

Comments on Diego Castro's "Critical Discussion in Sub-Optimal Settings"

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1. INTRODUCTION

Critical discussions do not always occur in ideal circumstances. These less-than-ideal conditions for arguing may be considered "sub-optimal settings": "settings that are unfavourable for a reasonable exchange of reasons"(126). That we can still argue—and even argue *well*—in such adverse circumstances raises the question of what effect they should have on our discursive norms. This is the question that Diego Castro seeks to answer in his (2019) paper "Critical discussion in sub-optimal settings."

Roughly, Castro's answer, as I understand it, is this: discursive norms should only have force to the extent that preconditions for an ideal discussion are satisfied. More specifically, Castro argues for something he calls the *partiality policy*:

When parties try to persuade in sub-optimal settings, the rules for critical discussion should be enforced only as long as their corresponding higher-order conditions have been met. (136)

Put differently, the contrapositive of this policy prescribes: discursive norms may be selectively suspended or disregarded if any higher-order (pre)conditions specifically corresponding to that norm are not met.

This brief commentary considers the kinds of higher-order conditions pertaining to critical discussions in order to clarify the kinds of problems that can arise when they are not met, summarizes the case Castro makes in support of the partiality policy, and finally offers a few critical observations and constructive suggestions for developing this important line of research.

2. CONDITIONS FOR A CRITICAL DISCUSSION

The rules for a critical discussion set forth an ideal discussion procedure in the form of a code of conduct for reasonable discussants who seek to resolve a disagreement on the basis of the transaction of reasons in critical argumentation (van Eemeren and Grootendorst 1984, 2004; van

Eemeren, Grootendorst, Jackson, and Jacobs 1993). Roughly, this code of conduct takes the form of a set of procedural rules for reasonable discussants, specifying the permissible, prohibited, and obligatory moves available to discussants at various stages of argument. Collectively these rules constitute “a set of ‘first-order’ conditions for the rational resolution of disagreements” (1993: 31).

The first-order conditions, if satisfiable, provide certain guarantees against things that could go wrong in the search for a resolution to a disagreement. For example, the first-order conditions assure that both parties to a dispute will have unlimited opportunity to cast doubt on standpoints and that both parties to a dispute will be obliged to respond to such doubts. (1993: 31-32)

These first-order conditions both constitute, and regulate, a critical discussion, the ideal model of argumentative discourse as set forth by Pragma-Dialectics.

In addition to these first-order conditions, it is assumed that certain higher-order conditions also hold (1993: 32f.; 2004: 36-37). As such,

the reasonableness of an argumentative ... discussion depends not only on the degree to which the procedural rules for a critical discussion are observed, but also on the satisfaction of certain preconditions regarding the participants' states of mind and the political, social, and cultural reality in which their discussion takes place. (2004: 8 emphasis added)

Second-order conditions pertain to the attitudes and intentions (1993: 31) of discussants, such that they are disposed to commit to the idealized norms of a critical discussion as a dispute resolution mechanism. For instance, disputants must be willing to hear each other out without interruption:

in order to act in accordance with the first-order rule that stipulates that parties may not prevent each other from advancing standpoints or expressing doubts ... [critical discussants] must satisfy the second-order condition that they are prepared to give their opinion and listen to the opinion of the other. (2004: 37)

Third-order conditions, by contrast, pertain to external circumstances of the dialogue, that “[enable discussants] to claim the rights and responsibilities associated with the argumentative roles defined by the model” (1993: 33).

For conducting a critical discussion, the circumstances must be such that individual freedom, the right to a free exchange of information and to voice criticism, non-violence, and intellectual pluralism are guaranteed. (2004: 37)

By attending to these conditions, Frans van Eemeren and Rob Grootendorst write, reasonableness acquires a social meaning in addition to its intellectual meaning (ibid.).

Circumstances where some or all of these higher-order conditions are not met Castro calls *sub-optimal settings*: “settings that are unfavourable for a reasonable exchange of reasons” (125).

3. THE ARGUMENT FOR PARTIALITY

The Pragma-Dialectical model of the critical discussion is an *ideal* model of argumentative discourse which *assumes* that the higher-order conditions just discussed also hold (1993: 32f.; 2004: 36-37). While a commitment to the ends of a critical discussion can dispose discussants to adopt, institute, and practice these higher-order conditions, the rules for a critical discussion are neither designed nor intended to establish or maintain them.

Castro’s argument begins with the observation that these higher-order conditions do not always obtain, giving rise to “sub-optimal” conditions for critical discussions.

3.1 Partiality and its alternatives

The idea that there can be sub-optimal conditions for critical discussions raises the question of what effect these adverse conditions should have on the procedural norms of reasonableness built into the ideal model of a critical discussion. Castro considers three policy alternatives.

