallacy is to use a metadialogue. If a metadialogue is used, the fallacy-monger can either retract their argument or insist that their contribution was not fallacious. A more cooperative party should be more willing to retract her fallacy than an adversarial party. So, while using a metadialogue seems like a good idea for cooperative dialogues, it is not so much for adversarial ones.

## 4.2 Fallacies and Epistemic Goals

Jacobs (2003) claims that argumentation serves two main functions: a cognitive or epistemic function and a social one. This distinction is also useful to answer the main question of this paper. The cognitive or epistemic function implies an individual effort for *belief* management (that is, it help us answer the question: “what should *I* believe?”). Therefore, according to this goal, the parties aim to reach epistemically correct conclusions as close as possible to what they consider to be the *truth* of an issue. The social function implies a quest for *disagreement* management (that is, it help us answer the question: “what should *we* do about it”). Accordingly, the parties aim at resolving or settling their disagreement and keeping a good relationship between them.

When parties argue, sometimes they mostly want to arrive at an epistemically “correct” answer, even if that implies sacrificing an agreement or their relationship; while sometimes they are not so worried about their epistemic goal, so they just want to leave the matter behind, even if that implies arriving at what they consider an epistemically incorrect answer.

For example, suppose Laura and Emma get lost while hiking in the woods and disagree over the way home. In that case, it is imperative for them

to arrive at an epistemically correct answer (imagine that it's getting dark and they are not carrying a tent). If Laura is entirely sure about which one is the right path, she should try to persuade Emma by every possible means. If that doesn't work, she should be willing to look for other kinds of settlement rather than saying: "Ok Emma, whatever you say, we will take your path". In other words, Laura should put *truth over agreement*.

On the other hand, if Gina and John disagree on which restaurant to pick for tonight's dinner, then it should be more important for them to agree on *any* restaurant than to go to *the best* restaurant in town. Therefore, it makes sense for John to say something like: "Ok Gina, we will go to the restaurant you picked, even considering that I don't like it". In other words, John should put agreement over truth.

This is relevant when facing fallacious partners. If the opponent is mainly worried about epistemic goals, she should react to a fallacy in an epistemically proper way. Since fallacies are unable, by themselves, to justify a correct conclusion, then the proper response should be to ask for the retraction of the fallacy (even risking an escalation of the conflict) or to use a counter-fallacy if there's no other choice. But suppose the opponent doesn't care about the epistemic goal. In that case, she should be willing to forgive the use of a fallacy, even assuming that it will be epistemically wrong, or end the dialogue, even assuming that the issue will remain unresolved.

### 4.3 Matrix of Dialogues

The two criteria described above generate the following matrix:

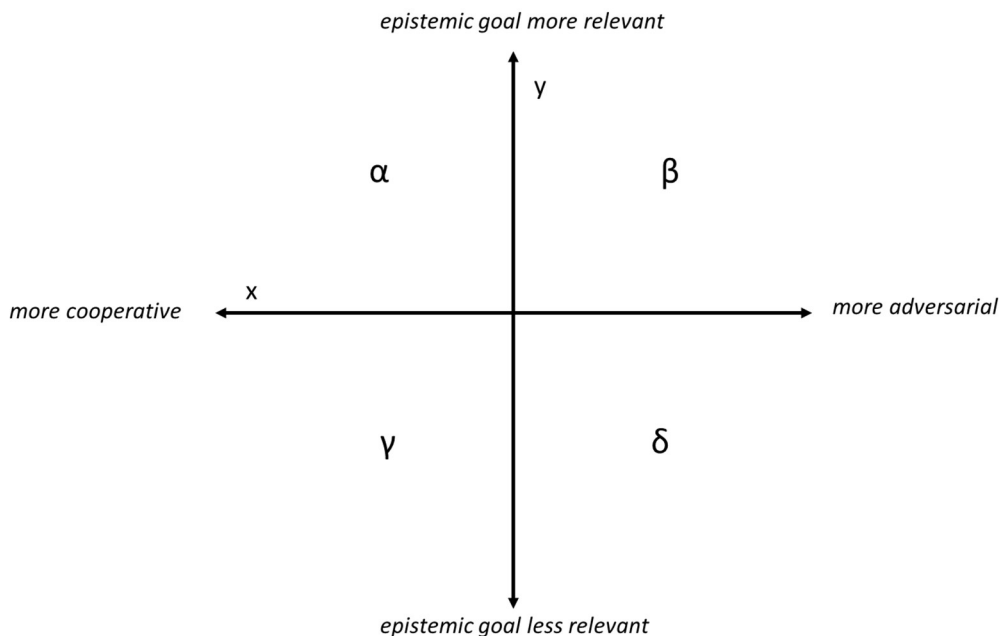


Fig 2. Matrix of adversariality and goals of argumentation

The  $x$ -axis represents a continuum between more cooperative and more adversarial dialogues. On the extreme left, we will find dialogues with only minimal adversariality. In this kind of dialogue, the parties are respectful, comprehensive, and emphatic. On the extreme right, the parties are more adversarial, so they will try to win the argument by all means, including personal attacks, irony, aggressivity and lack of empathy. Finally, in the middle, we will find dialogues that are *in-between* adversariality and cooperation.

The  $y$ -axis represents the relevance the parties give to their epistemic goal. Therefore, on the upper side of the matrix, we will find dialogues in which the parties try, above all, to arrive at the right conclusion given the arguments presented. Therefore, they are not flexible and will not forgive the use of a fallacy from their counterpart. On the lower side, we will find dialogues in which the parties are not so worried about their epistemic goals. Therefore, they will try to agree or end the discussion instead, even if that is not epistemically satisfying.

The four quadrants represent the possible combinations of these criteria. Therefore, in the “ $\alpha$ ” quadrant, we will find dialogues in which the parties are worried about their epistemic goal and are cooperative towards each other. For example, scientific or academic debates can usually be found in this quadrant. In the “ $\beta$ ” quadrant, the parties value their epistemic goal but have high adversariality towards each other. Ideologic, religious, or heated political disagreements can usually be found in this quadrant. The “ $\gamma$ ” quadrant represents dialogues where the parties are cooperative but are not worried about their epistemic goal. Domestic bargainings are usually found in this quadrant. In the “ $\delta$ ” quadrant, we will find dialogues in which the parties are not so worried about their epistemic goal but are very adversarial towards each other. Domestic or personal quarrels can be found in this quadrant. Finally, in the middle of the matrix, we will find dialogues that are *in between* both criteria. Political disagreements tend to be in the middle.

#### 4.4 Five Answers, one Matrix

The matrix can be the basis for developing a heuristic guide. The circumstances of a given dialogue can be many, and an adequate response should be adapted to them. However, the matrix can help the parties find an adequate answer when a fallacy is presented. Therefore, if (according to the opponent) a dialogue happens in the “ $\alpha$ ” quadrant, the most appropriate answer seems to be a metadialogue. If it happens in the “ $\beta$ ” quadrant, it would be helpful to respond with a counter-fallacy. When it happens in the “ $\gamma$ ” quadrant, the matrix suggests ignoring the fallacy. If it occurs in the “ $\delta$ ” quadrant, ending the dialogue seems like a proper answer. Finally, if the dialogue is close to the middle of the matrix, strategic manoeuvring appears like a rational choice.

A metadialogue is most useful in the “ $\alpha$ ” quadrant since the opponent is worried about the epistemic outcome of the argument, so she cannot ignore the fallacy. And since the relationship between the parties is cooperative enough, they don’t have to worry about an escalation of the disagreement. Therefore, they are in a position where they can fully compensate for the dialectical effects of the fallacy. And since the dialogue is cooperative, the counterpart doesn’t intend to produce relevant rhetorical effects (the fallacy was, probably, just a mistake).

A counter-fallacy seems like the best response to a fallacy that occurs in a dialogue in the “ $\beta$ ” quadrant. A metadialogue is unadvised because, since the dialogue is adversarial, the counterpart will probably not accept that they committed a fallacy. Strategic manoeuvring might have the same problem. As for ignoring the fallacy or ending the dialogue, those solutions are useless because the opponent is worried about their epistemic goal. Therefore, it seems adequate to use a counter-fallacy. If it works, she should be able to compensate for some of the rhetorical effects of the fallacy while ignoring its dialectical effects.

Ignoring the fallacy is a good idea for a dialogue in the “ $\gamma$ ” quadrant. Since the epistemic goal is irrelevant for the opponent, it doesn’t make sense to make a big deal about the fallacy. And since the parties are cooperative, there’s no reason to use the occurrence of the fallacy as a way to score points. In this case, the dialectical effects of the fallacy are ignored, and the rhetorical effects are irrelevant.

If the dialogue is in the “ $\delta$ ” quadrant, it seems best to end the discussion. For the opponent, the epistemic goal is not so relevant. But since the disagreement is adversarial, they shouldn’t allow the counterpart to get away with it, so it makes sense to end the discussion altogether. This will partially discharge the dialectical effect of the fallacy (“this is a fallacy, but I don’t even have to explain why”), while at the same time compensating the rhetorical effects (“my counterpart isn’t serious enough, it doesn’t make sense to keep arguing”).

Finally, if the dialogue is closer to the centre of the matrix, then strategic manoeuvring seems like a good idea. On the one hand, it does take the dialectical effect of the fallacy into account. Still, it doesn’t make its discharge too explicit to avoid escalation of disagreement or a never-ending meta-argument. On the other hand, it also takes the rhetorical effects into account, but without the aggressivity of a counter-fallacy, or the problems associated with ending the dialogue.

These are some ideas for developing motivated guidelines for arguers who are confronted with an interlocutor who committed a fallacy. I present these guidelines here, expecting that future research allows us to further refine and qualify them.

## **5 Some Examples**

In this section, I will present some examples of the application of the matrix described in the section before.

*Example 3: Antiviral drugs*

*At an academic colloquium, Maria, a biologist, presents her research on antiviral drugs. During the Q&A section at the end, the following dialogue with her colleague Mike ensues:*

- (1) Mike: “Thanks, that was a great presentation, professor. However, I have a minor observation. You say that drug D does not produce the side effect E that other drugs produce, and you support that position by saying that no such effect has been found in a study that included only 30 persons. That reminds me of what I learned about the argumentum ad ignorantiam! Your experiments only prove that effect E is unlikely, not that it won’t happen at all.*
- (2) Maria: “Thanks for your comments, professor. Indeed, that is correct. It does not follow. We can only conclude that it is unlikely that drug D will produce the side effect E.”.*

In his intervention, Mike accuses Maria of using an ad ignorantiam fallacy. From the absence of evidence on the side effects of drug E, you cannot conclude that drug D does not produce such side effects. On the move (1), Mike uses a metadialogue to call out the fallacy, saying that the conclusion doesn’t follow the premises presented. Finally, on the move (2) Maria complies, accepting that she used a fallacy and retracting her conclusion.

This is an example of a dialogue in which there is cooperation rather than adversariality, and the parties care about their epistemic goals. Therefore, it is a dialogue that happens in the “ $\alpha$ ” quadrant, and a metadialogue seems like a good idea.

*Example 4: Comeback to Margaret Thatcher*

*Let’s go back to example 1, “Margaret Thatcher”, and imagine that Simon Hughes had a chance to answer:*

- (2) MT: “People on all levels of income are better off than they were in 1979. The hon. Gentleman is saying that he would rather that the poor were poorer, provided that the rich were less rich. That way, one will never create the wealth for better social services, as we have.”*
- (3) S.H.: “The Prime Minister is unable to discuss problems on their own terms. Instead of trying to argue, she usually prefers to distort and offend others. That way, we will never have a proper discussion to resolve the problems that people face each day.”*



As we saw before, move (2) is a straw man fallacy. But move (3) is a personal attack and, as such, a counter-fallacy.

As often (but not always) happens in politics, this dialogue is adversarial. Also, the parties consider their epistemic goals relevant. Therefore, the dialogue is in the “ $\beta$ ” quadrant, so, according to the previous section, a counter-fallacy is adequate and may even be helpful to bring Thatcher back to a more reasonable exchange on the issue at hand.

#### *Example 5: Dinner Plans*

*Gina and John are planning to go to dinner together:*

- (1) *Gina: “We should go to Chez Martin.”*
- (2) *John: “I’m not so sure; why should we?”*
- (3) *Gina: “Because it is the best restaurant in town.”*
- (4) *John: “Why is it the best restaurant in town?”*
- (5) *Gina: “Because it is the best restaurant in town!”*
- (6) *John: “Ha, ha. Ok, let’s go there.”*

Move (5) is a clear example of circular reasoning or *petitio principii*. Gina doesn’t provide any reason to back her conclusion in argument (3), other than repeating the conclusion itself. However, John ignores the fallacy in argument (6), even taking it as a joke.

But John seems to have a good appreciation of the situation. The dialogue seems more collaborative than adversarial, and he’s not worried about accepting a conclusion that doesn’t follow the premises presented. Therefore, the dialogue is in the “ $\gamma$ ” quadrant, and it makes sense to ignore the fallacy.

#### *Example 6: domestic quarrel*

*Maria and Peter are a couple having a discussion:*

- (1) *Maria: “I think the way you treated my friend Rosa yesterday was inappropriate.”*
- (2) *Peter: “I didn’t treat her worse than the way you treat my friends, but you don’t see me complaining.”*
- (3) *Maria: “Sorry, but I’m not going to argue with you on those terms.”*

Move (2) is an ad hominem attack of the *tu quoque* variant. But Maria decides to abandon the discussion, and that seems like a good idea. The dialogue was too adversarial, and she wasn’t so worried about her epistemic goal to insist. Therefore, the dialogue is in the “ $\delta$ ” quadrant, and it makes sense to end the discussion.

#### *Example 2: Immigration*

*Anna and Jake are senators from opposite parties arguing about illegal immigration at a T.V. show. They have the subsequent dialogue:*

- (1) Anna: "For me, the solution is simple. If people are living and working in our country without the proper documentation, they are not supposed to be here. All we can do is deport them."*
- (2) Jake: "Well, it is not so simple, illegal immigrants are a very important part of our economy, we can't afford to lose them. Besides, many of them have been here for decades, they don't have anywhere to go. The only solution is to regularize their situation if they meet some conditions."*
- (3) Anna: "You only say so because your family owns a company that employs many illegal immigrants, you just want the advantages of cheap workers."*
- (4) Jake: "Sorry, I don't get it. Please clarify in which way that situation affects my main argument on illegal immigration".*
- (5) Anna: "I'm saying that your opinion is biased because of your family situation. Without it, you would probably think like me."*

Our well-known example 2 seems like a case where strategic manoeuvring is a good idea. In move (3), María has produced an ad hominem fallacy that has been responded to in move (4) by a move that asks Maria to reformulate the presentational device. Maria complies and reformulates her argument in a non-fallacious way in the move (5).

The dialogue was adversarial but not so much (people don't always want to appear as too adversarial in front of the T.V.). And the epistemic goal matters to the parties, but since they are not making a decision at that moment, it doesn't matter so much. Therefore, considering that the dialogue is close to the centre of the matrix, strategic manoeuvring is a good idea.

## **6 Conclusion**

Dialectical theories of argumentation are, more than anything, a normative endeavour. Therefore, they need to provide guidelines on how we *should* argue if we want to have a reasonable exchange. That being the case, it is of utter importance to distinguish between good and flawed argumentation. However, taking contextual specifics into account always complicates things because there are just too many things happening in a given dialogue to take everything into account. Therefore, it is difficult to provide a clear and distinct method to sort good from bad arguments: all we can strive for is to develop heuristic guidelines that will often be accurate but never devoid of exceptions.

The above is based on my interpretation of dialectical theories of fallacies such as the ones developed by Van Eemeren and Grootendorst

(2004), Walton (1995), or Woods (2004). But while these theories go into great detail to formulate rules and guidelines to distinguish sound arguments from fallacies that should serve the proponent of an argument to argue reasonably, not enough effort has been given to clarifying the opponent's role when facing a fallacy. In this paper, I've intended to cover that gap by providing such heuristic guidelines.

The meaning and scope of the two criteria provided could still be fine-tuned, but they give enough support to cover the gap described above. Ultimately, the goal of these principles (and, I think, of argumentation theory in general) is to shed light on the best way to overcome or resolve disagreements through an exchange of reasons. The level of adversariality is important to an assessment of the situation that the parties need to make when they intend to argue. It is a strategic concern that fits into rhetorical theories of argumentation. I claim that these kind of concerns are always necessary because "rhetorical strategy is unavoidable in argumentative discourse" (Jacobs 2006, p. 422). The second criterion, the relevance of the epistemic goal, arises from the fact that, granted, whilst truth and knowledge are important drivers of argumentation processes, they are not the only ones. Argumentation, and even reasoning more generally, are ultimately tools for social interaction (Mercier & Sperber 2011). Consequently, social concerns could frequently overrule epistemic ones, just as our ancestors presumably preferred sometimes to go along with the chief of the tribe, even knowing that he was making a wrong decision.

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## Chapter 3: Argumentation in Sub-optimal Settings

**Abstract:** When parties attempt to persuade their opponents of the tenability of a certain standpoint using reasons, they will often find that the circumstances of the dialogue hinder their chances of resolution. Power imbalances, cognitive biases, lack of time or hidden interests are some of the circumstances they need to face. I will label these circumstances as *sub-optimal settings for argumentation*. According to the pragma-dialectical tradition, higher-order conditions for critical discussion are unfulfilled in these cases (van Eemeren, Grootendorst, Jacobs, & Jackson 1993). The main question of this paper is the following: what is the normative standard that parties in a discussion need to follow to arrive at a resolution in such circumstances? I will defend a middle-ground solution between two extreme ones.

The first extreme position, the *anything-goes policy*, claims that, given that the conditions for a reasonable exchange of reasons are not satisfied, the dialogue stands outside the domain of reason, so anything goes for the parties. The second extreme position, the *business as usual policy*, claims that, since critical discussion is a normative model, the same rules should apply in sub-optimal settings. Finally, the *supernormal policy* that I defend claims that we need a more general and comprehensive norm that I refer to as a *supernorm* to evaluate these cases.

The supernormal policy divides argumentation into two stages: preparation and resolution. In the preparation stage, the parties attempt to restore or compensate for the sub-optimality of the setting, while in the resolution stage, they attempt to resolve their disagreement. I contend that the moves of the preparation stage should be evaluated by using the supernorm instead of by the rules for critical discussion (van Eemeren & Grootendorst 2004). At this point, the paper considers theoretical insights from Gilbert (1995, 1997, 2002) and Jacobs (2000, 2006) to understand what this entails.

**Keywords:** sub-optimal settings, persuasion dialogue, critical discussion, higher-order conditions, Pragma-Dialectics, Coalescent Argumentation, Normative Pragmatics.

### 1 Introduction

Argumentation theory seeks to understand and evaluate real-life argumentation. But the world is messy, and people argue in ways that are

often difficult to classify and evaluate. If the primary goal of argumentation is to resolve disagreements<sup>39</sup>, then many circumstances make that goal extremely difficult to realise: power imbalances, emotional attachments, unfair time constraints, cognitive biases or hidden interests are, among many others, circumstances that can heavily impede the resolution of disagreements. I call these circumstances *sub-optimal settings*, and they can be defined as *settings that are unfavourable for a reasonable exchange of reasons*.

When people disagree under these circumstances, these disagreements tend to be persistent; that is, they are disagreements “that likely cannot be resolved by persuasive argumentation”. Since the disagreements are persistent, and the conditions for a fair exchange of reasons are not satisfied, the parties will likely look for other means of overcoming their disagreements. For example, they might engage in a negotiation dialogue (van Laar & Krabbe, 2018a) or opt for a non-argumentative settlement of the dispute<sup>40</sup>. But, sometimes, they need or want to stick to rational persuasion<sup>41</sup>. In that case, the circumstances of the dialogue, and the fact that disagreements within such circumstances are hard to resolve, might incentivise looking for solutions that require contributions to the conversation that might clash with normative rules of resolution-oriented dialogue such as the “*rules for critical discussion*” (van Eemeren & Grootendorst 2004).

The main question of this paper is, then, the following. When the parties in a sub-optimal setting exchange reasons, thus aiming at persuasion, do the rules for critical discussion apply in the same way as in normal settings? My interest is not in the rules themselves but in what they should enable: properly conducted argumentation should facilitate a reasonable disagreement resolution. Thus, when an argumentative move hinders the chances of arriving at a rational resolution, it should be considered unreasonable. But is it reasonable to assess argumentation from the same normative stance when the pre-conditions for dispute resolution are mostly not in place? The main contribution of this paper is not to develop a completely novel argumentation theory for sub-optimal settings. Instead, the ambition is to add to the existing literature on persistent disagreements and difficult argumentative settings by pointing to the usefulness of the concepts of ‘sub-optimality’ and of a very general ‘supernorm’ that is even applicable when higher-order conditions are not satisfied.

I claim that there are two extreme positions and a middle-ground position regarding this question, each of which I take to propose a specific kind of ‘policy’ regarding how to evaluate contributions to the exchange of

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<sup>39</sup> But, as some argue, it might not be the only goal of argumentation. See Doury (2012).

