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'You're Being Unreasonable': Prior and Passing Theories of Critical Discussion

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ABSTRACT: A key and continuing concern within the pragma-dialectical theory of argumentation is how to account for effective persuasion disciplined by dialectical rationality. Currently, van Eemeren and Houtlosser offer one response to this concern in the form of strategic manoeuvring. This paper offers a prior/passing theory of communicative interaction as a supplement to the strategic manoeuvring approach. Our use of a prior/passing model investigates how a difference of opinion can be resolved while both dialectic obligations of reasonableness and rhetorical ambitions of argumentative success are simultaneously accommodated. The paper explores the model with particular reference to the pragma-dialectical rules of critical discussion, strategic manoeuvring and fallacious reasoning.

KEY WORDS: critical discussion, fallacies, interpretation, passing theory, pragma-dialectics, prior theory, reasonableness, strategic manoeuvring

1. INTRODUCTION

Over the past two decades, a group of theorists, mainly at the University of Amsterdam, have developed a pragma-dialectical method for analysing argumentative discourse. Their model treats argumentative discourse as if it were aimed at resolving a difference of opinion, that speech is used actively in achieving this goal, and that each speech act performed in argumentative discourse should be regarded as part of a critical discussion. They are also concerned with explaining how, during the course of resolving a difference of opinion, we are to account for effective persuasion disciplined by dialectical rationality; how do we, as students and researchers of argumentation, balance

people's dialectic objective of achieving a resolution of a difference of opinion, with their *rhetorical* objective of having their own position accepted? Currently, van Eemeren and Houtlosser (1997; 1999; 2002a; 2002b; 2003) are developing one response to these concerns in the form of strategic manoeuvring (see below for further discussion). They identify rhetorical choices which parties are able to employ within a dialectical framework – that is, parties to an argument are able to exploit the topical potential, adhere to audience demand, and use presentational devices at each argumentative stage in order to maximise their persuasive ability.

Our research, reflected in this paper and others (Atkin and Richardson, 2003; Richardson, 2001), holds the same pragma-dialectic sensibilities and is motivated by the same concerns for balancing rhetorical and dialectic objectives. However, we also think that the van Eemeren and Houtlosser's 'Stage-Management' account of Strategic Manoeuvring could be expanded and supplemented through a more explicit reference to the Ten Rules of critical discussion – what have been called the Decalogue, or 'ten commandments' of critical discussion (van Eemeren et al., 1996, p. 283). In particular, our concern is to relate, explicitly, the Decalogue to the rhetorical concerns of winning an argument; to relate some of the insights of strategic manoeuvring with the critical rules in a more defined way.

A second concern in this paper, given its focus on the pragma-dialectic analytic model, is to capture how any fallacious move in an argument is borne of an imbalance between dialectical and rhetorical objectives (see van Eemeren and Houtlosser, 2003), and specifically how we recognise (or not) such imbalances. (Of course, this interest shouldn't surprise any pragma-dialecticians, given the relationship between fallacies and the ten rules of critical discussion.) One of the significant insights of pragma-dialectical theory has been its treatment of the fallacies. But our feeling is that the treatment, as it stands, is perhaps too dialectical – a little too rule based – suggesting that the rules somehow 'speak for themselves'. After all, rules need to be interpreted and applied and this application will necessarily bring in a level of particularity. Of course van Eemeren and Houtlosser (2003) have recently brought a rhetorical dimension to their dialectical treatment of the fallacies, suggesting that fallacies are derailments of strategic manoeuvring. But to reiterate, we think that we should, and can, make the relation between the Decalogue, fallacy theory and rhetorical concerns clearer and more explicit.

What, then, is the means by which we intend to address our concerns of making an explicit connection between the Decalogue and the rhetorical objectives of arguers clear? We think there is an adaptable account of interactional or communicative exchange (of which we take

argument-conceived-as-the-resolution-of-a-difference-of-opinion to be but one) that might provide some useful tools for addressing just these concerns. This readily adaptable account is Donald Davidson's account of 'prior' and 'passing' theory for communication and meaning. Our proposal is to develop a prior/passing theory of the Decalogue in order to explain and expand on the pragma-dialectical concerns of strategic manoeuvring and fallacy theory.

