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SUBJECTIVITY AND GOVERNANCE IN PROCEDURAL THEORIES OF ARGUMENT

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Abstract:

In this essay I want to extend the brief discussion of "higher-order" conditions presented in *Reconstructing Argumentative Discourse* (Van Eemeren, Grootendorst, Jackson, and Jacobs, 1993). After a brief discussion of the scope and function of higher-order conditions, I will examine the modes of subjectivity entailed in their description of the ideal arguer. I will then move to a discussion of the relationship between governance and rationality underwriting their description of the socio-political environment conducive to critical discussion. I will conclude the essay with remarks on the role of procedural theories of argumentation in a deliberative conception of democracy.

I

Disagreement is an enduring feature of a democratic society and an interminable element of its political institutions. There is no set of moral, religious, political and philosophical commitments that all, or even most, persons hold. Society is, instead, constituted by a plurality of conflicting and perhaps irreconcilable doctrines. Moreover, there is no universal standard by which to rule some of these doctrines as false or unreasonable. Thus, our public lives are marked by the "conflict over the terms defining our practical and passionate relations to one another and over all the resources and assumptions that may influence these terms" (Unger, 1987, 10).

Given the "fact" of democratic pluralism, it is difficult, if not impossible, to judge the veracity of claims on substantive grounds. That is, there is no neutral way to determine if one set of "good reasons" is preferable to another. Any judgment based on the merits of the case will imply an endorsement of the values and ideological commitments implied in the advocate's position. While this is may not be a problem in our political lives it does present a challenge to a theory of argumentation. A theory of argument should be able to set out objective standards for judging argumentative practice. A theory of argumentation committed to the principles of democratic pluralism while rejecting epistemological and moral relativism must be founded on a set of principles that warrant the assent of any reasonable person independently of his or her moral, religious, political, and philosophical commitments. Hence, a fundamental challenge for a theory of argument is to discover or invent a set of normative principles to evaluate argumentation while respecting the fact that people will contest the norms of political and social conduct.

Procedural theories of argument locate these normative principles in the "rightness" of the procedures regulating critical discussion. The "procedural goal-oriented standards for the conduct of discussion" constitute the standard of reasonableness that guide the description, reconstruction and evaluation of argumentative practice (van Eemeren et. al., 1993). This "dialectical" perspective differs from "logical" perspectives that locate normative standards in the form of argument. It also differs from "rhetorical" perspectives that view the "good reasons" put

forth by advocates as constitutive of a community's practices and traditions. (Wenzel, 1990).

The "rightness" of procedures cannot be derived from an anthropological description of the methods people use to pursue and settle disputes. While anthropological studies of disputes have much to teach about how we engage in arguments, procedural theories of argument are not concerned with how we merely settle our differences but in discovering and inventing procedures that "enable discussants to really resolve disputes on the merits" of the argumentation put forth by the parties themselves (Van Eemeren et. al., 1993).

Procedures are assigned a special moral status. Following the procedure itself is a good that is morally compelling above and beyond the consequences of its use. This does not imply that the effects of the procedures are irrelevant. Rather, the normative force of procedures does not come from their effects but from the fact that they reflect basic moral duties and capacities that parties are to respect and perform.

The moral status and regulatory force of the procedures governing argumentation must be agreed upon by all parties. If they are not we risk replicating the coercion of imposing a single conception of the good upon persons separated by real differences of thought and belief. Consensus over the reasonableness of procedures is derived from the presuppositions embedded in communication oriented to reaching understanding and resolving differences of opinion. Pragma-dialectical theories of argument operationalize the grounds of this consensus in terms of problem-solving and intersubjective validity. Problem-solving validity refers to the efficacy of the procedure to resolve disagreements while avoiding obstacles and false resolutions (van Eemeren et. al., 1993). Intersubjective validity concerns the "conformity between the procedures components and the values, standards, and objectives actual arguers find acceptable" (14).

By grounding the validity of procedural designs in their ability to generate authentic resolutions and their conformity to the values and standards embedded in practices of actual audiences pragma-dialectical theories can provide critical normative grounds for critiquing argumentative practices that avoid the problems of objectivism and relativism. A procedural theory of argument is not objectivist because its procedures are founded in argumentative practice. It is not relativistic because it does not simply ground reasonableness in the patterns of behavior a particular community uses to settle disputes. The reasonableness of procedural designs is based on the practices that a "rational" person employs when he or she is "truly" oriented to understanding and resolving a difference of opinion. A procedural theory of argument, thus, allows for the background assumptions, decision-making practices and prejudices of a particular community to be the object of scrutiny.

