

Critical discussion for sub-optimal settings

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This paper aims at answering the following question: when some of the higher order conditions for a critical discussion are not met, should we adopt a policy of applying the rules for critical discussion?

I will defend a moderate answer in between two extreme ones. The first extreme position is "anything goes policy", which implies that the rules do not apply in these cases. The second position is "business as usual policy", implying that the rules apply anyway. The moderate solution implies that only some rules apply, which will be determined by the specific conditions that are not met.

KEYWORDS: critical discussion, fallacies, rules for critical discussion, sub-optimal settings.

1. INTRODUCTION

Sometimes, the parties of a dialogue want to persuade each other even when the conditions for a reasonable dialogue are not met. Consider the following examples:

- (1) Maria tries to persuade her daughter Laura that her boyfriend is not a good match for her.
- (2) Martin is trying to persuade his friend Ronald, bound to conspiracy theories and pseudo-science, that global warming is real.
- (3) A left-wing politician is trying to convince a right-wing politician that raising taxes for rich people would be a good idea.
- (4) Fred has only one minute to convince an investor to put money in his idea.

I will call these circumstances sub-optimal settings, and they can be defined as settings that are unfavourable for a reasonable exchange of reasons. The main question of this paper is, then, the following: when

the parties in a sub-optimal setting exchange reasons aiming at persuasion, what norms of reasonableness should we apply to evaluate them?

I will claim that there are two extremes and a middle ground position regarding this question. The first option, that I will call “anything goes policy” considers that, since the conditions for a reasonable exchange of reasons are not given, the discussion is outside the domain of reason, therefore, anything goes for the parties. The second option, namely “business as usual policy”, implies that, since normative goals are always ideal, then it doesn’t matter at all if the setting is sub-optimal or not since, either case, the rules for reasonableness should apply in the same way. The middle ground solution that I would like to defend is the “partiality policy”, which implies that only some norms of reasonableness still apply in these settings.

This matter will be considered from the standpoint of pragma-dialectics. 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 and argumentative exchanges. If the proposed position holds, then it could provide an interesting field of exploration for pragma-dialectics, enabling us to expand its use to less than ideal situations that are commonplace in social and political life.

2. BASIC CONCEPTS

It is necessary, first, to clarify some concepts.

2.1 Persuasion dialogue

As Walton and Krabbe (1995) have established, there are many dialogue types, and persuasion dialogue is just one of them. Then, besides persuasion dialogue, we will find negotiation, eristic, deliberative, information seeking and inquiry dialogues, plus other dialogue types that are a mix between them. Then, persuasion dialogue will only occur if the parties disagree and not in other cases like, for instance, the need to know the correct solution for an open problem, where deliberation dialogue is more suited.

There are two dimensions pertaining to persuasion dialogues: a descriptive and a normative one. The descriptive dimension requires us to identify a certain type of dialogue among others and show its main features. The normative perspective requires that we provide certain rules that allow us to evaluate persuasion dialogues and prescribe how they should be conducted in the future. Walton and Krabbe use the term *persuasion dialogue* in both senses. When they analyse persuasion

dialogue in a descriptive way they show the main features of such a dialogue, *i.e.*: the initial situation is disagreement, the main goal is to resolve the disagreement, and each of the participant's 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 formalize and evaluate persuasion dialogues.

When I say "persuasion dialogue" I'm only referring to the first dimension: it is a type of dialogue in which the parties disagree and whose disagreement they try to overcome by means of persuasion. Only if we allow this minimal definition of persuasion dialogue, we can consider that such a dialogue can be conducted under a sub-optimal setting. The parties can have, then, other goals in mind but, if persuasion is the main one, we would still call it persuasion dialogue.

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).

Consequently, in a critical discussion the parties begin with a difference of opinion regarding certain 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 that process is conducted in a reasonable manner, the parties would then arrive at a resolution (van Eemeren, et al., 2014, p. 528).

Critical discussion has also a descriptive and a normative dimension. Therefore, it identifies a kind of dialectical interaction, but also the norms to conduct it properly. In this paper, I'm only considering the normative side. Then, if we consider that a *persuasion dialogue* is a dialogue in which the parties try to persuade each other in order to reach an agreement, *critical discussion* is the normative model that will provide us with rules to reach an agreement reasonably.

According to the pragma-dialectical school, to conduct a critical discussion in a reasonable manner the parties need to comply with the rules that authorize the performance of certain speech acts in the four stages of the process (confrontation, opening, argumentative and closing stage). These standards are known as *rules for critical discussion* (RCD) (van Eemeren, et al., 2014, p. 528).

