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# More about Fallacies as Derailments of Strategic Maneuvering: The Case of Tu Quoque

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Title: More about Fallacies as Derailments of Strategic Maneuvering: The Case of  
*Tu Quoque*  
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## 1. Remaining problems in the study of fallacies

Since Hamblin's (1970) devastating portrayal of the state of the art in the study of fallacies in the 1960s, several new theoretical approaches have been developed in which the fallacies are viewed as "wrong moves in argumentative discourse" rather than as "arguments that seem valid but are in fact not" (van Eemeren, 2001).<sup>1</sup> Although, in general, nowadays Hamblin's criticisms no longer apply, a fully satisfactory theory of the fallacies is in our view still lacking. For one thing, the intriguing problem of the remarkable persuasiveness of (a great many of) the fallacies, which in the traditional standard definition of a fallacy was referred to by the word "seem," has not been addressed.<sup>2</sup> More importantly, a systematic treatment is still lacking of the criteria needed to pin down manifestations of the various types of fallacies in everyday argumentative discourse. In this paper, we shall argue that a better idea can be gained of how a great many of the fallacies "work" by incorporating rhetorical considerations into a dialectical approach of the fallacies. This theoretical renewal will lead to a fuller understanding of the demarcation between argumentative moves that are sound and fallacious argumentative acting.

## 2. *Ad hoc* treatments and systematic treatments of the fallacies

A great many fallacy theorists tend to take the traditional list of fallacies as it is handed down by history and established in the literature as their point of departure. A major disadvantage of such a treatment of the fallacies is that it is in fact *ad hoc*.<sup>3</sup> In spite of Woods' (1992) protestations, rather than a systematic and theoretically motivated catalogue of the fallacies, the traditional list is a more or less arbitrary collection of the diverse kinds of argumentative moves that have earlier been recognized as fallacious.

A fundamental problem of giving each fallacy its own treatment is that not only the treatments may be at variance with each other,<sup>4</sup> but also the theoretical perspectives from which the treatments start. In our view, it is a crucial requirement of any theoretically adequate evaluation of argumentative discourse, whether it is given in terms of fallacies or not, that the norms that are applied in the evaluation have a common rationale that guarantees their pertinence and coherence. This rationale and the norms used in its implementation should reflect a clearly defined philosophical ideal of reasonableness and rationality.<sup>5</sup>

Another crucial requirement is that the norms that are used in the evaluation of argumentative discourse can be made instrumental by relying on specific and applicable criteria that make it possible to decide in specific instances of argumentative discourse whether a certain norm has been violated or not. Otherwise the outcomes of the evaluative judgments cannot be properly justified.<sup>6</sup>

In more systematic treatments of the fallacies, such as Hamblin's (1970) and Barth and Krabbe's 'formal dialectics' (1982),<sup>7</sup> and van Eemeren and Grootendorst's 'pragma-

dialectics' (1984, 1992a, 2003),<sup>8</sup> the requirements we just mentioned are, at least partly, taken into account. Instead of taking the traditional list of fallacies as their point of departure, these dialectical fallacy theorists start from a general critical rationalist perspective on argumentative discourse as a dialectical exchange of moves aimed at testing the acceptability of standpoints that serves as their rationale for designing particular theoretical systems or models of a sound critical discussion. Fallacies are then conceived as argumentative moves excluded by the rules of a particular dialectical system or as moves that violate the rules of the procedural model for conducting a critical discussion. In both cases, the reasons for finding fault with such moves are independent of the traditional listing of the fallacies and these reasons are closely related with the general goal that is attributed to the discourse.<sup>9</sup> In pragma-dialectics, this general goal is resolving a difference of opinion by testing the acceptability of the standpoints at issue.<sup>10</sup>

Although the systematic requirement has thus been fulfilled that the norms for evaluating argumentative discourse have a common rationale that guarantees their pertinence and coherence, in pragma-dialectics and other dialectical approaches some other desiderata have not yet been fulfilled: (1) adequate criteria for deciding in concrete cases univocally whether or not a certain rule has been violated are still lacking; (2) no explanation has been given for why a lot of fallacies can be so persuasive; (3) no clues have been given as to why fallacies do so easily go unnoticed.