Procedural models of argument set out the rules and conditions of critical discussion in terms of a code of conduct that stipulates legitimate argumentative roles and moves. This code of conduct regulates: (1) Who can speak; procedural models posit the competencies and dispositions that participants have to possess in order to be recognized as rationally and seriously participating in critical discussion. (2) How participants should phrase their utterances at different stages of argumentation; procedural models set out the distribution of speech acts that persons must use in order to be heard as complying with the rules of critical discussion. And, (3) What forms of discourse are established as authentic, irrational, taboo and true; procedural models stipulate the argumentation schemes that will be heard as valid and the argumentative status of expressions of personal feelings and intuitions. Codes of conduct, especially as expressed by pragma-dialectical theories, are prohibitive in character. They are more precise in setting out which speech acts are unsuitable to resolution than what speech acts constitute "good" arguments. For instance, strategies that end discussion without mutual consent and any statement of commitments that are based in the advocates personal stake in the outcome of the dispute are prohibited in a normative model of critical discussion.

Political and legal theorists cite three distinct advantages of procedural models of dispute resolution. First, procedures are an effective means of obtaining just decisions. The norms underwriting a procedural theory of argument include: (a) An openness to the views of all persons possibly affected by the results of a substantive decision; (b) A focus on factual information subjected to expert and critical scrutiny; And (c) A rigorous process of public debate where all of the possible pros and cons of substantive decisions are thoroughly discussed. Second, shared procedures are the means by which an interconnected institutional system works most effectively. Shared procedures define the particular roles of institutions and their relations to each other. They also set up a mechanism of checks and balances for systemic self-correction. Third, shared procedures preserve faith in the competence of political institutions. A decision reached in accordance with duly established procedures is granted some degree of legitimacy in spite of whether it is correct or not. One may contest the prudence or popular support of a substantive decision. However, if the decision was the result of the use of duly established procedures it is binding until and unless those procedures are revised.

It seems that a procedural theory of argument offers a satisfactory answer to the demands of democratic pluralism, for both making legitimate political decisions and constructing a critical normative standard to judge argumentative practice. However, proceduralism is not without its detractors. The dichotomy presupposed in these theories between procedure and substance is viewed with suspicion. Rules and principles, it is argued, can not in themselves generate critically-rational argumentative discussions (Wenzel, 1990). Procedural theories of argument assume that arguers can and will bring the appropriate knowledge and attitudes to the table with them. Moreover, procedural theories assume the existence of socio-political conditions conducive to resolving disputes through critical discussion. Without an account of the arguer and the environment necessary for resolution a procedural theory of argument remains incomplete. In response, pragma-dialectical theory posits the necessity of a set of "higher-order" conditions which set out the psychological makeup of the arguer and the socio-political conditions necessary for conducting critical discussion.

I am particularly interested in the model arguer set out in these higher-order conditions. What are the moral and intellectual comportment's attributed to the person engaging in argumentation? How do individuals acquire the psychological capacities and dispositions required of them to be considered rational discussants? These are difficult questions that cannot be fully answered in this short essay. To begin focusing my reflection, I review a particular objection to the conception of the arguer set out in procedural theories of argument—namely that this conception of the arguer is underwritten by an untenable model of the person. I then briefly work through some ways that this objection can be answered by invoking a particular reading of the second-order conditions presupposed in critical discussion—namely that procedures constitute the substantive identity of the arguer and that this "autonomous self" is not too thin to engage in critical discussion. I think working through this objection and one possible answer gives some insight to the power and limits of the discussion of higher-order conditions in van Eemeren, Grootendorst, Jackson, and Jacobs (1993).

II

One objection to procedural theories of argument is that they rest on an untenable conception of the person. The thrust of this objection is that proceduralism is based on a "thin" notion of the self, a self that is not constituted by her or his engagement in communities of meaning but only by her or his ability to engage in argumentation. This "thin" conception of the self does not adequately describe the motivations, values, and commitments persons bring with them into argumentation. This conception of the self is too empty and abstract to provide adequate

grounds for a normative model.

This objection begins by pointing out that if a procedural model of argumentation is committed to remain neutral towards competing conceptions of the good, it must require that participants in critical discussions set aside their private identity and adopt an idealized identity for the sake of critical discussion. As Robert Maier (1995) claims, this move is suspicious because by describing the arguer as having to strip away her or his motives, attitudes, social position and affective investments, procedural theories resolve the problem of difference by stipulation rather than explanation and argument. Needless to say, this constitutes somewhat of a performative contradiction.

This idealized identity fits with what Michael Sandel (1984) has called the "unencumbered self." The "unencumbered self" refers to an image of the person that is independent of and prior to purposes and ends. This is a self that has no communal ties and no commitments to a conception of the good. This image of the self is rooted in the Enlightenment promise of a sovereign human subject free from the dictates of nature, society, and God. As participants in a pure procedural scheme of argumentation, "we are free to construct principles of justice unconstrained by an order of value antecedently given" (Sandel, 1984, 87). Thus, as long as our conceptions of the good and the policies they authorize do not unjustly limit the freedom of others, they are afforded legitimacy simply by virtue of having been chosen through the process of argumentation.