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 (van Eemeren & Grootendorst, 2004, pp. 190-196). By “RCD” I will understand, in this paper, the list of ten commandments.

2.3 Fallacies

Along with the establishment of do’s and don’ts for a critical discussion, the RCD serve as well to reinterpret and unify the classical fallacies inherited from the Aristotelian tradition. Accordingly, fallacies can be 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, fallacies are a wrong move since they “obstruct or hinder the resolution of a difference of opinion on the merits” (van Eemeren, et al., 2014, p. 545). That is, it is not possible to arrive at the resolution of a difference of opinion based on fallacies since the resolution will not arise from the merits of the arguments.

Consequently, most of the fallacies inherited from the tradition can be reconstructed as violations of one or more of the rules (van Eemeren, et al., 2014). For instance, if a party uses force to deny her counterpart from presenting or defending a standpoint, she will not only be committing a classical *ad baculum* fallacy but also violating the *freedom rule*, that implies that “discussants may not prevent each other from advancing standpoints or from calling standpoints into question” (van Eemeren, et al., 2014, p. 542).

In conclusion, critical discussion is a normative model which enables the parties to arrive at a resolution of a difference of opinion in a reasonable manner. The model is regulated by the RCD, whose observance ensure that the parties arrive at a resolution on the merits, and whose inobservance will impede or, at least, hinder them from doing so. Fallacies are violations of the RCD, so the parties need to avoid using them if they want to resolve their difference of opinion.

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 F. H., Grootendorst, Jackson, & Jacobs, 1993, p. 26). Nevertheless, 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, that are necessary for the system to lead to resolution, have been called “higher-order conditions”, and occur at two different levels: second and third order, considering that the RCD are the first order conditions for the resolution of a disagreement.

Second order conditions refer to an “idealized set of attitudes and intentions” (p. 31) of the parties which implies that they “wish to resolve, and not merely to settle, the disagreement” (p. 31). Naturally, if the parties instead of resolving the disagreement, just want to score points or damage the adversary, a reasonable resolution is not possible. But sometimes the problem is not that they are unwilling but, rather, 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”¹ (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 have inner 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” (p. 33). Therefore, in order to put forward standpoints and criticize them, 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 coerced in many ways: in a certain context there might be taboo topics, unfair time constraints, authority relationships or dogmatic issues, among others.

The pragma-dialectic literature has not yet recollected a clear and comprehensive list of higher order conditions. However, taking them from different sources, Zenker (2007, p. 12) has elaborated the following list:

Examples of 2nd order conditions:

1. The participants must accept that their points of view can prove to be wrong (Feteris, 2000, p. 118).
2. They must be prepared to admit that the points of view of others can be justified when they are successfully defended according to mutually shared starting points and evaluation procedures (Feteris, 2000, p. 118).
3. A person who has advanced a standpoint must be willing to provide arguments for that standpoint (van Eemeren & Grootendorst, 2004, p. 192) and to listen to the opinion of the other (van Eemeren & Grootendorst, 2004, p. 37).

4. Willingness to risk or lose face (Hitchcock, 2003).
5. Participant must not lack self-confidence (Hitchcock, 2003).
6. Absence of emotional restraint and personal pressure (van Eemeren & Grootendorst, 2004, p. 189).
7. Disinterestedness in the outcome of the discussion (van Eemeren F. H., Grootendorst, Jackson, & Jacobs, 1993, p. 32).
8. Ability to reason validly and to “handle” sophisticated and multiple lines of argument (van Eemeren F. H., Grootendorst, Jackson, & Jacobs, 1993, p. 32).

Examples of 3rd order conditions

1. The discussion situation must be such that the participants are not only willing, but also, free to put forward and defend a point of view of their own choice, and to cast doubt on a point of view of others with whom they disagree (Feteris 2000, p.118; similar van Eemeren and Grootendorst 2004, p.37).
2. Absence of authority relations among the discussants. (Hitchcock, 2003)
3. Equal time-constraints for all participants. (Hitchcock, 2003)
4. Disagreement space may not be limited. (Hitchcock, 2003)

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 in which one or more higher order conditions have not been substantially met.