An important reason why dialecticians have been so slow in developing the criteria that are needed to be able to check whether the rules are correctly applied in practice, is that so far they have almost exclusively concentrated on the critical objectives presupposed in their rules, without being interested in other kinds of purposes of the arguers. Paying attention to the reasons a party may have in ordinary discourse for not complying with the rules because of the pursuit of other purposes, which may be at odds with the aims of a critical discussion, may lead to an explanation of why a violation of a rule for critical discussion is sometimes inevitable. It is therefore imperative to know in each stage of a critical discussion what the other relevant purposes can be.

Deviations from the rules of critical discussion are often at the same time persuasive as well as hard to detect because normally the parties involved are very keen on maintaining the pretence of reasonableness and portraying themselves as living up to critical standards. It can therefore be expected that, in order to realize a purpose that is potentially at odds with the objective of a critical discussion rule, they will stick as much as possible to the means available for achieving the relevant critical objective and attempt to "stretch" the use of these means in such a way that the other purpose can be realized as well. This predicament makes it necessary for the analyst to know in advance as much as possible about the ways in which the means that can be used to achieve the specific objective of a certain stage in a critical discussion can be employed parasitically to realize purposes that may be at odds with this objective. Except for Walton (1992) and Walton and Krabbe (1995), the dialectical theorists have ignored the issue of multi-purposes and cross-purposes in real-life argumentative discourse.<sup>11</sup>

### 3. Including the rhetorical dimension in a dialectical treatment of the fallacies

In several recent papers about our pragma-dialectical approach to the fallacies we have taken due account of the persuasive aims of the arguers engaged in argumentative discourse (van Eemeren and Houtlosser, 2002a, 2002b). In this endeavor, we started from the assumption that persuasive aims need not necessarily be realized at the expense of achieving critical objectives. The arguers' attempts to have things their way can very well be

incorporated in their efforts to resolve a difference of opinion in accordance with the standards for critical discussion: while the arguers can be presumed to maintain these critical standards, they can, in our view, at the same time be presumed to be out for an optimal persuasive result. In their efforts to achieve this result, they may resort to what we have termed *strategic maneuvering* directed at simultaneously achieving critical and persuasive aims by diminishing the potential tension between them.

Of course, our view of strategic maneuvering, which is basically aimed at reconciling dialectical and rhetorical objectives, does by no means mean that we think that the two different objectives will in the end always be in perfect balance. On the one hand, arguers may neglect their persuasive interests for fear of being perceived as unreasonable; on the other hand, in their assiduity to win the other party over to their side, they may neglect their commitment to the critical ideal. If parties allow their commitment to a critical exchange of argumentative moves to be overruled by their aim of persuading the opponent, their strategic maneuvering violates a particular discussion rule and has got "derailed." Because this kind of maneuvering may victimize the other party, we are entitled to consider it fallacious.

Not in all cases the demarcation line between sound and fallacious strategic maneuvering is immediately clear. We have just given an account that explains why fallacies are usually not immediately *apparent* to everyone. In everyday argumentative discourse, arguers who maneuver strategically will normally uphold a commitment to the standards of critical reasonableness and their interlocutors will expect them to live up to such a commitment. Thus, an assumption of reasonableness is conferred on every discussion move (see also Jackson, 1995). Even when a particular way of maneuvering is fallacious because it violates a certain discussion rule, unless there are clear indications to the contrary, this assumption of reasonableness is still operative. Echoing the "standard" definition of a fallacy, we can then say that the maneuvering pretends to comply with the rules of critical discussion, but in fact does not.

#### 4. Fallacies and derailments of strategic maneuvering

Instead of beginning and ending with the traditional or any other list of fallacies, our approach takes as its starting point of analysis the various *types of strategic maneuvering*. An important advantage of this starting point is that it makes it possible to clarify the *relationship* between the fallacies and their "sound counterparts," and to explain the potentially *persuasive character* of the fallacies and the fact that they often go unnoticed.<sup>12</sup> We shall now focus on the ways in which our approach can be of help in developing criteria for *identifying* instances of fallacious argumentative acting.

In our view, each type of strategic maneuvering has, in a manner of speaking, its own "continuum" of sound and fallacious acting. Although fallacy judgments are in the end always contextually determined judgments regarding specific instances of situated argumentative acting, this does not mean that no clear criteria can be established in advance to determine whether a particular way of strategic maneuvering goes astray. Particular types or categories of strategic maneuvering can be identified. For each of these types, specific conditions can be determined that must be fulfilled if the maneuvering is to be sound. Certain manifestations of strategic maneuvering can then be recognized as legitimate while other manifestations can be pinned down as fallacious because the relevant conditions have not been met.