At one extreme is the *anything goes* policy [AGP]:

When parties try to persuade in sub-optimal settings, the rules for critical discussion don’t play any role in evaluating reasonability. (131)

Basically, the idea is this: “since the conditions for a reasonable exchange of reasons are not given [i.e., are not satisfied by the sub-optimal condition], the discussion is outside the domain of reason, therefore, *anything goes* for the parties” (126). If higher-order conditions are *prerequisites* or “enabling conditions” for a critical discussion, then “absent the conditions, there is not a critical

discussion,” (132). Worries about this approach include that “even in a sub-optimal setting, we can recognize moves that are fallacious,” and “in a way, every persuasive dialogue is sub-optimal, so the RCD [rules for a critical discussion] would never be binding” (132).

At the other extreme is the *business as usual* [BAUP] policy:

Even when parties try to persuade each other in sub-optimal settings, the rules for critical discussion are the right model for evaluating reasonability. (133)

Here, the basic idea is that “since normative goals are always ideal, then it doesn’t matter at all if the setting is sub-optimal or not since, [in] either case, the rules for reasonableness should not apply in the same way” (126). As Castro notes (133-4; citing 1993: 34), something like the BAUP is the “orthodox” answer to the problem of sub-optimality within Pragma-Dialectics.

Seemingly, understanding AGP as claiming that, in sub-optimal settings, *no* RCD apply, while, according to BAU *all* RCD apply even in sub-optimal settings, Castro proposes the *partiality policy* [PP] as a mean between these two extremes. According to PP: “*only some* norms of reasonableness still apply in these settings” (126, emphasis added).

When parties try to persuade in sub-optimal settings, the rules for a critical discussion should be enforced only so long as their higher-order conditions have been met. (136)

Partiality is only offered as a policy in cases where there are sufficient normative preconditions to make some semblance of critical argumentation possible, and yet there is enough degradation of those pre-conditions that achieving the norm of reasonableness is significantly impeded. (Insignificant variations in the normative preconditions are not to have any effect on the application of the RCD.)

Following this general statement of the partiality policy, Castro proceeds (137f.) to map some standardly articulated preconditions (as given in Zenker 2007) onto an equally standard list of the RCD. The details of this mapping are presented without argument, and a suggestion for developing the paper is that the rationale informing the mapping might be given. This brief commentary will engage with the policy only in principle, rather than in the details.

4. RESTORING OPTIMALITY IN SUB-OPTIMAL CONDITIONS

It should be granted that the norms regulating an activity should only apply in the event that the conditions—including normative conditions—constitutive of that activity are satisfied. For instance, only

contestants in a race are eligible to finish and to place, whether well or poorly. Runners who happen to cross the finish line of a marathon are not properly—i.e., *logically*—subject to penalty or disqualification on the grounds that they missed a check-in point or went off course, if they are not entrants (i.e., contestants) in the race. Nor can they properly be praised for finishing well. Only critical discussants are properly subject to the norms of critical discussions.

4.1 Redesigning rules

While a set of rules might be constitutive of an activity type, and thereby regulative over it, individual rules are also typically related—whether instrumentally or intrinsically—to the ends of activities of that type. In the case of the RCD, the end is “the rational resolution of disagreements” (1993: 31). And, if it is determined that those ends are not, or are only unreliably, achieved by acting according to the prescribed rules, then the rules ought to be revisited and revised accordingly—at least insofar as one wants to attain and uphold the goals or values of the activity.

Yet, the same reasons that occasion revisiting and revising those rules—namely that they are somehow involved in achieving the ends of the activity—mean that they should not be disregarded just because conditions are adverse to their being fulfilled. And, this has important consequences for how sub-optimality of preconditions for a rule-governed activity should properly be understood, explained, and responded to.

Consider the “rules of the road”—like the laws set out in Highway Traffic Acts. Those rules are intended, and hopefully designed, to promote the safety of road users as an end. Moreover, they often presuppose optimal preconditions. For example, rules specifying speed limits and safe following distances presuppose ideal driving conditions: clear visibility without glare, and clear, dry roads.

How should we respond when those conditions are not met? Well, consider what constitutes safe driving in settings that are unfavourable to driving. The roads are icy, so stopping distance is increased. The visibility is poor, so there is less time to react to hazards. Sub-optimal driving conditions do not mean that we should suspend or disregard the rules for safe driving. Quite the opposite! Instead, driving in sub-optimal conditions requires that we should be even more vigilant about our safety. If one is “driving beyond one’s headlights,” such that it takes longer to stop than the point at which things become illuminated (i.e., visible) before us, then the reason “Well, I wasn’t speeding” should not count as a reasonable excuse from responsibility for colliding with a stationary obstacle in the roadway. Rather than disregarding rules such as speed limits and following distances, we should instead *modify the*

rule such that it still serves its end even in sub-optimal conditions. We should decrease our speed and increase our following distance. How do we know to modify the rule *this* way, rather than *that*? Because we understand the *reason* for the rule—i.e., the way that it connects to the end that it upholds.