A sub-optimal setting is an in-between case since a persuasion dialogue in such setting can only occur if the higher-order conditions are not met to a substantial extent. For if, for instance, the parties are not willing to argue at all, we wouldn't be in presence of a persuasion dialogue in the first place. And if the conditions are only slightly not met, then the setting of the dialogue will not be sub-optimal. Only when parties do try to persuade each other but the setting is not optimal, we will be in presence of this case. In what follows, when I say: “the higher-order conditions have not been met”, I will be referring to the case when one or more of them have not been substantially met, but not to the case when they have not been totally (not a persuasion dialogue) or slightly (not a sub-optimal setting) met.

Considering the examples presented in section 1 and the list of higher order conditions given, we can say that in the example (1) the parties lack, at least, 2nd order conditions N°s 6 and 7; in example (2) one of the parties lacks 2nd order condition N° 2; in example (3) they might lack 2nd order conditions N°s 3 and 7; while in example (4) there is a lack of 3rd order condition N°s 2 and 3. Thus, we can safely call all of those settings sub-optimal.

Now, if we consider that the RCD are related to the fallacy theory, we will see that if we say that in a sub-optimal setting the higher-order conditions are not met, then is it just fair to ask ourselves if in these cases the RCD are still be binding. Therefore, we could re-phrase the research question of this paper in the following terms: when trying to persuade, are the parties allowed to violate the rules for critical discussion if one or more of the higher order conditions for critical discussion are not substantially met? In what follows, three solutions to this problem will be developed.

3. FIRST SOLUTION: ANYTHING GOES POLICY

The “anything goes policy” (AGP) can be characterized as follows: When parties try to persuade in sub-optimal settings, the rules for critical discussion don’t play any role in evaluating reasonability.

The main reason to support AGP is the consideration 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. Zenker characterizes (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 rules governing sub-optimal settings or (2) we need another, maybe more general model, to understand why a fallacy is a forbidden move. If that is the case, pragma-dialectics has nothing to say to us in a sub-optimal setting.

Along the same line, we could look at the definition of the term “condition”. The Merriam-Webster dictionary provides the following definitions:

1. A premise upon which the fulfillment of an agreement depends.
2. Something essential to the appearance or occurrence of something else.
3. A restricting or modifying factor.
4. A state of being.

The first definition needs a previous agreement or contract between the parties which is not always the case for critical discussion. The third is related to qualification, as when we say: “this bicycle is in good condition”. The fourth relates with a state of being, as when we say “the human condition”; therefore, only the second definition seems to apply. According to the same dictionary, a synonym of this meaning would be “prerequisite”. But if the higher-order conditions are a prerequisite for the existence of critical discussion as a whole, then the consequence is quite clear: absent the conditions there is not a critical discussion. As Aakhus (2003) puts it:

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?

While appealing, AGP seems wrong for two main reasons. The first is that, even in a sub-optimal setting, we can recognize moves that are fallacious. The second is that, in a way, every persuasive dialogue is sub-optimal, so the RCD would never be binding.

To understand the first reason, we could think of cases of sub-optimal settings like the ones presented before. For instance, in example (1) where a mother tries to convince her daughter that her boyfriend is not a good match, we can presume that the parties have, at least, strong emotional attachments that should count as a lack of a higher-order conditions. But should be considered reasonable if the mother presents any of the following arguments?

(1A) Honey, you are not even capable of taking care of your dog, how do you expect to take care of a relationship?

(1B) Leave him, or I will never talk to you again.

(1C) The guy's name is Andrew, like your father. You know people named Andrew are not to be trusted.

Those seem like clear cases of fallacies. (1A) is a false analogy, (1B) is a case of ad baculum, and (1C) seems like a hasty generalization. But the thing is, even in these cases, where there are emotional attachments and side goals the parties pursue, these fallacies still seem unreasonable. In other words, even in a clear case of lack of higher order conditions, we would call some moves fallacious. Therefore, AGP doesn't seem to be the best policy for the evaluation of sub-optimal setting.

The second argument against AGP is related to the fact that in the end, the higher-order conditions are an ideal model and, therefore, they are never completely met. In real-case scenarios, the parties will have some reluctance to recognize they have been proven wrong, some interest in the outcome of the discussion, some lack of emotional restraint or some kind of 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. If that is the case we can think, rather, that the RCD are always in place in persuasion dialogues. That will be the second solution.

4. SECOND SOLUTION: BUSINESS AS USUAL POLICY

The "business as usual policy" (BAUP) can be defined as follows: *Even when parties try to persuade each other in sub-optimal settings, the rules for critical discussion are the right model for evaluating reasonability.*

Someone could argue that, in the end, there is not a problem here. 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 doesn't have any relevance. If that is the case, we could always reconstruct persuasion dialogues in terms of critical discussion and call violations of the RCD "fallacies".