The criteria for determining fallacies can only be fully developed in a systematic way if first a well-considered classification is available of the diverse types of strategic maneuvering and a specification is given of their soundness conditions. Such a classification

of the types of strategic maneuvering should be based on a systematic specification of both the critical aims and the persuasive aims that the parties may be supposed to attempt to achieve at the various stages of an argumentative exchange. In our view, a good starting point for specifying these aims is provided by the pragma-dialectical model of a critical discussion. This model specifies the critical objectives of the parties in the four discussion stages. Each of these critical objectives has, as we have argued earlier, its complementary 'rhetorical' aim: in each discussion stage, the parties can attempt to achieve such complementary rhetorical aims to realize their own persuasive intents and may thus arrive at making a move that optimally furthers their own case. At all stages of the discussion, strategic maneuvering will be aimed at doing so in such a way that the critical objective of the stage concerned is not ignored – at least not openly. Therefore, the critical objectives of each particular discussion stage determine what the strategic maneuvering may be aimed at.<sup>13</sup> This fundamental insight makes it possible to identify for each stage the potential discrepancy between the dialectical and the rhetorical aims, the types of strategic maneuvering relevant for dissolving this discrepancy, and the soundness conditions of each type of strategic maneuvering that can be applied when accounting for the judgment that a certain type of strategic maneuvering has in a particular case got derailed and a particular type of fallacy has been committed.

##### 5. The *tu quoque* fallacy as a derailment of pointing out inconsistencies

As a case in point, we shall discuss the demarcation of non-fallacious and fallacious instances of a specific type of strategic maneuvering that takes place in the opening stage of a critical discussion. In this type of maneuvering a party attacks the other party by pointing out a logical or pragmatic inconsistency between a starting point proposed by the other party and a starting point this party assumed on a different occasion. Pointing out such an inconsistency can be a perfectly sound – and even very strong – strategic maneuver, but it can also derail and result in a *tu quoque* fallacy.

When we are talking about inconsistencies between starting points we may refer to two kinds of starting points. First, in a proper critical discussion there are always (explicit or implicit) *procedural* starting points. Second, there are also *material* starting points. Ideally, both kinds of starting points should be fully clear. This means that the parties involved in the dispute not only know *how* the discussion is going to be conducted but also *what* propositions they can safely bring to bear once the discussion has come off the ground. Besides agreeing on the discussion rules and the division of the burden of proof, the parties should in the opening stage of the discussion also reach an agreement on the propositions that may be used in the argumentation stage to defend and challenge the standpoints at issue.

In argumentative practice, there are certain institutional contexts, such as parliamentary debates, in which an agreement on particular procedural starting points is presupposed. It may be the case that even some material starting points are established beforehand. According to Dutch law the latter applies, for instance, to admissions made by the accused in the interrogation preceding the actual trial in a criminal case. Such admissions can be used in court to establish conclusions weighing against or in favor of the accused, as the case may be.

In non-institutionalized argumentative discourse there are usually no explicit agreements as to the facts that are pertinent to the points at issue. It would in fact not only be highly inefficient, but also superfluous, if each and every discussion had to begin by listing all the relevant propositions on which the parties agree. Generally, the parties use certain propositions as their starting points without asking for the other party's consent, but taking this consent, rightly or wrongly, for granted. All the same, there are a lot of cases in which it

is first negotiated whether or not particular propositions may serve as a common starting point. When such negotiations occur, they can be viewed as sub-discussions about the acceptability of a sub-standpoint that has emerged in the opening stage of the main discussion. Characteristic of such a sub-discussion is that – rather than leading to a conclusion as to whether or not the sub-standpoint is acceptable in its own right – it results in a conclusion as to whether or not the proposition can be used as a common starting point.