Consider another kind of case: Suppose that the power fails, such that the traffic lights at an intersection are out or malfunctioning. Clearly, this is a case where the *stop-go* rule—“red means stop, green means go”—*cannot* be followed. The lights are not operating. As such, *it* should not be followed. But, and despite the behavior of some drivers, this does not mean that the intersection thereby becomes *unregulated*—at least not if we want our roads to remain safe. Responding to this sub-optimal circumstance by selectively suspending or disregarding some rules of the road, namely the stop-go rule, seems to miss the point.

Rather, what is additionally needed is something like an *accommodation rule*: a subsidiary rule that comes into effect when the primary rule cannot properly be applied, and which maintains the proper relation between the rule and the end that the rule upholds. In this case, when traffic lights are malfunctioning, the *stop-go* rule is *replaced* with the *four-way-yield* rule: treat any uncontrolled intersection as a four-way-stop, yielding to drivers already in the intersection and to drivers on your right when arriving simultaneously. (This is not to say that there are not other rules that might equally accommodate this sub-optimal circumstance.)

So, technically speaking, I do not disagree with Castro’s partiality policy. If conditions are such that a rule cannot properly be applied, it must be set aside. E.g., It would be a mistake to cite a driver for failing to stop *for a red light* when the traffic lights have malfunctioned. Yet, it would also be a mistake *not* to cite them *for failing to stop* (at the uncontrolled intersection). *To merely suspend or disregard an initial rule, without modifying it or applying an accommodation rule, is to disregard the end that the rule is designed to uphold.* And this, it seems to me, is to miss the more important type of response necessary in sub-optimal discursive conditions—namely, understanding the reasons for our rules, and the ends that they uphold or the goods that they embody, and then finding some other way to uphold those ends or deliver those goods.

A constructive suggestion, then, is to augment the partiality policy with provisions for *rule redesign* (*rule modification* and the adoption of *accommodation rules*) such that then ends upheld by our rules and the goods embodied by them remain achievable even in sub-optimal circumstances. These goals and goods are, after all, the reasons we have the rules at all—i.e., values to which our rules are oriented.

4.2 (Re)designing rule environments

Attending to the ends of our rules makes visible features of their origin that can further help further inform a response to sub-optimal rule conditions. The RCD are not a set of rules cast in stone that we are handed from some external authority.¹ Rather, the rules are *artefactual* in nature—they are codifications of a practice that *we* engage in. As such, *we*, the discussants, are not only responsible for adhering to the RCD; we are also responsible for designing and implementing them. Similarly, the *circumstances* in which those practices have their place, and in which the rules governing those practices have effect, are also significantly *artefactual*. We do not merely *find ourselves* in rule-governed spaces; rather our rule environments are also *designed*. We design and build the system of roads on which we drive, and the system of traffic lights regulating the safe flow of traffic on those roads.

The higher-order conditions for reasonable argumentative discussions are similarly artefactual. Second-order conditions to reasonable augmentation are typically entirely under our control, even if only indirectly. E.g., it is entirely *up to us* whether we approach an argumentative exchange with an open mind, or whether we argue in an emotional or adversarial manner rather than in a congenial and collaborative one. Generally, *we*—collectively—can also significantly affect the obtaining of third-order conditions. E.g., when developing a policy, consulting and instituting agencies can design the circumstances of public consultation, by expanding or limiting the opportunity of the public to contribute to those discussions by setting the location, time, and duration of the public consultations.

As such, when we find ourselves in sub-optimal rule circumstances, rather than suspend or disregard a rule, another response that recommends itself is to *re-design the rule environment* so as to facilitate the applicability of the rule.

Consider that, in order to judge, adopt, reason with / about, or deliberate from / upon, a claim, one must first understand it. Yet, in a deliberative body like the United Nations, the discussants might not share a common language. Does this mean that the rules permitting the participation of discussants who do not share a common language should be suspended or disregarded? No. Quite the opposite. Instead, what we ought to do is re-design the circumstances so as to maximize

¹ If this is how we conceive of the rules, then from whence comes our obligation follow the rules? The source of *that* obligation cannot come from the rules themselves. Rather, our obligation to abide by, and comport ourselves according to, the rules comes from our commitment to the ends that they uphold or the goods that they embody.

the understanding of the discussants. In the U.N. this is accomplished by incorporating a bureaucracy of translators, such that each discussant may optimally participate in the discussion.