Considering the above, the solution for the problem posed should be BAUP. Then, if we reconstruct a persuasive dialogue of a very precise academic debate, or a sub-optimal setting the situation would be exactly the same: the parties must avoid fallacies in order to arrive at a resolution.

This seems to be the standard position taken by the pragma-dialectic school:

When analyzing 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 F. H., Grootendorst, Jackson, & Jacobs, 1993, p. 34)¹

It is clear, then, that for these authors the higher-order conditions are never fully met, which is why RCD are an ideal model. Critical discussion, then, 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 apply the RCD. Then, even if the parties arguing are, for example, intimates with strong emotional attachments, the dialogue can be evaluated using the RCD (Weger Jr., 2002).

But this interpretation seems also wrong. In the case of the AGP, stressing the term “condition” too much makes the system excessively loose, in the case of BAUP, stressing the term “ideal” too much makes it too strict.

There are two main objections against the BAUP. The first one is that it doesn’t make any difference between the optimal and sub-optimal settings, the second is that it leaves situations in grey areas unresolved.

To understand the first objection, consider the following example:

(5) Not a good match

Maria is trying to persuade her daughter Laura that her boyfriend is not a good match for her. When they are in that situation the following dialogue ensues:

- (1) Maria: I think that this kid is just not a good match for you. He doesn’t treat you well and doesn’t seem to have any perspective in life.
- (2) Laura: Yes mom, maybe, but I love him.
- (3) M: I feel just terrible when you ignore my opinion! You know I love you!

¹ The italics are my addition.

(4) L: Ok mom, I will think about it.

In this case, there is a persuasion dialogue in a sub-optimal setting, since there are a lack of emotional constraints between mother and daughter. For the *business as usual policy*, the argument (3) seems to be an appeal to emotions that violates the *relevance rule*. Therefore, the agreement at which the parties arrive in (4) shouldn't be considered a reasonable resolution.

However, this argument does appear as reasonable in some sense, and the reason is that the emotional attachment between mother and daughter seems to allow the use of appeals to emotions. It will be very different than, for instance, the following case:

(6) Not a good profile

Maria is trying to persuade her colleague Laura that Ralph, an applicant they want to hire at their company has not a good profile. When they are in that situation the following dialogue ensues:

- (1) Maria: I think that this guy, Ralph, has not the kind of profile that we are looking for. He doesn't seem to be a good team player and his CV is not really related to what we do in here.
- (2) Laura: Yes Maria, maybe, but I still think he is the best option for the position.
- (3) M: I feel just terrible when you ignore my opinion! You don't appreciate me!
- (4) L: Ok Maria, I will think about it.

In this case, an appeal to emotions does appear fallacious, since (3) is irrelevant regarding standpoint (1). But the only difference between this case and the one before is the lack of emotional constraints or attachments between the parties. Therefore, while there is a difference between "not a good match" and "not a good profile", the BAUP is not capable of revealing it.

The second reason to reject the BAUP is that it does not tell us what to do with grey areas. Pragma-dialectics does recognize that, in some cases, the RCD have no point especially when the arguers find themselves defending incommensurable standpoints or there is a clash in 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 F. H., Grootendorst, Jackson, & Jacobs, 1993, p. 166). But what will happen if the incommensurability is slightly less severe? Do the RCD apply? And what if it is even less severe? At which point can we be sure that the higher-order conditions are met at a level that is enough to apply the RCD? The *partiality policy* will try to resolve that question.

5. THIRD SOLUTION: PARTIALITY POLICY

5.1 The partiality policy

The partiality policy (PP) can be formulated as follows: *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.*

As this rule applies only for sub-optimal settings, if there is not a persuasion dialogue, we should apply the AGP, and if the lack of higher-order conditions is not substantial we should apply the BAUP.

As it is an *in-between solution*, the PP applies both the *anything goes* and the *business as usual* policies. From the AGP, PP takes the idea that, sometimes, when the higher-order conditions are not met, some seemingly fallacious moves shouldn't be considered fallacies. The difference is that I will consider each higher-order condition as related to one or more RCD, and not to the RCD as a whole. Therefore, only the corresponding rule could be suspended but not all of them. From the BAUP, PP takes the idea that in a sub-optimal setting, the rules must still be enforced (at least the ones not related to a condition not met).