This article is organised across five sections: first, we provide some detail about Davidson's account of 'prior' and 'passing' theory; second, we draw out those aspects of this account that are interesting and useful for pragma-dialectics. Third, we discuss the extent to which these insights are already present in pragma-dialectical theory and integrate the approach with the pragma-dialectical rules for critical discussion. Fourth, we explore how this development affects and integrates with the concept of strategic manoeuvring. Fifth and finally, we show how this development suggests some interesting avenues of analytical and empirical research into fallacies from a pragma-dialectical perspective.

2. DAVIDSON'S THEORY OF PRIOR AND PASSING MEANING

To begin with, we need to look at Davidson's account of prior and passing theories of communication and meaning. Prior Theory and Passing Theory form part of Donald Davidson's philosophy of language and his denial that regularities (like shared conventions) are important backdrops to communication and meaning; his contention is that meaning is something we generate 'in the field', as it were. This thesis is not something that we embrace or are interested in. Our interest is with the tools that he thinks enable him to make these claims and the use that we can make of them in the arena of pragma-dialectics and argumentation.

In his paper, 'A Nice Derangement of Epitaphs' (1986) Davidson discusses the dialogic interplay between a speaker and a hearer whose goal is successful communication. As part of this exchange, Davidson identifies what he calls the 'prior' and 'passing' theories of the participants. These are theories about how we are supposed to interact, communicate with and interpret each other. For instance, the prior theory of the *hearer* is meant to suggest, 'how he is prepared in advance to interpret an utterance of the speaker' (Davidson, 1986, p. 442). The prior theory of the *speaker*, on the other hand, is meant to suggest, 'what he believes the interpreter's prior theory will be' (Ibid.). In addition, each participant in a communicative exchange has a *passing* theory. The passing theory of the two participants arises from the actual communicative exchange that takes place between them and is meant

to indicate how they should communicate and interpret each other during the actual course of *this* exchange, during *their* exchange. Davidson describes the immediate, organic nature of passing theories by suggesting that 'every deviation from ordinary usage, as long as it is agreed on for the moment (knowingly deviant, or not, on one, or both, sides) is in the passing theory as a feature of what the words mean on that occasion. Such meanings, transient though they be, are literal' (Ibid.).

Davidson's argument, in short, is that hearers and speakers arrive at communicative episodes with already existing theories about how they need to interpret (or are going to be understood by) their communicative counterparts. They also generate theories, adaptations etc. during the course of their communicative exchange that enable them to continue communicating. For instance, during a conversation with my mother she mistakenly uses the word 'expresso' rather than the word 'espresso' for the coffee I like to drink, but we agree (tacitly or explicitly) to allow her word 'expresso' to mean the same as my word 'espresso' for the course of this conversation. This is something we agree 'on the hoof', as it were. Perelman (1979) makes a similar point concerning tautologies. Perelman suggests we never take statements such as 'He's his father's son' or 'boys will be boys' 'as tautologies, which would make them meaningless, but will look for plausible interpretations of the same term that will render the whole statement both meaningful and acceptable' (1979, p. 19). In other words, when faced with a statement that, on the face of things, does not actually *mean* anything, we automatically 'look for an interpretation that eliminates the incoherence' (Ibid.). These two features then – the theory we arrive with, and the theory we generate during an episode – are the parts of Davidson's prior and passing theories of communication that we are interested in.

2.1. *What in it for Us?*

Clearly, Davidson's theories focus upon securing speaker *meanings* in communicative settings. But in contrast to Grice (1975) his project is *semantic*, which he explores by examining the 'limits of the literal', or the relationships 'between what a speaker, on a given occasion, means and what his words mean' (Davidson, 1986, p. 434). Why, then, should we, who are interested in argumentation, be interested in Davidson's theories of semantics? The short answer is that we *aren't* interested in Davidson's semantic programme. But we *do* think that we can use prior and passing theories in a slightly different arena. To see why we think that passing and prior theories are interesting for pragma-dialecticians and argumentation theorists we need to forget about talk of interpretation, semantics, ordinary meanings, etc. We must

then extract from this semantic model the crucial idea that we have a general, *prior* model of how things should proceed (the prior theory) and a more instance-specific interactional model of how things proceed in some instance (a passing theory).

This strikes us as both useful and interesting – and we aren't the only ones. Take work by Thomas Kent (1993), for example, who attempts to balance the interpretive and persuasive elements of communicative interaction through his programme of Paralogic Rhetoric. Kent is interested in applying Davidson's passing and prior theories as a tool for explaining communication as a goal-orientated dynamic act. Working from a more anthropological approach to argumentation, Kent takes Davidson's theory to be a useful explanatory tool in describing the relativistic goals of communicative interaction. This is interesting because we have similar ambitions.