The dialectical profile of the initial exchange of moves in such negotiations is as follows. The protagonist, aiming at securing a basis for his defense, initiates the negotiation process by proposing to consider a specific proposition as a common starting point. He can, for instance, claim that the proposition concerned is a good point of departure for the discussion and invite the antagonist to accept it as a mutual starting point: "We simply have to start somewhere. If you would agree with me on this, it is not so difficult to see what should happen next." Alternatively, he can attribute the proposition boldly to the antagonist, as in "You do think that we need to get rid of this, don't you?" followed by "Well, why don't we just give it away then?" He can also try to elicit this proposition as a 'concession' from the antagonist. In all these cases, it is up to the antagonist to react. The antagonist may accept the protagonist's proposal, so that the negotiation comes to an end, but he can also reject the proposal. In the latter case, the antagonist may make either of two moves. He can deny the proposed proposition just like that the status of a common starting point: "I do not agree with that." He can also give reasons why the proposition should not be treated as a common starting point: "You cannot just assume that. It is not at all clear what will happen."<sup>14</sup>

Viewed dialectically, the antagonist is under no obligation to provide a reason for not admitting a proposition as a common starting point (see van Eemeren & Grootendorst, 2003, Ch. 6). Viewed rhetorically, however, it may be better if he does. After all, it is generally regarded of no use to start a discussion with people who refuse to commit themselves to any common starting point or, without giving any further explanation, to a specific starting point. Explaining why a certain proposition is denied the status of a common starting point can thus be regarded as a germane form of strategic maneuvering. This type of maneuvering is aimed at reconciling the rhetorical aim of admitting only starting points that are agreeable to the antagonist's own position and the dialectical objective of achieving sufficient common ground for a critical discussion. By refusing to accept a particular proposition as a starting point, the antagonist goes against the latter objective. He is therefore well advised to show that the refusal is not gratuitous, so that it is at least clear that the higher order condition for conducting a critical discussion has not been violated that participants should be prepared to attempt to find some common ground.

Giving reasons for a refusal to admit a proposition as a common starting point can be a perfectly sound way of strategic maneuvering, but it can also derail into a fallacy, e.g., the fallacy of *tu quoque*. In the *tu quoque* case, the reason-giving amounts to saying that the protagonist's proposal to treat a proposition as a starting point is not acceptable because the proposition is inconsistent with something the protagonist has said or implied (by what he said or did) on a different occasion.<sup>15</sup> If, for example, a protagonist proposes to start the discussion from the assumption that all promises should be kept at all times, the antagonist may point out that earlier on the protagonist advocated a less strict moral view or that he never keeps his own promises.<sup>16</sup> What soundness conditions make it possible to decide whether or not an antagonist maneuvers in an admissible way when refusing to admit a proposition as a starting point because of a proclaimed inconsistency between the proposed proposition and the protagonist's (verbal or non-verbal) behavior on a different occasion?

## 6. Soundness conditions for pointing out inconsistencies in the opening stage

The soundness of the strategic maneuvering hinges on three points: a point of definition, a matter of scope, and a quasi-empirical issue. The first point is one of a logico-pragmatic nature: how is inconsistency to be defined so that it is possible to determine whether two propositions are logically or pragmatically inconsistent? The second point is how an accusation by the antagonist that pertains to an inconsistency between the proposition that the protagonist presently proposes as a starting point and something the protagonist has earlier *done* can be incorporated. The third point is to find out what in practice is to be understood by "on a different occasion," so that it can be determined in a specific case whether viewed dialectically pointing at an inconsistency makes sense. We shall address these three issues.

An adequate argumentation theory should make clear how the parties engaged in an argumentative exchange can make use of logical and pragmatic insight to arrive at a common understanding of (undesired) inconsistency. Because logical as well as pragmatic insight may be derived from a variety of logical systems and theories of language use, it would be helpful if a coherent choice could be made that is based on a well-considered and mutually agreed upon philosophy of reasonableness and rationality. Such an opportunity is, for instance, offered by the pragma-dialectical theory of argumentation as it is externalized in the model for conducting a critical discussion. If the parties engaged in a critical discussion have come to an agreement about which logical and pragmatic views of inconsistency they will rely on, a decision about whether or not two propositions are actually logically or pragmatically inconsistent eventually depends on the result of the relevant 'intersubjective inference procedure' they need to go through (van Eemeren and Grootendorst, 2003, Ch. 6).