<sup>41</sup> For example, when the disagreement is theoretical rather than practical. I develop that distinction in chapter four.

reasons. These positions have not necessarily been defended by other authors, but represent a spectrum of possible answers to the main question of this paper. The first position is connected to what I call the “*anything goes policy*,” which comes down to the view that, since the conditions for a reasonable exchange of reasons are not satisfied, the discussion is outside the domain of reason. Accordingly, anything goes for the parties, and we are recommended not to apply the rules for critical discussion. The second position, connected to the “*business as usual policy*”, says that it doesn’t matter if the setting is sub-optimal or not. Either way, the rules for critical discussion should apply in the same way. The middle ground position that I would like to elaborate on leads to the “*supernormal policy*” and implies that, in sub-optimal circumstances, we need to adopt a more comprehensive approach to reasonableness: some moves that in other cases would be considered fallacious, shouldn’t be considered as such if they help the parties to arrive at a mutual understanding and, ultimately, create better conditions for reasonable dialogue. For the *supernormal policy* to properly work, we would need (instead of the rules for critical discussion) a kind of *supernorm* in place that helps the parties *restore* the proper conditions for reasonable dialogue or *compensate* for irredeemable cracks in the argumentative setting. Some authors seem to accept such a general norm (Gilbert 1995, 1997; Jacobs, 1998, 2006) and hold the view that we should evaluate argumentation using this norm at all times, not just when the higher-order conditions for resolving disputes remain unsatisfied. I propose to use this approach only in a more limited way: to prepare the parties for a normal exchange of reasons that might help them advance towards resolution.

The supernormal policy requires a two-step process<sup>42</sup>: during the first step, the parties will either try to restore the sub-optimal setting or compensate for the sub-optimality of the setting in some way. They will try to resolve the disagreement that prompted their discussion during the second step. The first step, then, is a procedural precursor for resolution in which the parties attempt to enhance the setting by bringing their positions together, while the second step is a proper resolution process, as it is understood in Pragma-Dialectics. That is, resolution is a process by which: “the argumentative discourse has resulted in an agreement between the parties involved on whether or not the standpoint at issue is acceptable” (van Eemeren et al. 2014, p. 528). I label the first step “preparation” and the second step “resolution”.

So, while for the preparation process, the parties can use moves that would be considered fallacious under normal settings, that is not possible for the resolution process. Here the dialogue must be adequately *regimented* to

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<sup>42</sup> However, the steps can be mixed by the parties or taken in a different order than the one expected, just as it happens with the stages of critical discussion in Pragma-Dialectics (van Eemeren & Grootendorst, 2004). The two steps are better conceived as a tool for the analyst than as steps to be applied by the parties.

allow the parties to resolve their difference of opinion (*cf.* van Eemeren & Grootendorst 1984, p. 17).

I consider this problem from the standpoint of Pragma-Dialectics (van Eemeren & Grootendorst 1984, 2004). The main reason for adopting this approach is that it is a well-worked out model that provides a plausible account of the norms of reasonableness for argumentative exchanges. However, the supernormal policy departs from Pragma-Dialectics in two important respects: first, it establishes the necessity of a broader normative approach to argumentation, mainly inspired by Michael Gilbert's (1995) *Coalescent Argumentation*, and by Scott Jacobs's *Normative Pragmatics* (2000), and implies that some dialogue moves that for Pragma-Dialectics would be unreasonable, should not be considered as such.

The paper is structured as follows: in the second section, I define and discuss the fundamental concept of a sub-optimal setting. The third section introduces and criticises the first solution: the *anything-goes policy*. In the fourth section, I evaluate the second solution: *business as usual policy*. In the fifth section, I introduce the *supernormal policy*. The sixth section applies this policy to some case studies that have been analysed before in the literature. The seventh section answers some possible objections. Finally, I present some concluding remarks.

## 2 Basic Concepts

### 2.1 Persuasion Dialogue

As Walton and Krabbe (1995) argue, there are many dialogue types, and *persuasion dialogue* is just one of them. Besides persuasion dialogue, we find negotiation dialogue, eristic dialogue, deliberation dialogue, information-seeking dialogue, inquiry dialogue, and other mixed dialogue types. Persuasion dialogue only occurs if the parties disagree and not in other cases such as when they need to know something, in that case, an information-seeking dialogue is more suited.

And even if they disagree, the parties can do many things besides attempting to persuade each other. They can negotiate a compromise, deliberate, or even toss a coin. In chapter one, I've specified how parties overcome persistent disagreements by shifting from one to another dialogue type. But in this paper, I want to concentrate only on persuasion dialogues because not every persuasion dialogue can be the subject of shifts. As I've argued, disagreements about what to *believe*, in contrast to disagreements about what to *do*, can't be shifted to other dialogue types.

There are two dimensions of persuasion dialogues: descriptive and normative. The descriptive dimension enables us to identify a certain type of dialogue among others and show its main features. The normative perspective requires that we provide specific rules to evaluate persuasion dialogues and prescribe how they should be conducted in the future. When Walton and



Krabbe descriptively analyse a persuasion dialogue, they show the main features of such a dialogue: the initial situation is disagreement, the main goal is to resolve the disagreement, and each of the participants' aim is trying to persuade the other party (1995, p. 68). When they analyse the normative dimension, they use their "systems of dialogue rules" (1995, pp. 123-172) to formalise norms to evaluate persuasion dialogues.

When I say "persuasion dialogue", I refer to a dialogue in which the initial situation is disagreement, and the main goal is to resolve the disagreement, and each of the participants' aim is to persuade the other party (1995, p. 68). Only if we allow this minimal definition of persuasion dialogue we can adequately say that such a dialogue can be conducted in a sub-optimal setting. The parties can have other aims in mind, but we still call it persuasion dialogue if persuasion is the main one. On the other hand, the normative dimension is "critical discussion".

## 2.2 Critical Discussion

A critical discussion is a dialogue in which:

The parties attempt to reach agreement about the acceptability of the standpoints at issue by finding out whether these standpoints are tenable against doubt and other criticism, given the mutually accepted starting points ( van Eemeren et al. 2014, p. 528).

In a critical discussion, the parties begin with a difference of opinion regarding a specific standpoint, and if one of them succeeds in defending her standpoint or attacking the one presented by the counterpart, then one of them needs to retract her original standpoint or criticism, and the parties can reach an agreement. If they conduct the process reasonably, the parties will arrive at a *resolution*.

Critical discussion is a normative ideal for conducting argumentation when the parties find themselves in a disagreement. Then, let's consider persuasion dialogue as a dialogue in which the parties try to persuade each other to reach an agreement; and *critical discussion* as a normative model that provides us with rules to reach an agreement reasonably.

According to the pragma-dialectical school, to conduct a critical discussion reasonably, the parties need to comply with the rules that authorise the performance of specific speech acts in the four stages of the process (confrontation, opening, argumentation, and concluding stage). These standards can evaluate whether a contribution to the dialogue helps the parties reach a reasonable resolution. These standards are known as *rules for critical discussion* (RCD).

These rules "constitute a dialectical procedure for the performance of speech acts in a critical discussion" (van Eemeren et al. 2014, p. 539) and are presented as a set of 15 rules (van Eemeren & Grootendorst 2004, pp. 136–

157) or, in its shorter version, as a set of 10 commandments (2004, pp. 190-196). By “RCD”, I understand, in this paper, the list of ten commandments.

### 2.3 Fallacies

Along with the establishment of do’s and don’t’s for a critical discussion, the RCD serve to reinterpret and unify most of the classical fallacies inherited from the Aristotelian tradition. Accordingly, a “fallacy” is defined as “a discussion move that violates in some way a rule for critical discussion applying to a particular discussion stage” (van Eemeren et al. 2014, p. 523). In other words, a fallacy is a “speech act that prejudices or frustrates efforts to resolve a difference of opinion on the merits” (van Eemeren 2010, p. 198). Therefore, it is impossible to resolve a difference of opinion based on fallacies since the resolution will not arise from the merits of the arguments. Thus if a fallacy is presented, it needs to be retracted or compensated for.

If fallacies imply violations of rules, then any fallacy can be reconstructed as the violation of such or such rule. For instance, if a party uses a threat to keep her counterpart from presenting or defending a standpoint, she commits an *ad baculum* fallacy. The reason is that she violates the *freedom rule*, which says that “discussants may not prevent each other from advancing standpoints or from calling standpoints into question” (van Eemeren & Grootendorst 2004, p. 190).

In conclusion, critical discussion is a normative model that reasonably enables the parties to resolve a difference of opinion. The RCD regulates the model, whose observance ensures that, if the parties arrive at an agreement, it a *resolution* based on the merits and whose inobservance will impede or, at least, hinder them from resolving their difference of opinion. Fallacies are violations of the RCD, so the parties need to avoid using them if they want to resolve their difference of opinion on the merits.

### 2.4 Higher-order Conditions

Critical discussion, more than a theory to describe actual discourses, “is a theory of how discourse would be structured if it were purely resolution oriented” (van Eemeren et al. 1993, p. 26) It plays a role as an ideal to which actual dialogues should be compared to. However, “the system described above assumes that certain conditions hold” (1993, p. 30). Those conditions have been called *higher-order conditions* (HOC). They distinguish two kinds: second and third-order, considering that the RCD are the first-order conditions for resolving a disagreement.

Second-order conditions refer to an “idealised set of attitudes and intentions” (1993, p. 31) of the parties, which imply that they “wish to resolve, and not merely to settle, the disagreement” (1993, p. 31). Naturally, if the parties want to score points or damage the adversary instead of resolving the disagreement, a reasonable resolution is not possible. But sometimes the

problem is not that they are unwilling but, instead, that they are incapable of resolving the issue since they lack the “ability to express their opinions, to listen to the opinions of others, and to change their own opinions when these fail to survive critical examination” (1993, p. 33).

However, willingness and ability are not enough to conduct a critical discussion, so besides the second-order conditions, there is a third-order that refers to external circumstances of the dialogue. Then, the parties must not only satisfy mental conditions for critical discussion but also “they must be enabled to claim the rights and responsibilities associated with the argumentative roles defined by the model” (1993, p. 33). Therefore, to put forward and criticise standpoints, the parties need to “have the right to advance his or her view to the best of his or her ability” (p.33). This right can be thwarted in many ways: in a particular context, there might be taboo topics, unfair time constraints, authority relationships or dogmatic positions, among others.

Zenker (2007, p. 12) has provided a list of HOC. Among the essential 2<sup>nd</sup> order conditions: people must be willing to listen to the other party, be prepared to accept that the other party’s point of view might be justified and theirs might be wrong, be disinterested in the outcome of the discussion. Among the 3<sup>rd</sup> order conditions, people must be free to speak their minds, have no authority relationships, and have equal time constraints.

## 2.5 Sub-optimal Settings

Considering the above, a persuasion dialogue that takes place in a sub-optimal setting can be defined as *a persuasion dialogue that fails to meet, to some substantial degree, one or more higher-order conditions.*

Sub-optimal settings are situations that stand in between the total abandonment of reasonable dialogue and minor glitches. I call a setting ‘normal’ in situations where the higher-order conditions are, for the most part, met (though small departures would be permitted). I call “hopeless settings”, those cases when the parties are entirely unwilling to argue persuasively (and, maybe, more than a persuasion dialogue, we are in the presence of an eristic one). Finally, when parties *do* try to persuade each other, but the setting is not optimal, we will be in the presence of sub-optimal settings.

Sub-optimality, however, is not a region of dialogues with clear borders. Instead, it is located in a sort of continuum. On one extreme, we find normal settings and, as we move away from the normal settings, we approach cases where the HOC are less and less present. At some point, the dialogue becomes purely eristic (Walton & Krabbe 1995) or the disagreement too deep beyond repair (Fogelin 1985). So, the best way to characterise sub-optimal settings is to show what they are not. They are not “normal” settings, that is, the type of settings where the parties have the will, abilities, and social conditions to reach a resolution through critical discussion. But, neither, they are hopeless settings, where the parties don’t want to persuade each other at

all, so persuasion is not one of their goals, or there isn't any way to restore the setting and allow for resolution, as it happens with Fogelin's "deep disagreements" (Fogelin 1985).

If the RCD are related to the HOC, it is unclear whether the RCD are the best way to describe reasonable contributions to the dialogue in sub-optimal settings. Therefore, we could re-phrase the research question of this paper in the following terms: *are the rules for critical discussion the best way to describe reasonable contributions to a persuasive dialogue if one or more of the higher-order conditions for critical discussion are not met to some substantial degree?* Aakhus (2003, p. 263) presents this question as follows:

When second and third order conditions are not satisfied, is it reasonable to conform strictly to the ideal model of critical discussion to understand whether a move fosters progress toward solving the conflict? Or, if the second and third order conditions are not met, then are the standards for judging argumentation based on the assumptions for critical discussion the best standards to use to interpret and evaluate argumentation in practical settings?

In what follows, I develop three solutions to this problem.

### **3 First Proposal: Anything Goes Policy**

The "anything goes policy" can be characterised as follows: *When parties try to persuade one another in sub-optimal settings, the rules for critical discussion don't play a role in evaluating contributions to the dialogue.*

The main reason to support the *anything-goes policy* is that the higher-order conditions are enabling conditions for a critical discussion. Therefore, if one or more of them are not met, we might have a persuasion dialogue but not a critical discussion. As a result, the RCD are only applicable in *normal settings*. Zenker characterises (while not necessarily defending) this solution as follows:

The point to note, then, is this: If a text appears argumentative, but its setting fails to comply to some higher-order condition, then this discourse must not be interpreted as one that is aimed at a resolution of a difference of opinion, to begin with (cf. van Eemeren and Grootendorst 2004). In such cases, the discourse simply ceases to be a proper object for the Pragma-Dialectical theory (2007, p. 13).

If that is the case, then the RCD are not in place anymore, so we would have two options: (1) there are no appropriate rules for evaluating the argumentative quality of dialogue contributions in these settings; or (2) we need another, a maybe more general norm to understand why a fallacy is a forbidden move in these cases. This section deals only with the first option,

while the second one will be re-examined in section 5 of this paper. *Anything goes policy*, then, refers only to the first option.

We could look at the term “condition” to back the first option. The Merriam-Webster dictionary defines it as: “something essential to the appearance or occurrence of something else”. Considering this definition, a synonym of this meaning would be “prerequisite”. But suppose the higher-order conditions are a prerequisite for critical discussion. In that case, the consequence is quite clear. If the conditions are not satisfied, it would be inappropriate or even unfair to analyse the reasonableness of contributions using the RCD.

While somewhat appealing, an *anything-goes policy* seems wrong for two main reasons. The first is that we can recognise fallacious moves even in a sub-optimal setting. The second is that it could be argued that every persuasion dialogue is sub-optimal, so the RCD would never be the best way to evaluate whether a contribution to the dialogue is reasonable. In real-case scenarios, the parties will have some reluctance to recognise they have been proven wrong, some interest in the outcome of the discussion, some lack of emotional restraint or some authority relationship.

In the end, in real-life argumentation, the conditions are never totally met, so saying that anything goes when the higher-order conditions are not met implies that anything goes in any discussion, and that’s an absurd outcome. If that is the case, we can think that the RCD are always in place in persuasion dialogues, which would be the second solution.

#### **4 Second Proposal: Business as Usual Policy**

The “*business as usual policy*” can be defined as follows: *When parties try to persuade one another in sub-optimal settings, the rules for critical discussion are the suitable model for evaluating which contribution is reasonable in a dialogue.*

Someone could argue that there is no problem here, and the only problem is that the word “condition” seems to entail a *requirement* or *essential condition*. But if we consider critical discussion to be just an ideal model, the higher-order conditions are, by definition, never met. Therefore, the distinction between the higher-order conditions being slightly or substantially not met is irrelevant. If that is the case, we could always reconstruct persuasion dialogues in terms of critical discussion and call violations of the RCD “fallacies”.

Pondering the above, the solution to the problem posed should be *business as usual policy*. Then, if we reconstruct a persuasive dialogue of an exact academic debate or a marital disagreement, the situation would be the same: the parties must avoid fallacies to arrive at a resolution and, if they commit them, they might arrive at an agreement, but it will not be on the merits.

*Business as usual* seems to be the standard position taken by the pragma-dialectic school:

When analysing argumentative discourse, the normative ideal of a critical discussion serves as a kind of template against which experience can be compared and a kind of standard against which it can be judged. As we will see, actual human interaction is not “naturally” resolution oriented. People involved in disagreement are not normally disinterested in the outcome but have a heavy interest in one outcome or another. They do not generally enter into discussion willing to subject all of their thinking to debate but treat certain things as so fundamental as to be beyond challenge. They have deficiencies of skill. They argue within social conditions that virtually assure some degree of inequality in power and resources (...). Actual practices are not described by such a model, but certain of their features can be given interesting explanations in terms of the model. (van Eemeren, Grootendorst, Jackson, & Jacobs 1993, p. 34)

The higher-order conditions are never fully met for these authors, so the RCD are an ideal model. Critical discussion is a sort of template, a *blueprint* used to evaluate actual practices (Aakhus 2003). Therefore, the fact that the higher-order conditions are not met is not a reason not to evaluate contributions to the dialogue using the RCD. Then, even if the parties arguing are, for example, intimates with strong emotional attachments, the dialogue can be evaluated using the RCD.

But there might be problems with this interpretation. In the case of the *anything-goes policy*, stressing the term “condition” too much makes the system excessively permissive; in the case of *business as usual policy*, stressing the term “ideal” too much could make it too strict and not adaptable to circumstances.

There are two main objections against this conception of the *business as usual* policy. The first one is that it doesn’t make any difference between the optimal and sub-optimal settings when it comes to the issue of whether the rules for critical discussion are the best standard for evaluating reasonableness. The second is that it leaves situations in grey areas unresolved.

The first objection says that the RCD are *too* strict about evaluating dialogues in sub-optimal settings. But, for example, we would consider that *appeals to emotions* are a proper and nonfallacious way of arguing when a mother argues with her daughter.

The second reason to reject the *business as usual* policy is that it does not tell us what to do with grey areas. Pragma-Dialectics does recognise that, in some cases, the RCD are not the best to determine whether a contribution is reasonable, especially when the arguers defend incommensurable standpoints or there is a clash argumentative points of departure. In such cases, “much of what is wrong appears to result from the absence of an essential second-order

condition for critical discussion—a serious, resolution-oriented attitude on the part of the participants” (van Eemeren, Grootendorst, Jackson, & Jacobs 1993, p. 166). But Pragma-Dialectics doesn’t tell us what to do in those cases. Can we apply the rules for critical discussion, or we should just look for another way to move forward? And which way could that be?

## 5 Third Proposal: Supernormal Policy

### 5.1 The Supernormal Policy

Normative models of argumentation need to account not only for standard settings but also for sub-optimal settings. In other words:

normative models must take into account that discussants are limited in their reasoning capacity and susceptible to fallacious reasoning; that they are usually each committed to a particular point of view and susceptible to prejudice; and that they are each motivated by a desire to win in a context of controversy. (Krabbe 2009, p. 122)

When confronted with sub-optimal settings: what does a party that wants to resolve a disagreement reasonably need to do? According to the supernormal policy, the parties need to rationally test each other’s standpoints in the resolution step. But in the *preparation* step, there are two possible contributions, depending on the nature of the sub-optimality.

Some sub-optimal settings can be *restored* to normal by the parties. To do this, at least one of the parties must acknowledge that the dialogue is sub-optimal and that it *could* be restored (but, of course, she could be mistaken in these appreciations). For instance, lack of trust can sometimes be remediated by talking openly to each other; cognitive biases can be sometimes revealed and corrected, lack of time or opportunities to present a good argument can be sometimes fixed, unwillingness from the parties to recognise when they are wrong can be worked out. When this is the case, the priority of the parties should be to *restore* the normal setting and put the discussion back on a reasonable track. For instance, as Kloster (2018) proposes, when there’s a lack of trust, the parties will have a hard time resolving their disagreement. Therefore, they need to know each other first to trust and then argue. For *restoring the dialogue to a normal setting*, I will mainly use Gilbert’s (1995) framework.

But in other cases, the setting cannot be restored. Authority relationships, for instance, will not go away even if the parties want them to, argumentative injustice cannot be changed within the timespan of a single discussion, emotional dispositions are just part of the character of some people, and so on. In such cases, the parties’ aim should be to compensate for the circumstances that make the disagreement sub-optimal. Since the problem

cannot be taken away, we need to learn to live with it to make it less harmful. To understand how this compensation works, I will use Jacobs' (2000) Normative Pragmatics as a framework.

The distinction between restoration and compensation is not clear cut, but it seems worthwhile. Both processes require that the arguers lean towards rhetoric but in a different way. Following Gilbert, the restoration process is more emphatic and seeks to coalesce the parties' positions; it is more about mutual understanding than anything else. The compensation process, on the other hand, and following Jacobs, is inevitably more assertive: it doesn't necessarily seek to bring the parties together but to call attention to the sub-optimality of the setting. In any case, both processes use rhetorical techniques that could be considered fallacious, at least from a pragma-dialectical standpoint.

In the dialogue's preparation process, the RCD don't serve the same function in a normal setting. While the RCD are a set of specific norms, this process would need a sort of more general *supernorm*, which should capture the spirit that animates the rules for critical discussion, but in a general and non-specific way, so that it provides guidance also when the conditions for critical discussion are not satisfied.

It is also relevant to note that, as described before, sub-optimality represents a sort of continuum so that some settings would be more sub-optimal than others. That *distance from the normal setting* should be one of the guiding factors for proceeding in the argumentative process. Then, the closer we are to a normal setting, the more strongly we should be committed to following the RCD<sup>43</sup>.