There are two main questions that the PP opens. The first is: how to determine which rule for critical discussion should still be enforced? The second is: what are the effects of PP in the fallacy theory? I will address those questions in what follows.

5.2 Determining the which RCD should still be enforced

I propose that each higher-order condition could be plausibly connected to one or more corresponding rule for critical discussion, and that every rule for critical discussion could be connected to one or more corresponding higher-order condition. Then, if a higher-order condition is not substantially met, we could expect the correspondent rule to be suspended for that particular dialogue.

I consider the list of higher-order conditions given in the second section incomplete and imprecise. However, it is not my intention in this paper to refine that catalogue but, merely, to use it as a starting point for this proposal. The map of relationships between higher-order

conditions and RCD will, then, have “conditions” on the left and “rules” on the right. For the rules, I’ve used the standard names and order given by the pragma-dialectical tradition (van Eemeren & Grootendorst, 2004, pp. 190-196); while for the list of conditions, I’ve used names that pretty much summarize their meaning. They are shown in the same order that Zenker (2007) presents them (see section 2.5 *supra*):

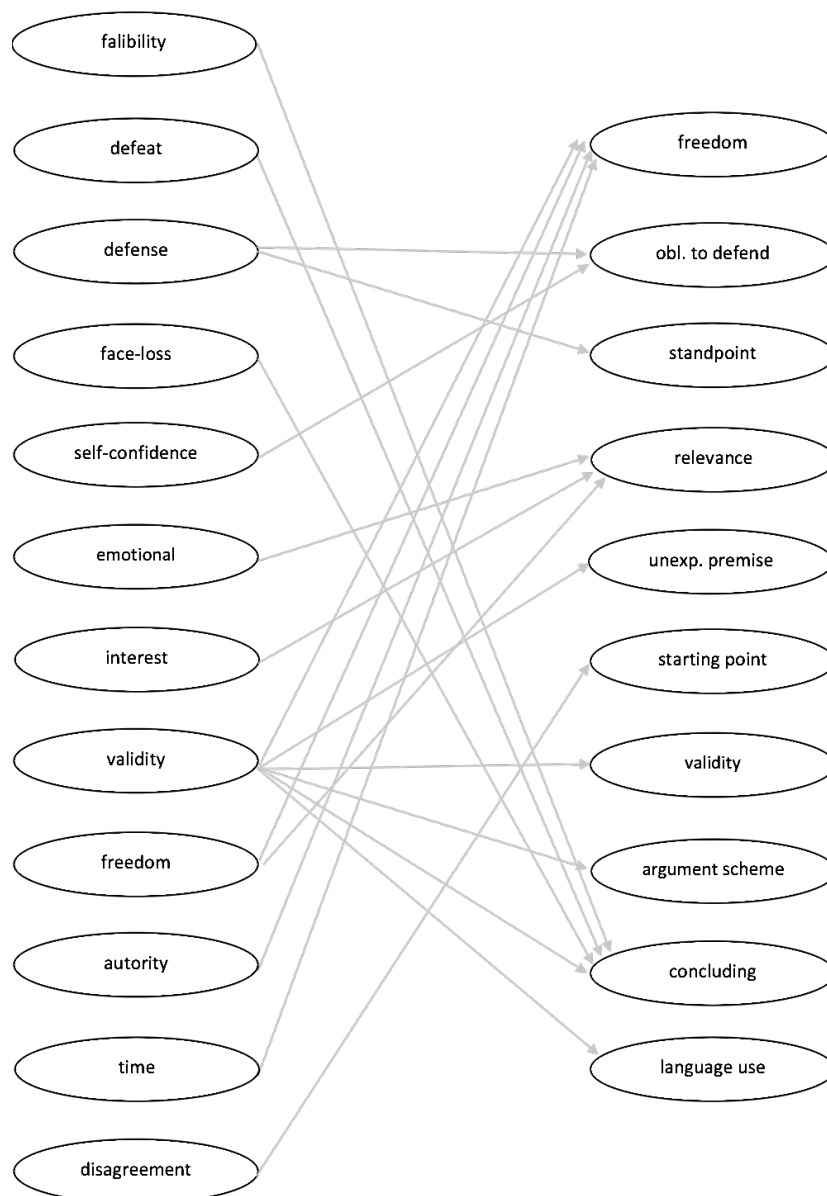


Fig 1. connections between higher-order conditions and RCD.