Strictly speaking, the question of how a person who has performed a certain action can be held committed to a certain proposition falls within the domain of action theory. The current state of affairs in action theory is such, however, that no decisive criteria are available for determining in all cases univocally whether or not a certain action implies a commitment to a particular proposition (see, e.g., Walton, 1998: 31). In an earlier paper (van Eemeren and Houtlosser, 2002b: 20) we have made a contribution to resolving this problem by making a distinction between *avowed* commitments and *contextual* commitments. Avowed commitments are propositional commitments that are explicitly assumed by the performance of speech acts of the assertive type and they resemble the commitments that Walton and Krabbe (1995) call "concessions." Contextual commitments are, in our conception, commitments that are assumed to be inherent in the discussion situation at hand. Obviously, the propositional commitments that might be implied by the protagonist's actions belong to the latter category. Because contextual commitments are open to rejection and can eventually only be of real consequence for the discussion if they stand up to an appropriate intersubjective identification procedure, having performed a certain action can commit a party to a certain proposition only if the parties engaged in the dialogue agree that the action implies, or can be "translated in," the proposition concerned. This may not seem to be very helpful, but it should be borne in mind that in practical discussion situations all kinds of agreements are presupposed that admit certain actions but prohibit others because they imply a particular propositional commitment that is at odds with an "external" agreement. Examples of such external agreements are legal (or semi-legal) contracts, legal (or semi-legal) procedures, and even engaging in particular institutional or semi-institutional practices (see, e.g., Walton, 1998: 285).<sup>17</sup>

The last issue we have left to address is what is to be understood by "on a different occasion." This issue seems empirical, but from a pragma-dialectical point of view it is not entirely so. In pragma-dialectics, "on a different occasion" is defined as meaning "in a

different critical discussion than the present one." Therefore, from a pragma-dialectical point of view, an inconsistency between something that is presently said and something that was said on a different occasion matters only if it involves an inconsistency in *one and the same critical discussion*. This point is particularly important when we are dealing with a proclaimed inconsistency between a party's starting points. The starting points that are assumed in a critical discussion are assumed *for the sake of having a constructive critical discussion in a specific argumentative situation* and this implies that the participants in such a discussion cannot automatically be held committed to having accepted these starting points in their own right and for their own sake. In a different critical discussion they are fully entitled to assume starting points that are precisely the opposite. The only thing they are not allowed to do is to accept *and* deny one and the same starting point in one and the same critical discussion.

This insight may seem hard to apply to a practical argumentative situation. A critical discussion in the pragma-dialectical sense is after all an idealization of a resolution-oriented argumentative exchange and not a real-life discussion. It is, however, precisely this discrepancy that makes it possible to resolve the problem of what is to be understood by "on a different occasion" in a primarily theoretical way, instead of purely empirically. Because real-life discussions never fully coincide with a critical discussion, an evaluation of a piece of actual argumentative discourse with the help of the model of critical discussion always requires a certain amount of methodical reconstruction which takes those and only those (explicit and implicit) elements of the discourse into account that can have a function in the process of resolving a difference of opinion. Such a reconstruction may assign contributions to the resolution process to one and the same critical discussion that are in practice temporally or locally distributed. If, for instance, a letter to the editor reacts to a newspaper article that was published a week earlier, the article and the letter will be reconstructed as two contributions to the same critical discussion. In some cases, pieces of argumentative discourse can only be properly understood if they are first reconstructed as one critical discussion. This implies that the answer to the question of what should count as "one and the same critical discussion" ultimately depends on whether it is theoretically as well as empirically *justified to reconstruct* particular pieces of argumentative discourse as being part of one and the same critical discussion. How can it be determined if such a reconstruction is justified?

We think that a reconstruction of two or more pieces of argumentative discourse as being part of one and the same critical discussion is justified if the following conditions are fulfilled:

- (1) All pieces of argumentative discourse are aimed at resolving the same difference of opinion;
- (2) All pieces of argumentative discourse have the same procedural starting points;
- (3) All pieces of argumentative discourse (except for those that are at issue) have the same material starting points;
- (4) The party whose proposal to use a certain proposition as a starting point was rejected in a certain piece of argumentative discourse has assumed the same position and the same discussion role in any of the preceding pieces of discourse under consideration.

