

ISSA Proceedings 2006 - Equality In Utilitarian Reasoning Or: How Useful Is The Pragma-Dialectical Approach As An Analytical And Critical Tool?



1. *Moral Equality*

In normative reasoning, equality still is a popular point of departure. Actions, policies, drafts and so on may be defended or rejected because they support the principle of equality or not. As a common place, loaded with mostly positive connotations, it has evoked in ethical, political and legal theory a lot of controversy about, among other things, its meaning, its scope and its relation to justice. Therefore, Ronald Dworkin (2000, p. 2) qualifies 'equality' as an essentially contested concept: "People who praise it or disparage it disagree about what they are praising or disparaging." As different as they are in other respects, all contemporary political theories seem to share some basic notion of *moral equality* (Kymlicka 2002, p. 5).

Moral equality can be defined as the prescription to treat persons as equals, that is, with equal concern and respect, instead of simply treating them equally, which would often lead to undesirable consequences (Dworkin 1977, p. 370). To recognize that human beings are all equal does not mean having to treat them identically in any respects other than those in which they clearly have a moral claim to be treated alike. Opinions diverge concerning the question what these claims amount to and how they have to be balanced with competing claims (based on, e.g., the principle of freedom). How should goods be distributed if we set out to treat people as equals?

For lack of space, we will restrict ourselves in this paper to one current type of normative reasoning, starting from the general concept of moral equality. The utilitarian conception of equality will be addressed, since it still constitutes, implicitly or explicitly, the normative background from which many people in daily life defend or reject equality claims. **[i]**

According to Bentham, who founded utilitarianism, the interest of all should be treated equally without taking into account the content of the interest and possible differences in people's material situation because nobody counts more than any other person. From a utilitarian perspective, morally justified actions are those that maximize utility. This conception of equality will be analyzed by means of the pragma-dialectical approach. By applying it on a concrete normative discussion, we expect to get an indication of the general usefulness of this approach as a an analytical and critical tool. Although the pragma-dialectical approach has primarily been applied to legal reasoning, there is no a priori reason why it could not be applied to other types of normative reasoning as well. **[ii]** Any kind of discussion can be subjected to a pragma-dialectical analysis as long as the discussion aims at resolving a difference of opinion, irrespectively whether the difference of opinion concerns factual statements, value judgments, or normative standpoints (Van Eemeren & Grootendorst 2004, p. 57).

After a short presentation of the utilitarian view on equality (section 2), we will – building on Van Eemeren & Grootendorst (1992) in particular – reconstruct the schemes of argumentation that underlie the given type of normative reasoning and show which critical questions follow from these schemes of argumentation (section 3). Next, these critical questions will be compared to the criticism that the utilitarian view has evoked in scholarly debates (section 4). What, if anything, does it add to the existing repertoire of objections? Subsequently, possibilities and limitations of the pragma-dialectical approach will be discussed (section 5). In dealing with normative issues such as moral equality does it really help to pose critical questions derived from argumentation schemes? Does the pragma-dialectical approach succeed in performing its self-acclaimed heuristic and critical functions? Van Eemeren & Grootendorst (2004: 59) describe the heuristic function as “being a guideline of analysis” and the critical function as “serving as a standard in the evaluation.” In the final section we will focus on the ideal of reasonableness to which the pragma-dialectical approach is dedicated (Feteris 1989, pp. 8 ff.; Van Eemeren & Grootendorst 2004, especially chapter 6). Can it contribute, as it claims, to a rational and reasonable ending of debates? And, moreover, by committing itself to the ideal of reasonableness, can it maintain its formal and neutral character?

2. A Utilitarian Conception of Equality

In many ethical theories, some notion of equality plays a central role. For

example, utilitarians like Mill and Bentham and deontologists like Kant and, more recently, Dworkin share a commitment to the idea of equality of persons. In utilitarianism, people are equal in the value accorded their preferences and goals, whereas Kantian theory considers persons to deserve equal respect. Also, as Dworkin has suggested in his theory of rights, the notion that everyone possesses fundamental and inviolable moral rights is one way of giving expressions to the idea of equality. In each of these theories, it is a requirement of morality that people should be treated equally, regardless of individual differences. As explained above, we focus in this paper on the utilitarian conception of equality. Utilitarianism is commonly recognized as having a strong intuitive appeal. Its general assumption is that an action is morally acceptable if and only if that action brings about the greatest happiness for the greatest number of people. The Utility Principle requires that we perform actions that produce the maximum possible happiness. To determine an action's moral value, one has to add up the total happiness to be produced, subtract the pain involved, and then determine the balance, which expresses the moral value of the act. By doing so, one calculates in a literal sense what ought to be done morally. The utilitarian insists that the main question is always: 'What should I do now?' and not 'What has proved generally valuable in the past?'