As attractive as this promise seems it is an unrealistic image of the person. The person that I am cannot be separated from the values that I hold. The unencumbered self is without character and moral depth. The idealized self underwriting procedural theories of argument is denied the

possibility of membership in any community where the self itself could be at stake. Such a community—call it constitutive as against merely cooperative—would engage the identity as well as the interests of the participants, and so implicate its members in a citizenship more thoroughgoing than the unencumbered self can know (Sandel, 1984, 87).

Procedural theories, according to Sandel, in their attempt to construct neutral models of dispute resolution may have thrown out the baby with the bathwater. While grounding their normative standards on an image of a person who can bracket out her or his private interests and fully commit to the demands of a procedure designed to fairly resolve differences of opinion, procedural theories have stipulated an image of the person who may not possess thick enough commitments and loyalties to have a standpoint she or he would want to defend in argumentation.

If this objection is sustained, the moral status of procedures cannot be derived independently of the substantive values that constitute the identities of those engaging in argumentation. The procedure/substance dichotomy is deconstructed and the hope of finding a set of normative principles for evaluating argumentative practice that does not rest upon a prior commitment to a conception of the good is unwarranted. A theory of argument would have to limit its scope to the community's whose values it took into account as the foundation for its normative principles. As Richard Rorty (1989) has observed a theory of argument founded in the practices and values of a particular community would have to content itself with being frankly ethnocentric.

An answer to this objection consists of two responses. First we can begin by granting that procedure and substance cannot be radically separated. Rather, procedures are constitutive of substantive commitments and vice versa. Critics of proceduralism make the mistake of thinking that our commitments and loyalties—which make us full persons—are derived independently of the methods of deliberating and choosing together what

conceptions of the good should prevail for the moment. The second part of our answer points to the fact that this objection does not take into account the commitments, attitudes, and dispositions of the arguer described in procedural theories. That is, the persona of the arguer described in procedural theories is not "unencumbered" and "thin" but to the contrary is "situated" and "thick."

No procedural design will work if the parties do not have a discussion-minded attitude. Persons engaged in argumentation must be willing and able to "express their opinions, listen to the opinions of others, and to change their own opinions when these fail to survive critical examination" (van Eemeren, et. al., 1993). Van Eemeren, et. al. (1993) describe the motivations, competencies, and intentions constituting this discussion-minded attitude as second-order conditions of critical discussion. Second-order conditions refer to the presupposition of a rational arguer and audience who

appeal to reasoning and evidence acceptable to themselves and to the other party, adjusting to their interlocutor's frame of reference and establishing a common ground or identification of interests from which they might reason together or otherwise transcend their divisions. They would be expected to conduct themselves in ways that maintain a mutual openness to criticism and to the demand for justification. (142)

If interlocutors fail to satisfy these conditions they can be held accountable for not doing so and sanctioned for failing to "live up to standards of rational conduct" (143).

Procedural theories do not simply assume that arguers possess the ability and desire to conduct themselves in a rational manner, they contend that the experience of participating in critical discussion may produce individuals with more critical-rational and democratic dispositions—individuals who are more tolerant, better able to examine their preferences, more willing to take the claims of others seriously, and more prepared to submit their judgments to the test of critical scrutiny. Mark Warren (1992) has referred to the claim that participation in deliberation produces selves who are more developed, autonomous and self-governing and thus are better able to meet the demands of deliberation as the self-transformation thesis. One implication of the self-transformation thesis, that is especially relevant to answering the charge that procedural theories rest upon an unencumbered self, is that the interests and capacities that define the self are not wholly determined prior to participating in deliberation. As Bowles and Gintis (1986) put it the interests and preferences defining the person "are as much formed as revealed in the exercise of choice. Individuals choose in order to become, and the nature of opportunities given for the expression of choice affects the formation of the will" (138). The self is in large part formed in and through argumentation. The formation of self-identity is, therefore, dependent on the discursive organization of political institutions and the constraints and possibilities of dissent those structures allow (this is where third-order conditions would come into play). Claims that procedural models strip the self of any substance miss this point.

Participation in argumentation has a unique capacity to foster and develop an autonomous self. Autonomy describes a critical faculty of judgment: individuals are autonomous inasmuch as their preferences, goals and life projects are the result of critical reflection and searching dialogue and debate rather than manipulation, brainwashing, an unreflective acceptance of traditional social roles, and blind obedience to tradition. Autonomy does not imply that our preferences and goals should not be taken from our traditions and social roles but that that these sources of self-identity should be chosen as the result of the free exercise of practical reason. In its thicker sense autonomy involves the selections of ends following a process of reflection, deliberation, scrutiny and consideration. Autonomy includes the ability to detach oneself from one's circumstances while realizing that

one is fully constituted by those circumstances.