The supernormal policy would not be followed, for example, when parties use arguments that might escalate the disagreement and not restore or compensate the sub-optimality of the setting. To evaluate what works, they need to assess the distance to the normal setting. Then, for example, an argumentation process between intimates close to an eristic dialogue should allow more emotional appeals than a political debate with a politician who cannot accept when he has lost an argument.

At this point, an objection can be formulated<sup>44</sup>: if departure from a normal setting is extreme, how extreme might a tactic be? Is it acceptable, for example, to censure or isolate people? That is a good question that exceeds the topic of this paper, but, at the very least, I can say the following: first, argumentation processes have obligations and norms of moral nature attached to them (Blair 2015). That is, to hit someone with a stick because we disagree is not only unreasonable for the resolution of a difference of opinion but also morally wrong, and argumentation is (also) related to moral duties. Secondly, if a party departs too much from a reasonable exchange, then maybe we are

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<sup>43</sup> Thanks to one anonymous reviewer for pointing this out.

<sup>44</sup> Thanks to one anonymous reviewer for raising it.



not talking about a sub-optimal setting but a *hopeless* case. In that case, the supernormal policy is of no use. Finally, the supernormal policy implies that we should try to *restore* or *compensate* the setting. The aim here is to overcome disagreements peacefully and reasonably, so anything that deviates from this goal shouldn't be considered desirable for the supernormal policy. That provides a limit to the strategies that can be used.

We can formulate this *supernorm* in the following terms: *When parties try to persuade one another in sub-optimal settings, their contributions to the dialogue must be evaluated considering how much they help restore the dialogue to a normal setting or compensate it when the restoration is not possible.*

I will now explore the two contributions that this supernorm allows to *restore* and *compensate*.

## 5.2 Restoring the Normal Setting.

To understand how the *restoration* of normal settings works, it is helpful to understand the concept of *Coalescent Argumentation*, developed by Michael Gilbert.

According to Gilbert (1995; 1997; 2002), one of the mistakes of dialectical theories of argumentation is to think that argumentation is solely about presenting arguments through language and logical connections. He claims that this belief can be called a *logocentric fallacy*, which “is committed when language, especially in its most logical guise, is seen as the only form of rational communication” (2002, p. 32).

To avoid this mistake, he begins by understanding an argument as “an exchange of information centered on an avowed disagreement” (1995, p. 839). Consequently, when people disagree, they not only disagree about a claim but, somewhat, about a position. A position is “a matrix of beliefs, attitudes, emotions, insights, and values connected to a claim.”(Gilbert 1995). The claim is just the tip of the iceberg, while the position (that mostly remains underwater) is what is really producing the disagreement.

For example: if a couple disagrees about the best school for their children, they not only disagree about the claim “school *p* is more suited than school *q* for Maria” but, rather, about a whole set of beliefs and attitudes that are connected to that claim: therefore, they have clashing positions, not only clashing claims<sup>45</sup>. For Pragma-Dialectics, what matters in this example are the clashing claims. But, probably, analysing only those claims will not allow us to know what is happening. If the claim is rooted in the feelings, life

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<sup>45</sup> Granted, not every disagreement is about certain *position* (or at least a deep one) some disagreements could also be mostly about specific claims and, thus, they should be resolvable through an exchange of only logical reasons. Those settings should tend to be *normal* rather than *sub-optimal*.

experience, or situation of the parties, it is unlikely that the disagreement can be resolved only through an exchange of logical reasons, so we need to look beyond that exchange.

So, if the parties want to reach an agreement, they need to *understand* their respective positions. In that sense, argumentation is a process in which the parties *uncover* the positions that back or warrant their respective claims: “one must garner not only the facts that support the claim but the values, emotions and attitudes that go along with the outlook attached to the claim.” (Gilbert 1995). Such a process of *understanding* a certain position is instrumental to what, in this paper, has been called *restoring a normal setting*.

To do so, the parties must explore different *modes of arguing*. Gilbert claims that there are four *modes*: “In addition to the classical logical mode . . . there are the emotional, visceral (physical), and kisceral (intuitive [& non-sensory]) modes” (1997, 75). If the parties explore these modes, they are better positioned to arrive at an agreement. This process of mutual understanding through different modes has been called “Coalescent Argumentation”: “The aim of Coalescent Argumentation is to bring about an agreement between two arguers based on the conjoining of their positions in as many ways as possible” (Gilbert 1997, p. 70).

In a way, sub-optimal settings are mostly sub-optimal for argumentation in the *logical mode*, but not necessarily for argumentation on one of the other modes. Sometimes people argue with emotional appeals that are not *prima facie* wrong but only wrong when analysed from a logical perspective. Gilbert’s criticism of Pragma-Dialectics, informal logic and other normative approaches is that they focus way too much on the logical mode (Gilbert 2002), reducing the chances of the parties to resolve their disagreements. When faced with sub-optimal settings, the parties should explore these modes because they will have more means to coalesce and look for a mutual understanding.

Arguing with people in echo chambers is a good example of a sub-optimal setting that could eventually restore to normal. “An echo chamber is a social epistemic structure from which other relevant voices have been actively excluded and discredited” (Nguyen 2020, p. 141). That is, people in echo chambers have learned to distrust certain epistemic sources, so arguments coming from that source are not persuasive by definition. This distrust implies that the setting is sub-optimal (and sometimes hopeless), so the parties cannot expect to resolve their disagreement through normal argumentation. However, by “cultivating trust between echo chamber members and outsiders” (2020, p. 158), it might be possible to restore the setting to normal. In my view, this might be achieved through many ways, among them, argumentation that seeks coalescence and building trust, not resolution. As Nguyen (2020, p. 159) argues:

Thus, the route to undoing their influence [of the echo chambers] is not through direct exposure to supposedly neutral facts and information;

those sources have been pre-emptively undermined. It is to address the structures of discredit – to work to repair the broken trust between echo chamber members and the outside social world.

In cases like these, the way to restore a dialogue to a proper setting is to use empathy to build trust and understanding, for example, through different modes of arguing, and not merely use a logical approach to analyse statements.

### 5.3 Compensating for a Sub-optimal Setting.

If the sub-optimal setting *can* be restored into a normal one, it *should* be restored. But that is not always possible since some settings cannot be changed. Therefore, we need to work out a way to compensate for the misbalances of the sub-optimal setting. To do that, it might be necessary to *call the counterpart's attention* through a rhetorical move. This move could imply, among other things, the use of moves that under normal settings should be called fallacious. Aristotle seems to be arguing in this sense when he claims:

... often the person questioned is the cause of the argument not being properly discussed, because he does not concede the points which would have enabled the argument against his thesis to have been properly carried out; for it is not within the power of one party only to ensure the proper accomplishment of the common task. It is, therefore, *necessary sometimes to attack the speaker and not the thesis*<sup>46</sup>, when the answerer is on the watch for points against the questioner and also employs abuse. (*Topics*, 8.11, 161a17-24).

By calling it *necessary*, Aristotle suggests that the parties can fulfil their dialectic goals by including such an eristic move (Krabbe 2009). But in which sense? Jacobs's *normative pragmatics* (2000) can be helpful to understand this point.

Rather than considering only the arguments presented, normative pragmatics focuses “on the communicative properties of actual argumentative messages”. (2000, p. 262). Messages are more complex than just arguments. While arguments are *what was said*, messages also include “the *way* it was said, *when* it was said, *who* it was said to, by *whom*; all in contrast to what *could* have been said but was *not*” (2000, p. 263). By contrast, Jacobs criticises dialectical approaches for only considering the *arguments* given and forcing their normative model to descriptive messages.

So, according to Jacobs, when looking at arguments in this way, we cannot just label some moves as “fallacies” if they violate certain norms that,

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<sup>46</sup> The italics are my addition.

we claim, are required to conduct a dialogue properly. Instead, when we consider the whole message, some rhetorical strategies that might appear as fallacious, when regarded only in the sense of *what was said*, can be constructive for resolving the disagreement. For instance: “emotional appeals can play a constructive role in deliberation and may be positively required by the situation” (2000, p. 277). Or, elsewhere: “apparently fallacious rhetorical tactics can be defended as playing a constructive role in the debate that’s actually going on” (2000, p. 278).

Suppose one of the parties uses rhetorical strategies to frame the discussion in a certain way that benefits her or constantly uses fallacies. In that case, it might be necessary to use rhetorical strategies that we could call fallacious to *counterbalance* the rhetorical effects produced by their message. Therefore, these strategies can be constructive: “They respond to the demand to find ways to place people in more open, critical, resolution-oriented frames of mind and to make the conditions for argumentation conducive to reasoned deliberation.” (2000, p. 281).

Accordingly, sub-optimal settings can be circumstances where the use of rhetorical strategies (fallacious or not) is recommended: “Rhetorical strategy can be a reasonable way of overcoming or working around the practical insufficiencies of the situation” (2000, p. 282).

Considering the above said, the *compensation strategy* seems to be more assertive than the *restoration strategy*. While restoration is about building trust and understanding, compensation is about calling the counterpart’s attention to counterbalance the situation, considering that the sub-optimality of the situation is probably unable to be restored. In that sense, the parties might even use *counter-fallacies* (van Eemeren & Houtlosser 2015). In the same way, Van Laar and Krabbe (2016, p. 331) consider that fallacies could be sometimes used as a sanction against a party acting unfairly.

## 6. Some Case Studies of the Supernormal Policy

I want to apply the above ideas to real-life case studies in this section. I have expressly chosen case studies that have been analysed before in the literature. I aim to fulfil three main objectives: first, provide realistic examples of the supernormal policy; second, to contrast my diagnosis with the one made by others in the field; and third, to specify the normative force of the supernormal policy.

To test the supernormal policy, it would be necessary to answer “yes” to the following questions<sup>47</sup>: (1) Is the setting of the dialogue sub-optimal? (2) Does one of the parties use a dialectical move that could be considered fallacious or unreasonable, at least from a pragma-dialectical framework? (3) Does the allegedly fallacious move help the parties restore the dialogue to a

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<sup>47</sup> Thanks to an anonymous reviewer for suggesting these questions.

normal setting or compensate for its sub-optimality when the restoration is not possible? If these three questions can be answered affirmatively, it can be concluded that the supernormal policy fulfils its expected effects, at least in the cases presented.

### 6.1 Case Study of Restoration of the Normal Setting

The following case is an example of sub-optimal settings where the parties make certain moves to *restore* the dialogue to a normal setting. Following Gilbert, in this process, the parties will need to use different *modes* of arguing (some of which might be considered fallacious in a normal setting) to build trust and understanding between the parties, thus restoring the dialogue to a normal setting.

#### *Case study 1: GMO debate*

This case study has been taken from Goodwin (2016) and concerns the rhetorical strategy used by the scientist Kevin Folta. Folta is a well-known biologist working on transgenic crops (GMO's), actively defending their use in the public sphere. Goodwin points out that, in cases like these, cooperation from the counterpart cannot be assumed:

We do not assume that participants in an argumentative transaction or 'dialogue'—especially in civic life—will inevitably be cooperative, reasonable, or possessed of any of the multitude of virtues that make transactions run well. Instead, we examine what arguers themselves can do to design or modify the contexts in which arguments are exchanged. (Goodwin 2016, p. 1)

According to Goodwin, parties need to *design* the dialogues' contexts to frame their contributions to the dialogue in a light that serves better their goals. In Folta's case, he needs to make his objectivity apparent: part of his audience thinks that he is partial towards the biotech industry, so they don't grant him enough trust to believe that his scientific discourse is objective enough. His challenge is to be seen as non-partisan or unbiased.

The dialogue in question is a talk at a University in which Folta is trying to defend the use of GMO's by addressing three topics: "what GMOs are, why people resist them, and what future holds for biotechnology" (2016, p. 2). The interactions with the public are varied, but some interlocutors were specially aggressive towards the speaker, as the following interaction shows:

*One of the interlocutor's of Folta is "hostile man" (HM). At several occasions he interrupts Folta (KF). For instance:*

(1) HM: “you have to stop right there because that is the biggest lie that there ever was.”

Instead of dealing with the accusation of “lie” or shutting down the interruption, Folta answers:

(2) KF: “This is a great opportunity for us to have a conversation, I’d love to be able to follow up on you. You can be the first person at the end when we talk about it. I’d love to answer that question.” (2016, p. 9).

For Goodwin, what Folta is doing is the “re-characterisation of HM’s intervention as a ‘question’ that’s part of a ‘conversation’.”(2016, p. 9). Folta seeks to reframe attacks into welcome questions, presuming good faith against the evidence and addressing those attacks according to such a presumption. In other words, “he aggressively presumes their good faith, even when they themselves don’t display it” (2016, p. 10). His ultimate goal is to give the audience reasons to believe that he’s being objective.

Is the dialogue between KF and HM sub-optimal? The interaction just transcribed doesn’t give us the full picture. Still, from the tone of the interaction (and the general context described by Goodwin) it can be assumed that we are dealing with a sub-optimal setting: HM is unwilling to listen or change his mind, so he doesn’t fulfil HOCs N° 1 and 3 described in section 2.4.

Can be KF’s answer and general strategy considered fallacious or unreasonable from the standpoint of critical discussion? As Goodwin points out, Folta is presuming good faith against the evidence. This means that he is not addressing HM’s real commitments but, instead, *watering down* his interventions. He is also evading HM’s accusation of “liar”. Accordingly, it could be argued that KF’s intervention move violates the “freedom rule”, that states that parties “may not prevent each other from advancing standpoints or from calling standpoints into question” (van Eemeren & Grootendorst 2004, p. 190) and/or the “relevance rule” that states that “Standpoints may not be defended by non-argumentation or argumentation that is not relevant to the standpoint.” (2004, p. 191).

Does Folta’s strategy help restore the dialogue to a normal setting? The dialogue isn’t only directed towards HM but towards a diverse audience. HM leaves the room before the dialogue is over. Still, as Goodwin recognises, Folta’s strategy does help to create trust with members of the audience that were originally sceptical, thus enabling an eventual resolution. In that sense, I think that his strategy does help the parties restore the setting to normal. What Folta tries to achieve, ultimately, is to bring coalescence between him and HM, and towards the rest of the audience, even if that implies not following the RCD by the book.

## 6.2. Case Study of Compensation of the Sub-Optimal Setting

In this case, the sub-optimal setting is unlikely to be changed through mutual understanding, so the parties need to call the counterpart's attention to *compensate* for the rhetorical situation. The moves might seem, thus, a little more aggressive than in the previous examples.

*Case study 2: Trump on Charlottesville*

The second case study is a press conference held by former President of the U.S. Donald Trump, and analysed by Jackson (2019, pp. 634–635). The topic of the press conference is Trump's reaction to the Charlottesville incident, in which a group of white supremacists violently protested the removal of the statue of Confederate General Robert E. Lee and clashed against groups supporting the removal. On August 15, 2017, at a press conference, the following dialogue ensued<sup>48</sup>:

72 DT: *[Okay, what about the alt-left that came charging at 'em, excuse me, what about the alt-left that came charging at the, as you say, the alt-right? Do they have any semblance of guilt?*

73 R6: *((inaudible clamor)) What are you saying?*

74 DT: *Let me ask you this. What about the fact that they came charging that they came charging with clubs in their hands, swinging clubs. Do they have any problem, =I think they do. =*

75 R6: *Sorry [are you*

76 RX: *[Mr. Trump* 77 DT: *= [As far as I'm concerned, that was a horrible, horrible day.*

78 R7: *(But) you're not putting [((inaudible)) on the same level = as the Neo- Nazis and white supremacists,*

79 DT: *[Wait a minute. I'm not = finished. I'm not finished, fake news.*

80 R7: *Sir*

81 DT: *That was a horrible day,*

82 R7: *you're not putting these protestors on the same level as [neo-Nazis and white supremacists*

83 RX: *[Is the alt-left as bad as white supremacy?*

84 DT: *I will tell you something. I watched those very closely, much more closely than you people watched it. And you have uh you had a group on one side that was bad, and you had a group on the other side that was also very violent. And nobody wants to say that, [but I'll say it right now.*

85 R7: *[((inaudible clamor)) (you'll say)*

86 DT: *You had a group you had a group on the other side that came charging in, without a permit, and they were very, very violent.*

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<sup>48</sup> “DT” refers to “Donald Trump” “R1” or “R2” refer to certain reporter that has been identified, and “RX” refers to an unidentified reporter.

Jackson analyses this case as an example of *naturally occurring discourse*. That is, it is a “discourse that is clearly argumentative, but that participants themselves have difficulty parsing into claims and reasons.” (2019, p. 632) She claims that argumentation occurring in these settings is evaluated by the parties using “natural normativity”, which consist of “intuitions about what is and is not helpful in managing disagreements” (2019, p. 640). Sometimes, a clash between well-articulated normative systems and this “natural normativity” can occur, and then “the natural normativity of argument as a disagreement management system comes into play” (2019, p. 641).

She claims that in the case presented, to capture what happens, we cannot be focused only on statements because what happens is much more than just statements. Specifically, the reporters are using “call-outs” which are challenges to what Trump is “presumed to hold but that he does not openly state” (2019, p.635). Call-outs are sometimes necessary for getting to productive disagreement since “callout-by-callout, a case on each side does appear” (2019. P. 636).

The supernormal policy does not contradict Jackson’s analysis but only adds a new perspective. *Naturally occurring discourse* might or might not be sub-optimal, but in any case, the parties need to evaluate what helps manage disagreements. And just as “natural normativity” might clash with well-articulated normative systems, the supernormal policy might clash with the rules for critical discussion.

There are three questions to answer: First, Is the setting sub-optimal? Trump’s discourse illustrates much of what happens when higher-order conditions are not met in this and other dialogues. He doesn’t seem to be willing to accept that his points of view can be wrong, to provide justification for his views or lose face. We can say, then, that the press conference setting is sub-optimal.

Second, do the reporters violate rules for critical discussion? It can be argued that that is the case. At least in interactions 78, 82 and 83 the reporters present “call-outs” that try to show Trump as committed to things he actually hasn’t said: “Criticism of the President’s response to Charlottesville is not aimed at the claims to which he commits himself (...) but at dispositions he is suspected of holding” (Jackson 2019, p. 636). In that sense, it could be argued that the move violates the “standpoint rule” that states: “Attacks on standpoints may not bear on a standpoint that has not actually been put forward by the other party” (van Eemeren & Grootendorst 2004, p. 191).

It could be argued that the journalists’ call-outs are not assertions but mere questions: they are not misrepresenting the President’s position but merely trying to find out what that position is. We can interpret the text in both senses, and some further context will be needed to settle the matter. However, at least contributions 78 and 82 look a lot like assertions that try to make conclusions from what the counterpart hasn’t expressly said. In contribution 78, the journalist presents what can be interpreted as a rhetorical question: “but you’re not putting on the same level as the Neo- Nazis and white



supremacists?” which is repeated in 82. But rhetorical questions aren’t really a type of question but a type of assertion (Han 1998).

Third: does the apparent rule violation succeeds at addressing the sub-optimality? I think that is the case. First, from Jackson’s perspective, it could be argued that the move helps the parties manage their disagreement by revealing where they stand. Second, from the perspective of the supernormal policy, the move might be considered “a reasonable way of overcoming or working around the practical insufficiencies of the situation” (Jacobs, 2000, p. 282). The journalists are calling attention to the true nature of what Trump is implying but doesn’t want to say. Therefore, it is a way of compensating for the sub-optimality of the situation.

## 7 Objections

In this section I wish to respond to some possible objections to the view I have just sketched.

### 7.1 The Supernormal Policy is not Necessary: Pragma-Dialectics’s “Strategic Manoeuvring Approach” Can Deal With Suboptimal Settings.

The first objection to this paper could be that it tries to rediscover the wheel. It could be argued that Pragma-Dialectics has already taken into account the sorts of problems described here, so there’s no need to do it all over again. The way to resolve this problem is through *strategic manoeuvring*.

Strategic manoeuvring is a newer development of the pragma-dialectical theory that attempts to incorporate rhetorical concerns into the standard theory. It has been defined as “the continual efforts made in all moves that are carried out in argumentative discourse to keep the balance between reasonableness and effectiveness” (van Eemeren 2010, p. 40). Reasonableness, here, must be understood as “using reason in a way that is appropriate in view of the situation concerned” (2010, p. 39), and effectiveness, has to be understood as being instrumental in “resolving the difference of opinion effectively in favour of their case” (van Eemeren 2010, p. 39).

In other words, to manoeuvre strategically, the arguers need to balance two different aims: their dialectical aim, which requires them to be reasonable at all times, avoiding fallacies and using speech acts appropriate to every stage of the dialogue, and their rhetorical aim, which demands that they put their best efforts to persuade the counterpart that their standpoint is correct. (van Eemeren 2010). Strategic manoeuvring is, then, an attempt at finding a sort of balance. If the parties lean too much towards their rhetorical aim, dismissing the dialectical dimension, they will proceed unreasonably. But if they only care about the dialectical aim, they will produce arguments that are ineffective

to fulfil their rhetorical goal. Under this light, fallacies can be conceived as “derailments of strategic manoeuvring in which a rule for critical discussion has been violated” (van Eemeren 2010, p. 200).

It could be argued, then, that in suboptimal settings, the parties need to manoeuvre strategically to *rerail* the dialogue to a balanced situation (van Eemeren & Houtlosser 2015), where they can resolve their disagreement. But this theory has three main problems.