Another constructive suggestion, then, is, rather than suspend or disregard rules in sub-optimal conditions, we ought instead to *re-design our rule environments* such that enabling preconditions for the rule are satisfied and the rule itself can be enacted. As with *rule redesign*, this approach preserves, rather than abandons, our commitment to the values expressed in our practices.

4.3 A worry about partiality

A general worry with Castro's focus on the problem of sub-optimality in discursive circumstances is that it encourages us to do what, in our worst moments, we are already inclined to do—namely, to not hold ourselves and each other accountable to norms when it is not convenient or in our own (apparent) self-interest to do so.

Consider, for example, Castro's "Spokesperson" example, where a government spokesperson, having been given instructions to avoid mentioning a policy, P, that the government wants to enforce, responds to a direct question from the media about whether the government is considering enforcing policy P by saying: "The government is really worried about that situation, and we are considering many solutions to it, [policies] Q and R among them" (138). This answer clearly violates the Gricean (1975) maxims of quantity and possibly quality. It misleads by implicature, and it is *intended* to do so. Moreover, the government has *designed* the circumstances for its spokesperson, by giving them the instruction to avoid mentioning policy P, such that, under the partiality policy, they may putatively be excused for not doing what they are otherwise obliged to do—namely answer the question honestly, directly, and clearly.

This type of subversive behavior, it might be added, happens predictably and strategically. E.g., by procedurally controlling a deliberative or investigative committee, a governing party will terminate discussion on a matter that brings it under unwanted critical scrutiny or public accountability.

When it is noticed that we can *subvert* normative practices that we would rather not have to engage in (i.e., rules that we would rather not have to abide by), say because they allocate to us responsibilities that we would rather not have (in this case, having to answer to, and account for, our decisions of policy), merely by designing the conditions in which some discourse rule will have effect such that the circumstance is not conducive to the rule's applicability, the partiality policy can be seen to enable and incentivize (extra-discursive) tactics that can be

employed to avoid rational accountability and the other ends, goods, and values embodied in the practice of reasonable argumentation.

Yet, just as we can, and predictably do, subvert a normative practice (e.g., when abiding by it appears not to be to our advantage) by affecting its necessary preconditions, we can also nurture, cultivate, and institute those same preconditions. And doing so expresses our commitment to the values, ends, and goods of that practice.

Our commitment to the ends and goods of our rule-governed practices is measured, in part, by our commitment to establishing and maintaining the required preconditions for that practice. This point deserves emphasis: as van Eemeren and Grootendorst have stated: “*the reasonableness of an argumentative ... discussion depends ... on the satisfaction of certain preconditions*” (2004: 8 emphasis added). Thus, when we fail to cultivate and institute the necessary (pre)conditions for reasonable argumentative discussions, we thereby express our disvalue of reasonableness itself. Our commitment to the value of reasonableness is no greater than our commitment to instituting the conditions that make reasonableness possible.

The rules constituting, codifying, and regulating *our* practices are just that: they articulate of *our* ways of doing. By identifying only as rule-subjects or rule-followers, rather than as rule-makers and rule-enablers, we distance ourselves from ownership of, and responsibility for, those rules and the goals, goods, and values they effect.

5. CONCLUSION: RECONCEIVING PRECONDITIONS FOR REASONABLE ARGUMENTATION

A functioning participatory democracy depends upon the participation of its citizens, e.g., by voting. Yet, prospective voters might not be able to engage in this democratic process if the activity of voting is somehow inaccessible to them, e.g., because of circumstances of time, location, or ability. Should we respond by to these sub-optimal circumstances merely by selectively suspending or disregarding the rules? No; for to do so is to abandon our commitment to the ends, goods, and values embodied in our democratic practices. And, more proximately, it is to *deny* a citizen their right to engage in an activity fundamental to democracy. That is, it is to cause a *harm* to the rule-subject who is circumstantially disenfranchised from their access to the rule-governed activity and its attendant ends and goods.

A final constructive suggestion, then, is to re-conceive of higher-order conditions and sub-optimality when theorizing about them. Rather than view higher-order conditions as preconditions for rules, perhaps they might better be conceived of as enabling conditions for participation in an activity whose ends and goods we value. Sub-

optimality, then, does not indicate the inapplicability of a rule, but the circumstantial, or possibly systemic, disenfranchisement of a rule-subject from the goods afforded by (their participation in) the rule system.

When viewed in this way, the goal in responding to sub-optimality should be to restore, insofar as is possible, conditions of optimality. Put differently, the goal in responding to sub-optimality should be to afford maximal accommodation to those who are dialectically disenfranchised by the sub-optimal circumstances. Restoring optimality can be achieved in a variety of different ways, e.g., through *rule redesign* or the *redesign of our rule environments* (Godden 2016). When we fail to make such accommodations, we show our lack of commitment not only to the values embodied in our practice but also to our fellow practitioners.

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