With his description of the prior theories that we hold, and the passing theories that we take to be applicable to the particular exchange that we are involved in, Davidson identifies and gives some formal shape to the phenomenon of *communicative* exchange in general. We want to use Davidson's theory to inform our model of *argumentative* exchange: how a difference of opinion can be resolved while both dialectic obligations of reasonableness and rhetorical ambitions of argumentative success are simultaneously catered for. In short, we see a prior/passing model as the key to explaining the argumentative aim of reasonable conflict resolution whilst accounting for strategic manoeuvring: the prior theory being our commitment to reasonable argumentation (both in a procedural and formal sense); the passing theory being the interpretation and application of this commitment in specific contexts and to specific disagreements.

3. PRIOR THEORY/PASSING THEORY AND 'THE DECALOGUE'

As the title of this section may well indicate, we propose to integrate the prior/passing theory insight into the pragma-dialectic model via a re-working of the Decalogue. To summarise, what we want to do is capture the idea that we arrive at an argument with a prior theory about how the argument should proceed and which rules or norms govern our interaction; and second, that these rules or norms are adapted and applied in accordance with the actual argumentative episode taking place; that is, in accordance with the parties' ideas about how *this* argument should proceed in the light of the prior rules, what is at stake, the other participants, etc. What we are proposing, is that the Decalogue functions at two levels: first, as a *prior* set of general argumentative norms; and second, as an application of these norms, in

which the general rules are made relevant to that particular disagreement. How might this work?

First, we shall consider the ten rules of critical discussion 'which are to be observed for resolving the difference of opinion' (van Eemeren and Grootendorst, 1994b, p. 63):

1. *the freedom rule*: participants must not prevent each other from putting forward standpoints or casting doubt on standpoints
2. *the burden of proof rule*: whoever who puts forward a standpoint is obliged to defend it if asked to do so
3. *the standpoint rule*: an attack on a standpoint must relate to the standpoint that has indeed been advanced by the protagonist
4. *the relevance rule*: a participant may defend his or her standpoint only by advancing argumentation related to that standpoint
5. *the unexpressed premise rule*: a participant can be held to the premises he leaves implicit; equally, an antagonist may not falsely suggest that a premise has been left unexpressed by the other participant
6. *the starting point rule*: no participant may falsely present a premise as an accepted starting point, or deny a premise representing an accepted starting point
7. *the validity, or logic rule*: the reasoning in the argumentation must be logically valid or must be capable of being made valid by making explicit one or more unexpressed premises
8. *the argument scheme rule*: a standpoint may not be regarded as conclusively defended if the defence does not take place by means of an appropriate argument scheme that is correctly applied
9. *the closure rule*: the failed defence of a standpoint must result in a protagonist retracting the standpoint, and a successful defence of a standpoint must result in an antagonist retracting his or her doubts
10. *the ambiguity, or usage rule*: participants must not use any formations that are not sufficiently clear or confusingly ambiguous, and they must interpret the formations of the other participant as carefully and accurately as possible (from van Eemeren and Grootendorst, 2004, pp. 190–196).

We argue that these Rules stand as a prior objective standard that all arguers hold to: this is the prior theory. Though at a relatively early stage, a range of empirical studies testing the conventional validity of the Decalogue support such an assertion (van Eemeren, Garssen and Meuffels, 2003a, 2003b, 2005a, 2005b; van Eemeren and Meuffels, 2002; van Eemeren, Meuffels and Verburg, 2000). But, these rules need to be made specific, given a particular argumentative interaction. Take, for instance, the argument scheme rule (Rule Eight). This rule states that a standpoint cannot be regarded as conclusively defended unless this defence takes place by means of an appropriate argument scheme that is correctly applied. Both parties (tacitly) agree to this

rule; hence their prior theories are the same. But there is clearly some scope for what can or can't count as an appropriate or correct *use* of an argument scheme. Think, for instance, of an appeal to authority. The two parties may both agree that no standpoint is defended by an appeal to an external authority unless that authority is appropriate. However, they may not agree precisely as to *whose* authority or what *kind* of authority is or is not correct and hence reasonable. Consider the following two exchanges, one in which authority is established and another in which it is not:

Ludwig: Marijuana causes memory loss
Bert: How do you know that?
Ludwig: My father told me
Bert: That doesn't mean anything. What does your father know about the effects of drugs?
Ludwig: He studied at Cambridge
Bert: So did lots of people, it doesn't mean they know anything about the effects of drugs.
Ludwig: But his research was on the long term effects of soft drugs.
Bert: Okay, fair enough.