The first one is that for strategic manoeuvring, the RCD still need to be considered binding: the parties can use rhetorical strategies, but only as long as they don't commit fallacies, defined as violations of the RCD. Therefore, strategic manoeuvring is, after all, just a more refined version of the *business as usual policy*. But if that is the case, the objections to this policy (presented in section 4) still apply here.

Pragma-dialecticians could answer to this objection by saying that “fallacy judgments are (or should be) in the end contextual judgments that depend on the specific circumstances of situated argumentative acting” (van Eemeren 2010, p. 203)”. That is, while the RCD are still in place in any specific circumstance, there are “institutionalized conventions of the communicative activity type” (2020, p. 204) that need to be taken into account to decide whether a dialectical norm has been violated. This doesn't mean that there are no criteria for judging the fallaciousness of an argument, or that such criteria are *ad-hoc* ones, it only means that “the implementation of the general soundness criteria for strategic manoeuvring is, in principle, context-dependent”. (2010, p. 204). If that is the case, then it could be argued that the suboptimal settings can modify such institutional context, allowing the parties to produce arguments that in normal settings, would be considered fallacious.

But this is problematic: let's recall case study 1: As said before, in move (2), Kevin Folta's lack of engagement with the bad faith of his counterpart could be considered a violation of the “freedom rule” since, by failing to take his interlocutor's argument seriously, Folta is preventing him from advancing a standpoint. But do the *institutionalized conventions of the communicative activity type* imply that in such case the parties might ignore these types of arguments? Do talks at Universities have an institutionalized convention, as trials or scientific papers do? And if they don't, we expect that “the soundness criteria for the argumentative discourse will have been largely acquired when getting to know these communicative activity types in primary socialization”(van Eemeren 2010, p. 206). That is, people supposedly *know* if these utterances are reasonable or not, because they have experience in such kind of dialogues. But it is unclear whether the parties have that experience.

Also, the freedom rule is just too basic and “unconditional”: “putting forward a standpoint and calling a standpoint into question are both basic rights that all discussants must accord each other unconditionally and without

reservation” (van Eemeren & Grootendorst 2004, p. 191). So, here, not following such a basic rule can be taken as a “de-railment of strategic maneuvering”.

Finally: as said before, pragma-dialecticians hold that the norms for evaluating arguments should be adapted to the *institutionalized conventions* of a given setting. But under suboptimal circumstances, there may be disagreement or lack of clarity regarding what those conventions entail. The institutionalized conventions for arguments in a criminal trial are clear enough, but what are the conventions for talks at universities? If the parties disagree (as they often do in suboptimal settings) regarding the institutionalized conventions on a given topic, then this method cannot help us.

## **7.2 The Supernormal Policy is too Permissive: It Doesn't Help us to Distinguish Good and Bad Arguments.**

It could be argued that the supernormal policy doesn't have standards for distinguishing good and bad arguments, at least in the first step of the process. This criticism has been argued against Gilbert's theory (and can be extended to the supernormal policy) in the following way: “we need to have criteria for judging whether one argument is better than another along substantive lines. After all, there are many venues in which decisions must be made, and where one reason must be judged as superior to another (...) Gilbert's theory does not help us to ascertain standards for correctness in such venues” (Warnick 1998, p. 429). The author claims that in cases like criminal trials, legislative debates, and scientific investigation, we need clear-cut criteria of what constitutes a bad move since bad moves can lead the parties to bad decisions.

In a way, I agree with Warnick in that Gilbert's proposal, and the supernormal policy, are general and don't allow us to distinguish between good and bad moves in cases where that distinction is crucial. But her criticism loses strength if we have the concept of suboptimal settings in mind. In the examples she provides, the settings are normal, so the dialogue should be evaluated using the RCD or another standardized set of norms. The problem arises in suboptimal dialogues, where the conditions for a reasonable exchange are not given. It is only then that we need to contemplate the use of a de-specified norm as the one presented. I've argued in this paper why that is the case.

However, it could be argued, that with the supernormal policy things may go astray. The supernormal policy is still *too* permissive, so it might leave the parties in a worse situation than before. It is not my intention, in this paper, to provide a full answer to this question, but it could be a good idea, in the future, to provide more case studies of the supernormal policy to understand

its limits. A good approach could be to distinguish *fair* from *unfair* argumentative strategies, understanding that fair strategies as “more or less balanced, transparent, and tolerant” (van Laar & Krabbe 2016, p. 321). So, while I don’t want to replace one code of conduct for another, we might say that for instance, lying or hitting the adversary, are not fair strategies and should be avoided.

### **7.3 The Supernormal Policy is too Restrictive. At Least More Than Other Approaches to Argumentation<sup>49</sup>.**

It could be argued that other approaches to argumentation resolve better the problem of suboptimality. If parties find themselves in settings that are suboptimal for the resolution of disagreements, then they can accommodate their procedures so that the dialogue ends up helping resolution. Among others, the following models seem to capture better this idea than the supernormal policy: “intersubjective validity” (van Eemeren & Grootendorst 2004); “participant-administration” (Jackson 2019); and “design approach” (Goodwin 2007).

First, regarding “intersubjective validity” of rules of dialogue, that criterion of reasonability has been characterized by Pragma-Dialectics as “related to a specific group of people at a particular place and time”(van Eemeren & Grootendorst 2004, p. 17). That is, the parties themselves can establish what is to be considered reasonable in a certain context. Therefore, it could be argued that intersubjective validity allows them to think outside the box of critical discussion when the circumstances are suboptimal, in ways that can be less than critical discussion.

However, intersubjective validity needs to be understood along with “problem solving validity”, in other words: “the extent to which a particular rule is considered reasonable depends on the adequacy of that rule, as part of a procedure for conducting a critical discussion, for solving the problem at hand (van Eemeren & Grootendorst 2004, p. 16). Therefore, intersubjective validity does allow the parties to conduct argumentation as they see fit, but it will not be reasonable if they don’t conform to rules that have problem solving validity, and such validity is ultimately linked to the RCD.

Second, *participant-administration* is one of the properties of *natural normativity* (explained in section 6.1 of this paper). It means that in an argumentative process “any regulation that must be done is left to the participants themselves” (Jackson 2019, p. 683). That is, the problem of “what is a good argument?” is something that cannot come predefined by some

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<sup>49</sup> Thanks to an anonymous reviewer for raising this objection.

external superstructure but must be established by the parties themselves. In that sense, it is akin to the concept of “intersubjective validity”.

The supernormal policy is in agreement with participant administration but does look at the problem from a different angle. First, since the setting is suboptimal it is possible that the parties disagree over how they want to regulate their dialogue. Second, the supernormal policy recognizes that in these cases we need a regimented normative standard, so it tries to steer the parties back to such a standard. Therefore, its approach is not necessarily more restrictive but it is more sensitive to the fact that some circumstances aren't well suited for resolution. Also, it deals with the issue of what happens when the parties disagree about how to “administrate” their dialogue. The supernormal policy claims that even without that agreement, one of the parties might try to “steer” the dialogue towards critical discussion.

Finally, as the first case study shows, another interesting approach to these kind of problems is “design theory”. For design theorists (see Aakhus 2003; Goodwin 2007; Jackson 2015) argumentation evolves over time, and the parties design the structure of their argumentation processes according to their needs. This includes establishing what sorts of arguments will be considered reasonable under certain circumstances. Seen from that perspective, the problem of suboptimality could be resolved by the parties if they design novel ways to overcome their disagreements.

Again, my approach is not akin to design theory, but adds the angle of suboptimality. In that sense, the problem of disagreement about how to design the dialogue arises again. If the setting is suboptimal, then that disagreement might be expected. The supernormal policy resolves that problem better.

The difference between my approach and the ones sketched here is, finally, that I try to find a middle ground between *anything goes* and *business as usual*. While Pragma-Dialectics remain in the *business as usual* side, it could be argued that participant administration or design theory, since they rely so much on *how* the parties want to argue, is closer to an *anything goes* approach (but not completely in that field, since they do propose ways to distinguish what is reasonable). That is perfectly fine in many circumstances, but in suboptimal settings, it seems like agreement over the argumentation processes is hard to get.

## 8 Conclusions

To answer the question “what is a good argument?” argumentation theory needs to mediate between a fundamental tension. On the one hand, it has to present a normative model of what “good argumentation” entails. But on the other hand, it has to connect to real-life argumentation. When we consider sub-optimal situations, that tension forces us to make a choice. How can a

normative model account for this kind of cases? In this paper, I've presented a proposal.

This proposal adds to others because it stands in a kind of middle ground between, on the one hand, saying that every persuasive dialogue must conform to a model, and on the other hand, that the parties themselves must create or design that model. That is, it does recognise that we need normative models such as critical discussion to evaluate reasonable contributions to the dialogue. At the same time, it recognises that sub-optimality might make the rules for critical discussion partially inapplicable, so we need a wider conception of reasonableness for those cases. This is not to say that other approaches to argumentation theory don't deal with the application of normative models to real-life argumentation. Still, they don't focus on faulty or sub-optimal cases as I've tried to do here.

I do recognise, however, that many ideas advanced in this paper need further development. Among others, the concept of sub-optimality could be better developed, for which the higher-order conditions also need to be better developed. The supernormal policy could be further tested in case studies, and the connection between this policy and other strands of argumentation theory, especially those that lean towards rhetoric, further explained.

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## Chapter 4: Negotiation as Practical Argumentation

**Abstract.** This paper defends negotiation as a way of rationally overcoming disagreements. Negotiation is a type of dialogue where the parties begin with a conflict and a need for cooperation, and their main goal is to make a deal (Walton and Krabbe 1995, p. 72). It has been discussed whether differences of opinion can be shifted from persuasion to negotiation dialogue. That is: if two parties disagree, is it reasonable to overcome their disagreement employing negotiation? Van Laar and Krabbe (2018) argue that negotiation is a correct way to settle disagreements when the parties arrive at a stalemate. Godden and Casey (2020) deny this. They argue that the goal of persuasion dialogue (to resolve a conflict by verbal means) can never be replaced by a bargaining procedure.

This paper claims that shifts to negotiation are reasonable, but only as long as the shift meets two conditions. The practical condition requires the disagreement to be practical rather than theoretical, and the sacrifice condition requires that the parties agree to shift the dialogue to negotiation. When the parties do not meet these conditions, they commit fallacies such as *ad consequentiam*, *ad baculum* or fallacy of middle ground.

Finally, I argue that negotiation arises in practical argumentation when the parties assign different relative values to their goals. When this process occurs, we see negotiation as a small step within the practical argumentation process that works as meta-persuasion. This concept means an argumentative process that takes into account not only first-order reasons to defend a standpoint but also second-order reasons, which consider the reluctance of the other party to accept our standpoint.

**Keywords:** negotiation, practical argumentation, theoretical argumentation, dialectical shifts, fallacies, retrospective evaluation, dialogue types,

### 1 Introduction

When people encounter a disagreement, they can do many things to overcome it. For example, they can argue to persuade the counterpart, call an arbitrator or mediator, toss a coin, or look for a compromise. In the last case, they use negotiation to get out of their disagreement. When we start trying to persuade the other party but end up using negotiation to settle a disagreement or difference of opinion, a shift between two dialogue types has occurred: the parties began with persuasion dialogue and then shifted to negotiation dialogue (Walton & Krabbe 1995).

Sometimes this seems like the only way forward: rational persuasion is a difficult road, so looking for a compromise seems like a reasonable choice. This strategy is defended by Van Laar and Krabbe (van Laar & Krabbe, 2018a) and has been labelled the *permissive policy* (Casey and Godden 2020,



p. 500). However, Casey and Godden (2020) argue otherwise. They claim that shifts from persuasion to negotiation dialogue are unreasonable because they “do not proceed according to the discursive standards of a critical discussion nor are they capable of satisfying its goals, properly understood” (p. 501). Therefore, according to them, when parties shift from persuasion dialogue to negotiation dialogue, they commit the fallacies of *middle ground*, bargaining, or *abandonment of the discussion*. This position can be labelled the *prohibitive policy*.

For the *permissive policy*, shifts to negotiation *can* be a reasonable way to overcome differences of opinion; for the *prohibitive policy*, shifts to negotiation *cannot* be a reasonable way to overcome differences of opinion. In this paper, I argue that the *prohibitive policy* is wrong, but the *permissive policy* is ambiguous and opens a flank of attack from the side of the restrictive policy, so we need a third option: a *conditional policy*. This policy implies that shifts to negotiation are reasonable only if they fulfil certain conditions so that when those conditions are not fulfilled, the shift is unreasonable, and the parties commit one or more of the fallacies mentioned above (and others that I will discuss).

I propose two such conditions: The *practical condition* requires the disagreement to be practical rather than theoretical. The *sacrifice condition* requires the parties to sacrifice part of their goals to achieve something rather than nothing. When the parties fulfil these conditions, I claim that they can negotiate their way out of disagreements. Moreover, as I will show, there are relevant similarities between practical reasoning and negotiation, which the literature hasn't explored.

This reflection on shifts to negotiation is part of a bigger picture that, in chapter 1, I have labelled *the dynamic and pluralistic approach to argumentation*. This approach takes argumentation as a process that works as a toolbox containing different dialogue types to overcome disagreements. The model of negotiation dialogue is just one of those tools, so in this paper, I want to zoom in on that tool to show the conditions in which a shift to negotiation is appropriate. As stated in the introduction and the first chapter, the whole process of overcoming a disagreement through different dialogue types (and not only persuasion dialogue) can be called *argumentation*.

The standard account of negotiation dialogue, held by Walton (1989), Wells and Reed (2006), Fisher, Ury, and Patton (1991), and Casey and Godden (2020), among others, takes it to be a process that can be sharply distinguished from persuasion dialogue. The way to make this distinction is to understand that these types of dialogue have different goals, namely resolving a difference of opinion and arriving at a deal, respectively. However, some authors (Provis 2004; Sycara 1990) argue that persuasion and negotiation are closely related and are sometimes indistinguishable. My position on this matter is closer to the second stance. Still, with one *proviso*: persuasion and negotiation are very close and sometimes indistinguishable only if the topic of

disagreement is practical. But when it is theoretical the standard account is correct.

The main contributions of this paper to the discussion on shifts from persuasion to negotiation dialogue are the following: first, the paper presents the conditions under which the shift is reasonable; second, it uses dialogue profiles to make the shift more precise dialogue and show that the shift is just a tiny step in the process of practical argumentation; third, it links the occurrence of fallacies with the failure to meet the two conditions; fourth, it provides a new insight into the relationship between persuasion and negotiation.

The chapter is structured as follows: in section 2, I present the case for a permissive stance on the shift to negotiation, following Van Laar and Krabbe (2018a; 2018b); in section 3, I present the case for a prohibitive policy regarding shifts to negotiation, as Casey and Godden (2020) argue. Section 4 presents the *practical* condition, primarily using Kock's (2017) reflections on practical argumentation. In section 5, I develop the *sacrifice* condition, mainly derived from Van Laar and Krabbe (2018a). Section 6 provides a dialogue profile for shifts to negotiation, to clarify the difference between persuasion and negotiation dialogue. In section 7, I show how these conditions help us to distinguish between reasonable and unreasonable shifts to negotiation by presenting the fallacies associated with shifts to negotiation as cases where the conditions are not met. In section 8, I explain why negotiation and persuasion are so closely related. Finally, in section 9, I provide some concluding remarks.

## 2 The Permissive Policy

We encounter disagreements all the time. And while persuading the other party of being *wrong* looks like a good idea at first glance, it is not always. On the one hand, the parties might find rational persuasion too challenging to achieve, and, on the other, it might have high costs and dangers (Paglieri & Castelfranchi 2010). Therefore, a failure to resolve the issue through persuasion dialogue might lead to a situation that could be harmful to each party, and the prospect of a deal based on mutual concessions can appear as something comparatively much better. However, as stated in chapter 1, a compromise is not a resolution, but it is good enough to overcome disagreements and allows the parties to move forward. Van Laar and Krabbe (2018a, 2018b) have carefully described this process.

To understand their position, we need to consider Walton and Krabbe's *dialogue type theory* (1995). According to this theory, the parties engage in different *dialogue types* and may *shift* from one dialogue type to another under certain circumstances. In the case I'm analysing, the initial dialogue type is *persuasion dialogue*, and the *shifted-to* dialogue is *negotiation dialogue*.

In a persuasion dialogue, the parties begin with a difference of opinion or point of view, and their goal is to resolve the conflict by verbal means

(Walton & Krabbe 1995, p. 68). In a negotiation dialogue, parties begin with a conflict of interest (or, as Van Laar and Krabbe argue, sometimes also with a difference of opinion) and a need for cooperation. Their main goal is to make a deal (Walton and Krabbe 1995, p. 72).

Van Laar and Krabbe argue that in cases when the parties begin with a difference of opinion, and they are unable to persuade each other, it is a sound and rational move to shift the dialogue type to a negotiation dialogue by treating their difference of opinion as to if it were a difference of interest so that they can try to ‘bargain’ with items and get to a settlement. Accordingly, the shift will be licit if both parties agree (expressly or tacitly) to make the move, assuming that resolution is beyond their possibilities.

But the shift to negotiation is not devoid of dangers: the parties might commit fallacies when shifting, so the shift will be reasonable only if the parties avoid them. To determine when the parties commit these fallacies, we need a set of conditions for a reasonable shift to negotiation. Therefore, when one or more of these conditions aren’t met, the parties commit fallacies. This solution is similar to Walton’s project (Walton 1995), which argues that the parties need to fulfil specific conditions when using different argumentation schemes. When one or more of these conditions are not met, they commit fallacies. This set of conditions for the shift to negotiation is lacking in Van Laar and Krabbe’s approach (at least explicitly), which may explain the response from Godden and Casey. They only claim that the parties need to *agree* on the shift, but as I will show, that is not enough.

To summarise, while I agree with the general outline of Van Laar and Krabbe’s proposal, I think it is incomplete. They include something similar to the *sacrifice condition*, which requires that both parties agree to do the shift but omit the *practical condition*. So, by not explicitly distinguishing theoretical from practical disagreements, they open the door for Godden and Casey’s main objection: why would it be legitimate to treat differences of opinion as differences of interest? If you believe that P is the case, and I believe that Q is the case, what should we bargain about? Shouldn’t we stick to our guns and try to persuade the counterpart, even if it is hard? The way to answer this question is to distinguish between theoretical and practical argumentation because there is nothing to bargain about in theoretical argumentation, but that is not the case for practical argumentation. Therefore, I agree that some differences of opinion can be treated as differences of interest, thus allowing the shift to negotiation. Still, without fulfilling the conditions, the shift is unreasonable, and we have good reasons to be sceptical about it. So now I will explain Godden and Casey’s criticism of shifts to negotiation to then try to develop those conditions and justify their necessity.

### **3 The Prohibitive Policy**

The process just sketched has been called the *permissive policy for shifting to negotiation* (Godden & Casey 2020, p. 500). By contrast, Godden and Casey

argue that shifts to negotiation are either unreasonable or redundant. Therefore, whenever the parties shift from a persuasion to a negotiation dialogue, they commit fallacies or have a “false start”. I call this position the *prohibitive policy for shifting to negotiation*.

Casey and Godden are not criticising Van Laar and Krabbe’s analysis of a negotiation process but, rather, the *shift* from persuasion to negotiation dialogue. Accordingly, when this shift occurs, they ask two rhetorical questions: “(i) Why not start off directly with negotiation? (ii) Why is consensus achieved via a negotiated compromise preferable to the residual dissensus of an unresolved critical discussion?” (2020, p. 511). The authors argue that Van Laar and Krabbe’s proposal doesn’t answer these questions sufficiently.

Regarding the first question, they claim that the only, non-trivial, reason to begin with persuasion rather than negotiation dialogue is that persuasion dialogue has some kind of *methodological priority* over negotiation dialogue; that is, the parties *should* prefer persuasion over negotiation. But if that is the case, the desired outcome of the negotiation dialogue is meant to serve the same function as the desired outcome of the persuasion dialogue. However, this cannot be reasonable because the parties are bound to Walton’s *principle of retrospective evaluation*:

To judge whether a shift is licit or illicit in a particular case of argumentation, we first have to pin down the original context of dialogue. Then we have to identify the new context, and decide whether the shift is licit or illicit by looking backwards and judging by the goals and standards of the original context. Is the new dialogue supporting those old goals, or at least allowing forward movement on their fulfilment, or is it blocking them? (Walton 1998, p. 201).

In other words, the shift to negotiation will only be licit if it fulfils the goals and standards of a persuasion dialogue because the methodological priority of the shifted-from dialogue preserves its norms in the shifted-to dialogue. In the case of shifts to negotiation, the parties’ goal is to resolve (and not settle) the disagreement, so the standards are those applicable to persuasion dialogue or, more specifically, critical discussion (van Eemeren & Grootendorst 2004). However, “the fact that critical discussions aim at generating resolutions while negotiations are only capable of generating compromises entails that negotiations cannot satisfy the goal of a critical discussion” (Godden & Casey, 2020, p. 517).

They conclude that if this is the case, the shift to negotiation falls into two categories: illicit or redundant. If the parties start with persuasion dialogue and then shift to negotiation dialogue, then the shift is illicit because it violates the principle of retrospective evaluation: the parties are supposed to test whether a proposition *p* is tenable, and no negotiation will produce that result. But if the parties’ goals weren’t to arrive at a resolution but, instead, at a

compromise, then persuasion dialogue is a *false start*. It only *looks* like the parties intended to resolve the disagreement, but they wanted to compromise. In that case, the persuasion dialogue is redundant because the parties should have chosen to engage in a negotiation dialogue from the very start.