The dispositions and abilities of the autonomous self include courage, loyalty, independence, tolerance, a strong work ethic, adaptability, respect, the ability to make critical evaluations, the willingness to listen to other points of view, and the ability express dissent in a civil manner. Put in terms of argumentative competencies and dispositions the autonomous self is expected to "reason validly, to take into account multiple lines of argument, to integrate coordinate sets of arguments, and to balance competing directions of argumentation" (van Eemeren, et. al., 1993, 32). Moreover, arguers ought to be disinterested in the outcome of discussion. That is, they must be willing to risk having to abandon their beliefs if they cannot defend them in argumentation.

Critics like Sandel (1984) and Maier (1995) mistakenly see procedural theories as only endorsing a thin sense of autonomy. They fail to understand that autonomy can also entail a set of commitments that are as substantive as any of our other communal identities. Perhaps the "thickest" of our identities is our membership in a community of religious faith; at least it is the favorite example of communitarians like Sandel. If we can show that the motivations and dispositions entailed in autonomy are as thick of a set of commitments as religious belief, we could safely assume that the argumentative self is sufficiently situated to engage in robust deliberations designed to resolve differences of opinion. The importance of autonomy in constituting religious identities is easy to see if we consider the progressive movement in the Catholic church. Progressives hold that Catholicism should engage the modern world and appropriate the values and beliefs of that world if they are demonstrated to be morally sound and intellectually valid. Progressive Catholics, therefore, usually, though not always, support married priests, female priests, the democratization of church authority, the downgrading of papal authority, greater tolerance for theological dissent, a repeal of the ban of contraceptives, and a flexible moral code in reference to abortion and homosexuality. I think the reason that progressive Catholics support these policies is because they use the norms of democracy, tolerance, and a willingness to test ideas in debate and discussion entailed by autonomy to judge the practices and doctrines of the church. In short, progressive Catholics fully integrate the characteristics of autonomy with their religious faith and they expect the church to do the same. It seems, at least in this case, that autonomy is every bit as influential as faith in constructing self-identity. Thus, it seems reasonable to conclude that autonomy is itself a constitutive end through which we can build a fully situated and communal identity.

If we interpret the attitudes and dispositions of the arguer, described in the second-order conditions posited by van Eemeren, et. al., as constituting the normative ideal of autonomy and contend that autonomy is not only a precondition for but an effect of engaging in argument, we can use these second-order conditions as a strategy for answering the charge that procedural theories rest on an untenable conception of the person. However, I do think Maier (1995) has a point when he claims that pragma-dialecticians tend to answer objections by stipulation rather than argument. The existence of a psychologically mature and critically-rational arguer and a socio-political environment free of massive social constraints is presupposed rather than accounted for. Yet, autonomy is not a natural attribute but an "inherently social capacity that individuals develop through their interactions with others, by coming to know others as both separate human beings with their own unique capacities, problems and interests and as beings with whom one shares at least some experiences, problems and interests" (Warren, 1992, 12). Autonomy is a normative ideal that should not be merely stipulated as a second-order logical presupposition or empirical precondition of argumentation. Autonomy is a higher-order condition of argumentation but it is not a characteristic of an uncaused, unencumbered self. Rather autonomy is a social accomplishment; an accomplishment that is the product of a great deal of discipline and governance, an accomplishment that is amenable to empirical description.

In his critical survey of the development of psychology, Nikolas Rose (1996) argues that "to live as an autonomous individual, you must learn new techniques for understanding and practicing upon yourself. Freedom, that is to say, is enacted only at the price of relying on experts of the soul" (17). Argumentation theorists, inasmuch as we teach people how to live as autonomous individuals by engaging in critical discussions, surely are one set of experts of the soul. The practical task of argumentation theory is to "transform individual arguers into ideal critical discussants by equipping them with skills and encouraging attitudes required for ideal participation" (van Eemeren, et. al., 1993, 178). Argumentation theory, then, is not just a body of thought but a model for a certain form of life, a mode of acting in the world. That is, argumentation theory is a form of cultural policy and political education that both presupposes the existence of and provides the disciplinary techniques for producing self-reflective, critically-minded citizens capable of both cooperation and dissent. This is nothing to be ashamed of. But it does present a challenge to critically describe the production of those norms governing the production of the arguer as an autonomous agent rather than stipulating her or his existence. The *figure* of the arguer plays a major part in procedural theories of argument. Yet, there is little focus on the concrete *persona* of the arguer inculcated in and through argumentative practice. Surely a plausible account of the arguer requires that we pay attention to how the specific capacities and attributes possessed by arguers are formed and acquired in the course of their participation in critical discussion.

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