Here, after discussion, the participants agree that Ludwig's father is an authority on the effects of soft drugs, Ludwig's father supports Ludwig's conclusion, and therefore Ludwig's standpoint is reasonable. In Aristotle's terms, the parties accept that Ludwig's father has sufficient practical wisdom (*phronesis*) to be considered an authority on the issue being discussed. Imagine instead that the claim is:

Ludwig: The River that runs through Cambridge is the Cam
Bert: How do you know that?
Ludwig: My father told me.
Bert: So?
Ludwig: He studied at Cambridge
Bert: Yes, but did he study Potomology?
Ludwig: Bert, you're being unreasonable.

In this second exchange, Ludwig is quite right to protest that Bert was being unreasonable: he was attempting to place too strict a criterion on what could count as an appropriate authority in this instance. After all, why must his father have studied rivers in order to know that it's the Cam that runs through Cambridge? What are taking place in these examples are disagreements about how the rules governing the argumentative exchange should be applied – in these cases, the discussion relates to the validity of an external authority. Logically therefore, the validity of this argument scheme – 'argument from authority' – has to be accepted in advance for this exchange to take

place; but between them, the parties flesh out (and ideally agree upon) precisely what 'authority' amounts to in this instance. In doing so, they generate a passing theory for this argument scheme.

We are frequently warned that the pragma-dialectical model is, in many ways, an ideal type intended to account for and explain critical discussion.[1] As we know, in a critical discussion 'the protagonist and antagonist of a particular viewpoint both try to establish jointly whether this viewpoint is tenable to critical responses', and a resolution of the dispute is possible 'only if the discussion is adequately regulated' (van Eemeren and Grootendorst, 1994, p. 21). As we also know, this ideal dialectical resolution is less clear-cut in practice. Only two pages after this definition of a critical discussion cited above, van Eemeren and Grootendorst (1994, p. 23) rightly state that a theory of argumentation 'should first and foremost relate to ordinary discussions in everyday language'. We believe that incorporating the prior/passing theory enables us, as pragma-dialecticians, to better relate to, and explain, ordinary argumentation. At present, pragma-dialectics does acknowledge the distinction between the rules for critical discussion and their manifestation in context, but (as far as we're aware) there is little analytical integration of these distinctions in any technical or formal manner within the model. We want to do precisely this.

So, when in argumentation does this transition from prior to passing theory occur? Take an example of people playing scrabble, which van Eemeren and Houtlosser (2003, p. 291) discuss in relation to the appeal to authority (and specifically where it derails and results in an *argumentum ad vericundiam*). When one of the players claims to have compiled a word but the others doubt that the word really exists, 'the first player may argue: 'This is a word, because it is in the dictionary.'' Agreements (or disagreements) as to who or what constitutes a valid source of authority are part of the opening stage of argumentation, during which parties 'determine whether there is sufficient common ground (shared background knowledge, values, rules) for a fruitful exchange of views' (van Eemeren et al., 1996, p. 282). Determining such procedural (dis)agreement can occur at any point during argumentation but, for the purposes of analytical reconstruction of argumentation, procedural (dis)agreement occurs as part of the dialectical opening stage. During argumentation, the primary disagreement takes a temporary hiatus and the disagreement side steps into a discussion about how the Rules for critical discussion are being interpreted and applied. If common agreement of the Rules and their implications zcannot be established – in this case, if it cannot be resolved whether the dictionary represents a valid external source of expertise – then the wider difference of opinion – 'is X a word or not?' – cannot be resolved.

In effect, the rules of critical discussion operate on two levels – one general and one applied. First, there is the standard Decalogue, which both parties bring with them as a prior standard; and second, a set of realised, argument specific interpretations and applications of these rules agreed upon in context between the antagonist and protagonist.

3.1. *A Comment on the Connection Between Passing and Prior Theories*

Clearly, these two levels on which the rules operate are intimately connected. But it is worth saying two things about this connection.