Case

A small firm needs a store clerk. For this job there is a male and a female applicant. The woman is slightly more qualified, but the firm chooses the man. The reason for this decision is that the woman is married recently and that there is a chance that she soon will become pregnant. From the past, the firm has some negative experiences with pregnant employees. It does not do well for the work atmosphere, since staff members complain about repeatedly being asked to do the heavy work, such as carrying heavy boxes from the stock room. An employee's pregnancy prevents her from doing her job, so the firm has to try to modify the workplace which is not so easy for a small firm. And in addition, she will have pregnancy leave which has to be paid by the firm. In order to survive the firm has to prevail using the available budget for investments rather than for the payment of pregnancy leaves.

Most utilitarians believe that following a general rule (e.g., do not to discriminate against women because of pregnancy) does not always promote the general good.**[iii]** They consider a discriminatory action to be justifiable in a context of

competition in which a small firm has to survive, if this action will lead to the greatest happiness for the greatest number of people. While utilitarianism may have unequal effects on people in cases like this, it can nonetheless claim to be motivated by a concern for treating people as equals (Kymlicka 2002, p. 37). In the calculation of the total happiness each person's happiness counts equally, since each person's interest should be given equal consideration: everyone counting for one, no one for more than one (Hare 1984: 106). Utilitarianism endorses this general egalitarian principle according to which each person's life matters equally. However, it goes against many widely shared intuitions about what it genuinely means to treat people as equals. Therefore, it has been criticized by many philosophers, amongst whom, Dworkin and Rawls. Rawls (1971, p. 27) states, for example, that the interpersonal balancing of benefits and harms that utilitarianism allows ignores the separateness of persons, and this does not contain a proper interpretation of moral equality as equal respect for each individual. Dworkin (1977, p. 234) argues that the egalitarian principle of the utilitarianism conflicts with our common understanding of equal treatment, since in the utilitarian calculation both the personal preferences (preferences about what I do or get) and external preferences (preferences about what other people do or get) are taken into account and have all equal weight. He argues that external preferences should be ignored, because if external preferences are counted, then what I am rightfully owed depends on how other think of me (Kymlicka 2002, p. 38).[iv]

3. A *Pragma-Dialectical Reconstruction*

An important issue in normative ethics is the assessment of the moral acceptability of various options for action. It has often been said that ethical theory arises because we need to *defend* our moral judgments. To demonstrate by means of an ethical theory that one is justified in holding a moral view requires making one's principles explicit and defending those principles systematically (see, among others, Beaucamp 2001). Ethical theories are clearly argumentative in their nature, because the positions taken are always defended by argumentation. The necessity of argumentation in ethics is not under discussion, but most ethical literature pays no attention to formal aspects of argumentation. In order to evaluate the usefulness of a formal approach to normative reasoning, we will confront the utilitarian conceptions of equality sketched above with the pragma-dialectical argumentation schemes developed by, among others, Van Eemeren & Grootendorst (1992), Kienpointner (1992) and Schellens (1985).

These argumentation schemes are accompanied by critical questions that need to be evaluated when the soundness of the arguments are assessed. More specifically, the goal of our exercise is to see to what extent the standard ethical criticism of the utilitarian conception of equality coincides with the standard critical questions that accompany the argumentation schemes used in the defense of these conceptions. We will start from the normative standpoint that 'action A is morally acceptable'. As will be shown, different argumentation schemes are used in these arguments. To assess whether a particular argument is sound, it may be useful to reveal the underlying argumentation scheme, because specific critical questions follow from these schemes. By posing these question, one may get an indication which supportive arguments are need to sustain a given normative position.