The first condition excludes cases in which the issues that are discussed in the various pieces of argumentative discourse are not identical; the second condition excludes cases in which the same issue is discussed but different discussion rules are followed; the third



condition excludes cases in which there are also other starting points that differ than the starting point that is at issue; the fourth condition excludes cases in which the protagonist of the starting point at issue made this proposal while being in a different dialectical position or having a different discussion role (e.g., as protagonist and defender of the opposite standpoint).<sup>18</sup> When taken together, these conditions guarantee that the proclaimed inconsistency between a starting point that a protagonist presently proposes and a starting point that this party proposed on a different occasion is an inconsistency in the opening stage of one and the same critical discussion.

## 7. Conclusion

By developing a theoretical perspective on argumentative discourse that integrates rhetorical insight in a pragma-dialectical framework, we have shown how a systematic and general approach to the fallacies can be developed that explains their potential persuasiveness as well as why they go often unnoticed. We have argued that the pragma-dialectical model of a critical discussion can be a basis for designing a systematic classification of the various types of strategic maneuvering that enables us to develop more adequate criteria for distinguishing between sound and fallacious moves in argumentative discourse. As a case in point, we have shown how the soundness conditions can be identified of strategic maneuvering by means of pointing out inconsistencies in the other party's verbal and non-verbal behavior in the opening stage of a critical discussion, so that occurrences of the fallacy of *tu quoque* can be identified.

## Notes

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<sup>1</sup> Among the protagonists of these new approaches are Hamblin (1970), Woods and Walton (1989), Barth and Krabbe (1982), Finocchiaro (1981), van Eemeren and Grootendorst (1984, 1992a, 2003), Walton (1987, 1992, 1995), Johnson (2000), and Jacobs (2002).

<sup>2</sup> Since Hamblin issued the verdict that this feature brings an undesirable element of psychological subjectivity to the definition, fallacy theorists have not been concerned anymore with the question of why fallacies can be effective (Jackson, 1995). Among critical theorists, there was a broad consensus that it was desirable "to dispense with the use of vague and subjective concepts like *appearance* and *seemingly correct*" (van Eemeren and Grootendorst, 87: 189). Whether an argument was correct or fallacious "surely must not be held to be question of the honorable or deceitful intentions of the arguer. Here lies the route to an altogether unwelcome "psychologism" (Woods and Walton, 1989: 64).

<sup>3</sup> A different kind of disadvantage is that the use of the labels for the fallacies is in these treatments often not restricted to cases that are considered unacceptable and unreasonable but also includes acceptable and reasonable cases. An *argumentum ad hominem* can then be an *incorrect* argumentative move but also a *correct* move. Van Eemeren and Grootendorst (1992b) pointed out that it is confusing to maintain that "not all fallacies are fallacious" or that "fallacies are not always fallacious." We shall therefore reserve the names of the fallacies for the *fallacious* cases, but we add immediately that the use of the same label for both fallacious and non-fallacious moves may well be a sign that the authors who do so already

have a hunch of the kind of relationship between non-fallacious and fallacious moves we are about to discuss.

<sup>4</sup> The older publications of Woods and Walton, and some of Walton's later work, provide good illustrations of how a label-oriented approach can easily lead to entirely different theoretical treatments of each of the fallacies. See Woods and Walton (1989).

<sup>5</sup> If abusive personal attacks, for instance, are judged fallacious in a theoretically interesting way, reference should be made to a general idea of reasonableness that implies certain standards for pursuing a particular goal with which abusive personal attacks are at odds.

<sup>6</sup> These requirements suggest that a theory of fallacies can be lacking in various ways. It may, for instance, provide a number of specific norms but no general rationale to back them up; but also mention only exceptions to the norms instead of providing criteria for applying these norms.

<sup>7</sup> See also Barth and Martens (1977).

<sup>8</sup> If the fallacies are viewed from a more general philosophical perspective, some studies of communicative acting by Habermas (1984) and Schreier et al. (e.g., 1995) can be added to this list.

<sup>9</sup> By relating their judgments concerning fallaciousness to an independent account of the sound counterpart of fallacies, dialectical theories explain why a fallacious argument is fallacious. Why exactly a sound argument that complies with the rules is sound, is to be explained independently.

<sup>10</sup> It could just be a coincidence that a great many of the moves that, according to the theory are condemnable – or non-moves – from the perspective of problem-solving capacity turn also out to be fallacies in the traditional sense, but it is, of course, very likely that in developing the traditional views the lack of problem-solving capacity of certain types of moves played a role.