First, it seems that some of the Ten Rules have more scope for interpretation and for strategic manoeuvring than others. Take the Relevance Rule for instance: we can imagine many argumentative exchanges where one party may say to the other: 'you're talking nonsense! What has that got to do with anything?' If this occurs, the protagonist can justify the relevance of the point or retract it; if the protagonist attempts to justify the argument, argumentation shifts into a critical discussion around the relevance (and hence reasonableness) or otherwise of the protagonist's move; which will eventually result, ideally, in the resolution of this difference of opinion. Hence, relevance is the result of a prior commitment to the use of relevant argumentation and the interpretation and application of this commitment in context. Or, in the terms of van Eemeren and Grootendorst (2004, p. 71), as a result of: a prior commitment to an *evaluative* view of relevance (as expressed in Rule 4) in which 'certain (complexes of) speech acts are judged as relevant'; and a context-specific commitment to an *interpretive* view of relevance (as expressed in the passing interpretation of Rule 4) in which 'the participants in a conversation determine what is a relevant sequel to what was said earlier'.

Second (and consequently), when parties generate an argument specific application of the rules they do not forgo their commitment to objective standards of the prior theory, irrespective of how much room for manoeuvring this prior rule allows. To be clear, we are *not* attempting to relativize unconditional rules. Nor are we are suggesting that if both parties agree to a rather perverse interpretation of a discussion rule that their argumentation can be considered reasonable. Suppose, for instance, that the following argument occurs:

Ludwig: Marijuana causes memory loss
Bert: How do you know that?
Ludwig: My father told me and he did a PhD on the long term effects of soft drugs
Bert: You expect me to believe him? His research was funded by the Home Office.

Ludwig: Okay, well my brother says his friend who smokes grass is very forgetful
Bert: Okay, fair enough.

Here, Ludwig and Bert have decided that the academic expert doesn't count as a valid external authority but someone with anecdotal evidence does. This is clearly wrong-headed and their reasoning is fallacious on at least three counts.[2] We agree with van Eemeren's (1994, p. 4) point that 'reasonableness is not solely determined by the norm of intersubjective agreement but also by the 'external' norm that this agreement should be reached in a valid manner.' Thus, in generating a passing theory parties do not escape the standards of the prior theory: they must still conform to objective standards of reasonable argument.

Now, having made this distinction between prior theory rules and passing theory rules, what do we think that this adds to our understanding of strategic manoeuvring and the fallacies?

4. STRATEGIC MANOEUVRING

In our understanding, strategic manoeuvring can be summarised as the deliberate and systematic use of available rhetorical strategies aimed at resolving a difference of opinion to one's own advantage. Under the current approach to strategic manoeuvring – developed by van Eemeren and Houtlosser (1997, 1999, 2002a, 2002b, 2003) – this can and does occur in three ways: through exploiting the topical potential, wherein 'speakers or writers may choose the material they find easiest to handle'; adapting to *audience demand* by choosing 'the perspective most agreeable to the audience'; and through *presentational devices* which frame 'their contribution in the most effective wordings' (van Eemeren and Houtlosser, 1999, p. 484). These strategies do not occur in isolation of course, but are used simultaneously, interacting with each other in order to achieve the persuasive goal. Indeed, the most successful rhetorical strategies combine the rhetorical efforts of these three levels of manoeuvring, so that a fusion of persuasive influences is generated.

This strategic manoeuvring is then integrated with the analytical component of the model, which suggests that argumentative discourse passes through four stages on the road to the resolution of a difference of opinion. Each of these argumentative stages has specific dialectical goals; they therefore give rise to their own rhetorical goals: in short, for each argumentative stage the parties involved in a difference of opinion can choose and employ strategic manoeuvring strategies that serve their interests best. In the words of van Eemeren and Houtlosser (1999), these rhetorical strategies are employed to influence 'the result of a

particular dialectical stage to one's own advantage' and they 'manifest themselves in a systematic, co-ordinated and simultaneous exploitation of the opportunities afforded by that stage' (pp. 485–486).

This, we feel, is a key statement which could be developed further: the 'exploitation of the opportunities afforded by that stage'. At present, strategic manoeuvring only considers the *textual* opportunities of each stage; in other words, the way that the 'argument as product' can be best tailored to be optimally effective within the bounds of dialectic reasonableness. The first strategic manoeuvre – exploiting topical potential – involves the protagonist choosing the material they find easiest to handle: so the text is shaped to suit the arguer. The second strategic manoeuvre – audience demand – promotes material that accords with the audience: in effect, the text is shaped to suit the audience. The third strategic manoeuvre – presentational devices – involves a move the other way from text to audience: the text is shaped (stylistically and formally) to be most effective in persuading the antagonist or auditor/audience.