Regarding the second question posed before (why is consensus preferable to dissensus?) Casey and Godden argue that dissensus is, in many cases, preferable to consensus. This conclusion is related to the principle of retrospective evaluation: if the parties cannot fulfil their goals (resolution), a compromise is not always something to strive for. Therefore, a shift to negotiation isn't better than leaving the issue unresolved. They reinforce this conclusion with the example of an argumentative overcharging strategy: presenting a robust case without having enough evidence to back it, to get at a better position in a negotiation<sup>50</sup>.

The authors also imply that we can tell that shifts to negotiation are unreasonable because the parties incur some specific fallacies when performing those shifts. I will argue against that conclusion in section 6 by showing that the parties only produce those fallacies when the shifts fail to fulfil the two conditions.

In the following sections, I will explain the *conditional policy* by first explaining the two conditions, then presenting a normative model to shifts to negotiation using dialogue profiles, and finally showing that fallacies are incurred only when the conditions remain unfulfilled.

## 4 The Practical Condition

There's an old joke from Groucho Marx that goes like this: "these are my principles; if you don't like them, I have others". I find this joke funny, but why? According to the most prominent explanation in the field of philosophy of humour (the incongruity theory), we think something is funny when a situation violates our mental patterns and expectations (Morrell 2020). In Marx's example, we *do not* expect principles to be traded or negotiated; therefore, there is an incongruence between the setting and the joke's punchline.

A shift to negotiation about principles appears illicit at first glance. If people disagree about principles, we expect that they produce persuasive arguments to resolve their disagreement, not that they negotiate their way out of the disagreement. But what is so special about principles? And besides

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<sup>50</sup> It is the classic move we see in cop movies, where the detective lies to the accused saying: "we can prove that you are guilty. Confess now and we can reduce your sentence". Thus, the detective produces an argument knowing beforehand that she cannot expect to persuade the judge, with the sole purpose of boosting her position during the negotiation. As I see it, the problem with this move is not the shift to negotiation, the problem is that the detective is lying about having proofs.

principles, in which other circumstances do we think that a shift to negotiation is improper? Can we draw a clear and distinct line between disagreements that can be managed through negotiation and those that cannot? It is possible to introduce the basic but not so explored distinction between *theoretical* and *practical* disagreements.

Theoretical disagreements are related to the *truth* of a statement, while practical disagreements are related to what *we should do* in a given situation. But what is precisely the difference between these two? Can a clear line be drawn? Answering this question will also shed light on *why* it is illicit to negotiate over theoretical disagreements. But to do that, it is necessary, first, to distinguish different types of claims.

#### 4.1 Types of Claims and Types of Disagreements

Parties disagree about a bunch of different things. Consider the following examples:

- a. Andrew and Barbara disagree about whether tomorrow it will rain.
- b. Andrew and Barbara disagree about whether the government was right in establishing mandatory lockdowns to prevent the spread of COVID.
- c. Andrew and Barbara disagree about the best explanation for the decline in the population of bees.
- d. Andrew and Barbara disagree about whether their country is a full democracy.
- e. Andrew and Barbara disagree about which school is the best option for their child.
- f. Andrew and Barbara are Senators and disagree about passing a new law that puts harsh sanctions on sexual harassment.

All these disagreements are different but have two things in common: *first*, the parties defend specific *claims*. In fact, these claims can be roughly reconstructed only with the information presented here. In case *a.*, for instance, Andrew is defending the claim “tomorrow it will rain” and Barbara is defending the claim “tomorrow it will not rain”. *Second*, since the parties support specific claims, they can put forward *reasons* to back their claims. If they do this, they will be *arguing*.

But the claims defended are of a different kind, and these differences can help us understand how argumentation works in diverse settings. For that, it would be necessary to build a *typology* of claims. Such a typology is a worthwhile project pursued by many authors, who differentiate between 3 up to 7 different types of claims (see Fahnestock & Secor 1982; Freeman 2005; Habermas 1984, p. 23; Kock 2017; Sproule 1980). Roughly, and taking as a reference mainly Kock (2017, p. 165) *a.* is a factual disagreement, specifically, about a prediction; *b.* is a disagreement about an evaluation; *c.* is a disagreement about a causal explanation; *d.* is a disagreement about a social or

political fact; *e.* is a practical disagreement of domestic nature, and *f.* is a practical disagreement of political nature.

This chapter does not aim to explore this typology to its full extent but only to understand in which cases it is reasonable for parties to shift the dialogue to a negotiation.

Case *a.* is an example of a disagreement that cannot be negotiated. In this case, the parties have different *beliefs* regarding their prediction. It wouldn't be reasonable for Andrew to say: "if you believe tomorrow it will rain, I will give you such amount of money"<sup>51</sup>. Instead, what is expected is that Andrew produces an argument such as: "I saw the weather forecast this morning".

Case *b.* is similar. The parties have no *agency*<sup>52</sup> regarding what the government has done, so they can just have different *evaluations* regarding the lockdowns. It doesn't make any sense for Barbara to say something like: "if you change your mind over the lockdowns, I will invite you to dinner". That is not a persuasive reason for *believing* something. What we expect, instead, is for her to provide reasons to back her claim.

In case *c.*, negotiation also seems unreasonable. The parties disagree about a causal explanation that is not negotiable. Instead, we expect the parties to provide good reasons to back their explanations, such as "the use of pesticides is killing the bees".

In case *d.*, it seems unreasonable to negotiate. In this case, we would expect that the parties produce arguments such as: "Our country is considered a full democracy by the democracy index", rather than providing offers.

Case *e.* could be resolved through persuasion, but also negotiation. For example, Barbara can attempt to persuade Andrew that school X is a better option by saying: "school X is the closest from home". But she can also try to negotiate: "please go along with me on this one, and I will accept that she takes football classes, as you proposed".

The parties can also overcome case *f.* through persuasion or negotiation. For example, Barbara can attempt to persuade Andrew that he must approve the bill because "sexual harassment is a growing concern". But she can also say something like: "If you approve this bill, I will support the tax cut you presented last week".

So, while the parties can disagree about many types of claims, they can't always reasonably negotiate. Only in examples *e.* and *f.* it is a reasonable

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<sup>51</sup> Granted, it could happen that Andrew make such an offer and Barbara answers: ok, give me such amount of money and I will believe that tomorrow it will rain. However, in that case she will not be changing her mind sincerely. In such sense, the parties will not arrive at resolution and the shift to negotiation will be unreasonable, as I will show in section 4. The same situation happens with the other examples of theoretical disagreements.

<sup>52</sup> I will say more on the problem of agency later.

choice. But what is the difference between cases *a.*, *b.*, *c.* and *d.*; and cases *e.* and *f.*? It seems to be the following: the first four cases are theoretical disagreements, while the last two are practical disagreements. We will see now what this difference entails.

## 4.2 Theoretical and Practical Argumentation

The difference between theoretical and practical argumentation has not received enough attention in the literature on argumentation (Kock 2017). Besides Kock, Habermas also mentions it (1984, p. 9), but, according to Kenny (1979), the distinction can be traced back to Aristotle when he introduced the *practical syllogism* (*Nicomachean Ethics*, 1144a29-b1).

However, despite the lack of attention in this field, the distinction is very relevant: in theoretical argumentation, the parties test whether a particular proposition is true, while in practical argumentation, they test whether it would be a good idea to perform a certain action (Kock 2017). While theoretically oriented claims are non-negotiable, I claim that practically oriented claims are negotiable<sup>53</sup>.

When a party presents a theoretical argument, she is putting forward an argument of the type: “P is the case because of Q”. But when she presents a practical argument, she puts forward an action proposal (Lewiński 2017), that is, a proposition: “we should do A because it will bring about B”. But for an action proposal to be possible (and thus for negotiation to be a legitimate option), the parties need to have *agency* over the intended result. That is why the following cases are different

*B1. Andrew and Barbara disagree about whether the government was right in establishing mandatory lockdowns to prevent COVID.*

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<sup>53</sup> This is related to the topic of “doxastic voluntarism”. According to doxastic involuntarists (see Alston 1988; Bennett 1990; Buckareff 2006) people don’t have voluntary control over what they believe. Doxastic voluntarists (Turri, Rose, & Buckwalter, 2018) claim that we have some willful control over our beliefs. If doxastic involuntarism is true, then it doesn’t make sense at all to use negotiation dialogue to change people’s beliefs. If doxastic voluntarism is true, it could make sense to do it.

I think that both parties are partially right, so I would be more inclined to favor “indirect doxastic voluntarism” (Vitz 2008). That is, we cannot *directly*, change our beliefs by wanting it, but we could indirectly do it. In the case of negotiation, the fact that someone is offering something valuable to change my mind is not, in itself, enough to change my mind. But it might make me think that there might be something wrong with my belief, which in the long run could make me change it. But even then, the reason to change my mind is not the *offer*, but the reasons I found *behind* that offer.



*B2. At a cabinet meeting, Andrew and Barbara disagree about whether it is right to establish mandatory lockdowns to prevent COVID.*

The first case evaluates a policy and can be classified as a theoretical disagreement. Only in the second case do the parties have agency to bring about the desired and, thus, the parties can shift the dialogue to negotiation. The requisite of agency for practical argumentation is already in Aristotle (*Nicomachean Ethics*, 1112a36).

When a party makes an action proposal, she puts forward a proposition she is committed to defending. In this chapter, I'm taking the commitment model for practical reasoning instead of the *beliefs, desires and intentions* (BDI model)<sup>54</sup>. This model (van Eemeren & Grootendorst 2004; Walton & Krabbe 1995) focuses on the public commitments that the parties make. In what follows, I will distinguish theoretical from practical argumentation using the commitment model. The commitment model implies that when parties make argumentative moves, they assert certain propositions and, thus, are committed to defending them. Those commitments can be accounted for in what Hamblin has called a "commitment store": "a speaker who is obliged to maintain consistency needs to keep a store of statements representing his previous commitments" (1970, p. 257). Therefore, to distinguish practical from theoretical commitments, we don't need to analyse what's inside people's heads: we just need to understand what they are publicly committed to defending.

In theoretical argumentation, the parties are committed to the *truth* of a proposition. Therefore, they assert *p* and are obliged to defend it if someone asks, "why *p*?" by putting forward arguments implying *p* is true. In practical argumentation, the parties commit to defending the appropriateness of a particular *action proposal*<sup>55</sup>. Therefore, if asked, "should we do *A*?" they are committed to defending that *we should do A* by providing reasons supporting *A*. In the first case, we would talk about *theoretical commitment*, and in the second about *practical commitment*<sup>56</sup>. Despite these differences, the two kinds

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<sup>54</sup> The BDI model is a model of practical reasoning that attributes moves to agents based on beliefs, desires and intentions about causal connections (Macagno & Walton 2018). The BDI model can be applied to theoretical and practical argumentation. We can say, then, that when the parties have a theoretical disagreement, they have clashing beliefs about certain state of affairs, and when they have practical disagreement they clash over their desires or intentions. But the BDI model is, arguably, not the best way to distinguish theoretical from practical disagreements.

<sup>55</sup> The concept of "action proposal" is taken from Lewinski (2017).

<sup>56</sup> Note that the distinction between theoretical and practical commitments is different from the distinction between "action" and "propositional" commitments that Walton and Krabbe make (1995, pp. 15-25). In their story, action commitments occur when somebody commits him/herself to perform certain action, while propositional commitments happen when we are committed to defend certain proposition. Both

of commitments seem to come down to the same thing and have the same function: “if questioned, provide reasons”.

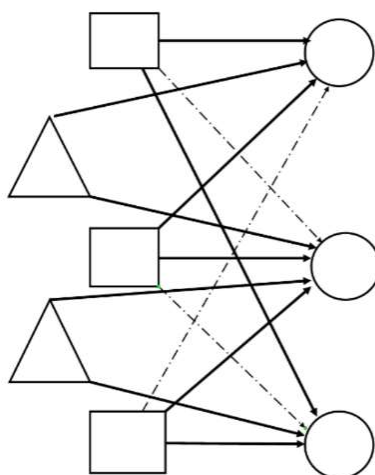
The distinction between theoretical and practical commitment clarifies the differences between theoretical and practical argumentation. However, it is still uncertain why the parties can only shift the dialogue type to negotiation in the second case, and I intend to do that in what follows.

### 4.3 Why can Only Practical Disagreements be Negotiated?

Part of the complexity of practical arguments derives from the fact that the parties have two different entities in mind, *goals* and *means*, and they argue “backwards”: “in practical reasoning, and hence in practical argumentation (we leave aside for the moment the relation between these two terms) we begin with the goal or the end, i.e., the value we wish to promote. Given that the end is good, we look for a means to bring about that end, because that means will also, in that respect, be good” (Kock 2017, p. 151).

To make things more complicated, contrary to what we may think, what we usually call “premise” is related to the goals that we want to bring about, and what we call “conclusion” is the means to achieve such a goal. So, in example *d.*: “I think that Maria should go to school X because it is closer to home” the goal is, presumably, “to be closer to home”, so the premise “School X is closer to home” is related to that goal. And the conclusion “Maria should go to school X” is an *action proposal* that works as a means: as our goal is to be closer to home, a means to arrive at that goal is to bring Maria to School X.

This relationship between means and goals is related to practical reasoning and can be schematised by as follows:




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practical and theoretical commitments are propositional commitments. Therefore, we are committed to defend a theoretical (“X is the case”) or a practical (“we should do X”) proposition. In that same sense, Lewinski (2017) calls practical statements “action-relevant speech acts”.

*Figure 1. Practical reason illustrated (figure taken from Kock 2017, p. 153).*

The figure can explain why practical disagreements are negotiable and, by contrast, why theoretical disagreements are not. The circles are the goals that an agent wants to achieve, and the squares and triangles are means to achieve them. A bold arrow indicates that a means will promote a goal, and a dotted arrow indicates that a means counteracts another goal. Squares, then, are means that promote specific goals while prejudicing others; and triangles are means that promote specific goals but don't negatively affect others<sup>57</sup>. Kock's example is the following: being healthy is one of my goals and doing exercise is a means to achieve it. However, doing exercise negatively affects other goals I might have, like spending time with my family or having time to watch movies.

This scheme is complicated enough when we want to decide on our own, but it worsens when we need to make a *joint decision* or take *collective* action. That happens in practical argumentation: the parties need to decide together, arguing that a specific means is good because it promotes a particular goal. But the parties may defend different schemes about their means to goals relation that they need to coordinate somehow. Practical argumentation is, in a way, this coordination.

When Barbara argues that "School X is better for Maria, because it is closer to home", she is promoting the goal of "being closer to home" (G1) as something desirable. Andrew has, basically, three available moves here:

- a) Accept the action proposal, resolving the disagreement: "Ok, let's send Maria to school X."
- b) Reject the action proposal by rejecting the facts stated in the premise or the causal connection between the means and the goal. In other words, by saying: "it is not true that school X is closer to home" (because, in Andrew's network, there is no bold arrow between means and goals).
- c) Reject the action proposal by showing that the means proposed negatively affect another goal (G2) not considered by the other party: "yes, it might be closer, but it is not that good academically speaking" (because in Andrew's network, there is a dotted connection between means and goals).

If option b) is taken, the parties will argue about a matter of fact (is *p* true?). If option c) is taken, the parties will argue about the *relative value* of certain goals (is G1 more important than G2?). We might call b) an argument about *the theoretical part of a practical disagreement*, and c) an argument about the

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<sup>57</sup> Kock claims that "triangles are unavailable means". Therefore, those means don't really exist because, at the very least, any mean has a cost of opportunity: it implies devoting time or resources that could have served another purpose. The triangles, then, are not real but sometimes are presented in rhetorical speech as if they were. The role of the questioner, then, is to show the negative effects that these means have.

*practical part of a practical disagreement.* The shift to negotiation may occur if they arrive at a stalemate situation in case c), because b) is akin to a theoretical disagreement (it is about the truth of a statement). Section 6 will explain the difference between these paths, the moves available for the parties, and how the shift works.

Therefore, for a shift to negotiation to be reasonable, not only must the disagreement in general be practical, but the parties must also disagree about the practical part of it, which amounts to a disagreement about the relative value that they assign to certain goals.

#### **4.4 Formulation of the Practical Condition**

Considering the distinction presented above, the practical condition can be formulated as follows:

*Practical condition: shifts to negotiation are reasonable only if the parties disagree about the relative value that they assign to certain goals in a practical disagreement.*

Accordingly, shifts to negotiation are unreasonable if:

- a. The parties disagree about a theoretical claim, for example: “tomorrow it’s going to rain”; or
- b. The parties disagree about the theoretical part of a practical disagreement, for example: “We shouldn’t take Maria to school X because school X is not the closest school from home”.

In section 6, I will show that failing to meet this condition results in the parties committing fallacies.

### **5 Sacrifice Condition**

#### **5.1 To Trade or not to Trade**

The fact that a disagreement is practical does not necessarily imply that shifting the dialogue type from persuasion to negotiation dialogue is reasonable. It is still necessary that both parties agree on making the shift, and for that, they need to decide on giving up part of their goals.

In other words, if the parties argue about the relative value of goals, it makes sense to promote the most valuable goals for them in the hope that the counterpart will agree. Negotiation, then, will come as a beneficial option only after the realisation that it is not possible to persuade the other party. To understand this, we need to have a clear idea of what negotiation *is* and why it is different from persuasion, especially from practical argumentation (however, in the last section, I will show that they are not *that* different).

In the last section, I argued that in practical argumentation, the parties try to persuade the counterpart that a specific action proposal is good because it fulfils certain goals. If the other party disagrees, she can disagree about the argument's theoretical or practical part. Suppose they disagree about the theoretical part (whether a claim is true or conducive to a certain goal). In that case, the dialogue cannot be reasonably shifted to negotiation (as I will better explain in the following section). But when the parties disagree about the practical part, they assign different relative values to their goals. Therefore, sometimes an action proposal cannot persuade the counterpart since the proponent assigns more value to the promoted goals than to those hindered. Still, for the opponent, it is the other way around.

When this happens, party A will argue " $G1 > G2$ "<sup>58</sup>, and party B will respond " $G1 < G2$ ". The persuasion dialogue can only be successful if one of the parties convinces the other that their picture of the relative weight of goals is more accurate. However, as Kock (2017) points out, the value we assign to diverse goals can be different for each people, so the parties may not resolve the matter, even after presenting their best available arguments<sup>59</sup>. Then, as argumentation over the relative value of goals has reached a stalemate, it would be good to shift the dialogue to a negotiation.

Negotiation has been defined as an "interest-based bargaining, where the goal is for the arguer to maximise his own interests, to get the 'best deal' possible." (Walton 1989, p. 175) or also "a means to distribute limited resources between competing agents" (Wells & Reed 2006, p. 2). So, when shifting to negotiation, the parties give up persuading each other regarding the weight they assign to different and look instead for a compromise.

This compromise implies that the parties try to maximise the fulfilment of their goal by presenting a new action proposal that balances goals differently. This re-balancing of goals can either: split the difference between the parties or add a new goal to the mix. In the first case, we will talk about *distributive* negotiation; in the second, we will talk about *integrative* negotiation.

## 5.2 The "Distributive Negotiation" Sacrifice

A distributive negotiation occurs when the parties assume that what is at stake is the distribution of a fixed pie (Ihnen Jory 2016, p. 152). An example of the first type of shift would be the following (taken from Van Laar & Krabbe 2018a):

*Example 1: Greenhouse emissions*

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<sup>58</sup> That is, "goal 1 is more valuable than goal 2".

<sup>59</sup> A situation that can be aggravated when the so-called higher-order conditions for critical discussion are not fulfilled to an important extent, as I explained in chapter four.