In a utilitarian line of reasoning, the means-ends argumentation scheme occupies a central position. From a given end the means are derived that are supposed to realize that end. This argumentation is non-deductive, because the conclusion is not embedded in the premises. There may be other means to realize the end, so the choice for means y is not a necessary one. By implication, when we apply the means-ends scheme, we must make a reasonable case for the choice of means y at the expense of others.

Means-ends scheme

If you wish to achieve end x, then you must carry out action or measure y.

Formal

- x (the end)
- carrying out action or measure y (the means) realizes the end x (means-end premise)
- So: do y

Critical questions

1. Does action or measure y indeed realize end x?
2. Can action or measure y be carried out?
3. Does execution of action or measure y lead to unacceptable side effects?
4. Are there no other (better) actions to achieve x?
5. Is the end acceptable?

In utilitarianism, the end can be summarized by the well-know dictum: the greatest happiness for the greatest number; the means to achieve this end is a

certain action. The end is formulated in very abstract way, but, applied to a specific situation, it becomes more concrete. The action that has the best consequences leads to the highest degree of happiness for the greatest number of people. In utilitarian theory, the end is formulated such that the fifth critical question is put out of the question: the utilitarian end is worth striving for by definition, at least according to defenders of this view. Depending on the context in which such an argumentation is used, the critical questions are of greater or lesser relevance. The most relevant critical question in a utilitarian argumentation is the first one: Does means y actually realize objective x ? For example, does the discrimination of the female applicant by offering the job to the male applicant actually leads to the greatest happiness for the greatest number of people?

Two matters are of importance to answer this question. Firstly, we must demonstrate that the action leads to the expected consequences and, secondly, that these consequences give the best result, that is, the greatest happiness for the greatest number. The first question involves a causality argumentation scheme, because expected consequences are derived from a certain action. In other words, a causal link between the action and the expected consequences is posited.

Causality argumentation scheme

This argumentation scheme is based on the fact that certain expected consequences can be derived from a certain situation or action.

Formal

- p
- ' p causes q ' or ' p has q as a consequence' (the causality imperative)
- So: q

Critical questions

1. Will the given situation or action indeed lead to the expected consequences?
2. Have no issues been forgotten, for example, with respect to the expected consequences?
3. How do you determine the expected consequences and can it be defended?

Subsequently, we need to demonstrate that these consequences give indeed the best result. This is determined by means of a comparative assessment. This

judgment can be made, if the expected consequences of all possible actions have been determined (in which a causality argumentation is used each time), so that these actions can be compared. In the above case, two options of action have to be considered: the job is offered either to man or to the woman. Using a kind of cost-benefit analysis, the best option is selected. According to Bentham, money is a suitable means that allows for a comparison of the expected consequences. By definition, the best option will lead to the greatest happiness for the greatest number. Moreover, this comparative judgment is sustained by an argumentation in which the critical question 'Can we express all consequences in money?' is applicable.

Because it is impossible to determine the expected consequences of all actions in many situations, some utilitarians make use of another end: the sum of the total usefulness (pleasure) and uselessness (pain) has to be positive. By means of this criterion, we can determine whether a certain action is morally acceptable, without having to consider all other possible actions.

4. What Difference Does It Make?

Despite its intuitive appeal, the utilitarian conception of equality has been criticized severely from many different normative positions. In this section, we will discuss various important objections that have been brought forward against them in ethical and political theory and try to connect them with the objections that can be deduced from the critical questions that follow from the underlying argumentation schemes discussed in the previous section. Our purpose is to find out whether these critical questions cover all of the main objections raised so far and whether they add something new and interesting to the existing canon of criticism. What difference does the pragma-dialectical approach make in assessing the argumentative force of the utilitarian conception of equality?

In normative discussions, four kinds of objections are recurrently being raised against the utilitarian line of reasoning and the conception of equality on which it is based. **[v]** Firstly, it is argued that happiness, which utilitarianism strives to maximise for all people involved on an equal basis, cannot be measured objectively. Different persons get their pleasure from different things: some people may primarily want to increase their amount of money, whereas other people may be more interested in spiritual growth. If it is possible to agree on a general acceptable standard for measuring happiness - e.g., the financial costs and benefits of a certain action, as Bentham suggested - it is not always possible to make an exact calculation.