We think that pragma-dialectical theory is missing a trick here. As van Eemeren and Houtlosser (1997) argue: 'Someone who enters a confrontation will, as a rule, attempt to define the disagreement in such a way that his chances of winning are optimal' (p. 10). As stated, this has been interpreted as the way in which a parties strategically define the argument as product – what is actually *said* – but we would like to extend this definition of the strategic manoeuvring to embrace more dialectical issues of procedure. Indeed, within a disagreement, the 'only thing that is not permitted is to be contra-dialectic, i.e., to reduce the possibilities of achieving a *reasonable* resolution of the dispute' (van Eemeren and Houtlosser, 1997, p. 10). We acknowledge that pragma-dialectics defines reasonableness in terms of the Decalogue; but, as we suggested earlier, these rules have to be interpreted and applied; and the application of the rules may cause a further difference of opinion about the reasonableness of this application. This is perhaps easiest to grasp if we consider the argument scheme rule. Pragma-dialectical theorists maintain that there are three categories of argumentation scheme (see van Eemeren, Grootendorst and Snoeck Henkemans, 2002, pp. 95–104): causal argumentation (where: Y is true of X *because* Z is true of X *and* Z leads to Y); comparison argumentation (where: Y is true of X *because* Y is true of Z *and* Z is comparable to X) and symptomatic argumentation (where: Y is true of X *because* Z is true of X *and* Z is symptomatic of Y). In causal argumentation, there is a degree of interpretation in the extent to which an argument is (or is not) a causal factor for a standpoint, particularly with argumentation on or about social or political topics. Similarly in the case of symptomatic argumentation, there is a degree of interpretation in the extent to which

an argument is (or is not) a sign of what is stated in the standpoint. When a protagonist chooses an argument scheme, the antagonist is fully within their rights to question how this scheme is being applied – thus, to question the protagonist's interpretation of the Argument Scheme Rule. This room to manoeuvre allows parties to attempt to shape the interpretation of dialectic rules in the way that is most advantageous to their argumentative goals.

In short, given that parties will 'attempt to define the disagreement in such a way that [their] chances of winning are optimal' (van Eemeren and Houtlosser, 1997, p. 10), parties will attempt to interpret and apply the discussion rules *themselves* in ways which maximise their chances of winning. Sometimes this strategic interpretation transgresses a discussion rule. This occurs when a party: attempts to stretch a fixed rule such as the standpoint rule; or exceeds the bounds of a more interpretive rule; or (as previously with Ludwig and Bert) inadvertently violates Rule X during a critical discussion about Rule Y. Even these instances of derailment validate the pragma-dialectical position that participants recognise the discussion rules as a prior theory; even the faulty application of a Rule in passing unavoidably entails prior recognition (tacitly or explicitly) of this Rule by the parties: simply put, you cannot strategically apply a Rule that you do not recognise *a priori*.

5. FALLACIES IN CONTEXT

Introducing Davidson's prior/passing theory to pragma-dialectical theory suggests a number of avenues of research in the study of fallacies. As we suggest above, we consider the rules for critical discussion to form the basis of the prior theory adopted by parties. Hence our argument does not substantively affect pragma-dialectical theory at the philosophical level of the model, nor does it affect the core pragma-dialectical notion of reasonableness. However we do feel that it could have positive implications at other levels. Here we will briefly discuss our initial thoughts at how recognising prior/passing theories of argumentation may affect the analytical and empirical research of fallacies from a pragma-dialectical perspective.

5.1. *Analytical Research*

Davidson's model is interesting because it identifies and gives some formal shape to the idea of prior theories and interaction specific theories. But he is not unique in identifying the tension between the theories and norms that govern specific interactions or exchanges, and those that seem to apply more generally. For instance, van Eemeren and Houtlosser suggest that

> Although fallacy judgments are in the end always contextual judgments of specific instances of situated argumentative acting, this does not mean that no clear criteria can be established in advance to determine whether a particular way of strategic manoeuvring goes astray. (2003, p. 290)

Therefore, there are prior criteria of acceptable strategic manoeuvres (and, logically, unacceptable strategic manoeuvres) that are applied, interpreted and understood – in passing – in particular contextual circumstances. We are interested in examining this tension from the other side, if you will. Thus, while 'clear criteria can be established in advance to determine whether a particular way of strategic manoeuvring goes astray', what effects do contextual judgments made in 'specific instances of situated argumentative acting' have on assessing fallacies?