As can be seen, this is a complex map. Some conditions are related to more than one rule, while some rules are related to more than one condition. However, every condition is, at least, related to one rule, and every rule is, at least, related to one condition. Now, I don't claim that these are all the relations that can be traced but, in principle, it is a good starting point. If I'm right, I should be able to take any condition in the left, imagine a persuasive dialogue where that condition is not substantially met and, as a result, see that it makes sense to suspend the corresponding rule.

5.3 Implications for the fallacy theory

To analyze the implications of the PP for the fallacy theory we could take some examples of fallacies and see what happens to them when produced in sub-optimal setting:

5.3.1 Ignoratio Elenchi.

This fallacy can be defined as "an argument that does not address the thesis that happens to be the point at issue but some different matter" (van Eemeren, et al., 2014, pp. 168-169). For the pragma-dialectical school, this fallacy is a violation of the "relevance rule" (van Eemeren, et al., 2014, p. 546). According to fig. 1, the relevance rule is related to three conditions: emotional restraint, interest and freedom. Let's see an example with the freedom condition.

The freedom condition states that "The discussion situation must be such that the participants are not only willing, but also, free to put forward and defend a point of view of their own choice, and to cast doubt on a point of view of others with whom they disagree". But what happens when one of the parties is not free? Consider the following example:

(7) Spokesman

Peter is a spokesman for a government, with precise instructions to avoid mentioning policy P, that the government wants to enforce. When he is giving a press conference, the following dialogue with a journalist ensues:

- (1) Journalist: Mister, is the government thinking about enforcing P?
- (2) Peter: look, the government is really worried about that situation, and we are considering many solutions to it, Q and R among them.

For the BAUP, Peter is committing a fallacy (*ignoratio elenchi*). For the AGR Peter is not committing a fallacy and it is not even possible to commit a fallacy in his position. But for the PP, Peter is not free to say P, so by saying Q and R, he is trying to resolve the issue from his limited position. Therefore, he is not committing a fallacy, but he could still commit fallacies in this dialogue if, for example, he would then use circular reasoning.

5.3.2 Taboo standpoint

This fallacy implies declaring a standpoint taboo. For the pragma-dialectical school, it is fallacious since it affects the freedom rule by impeding a party from freely defending her standpoint (van Eemeren, et al., 2014, p. 546). According to *fig. 1*, the freedom rule is related to the freedom, authority and time conditions. Let's see an example with the authority condition.

The authority condition states that there must be an "absence of authority relations among the participants". But what happens if there is an authority relationship between the parties? Consider the following:

(8) Boss and employee

Laura is Thomas's boss. At a meeting, they have a disagreement regarding the policies of the company. In such situation, the following dialogue ensues:

- (1) Thomas: Laura, I think that the decision of opening a new area for the company is a mistake.
- (2) Laura: I've heard this before, but this decision has been taken, please don't bring the subject again.

For the BAUP, Laura's argument is a fallacy, since it declares a topic taboo and violates the freedom rule. For the AGR, it is not a fallacy, but since this is not critical discussion is not even possible to produce fallacies. For the PP, the argument is not fallacious since an authority should be allowed to declare certain topics taboo, but that same authority can still commit other fallacies that are unrelated with the authority condition.

5.3.3 Appeal to emotions

These arguments involve "playing on the emotions, sentiments or biases of the intended audience" (van Eemeren & Grootendorst, 2002, p. 120) and, for pragma-dialectics, they are fallacious since they violate the

relevance rule by putting forward arguments that are not relevant to the standpoint defended (van Eemeren, et al., 2014, p. 546). According to *fig. 1.*, the relevance rule is related to three conditions: emotional restraint, interest and freedom.

In the case of appeals to emotions there seems to be, mainly, a relation with the *emotional restraint condition* that implies that the parties must have: “absence of emotional restraint and personal pressure”. But what happens if they do lack emotional restraint or are prone personal pressure?

A good example is the “not a good match” case presented before. For the BAUP, the mother commits a fallacy when appealing to emotions. For the AGR, it is not possible to commit fallacies in her situation. Finally, for the PP she does not commit a fallacy because it is expected to be a strong emotional connection between the parties, but she could potentially commit fallacies that are unrelated to the emotional constrain condition (see examples 1A-1C in section 3 *supra*).

5.3 The PP and similar approaches in the literature

For the PP, then, it just makes no sense sometimes to talk about fallacies. Is not that the arguments presented before are not fallacious, but, since the rule is not even applicable, they are *a-fallacious*, a sort of bubble in a dialogue that, otherwise, should be conducted as a critical discussion.