Consequences of an action are often uncertain, unpredictable or simply unknown. In the example given above, it could turn out that the woman, even though she is absent from her work during her pregnancy and parental leave, is, all things considered, more useful to the company because she is slightly more qualified in social, organisational and intellectual respects than the man. A purely quantitative (financial) assessment of happiness may be too simplistic, because, for one thing, not all valuable things in life can be expressed in terms of money. If we, following Mill, try to assess happiness in a qualitative way, the problem of comparison arises: how to balance one good against the other? For example, by prohibiting the cutting of tropical wood, one may at the same time save nature and deprive native people of their main source of income. What makes one kind of pleasure (in this case: nature protection) more valuable than other kinds (such as earning money)? General accepted standards for answering this question are lacking. Goods may even be, as some claim, incommensurable (Kymlicka 2002, pp. 17-18).

In the pragma-dialectical approach, this kind of objections can primarily be traced back to both the means-ends and the causality argumentation scheme that underlies utilitarian normative reasoning. In particular, the critical question 'Does action *y* indeed realize end *x*?,' connected to the means-end scheme, is relevant here, together with the critical questions 'Will the given situation or action indeed lead to the expected consequences?' and 'How do you determine the expected consequences and can it be defended?,' following from the causality scheme. The discussion at this point focuses on the instrumental side of utilitarian reasoning: given the desirability of the end or expected consequence - i.e., 'the greatest happiness for the greatest number of people' -, by which means can it best be achieved? In case a qualitative assessment of happiness is made, a critical question derived from the comparison argumentation scheme can be invoked: to which extent are the goods at hand comparable?

Secondly, the end itself can be called into question. It is argued that happiness is not the only or the most important standard of justice. Some actions may increase the over-all happiness in a society, but may be considered unfair or unjust on other grounds. For example, the killing of a cruel dictator will undoubtedly contribute significantly to the pleasure of his subjects; however, this act still constitutes murder. In a utilitarian line of reasoning, basic human rights may be violated, if the positive consequences of an action exceed the negative ones. This point of criticism corresponds to the critical question 'Is the end acceptable?,'

following from the means-ends argumentation scheme in the pragma-dialectical approach. Closely connected to this point, some authors have argued, thirdly, that utilitarian calculations may result in an unfair distribution of pains and pleasures in a society.

According to Rawls (1971), utilitarianism cannot do justice to fundamental differences among people. In applying the Utility Principle, one has to conceive of society as a whole and to take into consideration only its total happiness. Thereby, the question of distributive justice disappears fully from view: any distribution of goods is justifiable, however unequal (e.g., some people may be very rich, whereas other people can barely survive), as long as the general happiness is maximised. Moreover, utilitarianism can lead to the suppression of people: if it adds up to the total sum of happiness, people may – despite Bentham’s own intentions – be abused, and even put to slavery. This criticism is reflected in the critical question ‘Does the execution of action y lead to unacceptable side effects?’, connected to the means-ends argumentation scheme in the pragma-dialectical model.

Finally, utilitarianism is accused of being based on a wrong conception of equality (Kymlicka 2002, pp. 37 ff.). On the one side, it excludes special obligations one may have to particular people, for instance, to friends or family members, or to people to whom one has made a promise. All these moral ties have to be ignored, if a person is equal to any other person and may only count as one in the utilitarian calculus. On the other side, it includes preferences of a dubious moral nature: preferences that someone has with regard to other people (or external preferences) and preferences that exceed one’s fair share of goods (or selfish preferences). In the first case, it may be justifiable on utilitarian grounds to make people suffer for the perverse pleasure it gives to other people (or animals, e.g. in bull fighting). In the second case, it becomes possible to get more goods or resources than other people and more than they rightfully deserve, on the sole ground of maximizing the over-all happiness.

This criticism cannot be easily accommodated into the pragma-dialectical model, since it does not address, or not directly, the means-ends relation or the causality scheme in utilitarian reasoning. It may be connected to the critical question ‘Have no issues been forgotten, for example, with respect to the expected consequences?’, following from the causality argumentation scheme, but that seems very far-fetched. Moreover, utilitarianism is not attacked here for its consequences, but for its ‘inherent’, supposedly untenable, conception of equality.