Johnson and Blair (1977, p. 200) suggest that 'the charge of fallacy seems to extend argument, not cut off debate'. This, we feel, is because when the charge of 'fallacy' is advanced (in everyday argument this is indicated by a party claiming 'you're being unreasonable' or some other such formulation), argumentation takes a shift into a discussion around the rules for argumentative engagement – or, in our terms, a discussion of the passing theory. Thus, when a party suspects that their opponent's argumentative move may have violated the prior/passing theory, argumentation shifts to a critical discussion of the application of the rules within this particular argumentative context. We thought that we'd explore this through a short discussion of a potential *ad hominem* exchange. For the record, we do not believe that all arguments 'against the person' are fallacies; in other words, we do not think that all arguments against the person can be classified as *argumentum ad hominem*. Some arguments against the person are acceptable because they interrogate the *ethos*, or more specifically an ethotic manoeuvre[3], of the protagonist. Arguments against the person that do *not* interrogate, or contest, an ethotic manoeuvre (which may exist as an unexpressed premise or as an inference license in the form of a warrant) *are ad hominem*. Consider the following exchange, which van Eemeren, Garssen and Meuffels (2003, p. 276) argue does not violate the freedom rule and hence is not fallacious (once again, transposed as an argument between Bert and Ludwig):

Bert: I believe my scientific integrity to be impeccable; my research has always been honest and sound.
Ludwig: Do you really want us to believe you? You have already been caught twice tampering with your research results.

Of course Ludwig's contra-argumentation is against the person: he explicitly asks 'Do you really want us to believe *you*', rather than '*Your research results were corrupted*' or words to that effect. However, the response is not *ad hominem*. Ludwig questions Bert's standpoint

(that he possesses scientific integrity) by interrogating Bert's claim about honest and sound research that he employs as a support. By directly countering this symptomatic argument, Ludwig implicitly suggests that Bert lacks virtue (caught not once but twice) and goodwill ('tampering' suggests Bert was underhand, manipulative and attempting to deceive) and hence lacks integrity. So, the disagreement is fundamentally about Bert's character – or *ethos* – a topic that Bert raised himself.

Imagine though that Bert responds in the following way:

Bert: You're being unreasonable. You know that happened years ago and I'm a changed person now.

The discussion has now shifted from being about the legitimacy or validity of Bert's research (and what this says about his integrity) to a discussion about how the rules are applied used to distinguish between reasonable and unreasonable argumentation. Bert implicitly acknowledges the truth of Ludwig's counter-argument, but questions whether this emphatically demonstrates that he lacks integrity *now*. Bert attempts to cast doubt on the acceptability of the symptomatic argument scheme that Ludwig chose, questioning whether tampering with research results in the past is sufficient evidence of a lack of integrity in the present. Bert implies that there is some kind of statute of limitations on negative actions, and that past events cannot be used to besmirch his character now.

No doubt Ludwig could then attempt to demonstrate an inconsistency between the original position and Bert's subsequent response. This could take the following form:

Ludwig: Look, you said your research has *always* been honest and sound and you know this isn't true. You falsified your results and your integrity is still tainted by that.

Such a move could, in turn, perhaps cause Bert to retract the original support, or at least reduce its truth modality from 'has always' to 'has, *for a long time* been honest and sound'. In essence therefore, what we have is a discussion about character; specifically the statute of limitations on unethical practices, and the length of time that such dishonest deeds can be used to demonstrate that one's integrity is, or isn't impeccable. In essence: does a move pointing out the past flaws of a protagonist amount to an *ad hominem* fallacy? This is a discussion which has arisen because the two parties are ostensibly in disagreement about the passing theory – they are attempting to apply different interpretations of the prior theory (in this case both the argument

scheme and freedom rules) in order to maximize their chances of winning the disagreement.

5.2. *Empirical Research*

Second, adopting a prior/passing model suggests several notable empirical avenues of fallacy research. In argumentation studies, we are repeatedly confronted with a seeming inconsistency in the way in which ordinary language users approach fallacious argumentation. Empirical research has shown that 'ordinary language users indeed think that the traditional fallacies are unreasonable discussion moves' (van Eemeren and Meuffels 2002, p. 58), and thus in this respect 'their pre-theoretical norms agree with the pragma-dialectical norms'(van Eemeren, Garssen and Meuffels 2003b, p. 281).