*Party A and Party B disagree about the level of renewable energy that should be used by a specific year. Party A proposes an 18% and party B a 14%. After trying to persuade each other, providing several reasons, they arrive at a stalemate: no party has been able to persuade the other. Therefore, they decide to split the difference at 16%.*

In this case, we can imagine the mean and goal that party A has in mind:

*M1: Get to an 18% of renewable energy.*

*G1: Reduce carbon footprint.*

Therefore, party A produces the following argument:

*(1) Party A: We should increase the use of renewable energy to 18% of the total because we want to reduce our carbon footprint.*

Party B disagrees. They agree that increasing the use of renewable energy will reduce the carbon footprint (G1), still, they also think that it will negatively affect another goal (G2): keeping the price of energy low. Therefore, they answer:

*(2) Party B: We disagree because that will increase the energy price too much. We propose 14% of renewable energies instead.*

From this point, party A can take the theoretical or a practical avenue for answering. If party A goes for the theoretical option, they should argue something like: "It is not true that increasing renewable energies will increase the price, because such and such". If they go for the practical option, they could either argue that M1 produces other valuable goals (G3) like "it will also increase jobs in the green sector", or argue that "G1>G2". This latter case (but not the only one, as I will show later) is the one that may prompt the shift to negotiation:

*(3) Party A: Yes, it might increase the price in the short term. But reducing our carbon footprint is more important.*

The persuasion dialogue can go on but let's imagine that Party B is unconvinced and decides that they arrived at a dead end. Then, Party B proposes a *shift to negotiation* by presenting a *new action proposal* that Party B accepts:

*(4) Party B: Ok, let's do something. Let's agree on 16%.*

*(5) Party A: Agreed.*

When this shift happens, party A still believes that  $G1 > G2$  and party B believes the opposite. But party A makes an action proposal that splits the difference so that both parties fulfil their preferred goals ( $G1$  for party A and  $G2$  for party B) to a lesser extent. The shift to negotiation will be only reasonable if both parties agree on this sacrifice: *to fulfil their preferred goal to a lesser extent.*

### 5.3 The “Integrative Negotiation” Sacrifice

Another way of shifting to negotiation is by adding a new goal ( $G3$ ) to the mix<sup>60</sup>. This goal can balance the situation because it can compensate for the loss of goals that one of the parties has suffered. Consider the following example introduced earlier:

#### *Example 2: Picking a School*

*Andrew and Barbara disagree about which school to pick for their daughter Maria:*

- (1) Barbara: I think we should pick School A for Maria because it is closer to home*
- (2) Andrew: I don't see it this way; school B is a better option. It might be further, but it is also academically better.*
- (3) Barbara: I think the academic difference is not that much, and being closer might have lots of benefits.*
- (4) Andrew: I beg to differ; any academic difference might be crucial for her future.*
- (5) Barbara: Ok, let's do something. Let's pick School A, and I will agree to take her to football practice, as you told me you wanted last week. I will leave her, pick her up, and go with you to the matches on weekends.*
- (6) Andrew: Ok. Participating in a team sport will also be important for her.*

In this dialogue, the parties disagree about a practical claim. Barbara's goal ( $G1$ ) is to have a school close to home, and Andrew's goal ( $G2$ ) is to promote academic success. Their disagreement arises from the fact that for Barbara

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<sup>60</sup> This version of an integrative negotiation is slightly different from the most common version. Integrative negotiation is usually seen as a win-win solution: “integrative negotiations take place when the parties no longer assume that what is at stake is the distribution of a fixed pie, but instead search for a solution where both can maximize their gains simultaneously” (Ihnen Jory 2016, p. 153). But in my version, the parties enlarge the pie but still make a sacrifice, so the result is not a win-win. That kind of win-win solutions without sacrifice can be seen instead as a practical negotiation in which one of the parties changes the original action proposal, a process described in section 6.4 of this chapter.

$G1 > G2$  and for Andrew  $G1 < G2$ . But in this case, splitting the difference is not possible, as in the case before. So, after arriving at a stalemate, Barbara shifts the dialogue to negotiation in (5). And what she does is to forget about trying to persuade Andrew that  $G1 > G2$  and, instead, present a new action proposal that adds a new goal (G3): “participating in a team sport”. Therefore, now Barbara is offering the action proposal:  $G1 + G3 > G2$ , and Andrew agrees.

In this case, both parties have made a sacrifice. Barbara has offered G3, which is a sacrifice for her since she must take Maria to football practice and go to matches. And Andrew has accepted to sacrifice G2 and to win G3 instead.

#### 5.4 The Sacrifice Condition Formulated

When the parties shift the dialogue from persuasion to negotiation, they replace *arguments* with *offers*. The offer requires a sacrifice of one of the two kinds described before. But in any case, the shift will be fallacious if both parties don't agree with the sacrifice. According to Van Laar and Krabbe (2018a, p. 340), the fallacy could be avoided if:

- (a) Party A makes an explicit proposal to party B to abandon the persuasion dialogue and shifts to a negotiation dialogue, and B agrees; or
- (b) Party A makes an implicit proposal to accept some items and concede some other items to party B, and B agrees to the shift, being aware from the context that a shift has been made.

So, parties must be aware of the shift, that arguments have been replaced with offers and agree with that. Besides that, as I have shown, negotiation is a kind of sacrifice, so the parties must be willing to make a sacrifice and chose one of the two types of negotiation presented before, accepting that they will lose something. The condition, then, is more complex than the one presented by Van Laar and Krabbe and could be formulated as follows:

*Sacrifice condition: Shifts to negotiation are reasonable only if all the parties agree explicitly or tacitly on making a sacrifice and shifting the dialogue to negotiation by splitting the difference between them or offering new goals.*

### 6 Dialogue Profiles for Shifts to Negotiation

This section aims to make the idea of practical argumentation and an eventual shift to negotiation more precise. I will assume that the first condition is met (so the parties are discussing an action proposal). The second condition is met when the parties shift the dialogue to negotiation. Thanks to these profiles, we can understand the relationship between practical argumentation and negotiation. The shift to negotiation is just a tiny step in a bigger process.

A dialogue profile is “a means of representing a sequence of connected moves (adjacency-pairs) in a dialogue exchange” (Walton 1999). It involves



two parties, a proponent (P) and an opponent (O), who take turns to respond to each other's interventions. The profile aims to show the salient possibilities that the parties have for conducting a dialogue and the prima facie reasonable moves available.

In practical argumentation, the profile starts with a practical claim that proposes an action: "we should do M1" advanced by the proponent and represented by "M1". The opponent takes the role of challenging M1, so the proponent must argue that M1 is conducive to a certain goal (G1). The opponent then can argue that M1 must be rejected for theoretical or practical reasons. I show the most prominent moves at every turn, but things can always be more complicated.

To better understand how shifts to negotiation work, I now present four dialogue profiles: the first is a *general overview* of the parties' options; the second is a detailed account of the *theoretical path* for dealing with practical disagreements; the third is the *practical path* that the parties might follow and the fourth contains the *shift to negotiation*.

### 6.1 General Profile

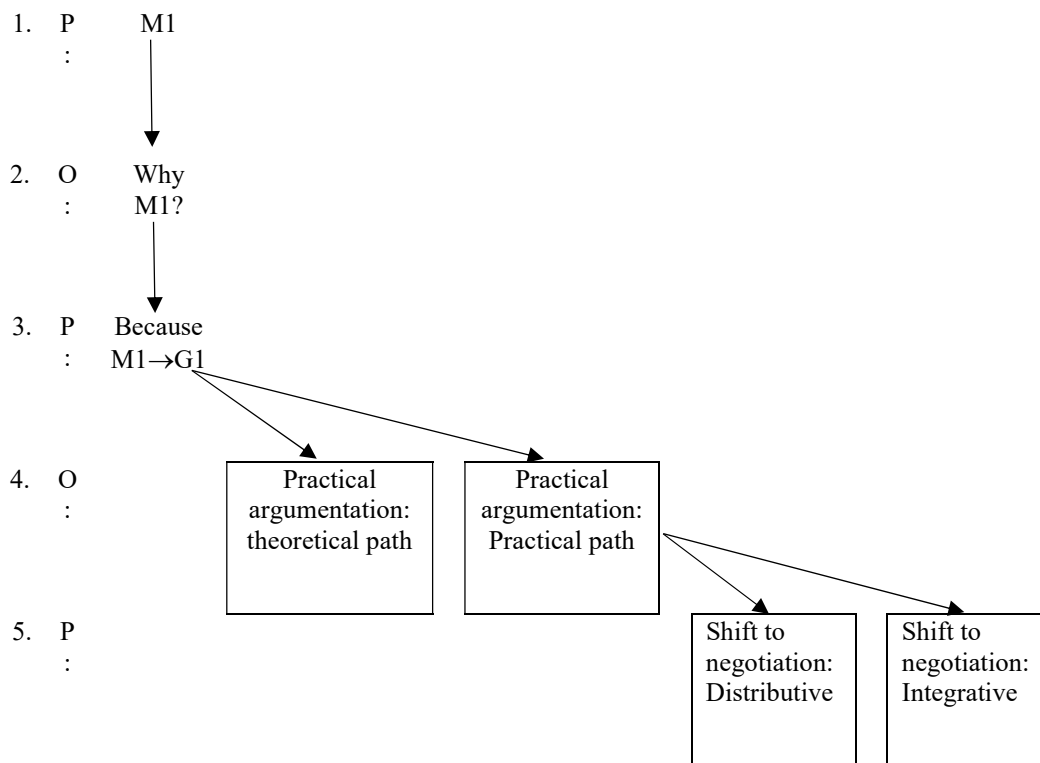


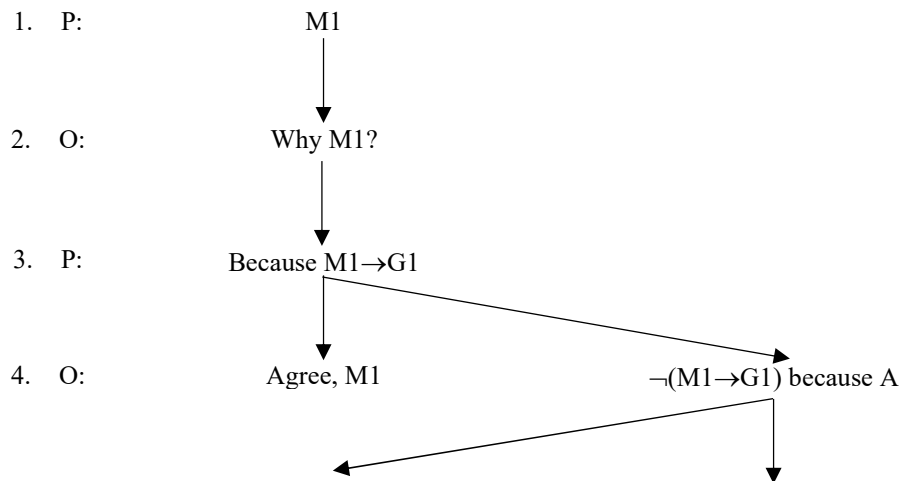
Figure 2. General dialogue profile for shifts to negotiation

The moves are the following:

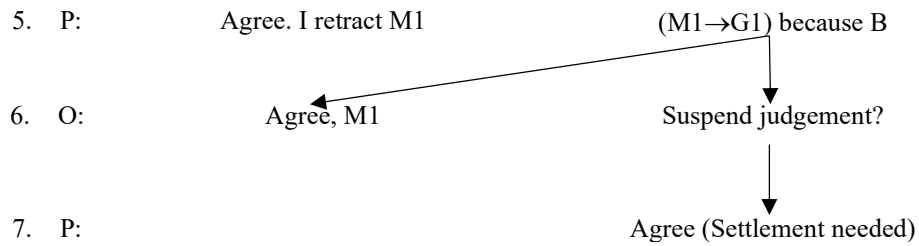
1. In turn 1, the proponent puts forward an action proposal “M1” such as “we should go running together every day”.
2. In turn 2, the opponent asks what the grounds for M1 are: “why should we go running every day?”.
3. In turn 3, the proponent asserts that the reason for doing M1 is that it will promote the goal G1: “we should go running every day because we will lose weight”<sup>61</sup>.
4. In turn 4, the opponent can take two paths: theoretical or practical.
  - a. The theoretical path implies denying the conditional relationship between M1 and G1, for example: “it is not true that if we go running every day, we will lose weight because after running you usually eat more”.
  - b. The practical path implies arguing that, even accepting that M1 is conducive to G1, there are other goals (G2) to consider, for example: “yes, it is true, but I also need resting time after work”.
5. In turn 5, after being unable to resolve the disagreement, the parties shift the dialogue to a distributive or integrative negotiation.

## 6.2 The Theoretical Path

If the opponent takes the theoretical path of practical argumentation, she questions whether the conditional relation between means and goals is true. In other words, she argues that it is not true that the means is conducive to reach the goal. The profile would look like this:



<sup>61</sup> I’m using the logical symbol for conditional statement since, what is stated, is precisely that if the parties go along with the means M1, then the goal G1 will be achieved. In other words, what the proponent wants to say is that “in any case in which the antecedent is true, the consequent is also true” (Copi et al., 2016, p. 480).



*Figure 3. Dialogue profile for the theoretical path of practical argumentation*

In the theoretical path, after the proponent has argued that M1 is conducive to G1, the dialogue goes like this:

- a. In turn 4, the opponent can either agree that M1 is a good idea or argue that the conditional relation between M1 and G1 is false: “it is not the case we will lose weight if we go running every day, because you usually eat even more after doing exercise”.
- b. In turn 5, the opponent can either agree with the proponent and retract M1: “Ok, you are right”, or provide reasons why the opponent was wrong in questioning the conditional relation between M1 and G1: “You do lose weight by doing exercise, you just need to eat healthy afterwards”.
- c. In turn 6, the opponent can either agree on the action proposal: “Ok, let’s do it” or keep providing objections to M1. But to simplify things, we could argue that at some point, the parties can agree to suspend judgment over the theoretical path; that is, they cannot reach an agreement on whether the conditional relation between means and goals is true.
- d. In turn 7, if the proponent agrees to suspend judgment, some settlement method is needed. The reason is that the parties are arguing about a practical proposition, so they cannot just “suspend judgement” over M1, only accept it or reject it. They will need a settlement method to settle the disagreement (that could include negotiation), as I will explain in section 7.1.1 of this chapter.

### 6.3 The Practical Path

If the parties follow the practical path, they agree on the means goal relationship but argue about the relative value of their goals. The dialogue profile will, therefore, look like this:

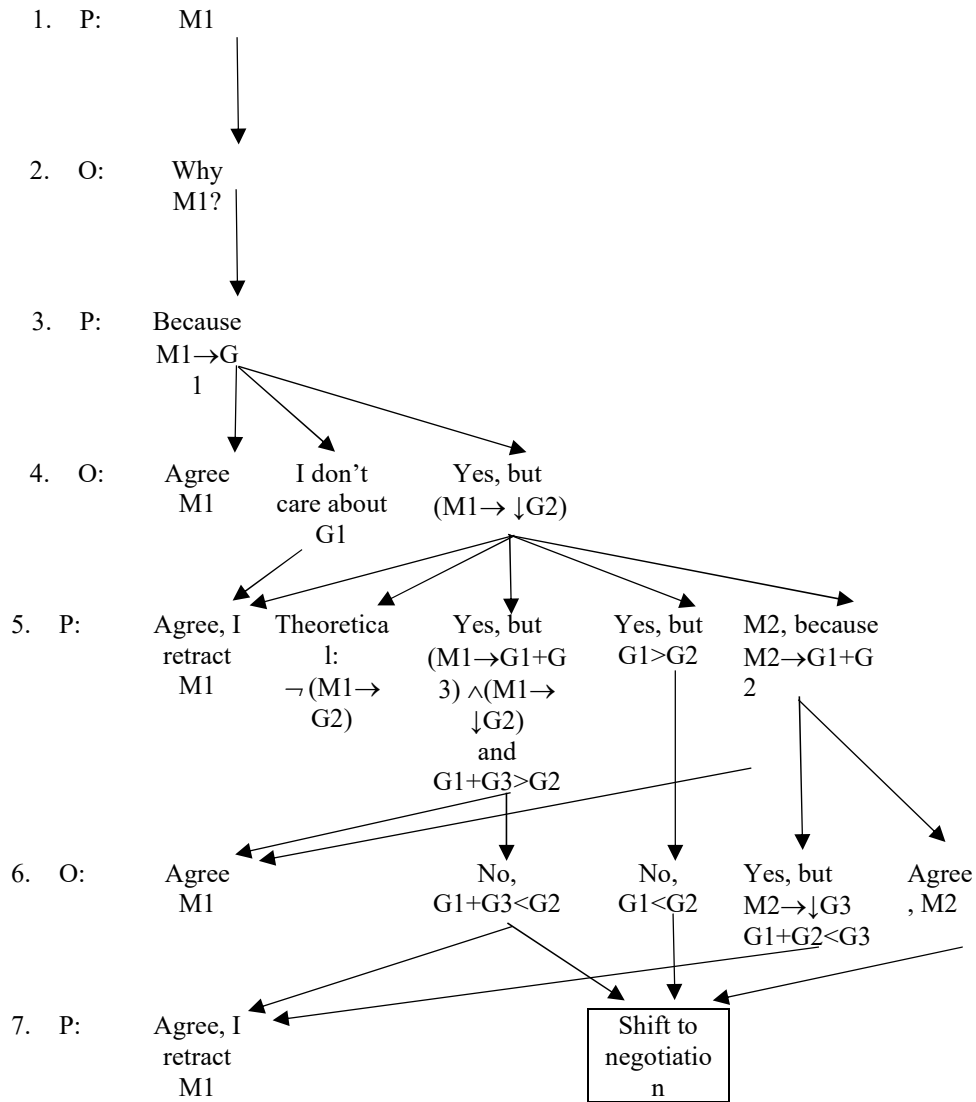


Figure 4. Dialogue profile for the practical path of practical argumentation

In the practical path, after the proponent has argued that M1 is conducive to G1, the dialogue goes like this:

- A. Turn 4: the opponent can do three things:

- a. First column, “agree, M1”: consider that the argument is enough and agree on the action proposal M1: “ok, let’s go for a run every day”.
  - b. Second column, “I don’t care about G1”: challenge the desirability of G1 “I don’t really want to lose weight, I’m happy with my body”.
  - c. Third column, “yes, but  $(M1 \rightarrow \downarrow G2)$ ”<sup>62</sup>: make a practical challenge by arguing that while it is true that M1 leads to G1, it is also true that it undermines another goal G2 that is considered valuable. For instance, she can argue: (“it is true, we would lose weight by running, but I want to rest after work”).
- B. Turn 5. The proponent has the following moves available:
- a. First column; “agree, I retract M1”: Retract M1 because the opponent doesn’t consider G1 desirable or has successfully argued that G2 is more important than G1.
  - b. Second column; “ $\neg(M1 \rightarrow G2)$ ”: the proponent theoretically disagrees about the opponent’s practical challenge; that is, he claims that it is not true that pursuing M2 hinders G2: “but when you exercise you have more energy, so running doesn’t affect your repose”. This theoretical challenge can continue as in the dialogue profile presented before.
  - c. Third column; “ $(M1 \rightarrow G1+G3) \wedge (M1 \rightarrow \downarrow G2)$  and  $G1+G3 > G2$ ”<sup>63</sup>: The proponent argues that while it is true that M1 helps fulfil G1 and undermines G2, it is also true that it can help fulfil another goal G3, and that the sum of G1 and G3 is more relevant than G2: “I know that you want to rest, but running not only it helps lose weight, it is also good for relieving stress”.
  - d. Fourth column “ $G1 > G2$ ”: the proponent argues that while it is true that M1 undermines G2, G1 is still more important than G2: “yes, running takes time for resting, but losing weight is much more important”.
  - e. Fifth column; “ $M2 \rightarrow G1+G2$ ”: The proponent advances a new action proposal M2, that fulfils G1 while at the same time

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<sup>62</sup> The downwards arrow “ $\downarrow$ ” here represents that the means undermines the goal. Therefore, “ $M1 \rightarrow \downarrow G2$ ” should be read: “If we go along with the action proposal M1, then the goal G2 will be undermined”.

<sup>63</sup> The symbol “+” represent an addition of two goals. Therefore, when a party argues “ $M1 \rightarrow G1+G3$ ”, she is asserting: “if we carry on the action proposal M1, then we will achieve goals G1 and G2”.

The symbols “ $>$ ” or “ $<$ ” represent that certain goal or goals should be considered more desirable than other(s). Therefore, if a party argues “ $G1+G3 > G2$ ”, she is asserting “goal G1 is more important than goals G2 and G3 taken together”.

fulfilling (or at least not undermining) G2: “we should go cycling, then, then you won’t be so tired”<sup>64</sup>.

- C. Turn 6. The Opponent can:
- a. First column, “M1”: Agree on M1 and retract his practical challenge.
  - b. Third column,  $G1+G3 < G2$ : Argue that the sum of G1 and G3 is still more critical than G2: “I don’t know, resting is important for me. Even more than losing weight and relieving stress”.
  - c. Fourth column, “ $G1 < G2$ ”: argue that G2 is more important than G2: “sorry, resting is more important than losing weight”.
  - d. Fifth column, “ $M2 \rightarrow \downarrow G3$ ” and “ $G1+G2 < G3$ ”: argue against M2, by saying that while it is true that M2 can balance G1 and G2, it also undermines another goal G3: “yes, but cycling doesn’t help me relieve stress, I don’t feel so safe”.
  - a. Sixth column, “M2”: she can agree on M2: “Ok, let’s go cycling”.
- D. Turn 7: the proponent can:
- a. First column, “retract M1”: agree that the challenges to M1 are enough to retract M1.
  - b. Third column: propose a shift to negotiation as an answer to the practical challenges posed by the opponent.

#### 6.4 Shift to negotiation

The shift to negotiation begins as a stalemate on the practical path. This stalemate arises when the parties assign different relative values to their goals. According to Kock (2017), this relative value is related to people’s subjectivity, expectations, interests, moral view, etc. Therefore, it is unsurprising that people might find themselves in a stalemate situation after presenting persuasive arguments. As the profile before shows, the parties can arrive at this stalemate in different ways: by presenting new goals not taken into consideration by the other party, presenting new action proposals, or saying that a particular goal is not valuable enough. In any case, the dialogue profile is much simpler than the one presented before. Here, instead of “action proposals”, the parties present “offers”<sup>65</sup> (Of) that are conducive to specific goals. The profile looks like this:

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<sup>64</sup> This is the type of move that other authors like Walton and McKersie consider “integrative negotiation” (see Ihnen Jory 2016). In this chapter I see this move a part of a persuasion dialogue, since the parties are not doing a sacrifice.

<sup>65</sup> However, in the last section of this chapter we will see than in many situations “offers” and “action proposals” are undistinguishable.