The model presented here is, in a way, similar to the one defended by Lewiński (2011) who, referring to the RCD, states that “when put to work in actual, less than ideal procedures of argumentation, the rules may clash with one another” (p. 230). His solution for those clashes is a “dialectical trade-off”, a situation in which, in order to comply with one of the rules, the parties may sacrifice another. For example: if there is limited time, the parties might need to sacrifice the freedom rule. I analyze this situation from another perspective to arrive at the same conclusion: the reason why it is necessary to perform a dialectical trade-off is the absence of a higher-order condition enabling one of the corresponding rules.

Jacobs (2003) presents another analogous model. In his view, argumentation has two different functions: cognitive and social. The cognitive function allows the parties to manage their beliefs in order to develop a truth-testing function. The social function enables the parties to look for mutual agreement and understanding. The problem is that under less-than-ideal circumstances, these two functions tend to clash. Therefore “it is common enough to find deliberations in which opinions are downplayed or dismissed or participation is closed off altogether on grounds of incompetence”. In Jacobs’s conception, such a move could be

allowed because it enables the parties to balance the cognitive and social function. In my conception, the move is valid because the lack of a higher-order condition (validity condition) of one of the parties allows the counterpart to suspend the freedom rule (*see fig. 1 supra*).

6. THREE POSSIBLE OBJECTIONS

I will now present three possible objections and their responses to the PR policy.

6.1 *The PP is vague*

One of the advantages of the pragma-dialectical conception of fallacies is that it is simple and precise. If we perform a normative reconstruction of a persuasion dialogue, we can usually spot where a rule has been violated (and, thus, a fallacious argument has been presented). In that sense, the BAUP is very precise. But with the PP, things are more complicated: we would need first to see whether the higher-order conditions are met to, then, see which RCD is conditionally connected to the condition not met.

However, critical discussion should still be a *by default* model of analysis. Only when it is clear that the setting of a dialogue is sub-optimal we should analyze the higher-order conditions. A good indication of that circumstance could be, for instance, the use of reiterative fallacies from the parties. Therefore, while this model is a little bit more complicated, it is by no means *vague*.

6.2 *Those are not critical discussions*

The second objection close to the AGP and implies saying that examples like the ones presented before have nothing to do with a critical discussion. For example, in the “boss and employee case” the boss might be trying to persuade about something but that doesn’t make it a critical discussion. Therefore, her speech act doesn’t need to abide to the standards of critical discussion.

I agree that those cases are not proper critical discussions (for lack of higher-order conditions) but they are dialogical engagements in which the parties have, at least, a persuasive goal. So, the relevant question here is the following: are there any rules for those cases? If we just dismiss these cases as having nothing to do with critical discussion, then there are no rules (anything goes). But if we follow the PP, then some rules will still apply.

6.3 *The PP lacks normative force*

A third possible objection is akin to the BAUP. It could be presented with an example:

(9) Trump on Global Warming

On November 27, 2018, President Donald Trump was asked by a reporter if he was aware and was taking into consideration the last IPCC report on climate change, his answer was the following:

"I don't believe it. You're going to have to have China and Japan and all of Asia and all these other countries, you know, it [the report] addresses our country. Right now we're at the cleanest we've ever been and that's very important to me. But if we're clean, but every other place on Earth is dirty, that's not so good. So I want clean air, I want clean water, very important."²

For the advocates of the BAUP, that is clearly an unreasonable response from the President. I do not intend to analyze the response in detail, but we can see that he is, at least, violating the relevance rule by using arguments that are totally unrelated with the standpoint he seems to be defending (that the IPCC report is mistaken).

It could be argued, then, that if we follow the PP, Trump answer shouldn't be considered a fallacy. Indeed, it could be argued that, sadly, the President of the United States is unable to comply with the second order conditions. If we go through them one by one, we can conclude that he almost does not meet any of them: he is unable to recognize when he is mistaken and to defend a standpoint, he is unwilling to listen to the opinion of others or lose face, probably has hidden interests, etc. Therefore, it would be argued that, since these higher-order conditions are not in place, the related RCD are also not in place.

However, I wouldn't argue in that sense. I think that the answer of the President is, indeed, fallacious since, while it is true that he does not comply with some higher-order conditions, his position as a President and the context of the dialogue indicate that he *should* comply with them. In other words, a President "should" be able to recognize when he is mistaken and, if he doesn't, we would say that he is not a very good president. But that's a political, not an argumentative or logical problem. In other political contexts (let's imagine a theocracy where the leader is believed to speak on behalf of god) a political leader might not have the obligation to be able to recognize when he is mistaken.