However, these same empirical studies show that despite agreeing with pragma-dialectical norms that fallacious moves are unreasonable, ordinary language users find it difficult to identify fallacies in practice. Van Eemeren, Garssen and Meuffels (2003a, p. 277), for example, examine the ability of respondents to identify *ad hominem* fallacies, grading argumentation on a 7 point scale ranging from 1 (very unreasonable) to 7 (very reasonable). This study provides support for the validity of the freedom rule, showing that 'the mean reasonableness score for the dialogues with fallacies is 3.75 ('fairly unreasonable'), the mean for dialogues without fallacies is 5.29 ('fairly reasonable')' (Ibid.) Interestingly, these overall mean scores hide a significant distinction between the respondents' judgment of fallacies in different argumentative contexts. Specifically, van Eemeren, Garssen and Meuffels (2003a) investigated the subjects' judgments of the (un)reasonableness of *ad hominem* fallacies in three argumentative contexts: the domestic context; the political context; and the scientific context. Of these three contexts, fallacious manoeuvring was judged most strictly in scientific discussions. In the words of van Eemeren et al. (2000)

> Ordinary arguers consider as more unreasonable violations of discussion rules occurring in an exchange of opinions which – in our terms – closely approaches the ideal of critical discussion than similar violations occurring in types of exchanges that are further removed from the critical ideal.

How should we explain this? The prior/passing model suggests one answer: ordinary language users recognise that the passing theory in scientific discussions is closer to the prior theory of the rules for critical discussion than in political or domestic discussions. In evaluating (un)reasonableness in these experiments, ordinary arguers tacitly acknowledge: first, the Decalogue as a prior theory; and second, the accepted interpretation – or passing theory – of the Rules used to regulate debate in each argumentative context. They then apply this

passing theory to distinguish between reasonable and unreasonable argumentative moves, and hence to establish whether a fallacy has been committed.[4] As van Eemeren et al. (2000) suggest, scientific discussions are viewed as an argumentative context that closely approximates the pragma-dialectical ideals of critical discussion. Hence, the passing theory in operation – and which ordinary arguers assume *to be* in operation – closely approximates the prior theory of the Decalogue. In contrast, when it comes to judging the (un)reasonableness of arguments against the person in the *domestic* context, ordinary language users recognise that there is a less stringent interpretation of the Freedom Rule. Therefore, they are less critical about the use of certain moves that the prior theory classifies as fallacious.

6. CONCLUSION

A key and continuing problematic within argumentation theory is how to account for effective persuasion disciplined by dialectical rationality. We believe that Davidson's prior/passing theory of communicative interaction offers one way of resolving this challenge, which we can develop as a supplement to strategic manoeuvring. In effect, this entails that the rules for critical discussion are a two-tiered structure: they should be viewed in abstract, as the prior theory, and in application, as the passing theory. In addition to the three text-centred strategic manoeuvres suggested by van Eemeren and Houtlosser, we believe that parties will attempt to maximise their chances of winning a dispute by strategically interpreting and applying the rules for critical discussion themselves. At all times participants remain obliged to abide by the standards of the prior theory and hence a breach of the abstract prior rules is automatically a breach of any passing rule.

Further, we suggest that certain argumentative contexts may become associated with particular passing theories through their habituated or frequent use in such contexts. Such passing theories may be viewed in relation to the 'dialectical distance' between their discussion rules and the pragma-dialectical ideal of a critical discussion. Empirical results suggest that disagreements in domestic contexts, for example, are managed by a markedly more accommodating interpretation of the prior theory (the Decalogue) than disagreements in political or scientific contexts. Ordinary language users acknowledge this greater 'dialectical distance' and hence are more forgiving of fallacious reasoning in such contexts.

We therefore believe that our reading of the prior/passing model offers a new insight, and new avenues of pragma-dialectical research,

into how a difference of opinion can be resolved while both dialectic obligations of reasonableness and rhetorical ambitions of argumentative success are simultaneously accommodated.

NOTES

[1] On this point, van Rees (1994, p. 198) argues: 'Pragma-dialectical analysis and evaluation require that the discussion is reconstructed as a critical discussion in which the participants aim to resolve their differences of opinion in a way acceptable to a rational judge.' Similarly, van Eemeren and Meuffels (2002, p. 46) argue that in pragma-dialectical theory, argumentative moves 'are considered reasonable only if they are a constructive contribution to the resolution of difference.'

[2] The exchange contains at least the following fallacies: circumstantial *ad hominem*; *post hoc* error; hasty generalisation.

[3] We use the term 'ethotic' in preference to 'ethical' to avoid terminological confusion; we prefer 'pathotic' over 'pathetic' and 'logetic' over logical for identical reasons.

[4] To be clear, an *ad hominem* is always a fallacy; discussion centres on whether a fallacy has been committed in this exchange, not whether the fallacy is acceptable.

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