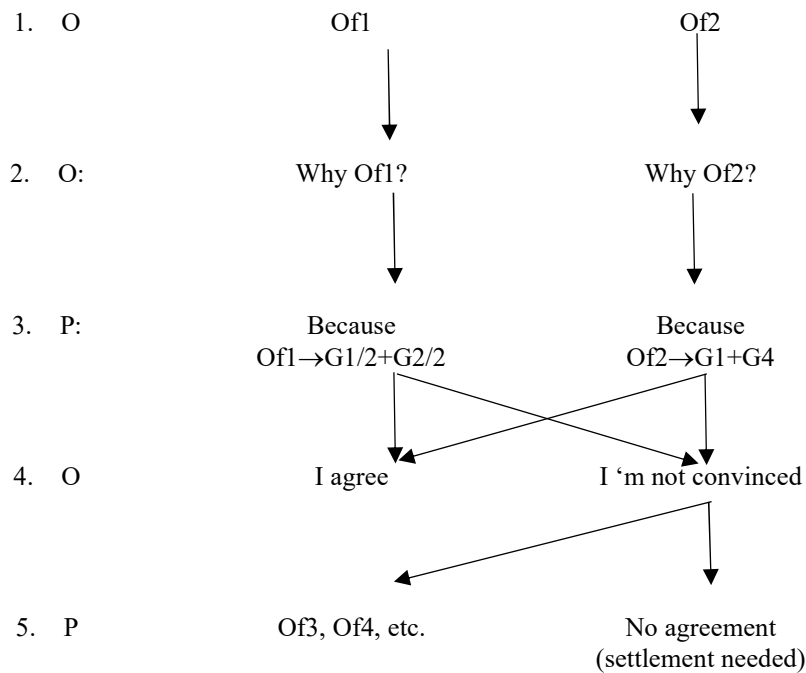


Figure 5. Dialogue profile for shifts to negotiation

- A. Turn 1; the proponent might present:
  - a. an offer of the distributive type (Of1): “we should go running together every two days.”
  - b. or an offer of the integrative type (Of2): “we should go running together every day, and I will cook when we return”.
- B. Turn 2, the opponent asks:
  - a. Why Of1 is a good idea?
  - b. Why Of2 is a good idea?
- C. Turn 3; the proponent explains why his offers are valuable:
  - a. In the distributive case (Of1 → G1/2 + G2/2)<sup>66</sup>: he argues that by taking Of1, the parties will fulfil half of G1 and also half of G2; therefore, the offer literally means: “if we go running every two days (Of1), we will still lose some weight (G1), and at the same time you will be able to rest when we are not running (G2).

<sup>66</sup> The division sign with a 2 after the goal “\*/2” indicates that the opponent proposes to split the difference, so that certain goal will be fulfilled but only to certain extent. This doesn’t mean that the difference must be split in equal parts as in “example 1”.

- b. In the integrative case ( $Of2 \rightarrow G1+G4$ ): the proponent argues that by taking  $Of2$ , they will fulfil  $G1$  and also a new goal  $G4$ ; therefore, the offer literally means: “if we go running together every day and I cook when we return ( $O2$ ), then we will lose some weight ( $G1$ ), and you won’t have to cook dinner ( $G4$ )”.
- D. Turn 4; the opponent can either:
  - a. accept  $Of1$  or  $Of2$ ; or
  - b. Reject  $Of1$  or  $Of2$ .
- E. Turn 5; the proponent can either:
  - a. Present new offers ( $Of3, Of4$ ); or
  - b. Look for another settlement method (withdraw the action proposal, flip a coin, look for a third party to decide, and so on).

Regarding the profiles just presented, there are three relevant considerations to make.

First, they only intend to show several standard options available to reasonable participants. Things could be much more complicated or straightforward, so the parties could shift back and forth, reject the negotiation, go back to the persuasion dialogue, omit steps, start right away with the negotiation dialogue and so on.

Second, the path that the parties must follow to arrive at a shift to negotiation implies an unsuccessful disagreement over the relative value of the goals of practical disagreement. Godden and Casey (2020) mention that persuasion dialogue has “methodological priority” over negotiation dialogue. I think that is correct. Persuasion dialogue has a methodological priority because it doesn’t require sacrifices: if the disagreement gets resolved, the parties can agree on an action proposal that they consider “the best available”. Then, the shift to negotiation is only reasonable if the parties explicitly or tacitly understand that persuasion dialogue can’t help them anymore. But if they decide to make the shift, they just need to take a small step. In a way, negotiation is still part of the bigger picture of practical argumentation.

Third, as I will further explain in section 8, practical argumentation is not so different from negotiation. Providing offers instead of arguments only implies a change in the action proposal based on mutual concessions, which is not different to what the parties do on the practical argumentation path and, in some cases, is indistinguishable from it.

## **7 Fallacious Shifts to Negotiation**

The profiles show how close persuasion and negotiation dialogue are. But the shift will only be reasonable if the two conditions presented before are met. These conditions are related to a pair of concepts developed by Van Eemeren and Grootendorst; the idea that the rules of a dialogue need to fulfil two types



of validity to be reasonable: “problem-solving validity” and “intersubjective validity” (2004). Problem-solving validity refers to the capacity of an argument for “solving the problem at issue” (2004, p. 38). For example, if two parties argue about fixing a car, an argument has this type of validity as long as it can help the parties resolve the disagreement on how to fix the car. Intersubjective validity, on the other hand, “is related to a specific group of people at a particular place and time” (2004, p. 38); that is, an argument is reasonable only if the parties at a given circumstance consider it to be so.

The two conditions mentioned above are necessary because they fulfil these different types of validity.

The practical condition refers, roughly, to “problem-solving validity”, so it is a rule that permits a shift to negotiation because it could help the parties overcome their disagreement in a productive way.

The sacrifice condition is related, roughly, to intersubjective validity. Only if both parties recognise that it is worthwhile to sacrifice part of their goals can they agree that a shift to negotiation is a productive way to manage their disagreement.

Therefore, if the two conditions are necessary, we can make a prediction that this section needs to test: shifts to negotiation are reasonable moves as long as the parties avoid violating either of the conditions. Consequently, shifts to negotiation are unreasonable if (a) the disagreement is theoretical rather than practical, or (b) at least one of the parties is unwilling to make a sacrifice. According to dialectical theories of argumentation such as Pragma-Dialectics (van Eemeren & Grootendorst 2004), the *New Dialectic* (Walton 1998) and others, unreasonable arguments are fallacious. Thus, we should find fallacies in cases where the shift to negotiation doesn’t fulfil the conditions mentioned.

## 7.1 Violations of the Practical Condition

The parties violate the practical condition when they disagree over a theoretical issue but treat it as if it were a practical one, or when they disagree about a practical issue but treat its theoretical part as practical. Therefore, instead of trying to resolve their difference of opinion by presenting *persuasive reasons*, they shift the dialogue type to negotiation and start making offers<sup>67</sup>. This violation can take the form of different fallacies that I describe in this section.

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<sup>67</sup> They can also shift the dialogue to a “deliberation”. One of the main differences between negotiation and deliberation dialogue is that the parties in a deliberation present “proposals” while in a negotiation they present “offers” (Ihnen Jory, 2016). But if the disagreement is theoretical, a shift to deliberation will be as fallacious as a shift to negotiation dialogue, as I will show later.

### 7.1.1 The Fallacy of Middle Ground

The “fallacy of middle ground” can be defined as “presenting a compromise as a regular resolution” (van Laar & Krabbe 2018a, p. 342)(Godden & Casey, 2020). One instance is when a persuasion dialogue about a theoretical issue is shifted to negotiation dialogue to treat it as a practical issue. For example (adapted from Van Laar & Krabbe 2018a, p. 346):

#### *Example 3: almighty God*

- (1) Andrew: *I think God exists and is all-powerful, all-knowing, and all good.*
- (2) Barbara: *Sorry, I think God does not exist.*
- (3) Andrew: *it appears that we disagree. Could we settle it if you and I accept that God exists, but he is only very powerful, very knowing, and very good?*
- (4) Barbara: *That seems right to me.*

The problem is that statement (1) is a theoretical claim, but the parties try to compromise in (3) and (4). But it is unreasonable to compromise in theoretical disagreements, even if both parties agree. So, while the *sacrifice condition* is fulfilled, the *practical condition* is not, which renders the move unreasonable.

The fallacy cannot be avoided in this case since the disagreement is theoretical<sup>68</sup>. Moreover, as I’ve shown in the last section, parties could commit the fallacy even in a practical disagreement if they disagree about the means-goals relation rather than the relative value of goals. Consider the following example:

#### *Example 4: Emergency Room*

*Andrew and Barbara are doctors and disagree about the proper treatment for a patient who has a life-threatening illness in his liver:*

- (1) Andrew: *I think that we should perform surgery as soon as possible.*
- (2) Barbara: *I disagree; we can treat him with drugs; surgery could be too risky.*
- (3) Andrew: *Ok, let’s do something. Let’s operate now, and I will buy you lunch afterwards.*
- (4) Barbara: *I agree.*

In this example, the parties argue about an action commitment (“should we operate?”) which renders the disagreement practical. However, moves (3) and (4) seem unreasonable because the parties mistook a compromise for a resolution. Even when both parties agree (thus fulfilling the sacrifice

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<sup>68</sup> I think that Van Laar and Krabbe are mistaken here, they argue that the fallacy could be avoided if both parties explicitly or tacitly agree to shift to negotiation dialogue (van Laar & Krabbe 2018a, p. 340)

condition), the move seems unreasonable<sup>69</sup>. But why is it so if the disagreement is practical? The answer is that the parties are taking what I've labelled before the "theoretical path" of a practical disagreement (see figure 3 above).

In other words, the disagreement is not about the relative value of goals. Presumably, both parties would agree that saving the patient's life is the most significant goal so that no other goal could have a higher relative value. Instead, the parties disagree about the means-goal relationship. Andrew believes that his action proposal ("perform a surgery") better fulfils the goal. Barbara disagrees; she believes that her action proposal "treat him with drugs" does a better job. But means-goal relationships are theoretical, not practical.

In cases like this, it only makes sense to negotiate if the parties can suspend judgement over the theoretical issue, take that proposition out of the equation, and negotiate over other goals that they find relevant. Those goals do not exist in example 4 but can be present in other examples: "Look, I know that we disagree over whether running is good for losing weight, but let's suspend judgment because there are other reasons to do it".

But what can the parties do in example 4 if they cannot persuade nor negotiate? That question exceeds the objectives of this chapter, but at the very least, I would argue that the parties need to find another "settlement method" different from negotiation (such as the ones described in chapter 1). For instance, calling a third party (a more experienced doctor) seems like a good idea. Also, in medicine, the parties usually resolve their disagreement using heuristics, *i.e.* a norm that, in case of lack of time or information, helps us "rapidly jump to a conclusion or course of action" (Walton 2010, p. 161). For instance, it would be better to avoid intervention than to pursue it here.

### 7.1.2 *Ad Consequentiam*

Argument from consequences is an argument in which good or harmful consequences are presented as a reason for accepting a particular standpoint (Walton 2009). Such arguments can take the form of a fallacy when the good or bad consequences are entirely irrelevant for the acceptance or rejection of the standpoint advanced. When this happens, we have an *ad consequentiam fallacy*. Rescher (1964, p. 82) describes it as follows: "logically speaking, it can be entirely irrelevant that certain undesirable consequences might derive from the rejection of a thesis, or certain benefits accrue from its acceptance". He provides the following example:

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<sup>69</sup> To prove this point, imagine that the parties decided to negotiate in any way ("ok, let's operate but you will buy me lunch") and the patient dies because of the surgery. If an ethical committee would examine the case afterwards, it would probably rule out that it was imprudent to act in such way, and make life or death decisions based on who buys lunch.

### Example 5: “The Mexican War Example

*The United States had justice on its side in waging the Mexican war of 1848. To question this is unpatriotic and would give comfort to our enemies by promoting the cause of defeatism.*

Walton (2009, pp. 66-70) claims that in this example, an illicit shift has been produced, so the premises “to question this is unpatriotic” and “would give comfort to our enemies” are presented as reasons backing the proposition:

*(A) The United States had justice on its side in waging the Mexican war of 1848.*

But those premises are unrelated to that conclusion and are supporting an unexpressed conclusion like:

*(A+) you should not question in public the proposition that the United States had justice on its side in waging the Mexican war of 1848.*

Therefore, Walton argues, the argument is irrelevant because it illicitly shifts the dialogue type from persuasion to deliberation dialogue. In a persuasion dialogue, the parties try to resolve a difference of opinion (does the United States have justice on its side?). In contrast, in the deliberation dialogue, the parties argue about what “should” be done about it (should you question in public the justice of the Mexican war?).

What this analysis is missing is the distinction between theoretical and practical statements. There is no inherent problem with shifting a persuasion to a deliberation dialogue, but there is a problem if the persuasion dialogue is theoretical. That is the case for shifts to deliberation and negotiation because the dialogue is trying to resolve what we should do in both cases. In conclusion, a shift to negotiation or deliberation is reasonable for the conclusion (A+) but not for the conclusion (A).

#### 7.1.3 *Ad Baculum*

An *ad baculum* fallacy is “the use of force or a threat by one party in a dispute, to try to get the other party to accept an argument he is advocating” (Walton 2009, p. 61). In a way, an *ad baculum* argument is a type of *argument from consequences*. A party says that if her counterpart does not accept or reject p, she threatens to punish her, bringing about a dire consequence.

Threats are considered fallacious in persuasion dialogue because they violate the *freedom rule* (van Eemeren & Grootendorst 2004, p. 190). But threatening with sanctions or reward is *prima facie* legitimate in negotiation dialogue (Van Laar & Krabbe 2019, p. 220; Walton & Krabbe 1995, p. 109).

Therefore, what happens with dialogues that shift from persuasion to negotiation? What rule should we apply, the one of the original dialogue (“threats are always fallacious) or the one of the shifted-to dialogue (“some threats are *prima facie* legitimate”)? For Godden and Casey (2020), the answer

is clear: the principle of retrospective evaluation implies that we should follow the normativity of the original dialogue. Hence, threats are an instance of *ad baculum* fallacy.

But as I will argue, that principle doesn't apply in the same way in practical argumentation. That is, as long as the parties "use reasonable and legitimate means to reach a compromise that they will voluntarily subscribe to" (Van Laar and Krabbe 2019, p. 221), they could use *ad baculum* and other types of personal pressure in the negotiation phase of the dialogue. So, besides the cases when those means are *unreasonable* or *illegitimate* (like, for example, blackmail or bribery), in which other circumstance the shift to negotiation is illegitimate? As the following example illustrates, that case is the violation of the practical condition.

#### *Example 6: The Free Will Example*

*A professor and a student are discussing the issue of free will versus determinism in a philosophy seminar, and the professor says, "You had better stop advocating that argument against free will, or I'll give you a failing grade in this course!" (Walton 2009, p. 64)*

This is an example of an *ad baculum* argument that is an illicit move from the professor. But why is it illicit? Walton (2009, p. 65) see it as a problem of relevance: the move made by the professor is irrelevant regarding the discussion taking place. Therefore, the move is a fallacious *ad baculum*.

But from my perspective, the argument is irrelevant (and thus, fallacious) because it violates the practical condition. The first sentence of the example sets the tone: "A professor and a student are discussing the issue of free will versus determinism in a philosophy seminar". Whether a human being is free or determined by nature is a clear example of a *theoretical* rather than a *practical* issue. But then the professor shifts the dialogue to a negotiation ("if you do X, I will give you Y").

However, the move *in itself* is not abusive: professors have the right to give bad grades to their students if they don't perform well, so the problem is the illicit shift to negotiation rather than the argument used in the negotiation dialogue.

To prove it, I need to show that the same argument wouldn't be fallacious if the first argument had been practical rather than theoretical. To this avail, consider the following example:

#### *Example 7: The Free Will Example 2*

*A professor and a student are discussing what kind of arguments should be used against free will in a philosophy exam, and the professor says, "You had better stop advocating that argument against free will, or I'll give you a failing grade in this course!"*

This argument is almost the same as example 6, the only difference being that the parties are discussing what kind of argument “should” be used if one were to attack free will. Therefore, they disagree on a *practical* issue. The professor here also performs a shift to negotiation, but, in this case, since the original disagreement is practical, the shift is unproblematic.

## 7.2 Violations of the Sacrifice Condition

Parties violate the sacrifice when at least one of them disagrees with shifting the dialogue type to a negotiation dialogue. At least the following fallacies are related to this case:

### 7.2.1 Fallacy of Bargaining

The fallacy of bargaining (Walton & Krabbe 1995, p. 104) occurs when the parties substitute offers for arguments. The parties are conducting a persuasion dialogue, and one of them starts presenting offers without the express or tacit agreement of the counterpart to shift the dialogue type. Consider the following example:

#### *Example 8: lousy neighbour*

*On a Saturday morning, Peter wakes up to the sound of a drill coming from his neighbour Michael’s apartment. He rings the bell and says:*

- (1) Peter: Hi Michael, it is 8 A.M. You know you are not supposed to be making this kind of noise on a Saturday morning.*
- (2) Michael: Ok, it might be, but I must do it. I will give you 50 Euros if you stop complaining.*
- (3) Peter: You are unbelievable!*

In the example, the dialogue starts as a persuasion dialogue in (1), but Michael shifts it to a negotiation dialogue in (2). Peter is outraged by the move and rejects the shift. Notice that he doesn’t just reject the offer by asking for more money, but the shift itself. The move is fallacious because Peter rejects the shift, but it could be legitimate if Peter would answer with an argument “(3’) Peter: ok, but only this time”. Finally, from the start, the disagreement is practical, not theoretical, so the problem is that Peter doesn’t consent to make a sacrifice.

### 7.2.2 The Fallacy of Abandonment of Commitment/Discussion

The fallacy of abandonment of commitment/discussion “involves renegeing on one’s discursive commitments, particularly one’s obligation to defend one’s stated views” (Godden & Casey 2020). In other words, when parties argue, they are committed to defending certain beliefs. They can successfully defend them or be proven wrong and retract them, but they cannot just be left *hanging*. For Godden and Casey, when parties shift the dialogue type to

negotiation, they abandon their commitments without defending or retracting them and act as if the negotiation could serve that role. But, since negotiation is about preferences, not beliefs, a shift to negotiation entails an abandonment of commitment or discussion.

However, I think that they are mistaken. We need to remember that a persuasion dialogue might have many different outcomes. In a mixed dispute (where a party defends  $p$ , while the other defends  $q$ ), Van Laar and Krabbe (2018a, p. 334) recognise nine possible outcomes. The one that is interesting for this discussion is the following: “party A and party B (...) each maintain their standpoint and their critical stance towards the standpoint of the other and no progress is made towards resolution, except for possibly gaining a better understanding of the issue.” (2018a, p. 334).

This outcome implies that the parties are in a stalemate. What do Casey and Godden expect them to do in that case? I only see four options: keep arguing, use non-rational or irrational strategies, agree to disagree and look for other settlement methods (like negotiation):

First, the parties might try to keep arguing about their difference of opinion, but if “no progress is made towards resolution”, there’s no point in continuing. Maybe Casey and Godden think that there’s not such a thing as a stalemate situation: that all persuasion dialogues are destined to resolution over time. But they don’t support that conclusion, so we cannot assume it, and, also, it is counter-intuitive.

Secondly, the parties can use non-rational or irrational strategies like fallacies, manipulation or violence. However, ending the dialogue this way doesn’t resolve the issue peacefully and reasonably and shouldn’t be encouraged.

Thirdly, the parties can agree to disagree over the issue. They still believe that  $p$  is the case, but they recognise that they will not persuade the counterpart<sup>70</sup>. This option seems intuitive, and it is what parties usually do: if I cannot persuade you and you can’t persuade me either, we should agree to disagree and leave the matter behind. In practical disagreements, this option also implies that we need another settlement method: the parties can either *accept an action proposal* or *reject it*. If they just stop arguing, that should count as a rejection of the action proposal. In William James’s terms, practical disagreements are called “forced options” (James 1960). Then, they need to shift to negotiation, deliberation, tossing a coin or something else. Therefore,

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<sup>70</sup> Notice that “agree to disagree” is not the same as “suspending judgement”. When I suspend judgment, I recognize that, because of the arguments presented by the counterpart, I’m unable to tell whether  $p$  is the case. Suspending judgment should be considered a type of rational resolution (Feldman 2005), and for Walton and Krabbe (1995) it should imply a retraction of the commitment. But when I “agree to disagree” I still believe I have good reasons for  $p$ , but I’m just unable to persuade the counterpart.

the shift to negotiation can be seen as a possible response to an agreement to disagree. Only after the parties understand that persuasion dialogue is not helping they can implicitly or explicitly agree to disagree and shift the dialogue type to a negotiation.

Agreement to disagree can also be seen as a sacrifice. Both parties still think their action commitment is the best, but they don't think they can persuade the counterpart. Therefore, they sacrifice part of their goals: an imperfect agreement is better than no agreement.

The fallacy of abandonment of discussion will occur only if one of the parties is unwilling to sacrifice her goal. This fallacy can happen if, for instance, she still can think of good reasons to persuade the counterpart, but the counterpart wants to start the negotiation dialogue. If that is the case, the party that shifts to negotiation has abandoned her commitment to defending her standpoint against the arguments her counterpart might still have. If that is the case, the parties have not adequately closed their persuasion dialogue, so the fallacy is committed. This position is also Walton and Krabbe:

We are not implying that a movement away from persuasion dialogue is always fallacious. Sometimes it might be better to close off the persuasion dialogue and try to settle the matter by negotiation or some other means. The problem is that often the persuasion dialogue isn't closed off properly at all and the shift occurs without the parties being aware of it and agreeing to go along with it." (1995 p. 110).