But then, it could be argued that the PP is no novelty at all. If we still need to comply with the RCD, then we are just providing a *higher order*

² Retrieved from <https://www.bbc.com/news/world-us-canada-46351940>.

answer that leaves us in the same position than before. I disagree with that statement because the obligation to abide to the higher-order conditions is not always present. The parties are not always to blame for not complying with the higher-order conditions.

This is the case, certainly, in the case of the 3rd order conditions that have to do with the external circumstances of a dialogue but also in some cases of 2nd order conditions, for example, in the case of a children trying to persuade, or a couple arguing about their relationship.

7 CONCLUSION

The intention of this paper was clearly exploratory. There is still a lot to research in this field but, at least, we can say with certainty that the existence of sub-optimal settings is a problem for pragma-dialectics, and that such a problem is related, among other issues, with the lack of attention that the higher order conditions have received so far.

From the two extreme positions the BAUP seems to be the one better adjusted to the pragma-dialectical canon. However, I think I've showed convincingly enough that this solution has loopholes that are not easy to solve.

The PP can take care of these problems in a better way. However, the model is still undeveloped, and it would be necessary to analyze it carefully. It would be especially interesting to see if the maps of relations between higher-order conditions and RCD are plausible. For that it would be a good idea to carefully explore each of those relations, to see what the exact meaning of the conditions are, how are they related to the rules and what fallacies does this conditional connection affect. A careful exploration of those relations could expand and enrich the pragma-dialectical tradition in an important way.

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REFERENCES

- Aakhus, M. (2003). Neither Naïve nor Critical Reconstruction: Dispute Mediators, Impasse, and the Design of Argumentation. *Argumentation*, 17(3), 265-290.

- Feteris, E. (2000). A dialogical theory of legal discussions: Pragma-dialectical analysis and evaluation of legal Argumentation. *Artificial Intelligence and Law*, 8, 115-135.
- Hitchcock, D. (2003). Review of F. H. Van Eemeren (Ed.), *Advances in Pragma-Dialectics*. *Informal Logic*, 1(23), 91-108.
- Jacobs, S. (2003). Two conceptions of openness in argumentation theory. En F. van Eemeren, J. Blair, C. Willard, & A. Snoeck Henkemans (Ed.), *Fifth Conference of the International Society for the Study of Argumentation* (págs. 553-556). Amsterdam: SicSat. Recuperado el 12 de 2 de 2019, de <http://rozenbergquarterly.com/issa-proceedings-2002-two-conceptions-of-openness-in-argumentation-theory/>
- Lewinski, M. (2011). Dialectical trade-offs in the design of protocols for computer-mediated deliberation. *Studies in Logic, Grammar and Rhetoric*, 23(36), 225-241.
- van Eemeren, F. H., & Grootendorst, R. (2002). *Argumentation: Analysis, Evaluation, Presentation*. London: Routledge.
- van Eemeren, F. H., & Grootendorst, R. (2004). *A systematic theory of argumentation: the pragma-dialectical approach*. Cambridge: Cambridge University Press.
- van Eemeren, F. H., Garssen, B., Wagemans, J. H., Snoeck Henkemans, F., Verheij, B., & Krabbe, E. C. (2014). *Handbook of Argumentation Theory*. Dordrecht: Springer Reference.
- van Eemeren, F. H., Grootendorst, R., Jackson, S., & Jacobs, S. (1993). *Reconstructing Argumentative Discourse*. Tuscaloosa: The University of Alabama Press.
- Walton, D., & Krabbe, E. C. (1995). *Commitment in dialogue: basic concepts of interpersonal reasoning*. New York: SUNY.
- Weger Jr., H. (2002). Violating pragma-dialectical rules in arguments between intimates. En F. H. van Eemeren, *Advances in Pragma-Dialectics* (págs. 197-213). Amsterdam: Sic Sat.
- Woods, J. (2004). *The Death of Argument, Fallacies in Agent Based Reasoning*. Dordrecht: Kluwer.
- Zenker, F. (2007, June 9). *Pragma-Dialectic's Necessary Conditions for a Critical Discussion*. Retrieved from OSSA Conference Archive: <https://scholar.uwindsor.ca/ossaarchive/OSSA7/papersandcommentaries/161>