<sup>11</sup> Walton's (1992) notion of a 'dialectical shift,' as developed further in Walton and Krabbe (1995) comes, although it is conceptually not very clear, closest to a tool for taking such complications into account.

<sup>12</sup> As Hamblin (1970: 138-140, 158) informs us, scholars like Peter Ramus (*Dialectique*, 1555) and, in his wake, Fraunce (*Lawiers Logike*, 1588) still saw fallacies as the 'captious' counterparts of sound argument forms known as – dialectical and rhetorical – topics, while scholars like Wallis (*The Insitutio Logicae*, 1688) and Aldrich (*Artis Logicae Compendium*, 1691) dropped the connection between fallacies and topics.

<sup>13</sup> It stands to reason that to provide a more refined inventory of the types of strategic maneuvering pertinent to the various stages, these stage-related 'local' aims need to be further specified.

<sup>14</sup> It may make a difference for the negotiations about the starting points which type of dispute initiated the main discussion. When two consecutive attempts are made to resolve two non-mixed discussions ensuing from a mixed dispute, for instance, a particular proposition cannot be at the same time accepted as a common starting point in the first discussion and not in the

second discussion. In the case of a non-mixed discussion ensuing from a non-mixed dispute, no such restrictions apply.

<sup>15</sup> A rhetorical technique that comes close to this type of maneuvering is described in classical rhetoric as the *ab adversariorum*-technique of *anticategoria* ('counter charge,' 'accusing in turn,' Latin: *accusatio adversa, translatio in adversarium, incidens quaestio*, meaning 'a retort in which one turns the very accusation made by one's adversary back against him'). Lausberg (1998: section 197) describes the objective of *anticategoria* as compromising the prosecutor, in this way proving his lack of jurisdiction. *Anticategoria* is divided into two *genera*. In reply to the prosecutor's accusation, the defendant charges the prosecutor with having committed (1) the same particular crime, or (2) another crime; the other crime is in different ways related to the crime of which the defendant is accused. In the second case, the relationship can be one of similarity [with any other crime], one of causality [*remotio*, as in "Befehl ist Befehl"] or one between the crime and the act of prosecution itself [as in a *dépit amoureux*]. In today's law courts, the admissibility of this type of technique is not undisputed. In its decision of 3 February 1999, the Trial Chamber [of the International Criminal Tribunal for the former Yugoslavia], for instance, ruled that "the principle of *tu quoque* does not apply to international humanitarian law since that body of law creates obligations *erga omnes (contractantes)* and not obligations based on reciprocity." The Chamber found, however, that "evidence of events beyond the main geographical focus of the indictment may be admissible insofar as it is not repetitious and is duly circumscribed and intended to rebut the allegations, explain the behaviour of the accused or provide information concerning the organisation and activities of the armies involved." The Chamber added that "before adducing such evidence, the defence should state its purpose" (<http://www.un.org/icty/rappannu-e/1999/index.htm>).

<sup>16</sup> In pragma-dialectics, *tu quoque* is primarily discussed as a violation of a rule for the confrontation stage of a critical discussion, but in the pragma-dialectical conception of *tu quoque* this fallacy can, unlike the other variants of the *argumentum ad hominem*, also be committed in a later stage of the discussion (van Eemeren & Grootendorst 2003, Ch. 6). Then, the *tu quoque* is not aimed at preventing the other party from maintaining a certain standpoint, but from founding the case for a certain standpoint on a particular starting point.

<sup>17</sup> Maxims such as "Practice what you preach" may, when turned around to mean that one should not say things that are at odds with what one practices, even be regarded to point at the existence of a general agreement that carrying out actions precludes having commitments that are inconsistent with these actions.

<sup>18</sup> In the classification of types of outcome of an argumentative dialogue proposed by Barth and Martens (1977), our conditions apply to a thesis T being *tenable ex concessis against opponent O* because it can be successfully defended against this opponent on the basis of a set of concessions C. Barth and Martens also distinguish outcomes less dependent on the opponents and their concessions: (1) a thesis *tenable ex concessis* ("follows logically from a set of concessions C") because it can be successfully defended against any opponent O on the basis of a set of concessions C, and (2) a thesis *tenable* ("logically true") because it can be successfully defended against any opponent O on the basis of any set of concessions.

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