### **7.3 Principle of Retrospective Evaluation Revisited.**

Ultimately, Godden and Casey's argument relies heavily on the principle of retrospective evaluation. Suppose this principle implies, as they claim, that the shifted-to dialogue must always follow the norms of reasonableness of the shifted-from dialogue. In that case, the restrictive policy for shifts to negotiation is a logical conclusion. Many of the moves that parties make when negotiating must be considered fallacious from the point of view of persuasion dialogue. So, is their interpretation of this principle accurate? Let's see.

The principle is extensively developed by Walton (1998) to tell licit from illicit shifts from one dialogue type to another. Still, there are two possible interpretations when applying it to the shift to negotiation. The first one (that Godden and Casey support) implies that we must always look back to evaluate the negotiation dialogue using the norms of persuasion dialogue. The second implies that we only need to look back when the shift is illicit because of deception or misunderstanding.

There is some evidence in Walton's text that seems to imply the first interpretation:

To judge whether a shift is licit or illicit in a particular case of argumentation, we first have to pin down the original context of



dialogue. Then we have to identify the new context, and decide whether the shift is licit or illicit by looking backwards and judging by the goals and standards of the original context (1998, p. 201).

And, elsewhere:

The basic principle in evaluating argumentation as reasoning used for a communicative purpose is to look backwards, were a dialectical shift has occurred, in order to judge the argumentation by the standards appropriate for the type of dialogue that the participants were supposed to be engaging in at the outset (1998, p. 214).

These quotes seem to support Godden and Casey's interpretation. When there's a dialectical shift between persuasion and negotiation dialogue, the moves of negotiation dialogue must be evaluated from the standpoint of persuasion dialogue. Therefore, at least some of the fallacies discussed before (middle ground, *ad consequentiam*, *ad baculum*, bargaining, abandonment of discussion) will occur when shifting to negotiation, so this shift must be considered illicit.

However, we need to provide some context to these quotes. Because in the same chapter, Walton argues:

Dialectical shifts tend to become a problem, from the point of view of the critical analysis of argumentation, when there is an illicit shift, especially one that involves a deception or misunderstanding, during an argument that goes from one type of dialogue to another. (1998, p. 205).

And, elsewhere

In evaluating a particular case, much depends on whether a dialectical shift is licit or illicit; that is, the retrospective evaluation depends on whether the shift is appropriate, whether it is properly agreed upon by the participants, and whether it is announced by the arguer in an appropriate way. (1998, p. 216).

According to these quotes, we arrive at a second interpretation: the principle of retrospective evaluation operates only when the participants' shift isn't agreed upon or is deceptive. I think we have good reasons to believe in the second interpretation. The main reason is that the first interpretation would imply that all dialectical shifts are illicit by default, as I will explain now.

As developed by Walton and Krabbe, the dialogue type theory establishes that the goals of diverse dialogue types are different. Then, for example, the main goal of persuasion dialogue is to resolve a conflict, the

main goal of negotiation dialogue is to make a deal, the main goal of an inquiry dialogue is to acquire knowledge, and so on (1995, p. 66). These goals are essential because they help us distinguish different dialogue types and because they “constitute a normative model of the type of dialogue in question” (1995, p. 66). The moves that help the parties reach their goal might be called licit, while the moves that obstruct such a goal are illicit or fallacious. So, for example, typically, *ad hominem* attacks are fallacious in the context of persuasion dialogues because they obstruct the resolution of the issue, but are perfectly valid in eristic dialogues.

Therefore, when the parties shift the dialogue type, they also change their goals and the norms associated with such goals. If the goals wouldn't change, then dialectical shifts wouldn't be possible since the goals are of the essence of the dialogue type. But when both parts are aware that the dialogue type (and the goals and norms) have changed, there's no reason to call that shift illicit. Moreover, since norms are associated with goals, then the shifted-to dialogue must follow the norms of the new and not the old dialogue type.

This situation is what happens in shifts to negotiation. Suppose the two conditions described in this chapter are met. In that case, the parties are aware that the primary goal of their dialogue has changed: they no longer seek to persuade the counterpart that *p* is the case, they give up part of their goal or they agree to consider other goals, so now they want to arrive at a deal. That deal is a perfectly adequate solution when persuasion dialogue arrives at a dead end.

## **8 Persuasion and negotiation: grasping the difference**

From the arguments developed above, we can conclude that the shift to negotiation is reasonable if the parties fulfil both conditions. Moreover, the step from one dialogue type to the other is rather small. But then: What is the difference between persuasion dialogue about a practical issue and negotiation dialogue? Let's re-consider example 1:

In that example, there is a persuasion phase and a negotiation phase. In the persuasion phase, party A argues that 18% of renewable energy sources is necessary. We can formulate Party A's position at this phase (T0) as follows:

*“Party A: We should establish an 18% of renewable energy sources because that is necessary to lower our carbon footprint”.*

Party B is unconvinced by this argument because she argues that the action proposal will hinder another goal (keeping the energy prices low). Her answer at T0 is:

*“Party B: No, that will raise the energy price too much; a 14% is good enough”.*

Since there isn't agreement, Party B shifts the dialogue to negotiation by presenting an offer at T1:

*"Party B: Ok, let's do something. Let's agree on a 16%."*

This last proposition can be seen both as an *offer* or an *argument*. As an offer, Party B says: "give me 2% less of what you think is fine, and I will give you 2% more of what I think is fine". But as an argument, she is saying:

*P1: In my opinion, 18% of renewable energies will raise the energy price too much.*

*P2: In your opinion, 14% of renewable energies is a good enough reduction of the carbon footprint.*

*P3: You are not convinced by my argument, and yours does not convince me.*

*P4: To make a compromise would be better than a no-deal scenario.*

*Conclusion: A 16% is a good enough compromise for both parties.*

In this example, P3 is a *social consideration*, that is, a premise that considers the issue at hand and what the other party thinks about it. But the conclusion is still trying to persuade the counterpart: it tries to persuade her that 16% is good enough, and the other party can be unconvinced and reject it. In this case, we can say that party A intends to do a *meta-persuasion*, that is, persuasion that takes, as a reason, not only the issue at stake but what the other party thinks about it.

If this is the case, the difference between practical argumentation and negotiation is not so sharp as some authors argue (Fisher et al. 1991; Walton 1989; Wells & Reed 2006) but is much more nuanced. As Sycara (1990, p. 204) points out, "persuasive argumentation lies at the heart of negotiation" because in negotiation, as in persuasion, the parties are trying to change how the counterpart thinks about specific issues. Or, as Provis (2004, p. 107) puts it, "argument and concession exchange seem to be closely interwoven, with no convincing theoretical reason to analyse them one way rather than another".

On this matter, I will say that the most relevant difference between the two processes is that while persuasion looks for reasons *within* the issue at hand, negotiation considers the social situation in the meta-persuasion process that I've just discussed. In other words, persuasion mainly uses *first order reasons* to argue why some action proposal is desirable; while negotiation uses *second order reasons* that argue why some action proposal is desirable given what the other party is willing to accept.

A way to put it is to think about persuasion and negotiation dialogue as a spectrum. We have theoretical disagreements that cannot be shifted to negotiation at one extreme since it would violate the practical condition. At the other extreme, we have "pure bargaining" situations that don't have much to do with persuasion (think about a monetary transaction). But in the middle,

we have practical argumentation and negotiation about joint actions, which can be shifted from one dialogue type to another.

And finally, in some cases, persuasion and negotiation dialogue become indistinguishable towards the centre of the spectrum. Consider the following example:

#### *Example 9. Party night*

*Andrew and Barbara disagree about what to do on a Friday night.*

*(1)A: Hey, I just remembered that tonight is Josh's party, we should go!*

*(2)B: I don't want to go, I'm too tired.*

*(3)A: But most of our friends are going to be there! It will be fun!*

*(4)B: I know, but I just want to sleep.*

*(5)A: Ok, let's do something, let's go to the party but return by midnight, that way we will see our friends, but you won't be so tired.*

*(6)B: ok, let's go.*

This example can be taken as a persuasion dialogue resolved through argumentation or negotiation dialogue. The problematic contribution is (5). Here, Andrew can be either presenting a new action proposal or an offer. In both cases, he presents a case that re-balances to the parties' goals so, is it an action proposal or an offer?

The only way to know will be to find out if Andrew is *persuaded* that going yet returning before midnight is a good option in itself (he realizes he is also tired), or he's not *persuaded* but understands that he needs to make a *sacrifice* (come home earlier than expected) because of the social situation. In the first case, we are still in the realm of persuasion dialogue, in the second case, there is a shift to negotiation. However, as I've argued before, the commitment model of argumentation rejects psychologism; we don't need to find out what is inside people's heads (which could be mysterious even for them), only what the parties are explicitly committed to defending. In such a sense, there's no way to know if this is practical argumentation or negotiation.

## **9 Closing remarks**

In this chapter, I have shown that shifts from persuasion to negotiation dialogue are a reasonable way to manage and eventually overcome disagreements, but only after the conditions for the shift are met. This *conditional policy* stands in a middle ground between the *permissive* and the *prohibitive policies*.

The *permissive* policy seems to be on the right path, but it can prompt illicit moves from the parties. The shift should fulfil the two conditions detailed in this chapter to avoid those illicit moves. On the other hand, the

*prohibitive policy* is counter-intuitive, leaves the parties with no way out in practical disagreements, and implies that no dialectical shift is ever licit.

In the chapter, I have shown, *first*: that shifts from persuasion to negotiation dialogue are reasonable but only under certain circumstances; *second*, that fallacies appear when those conditions are not fulfilled; *third*, that negotiation is part of practical argumentation, which can be explained by using dialogue profiles; *fourth*, that persuasion and negotiation dialogue are deeply intertwined and are sometimes indistinguishable.

There are still many issues unresolved: among others, I think that the normative problem remains the most important. Here, I've only dealt with the reasonableness of the shift to negotiation, not the reasonableness of moves in negotiation dialogue. Because: if persuasion and negotiation are so profoundly intertwined, do they have different normative rules or the same ones? And what about the rules that govern deliberation? What are they, and in which way are they different from negotiation? Those questions should be an object of future research.

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# Conclusion

## 1 What does this all mean?

This dissertation began with the question of the proper solution for a disagreement when people don't find the reasons given convincing, as in the example of anti-vaxxers. More precisely, I asked, "how can we overcome disagreements reasonably, especially when they are persistent?". I argued that more than an epistemic, sophistical, or consensual answer, a pluralistic argumentative answer was the solution. This solution argues that providing *arguments* is the most reasonable solution for these cases, but we shouldn't expect that consensus is the only possible or desirable outcome of argumentation. By ceasing to identify *argumentation* with *rational persuasion* or *consensus building*, we get a much more enriched, flexible and pluralistic idea of what argumentation is.

However, it could be argued that what is gained from that move is lost by moving away from a very clear and distinct normative model, such as the one proposed by Pragma-Dialectics. For example, in chapter 3, the idea of a *supernorm* is less specific than the *rules for critical discussion* that the supernorm is meant to replace in some settings; or in chapter 4, by taking negotiation as practical argumentation, we lose the orientation towards a consensus that should serve as a normative compass for arguing.

That might be true in a sense, but I see it as a necessary step to avoid the consequences of unresolved disagreements. The general orientation of this dissertation was not to look only for normatively ideal solutions but also for solutions that could be applied to the heated debates of our private and especially public lives. We need to remember, as a background, the phenomena identified as the *post-truth* world, the *age of misinformation*, and so on. A purely consensus-oriented idea of argumentation doesn't seem the best way to deal with them.

Regarding those debates, we always need to make concessions and sacrifices. In chapter 1, the concession implied making *epistemic sacrifices*; in chapter 2, it implied *accepting fallacies* presented when arguing as part of a normal argumentation process; in chapter 3, it meant accepting that sometimes we need *flexible norms* to evaluate arguments, and in chapter 4, it meant accepting that *making a sacrifice* is usually worthwhile in practical argumentation.

The main question of the thesis was broken down into the following smaller questions:

1. What is persistent disagreement?
2. How can argumentation help us overcome these disagreements?
3. What does the term "argumentation" mean?

4. What is a dialogue type, and what are the conditions for shifting from one dialogue type to another?
5. What is the normative model for sub-optimal settings?
6. What is the proper response to a fallacy?
7. What are the conditions for a reasonable shift from persuasion to negotiation dialogue?

Were these questions answered, and how? Let's see a summary of the chapter and its results to evaluate.

## 2 Summary and Results

*In Chapter 1*, I presented the concept of persistent disagreement and argued that more than *resolving* disagreements, we should try to *overcome them reasonably*. This implied using a pluralistic and dynamic approach to argumentation, where different dialogue types are presented as strategies for dealing with persistent disagreements. The following results can be obtained from this chapter:

- Result 1. For dealing with persistent disagreements, we need a conception of argumentation that doesn't identify it exclusively with rational persuasion but also looks at other strategies like deliberation, negotiation, or settlement to overcome these disagreements reasonably. This answers questions 1 and 2 posed above.
- Result 2. For choosing the right strategy for overcoming disagreements, parties need to balance their social and epistemic goals. To fulfil their social goal (agreement), they will generally need to sacrifice their epistemic (being right) goal partially.
- Result 3. Since all the processes of overcoming disagreements can be called "argumentation", the distinction between different dialogue types is not as sharp as sometimes presented. This helps us answer question 3, posed above.

*Chapter 2* asked how a reasonable arguer should respond to a fallacy. I considered that fallacies produce rhetorical and dialectical effects, so we need some heuristics to tell if the other party can compensate for those effects. I built the heuristic by considering the level of adversariality and the relevance of the epistemic goal given by the parties. I concluded by saying that we can better respond to fallacies with such a heuristic, which could help the parties overcome disagreements. The main result obtained from that chapter is the following:

- Result 4. We need a flexible approach for responding to fallacies that considers the parties' goals. This implies that different solutions might



be adequate in different cases, and some are more apt for overcoming disagreements than others. This helps us answer question 6, posed above.

*Chapter 3* asked about the normative standard that parties in a discussion in sub-optimal settings need to follow to arrive at a resolution. I defended the *supernormal policy*, which claims that we need a general and comprehensive norm, referred to as a *supernorm*, to evaluate these cases instead of the rules for critical discussion. This supernorm implies that the parties need to *restore* the setting to normal or *compensate* for its sub-optimality before resolving the disagreement. From this reflection, we arrived at the following results:

Result 5. Sub-optimal settings may hinder argumentation processes and an eventual resolution, and we need a comprehensive supernorm to deal with these cases. This supernorm helps us answer question 5, posed above.

Result 6. The supernorm requires that the parties *restore* the setting to normal or *compensate* for the sub-optimality of the setting when such restoration is not possible.

*Chapter 4* argued that the shift from persuasion to negotiation dialogue is a proper way to overcome disagreements, as long as the practical and the sacrifice conditions are met. The fulfilment of these conditions avoids the fallacies associated with the shift. Negotiation is a part of practical negotiation that arises when the parties assign different relative values to their goals and decide to make a sacrifice.

Result 7. Shifts from persuasion to negotiation dialogue are reasonable, but only as long as the *practical* and *sacrifice* conditions are met. The practical condition implies that the disagreement is practical rather than theoretical, and the sacrifice condition implies that the parties are willing to make an epistemic sacrifice. These conditions help us answer question 7, posed above, and partly question 4.

Result 8. Negotiation is a type of practical negotiation that uses meta-persuasion, and some cases of negotiation dialogue are indistinguishable from persuasion dialogue

### 3 Guidelines for Further Research

This thesis has left many questions unanswered that suggests new avenues for further research.

First, does an approach to disagreement like the one presented here even work? Can we find empirical evidence supporting this approach? For example, are shifts to negotiation more successful in dealing with disagreements than sticking to persuasion? Does the use of counter-fallacies

(in the circumstances indicated in chapter 2) improve the chances of resolving a disagreement?

An analysis of these questions could try to take many different argumentative processes and analyse whether they succeed in overcoming their disagreements and what methods they use to arrive at such a result.

Second, if dialogue types are so closely related and complicated to distinguish from one another, does it make sense to keep the distinction between them, as Walton and Krabbe (1995) have argued? Or maybe it doesn't make sense to argue that there are different ways of arguing through dialogue types, as Goodwin (2007) implies?

Regarding this question, I would, *a priori*, argue that keeping the distinction between different dialogue types serves a normative function. Still, it must not be over-interpreted: some interactions just cannot be captured appropriately by the dialogue type theory. It could be suggested that, at least in those cases, the normativity of the interaction must be evaluated by considering the specific goals that the parties have or create rather than a standardized set of goals. Some authors (Goodwin 2007; Aakhus 2003; Jackson 2015; Stevens 2019) go along those lines.

Third, also regarding dialogue types, is there a sort of normative primacy of one dialogue type over others? Authors like Walton (1998) argue that persuasion dialogue has that sort of priority, while others like Kock (2018) claim that, at least for practical argumentation, deliberation is the primary normative model.

In possible future research, I would argue that, once we distinguish between practical and theoretical argumentation, it can be maintained that persuasion dialogue has a normative primacy for theoretical dialogues, and deliberation dialogue has a priority for practical dialogues.

Fourth, and along the same lines, persuasion dialogue has been given lots of attention, and many attempts at establishing its normative models have been presented. This focus has resulted in the neglect of other dialogue types. So, can rules for other dialogue types can be found? Are there proper rules for negotiation dialogue, inquiry dialogue or eristic dialogues?

Initially, to answer that question, I would claim that, following Walton and Krabbe's (1995) idea that different dialogue types have different goals, it might be possible to postulate sets of rules that favour such goals in different circumstances. Such literature for negotiation could be systematized (for example, Fisher et al. 1991), but more work needs to be done on other dialogue types.

Fifth, on the same topic, is there some common *norm* for all dialogue types? Suppose they are taken to be separate entities with unrelated goals. In that case, it seems unlikely that we would find common norms besides basic norms of conversation (Grice 1975). Still, if we think of them as parts of the same process, oriented towards overcoming disagreements (as I argue in chapter 1), we might expect *a rule to rule them all*.

This thesis points to the possibility of a general normative treatment of all dialogue types aimed at overcoming disagreements. That normativity should be aligned with the goal of peacefully and reasonably finding solutions for our private and public disagreements. Those norms should be based on persuasion dialogue for theoretical disagreements and deliberation dialogue for practical disagreements.

Sixth, regarding dialectical shifts, what other conditions are necessary for the various shifts? The conditions are only fleshed out for shifts from persuasion to negotiation dialogue, but what about shifts from persuasion to deliberation dialogue or from negotiation to settlement dialogue? As chapter 4 suggests, can we also find fallacies when these conditions are unfulfilled?

My intuition is that what I have said for negotiation dialogue in chapter 4 also applies for other shifts, but to point out the exact conditions must be explicitly done for each case.

Seventh, regarding the supernormal policy, does it work in real-life scenarios? Does the normative orientation given allow us to *resolve* disagreements in a better way than a pragma-dialectical approach?

This question is similar to the first one in that an empirical approach to resolving it should be intended. At least the case studies that I presented seem to point in the direction of answering *yes* to this question, but we should analyse many more dialogues to arrive at a definitive answer.

And, finally, regarding shifts to negotiation: Does it make sense to imply that negotiation could be not only interest-driven? Or maybe I'm just confusing negotiation with deliberation dialogue?

To answer this, a clear understanding of what deliberation *is* seems necessary. This topic has not received enough attention in argumentation theory and is worthy of further investigation.

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## Summary

Disagreement is a philosophical problem, especially when it is persistent, that is, when there is no easy or obvious resolution available for the parties. The main question of this thesis is: “What can the parties do to overcome disagreements reasonably, especially when they are persistent?” I argue that the most reasonable way to deal with disagreement is by using *argumentation* and, specifically, a pluralistic approach to argumentation.

This pluralistic approach implies an expansion of traditional approaches to argumentation like *pragma-dialectics* or *informal logic*. According to this approach, rational persuasion cannot be the only goal of argumentation because it rarely succeeds, especially in the case of persistent disagreement. Therefore, a pluralistic approach to argumentation implies that: a) the parties might *overcome* their disagreements by reasonable means different from persuasion. Among these means we can consider deliberation, negotiation and settlement; b) if those means revolve around presenting *reasons*, they should be considered under the concept *argumentation*; c) sometimes *persuasion* is necessary, but even then, if the setting of the dialogue is *sub-optimal*, as in the persistent case, we need a general or nonspecific normative approach to evaluate the contributions of the parties; d) when *fallacies* are presented, the proper response to them will depend on certain circumstances of the dialogue, considering the goal of overcoming disagreements reasonably; e) For overcoming disagreements the parties may need to shift between different dialogue types, but those shifts have special conditions of their own.

The dissertation hopes to achieve the following objectives: a) to understand how disagreements, especially in the persistent case, can be overcome reasonably by the parties; b) to clarify what it means to “reasonably overcome disagreements; c) To develop a model of argumentation theory that accounts for the problem of disagreement; d) to understand the meaning of concepts like “argumentation”; “disagreement” or “fallacy” in the light of the problem of disagreement.



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