Another possibility is to reconstruct the inclusion of illegitimate preferences as unacceptable side-effects within the means-ends scheme, but that does not do justice to the principal character of the critique: a supposedly wrong conception of equality is not just a 'side-effect' of an action based on utilitarian grounds, but is, according to Kymlicka and others, a fatal flaw at the heart of the utilitarian theory. Except for the critical questions mentioned, the argumentation schemes underlying utilitarian normative reasoning do not generate any interesting questions.

5. Possibilities and Limitations of the Pragma-Dialectical Approach

After having compared the criticism that the utilitarian conception of equality has evoked in normative theory with the critical questions that follow from the underlying argumentation schemes, we may get an indication of the possibilities and limitations of the pragma-dialectical approach. In finding and articulating criticism to a particular normative position, is it really helpful or necessary to engage oneself in a reconstruction of the arguments exchanged? As the comparison above indicates, the pragma-dialectical approach serves its self-acclaimed function as a heuristic device: it is capable of generating questions that cover many points of criticism that have been raised against the two conceptions of equality. Thereby, it may provide a good starting point for criticism. If one aims at making a 'quick scan' of the possibly problematic aspects of a given position, it surely makes sense to uncover the underlying argumentation schemes and pose the corresponding critical questions. Applied to utilitarian normative reasoning, the basic questions present themselves on a silver platter as soon as the underlying means-ends and causality argumentation schemes are identified: 'Is happiness maximization an acceptable end?', 'By which means can it be achieved?' and 'Are there any unacceptable side-effects?'

On the other hand, the pragma-dialectical approach does not - and does not pretend - to give any clue whatsoever to answer the critical questions that it generates, nor does it give any real guidance in evaluating the competing answers to the same question. For example, questions like 'Is happiness maximization an acceptable end?' or 'Does it constitute a better normative principle than, e.g., Kant's categorical imperative?' cannot be answered from within a pragma-dialectical approach. That has to be settled in the critical discussion itself, but on which grounds? The only guidance the pragma-dialectical approach gives, is a set of procedural rules for a critical discussion, such as "The antagonist has conclusively attacked the standpoint of the protagonist, if he has successfully

attacked either the propositional content or the force of justification or refutation of the complex speech act of argumentation" (rule 9b, Van Eemeren & Grootendorst 2004, p. 151). However, standards for a *substantive* assessment of the quality of the arguments exchanged are lacking – When can an attack, e.g., be called ‘successful’? In this respect, it is and remains a purely formal approach, devoid of content. That is one of the reasons why the pragma-dialectical approach is of limited use in a critical discussion as well as in a didactical context: after the critical questions have been identified, it remains fully unclear, both for the scholar and the student, how to proceed.

Moreover, pragma-dialectics is not able to discover all the basic questions that a normative position may raise. The last fundamental point against utilitarianism was missed, namely, that it is – according to Rawls, Dworkin, Kymlicka, and others – based on a wrong conception of equality. Apparently, not all critical questions can be derived from or connected to an underlying argumentation scheme. Or, if one is able to find an applicable argumentation scheme after inventive reconstruction, one may still arrive at rather general critical questions, which are not very helpful in finding and articulating criticism. E.g., the critical questions ‘Have no issues been forgotten, for example, with respect to the expected consequences?’ and ‘How do you determine the expected consequences and can it be defended?’, both connected to the causality argumentation scheme, are so vague and undirected that they lack any interesting critical potential. However, it may be said that it is too much to ask for completeness on this point: the pragma-dialectical approach may be still valuable if it generates, though not all, *many or the most* of the basic questions that a normative position has to account for. In our analysis given above, we were able to trace back three out of four basic questions per normative position to the underlying argumentation schemes.

A final and more serious limitation is that the critical questions the pragma-dialectical approach is able to come up with, are of a relatively trivial nature and are not capable of generating any interesting points of criticism outside the existing canon. One does not need to reconstruct the underlying argumentation schemes, to ask oneself whether happiness should be the ultimate goal in life, as utilitarianism claims, or that there may be other goals worth striving for. What does this approach add to the criticism that can be found, without too much effort, by using one’s, academically or otherwise trained, common sense? Without this common sense, one would not even be able to recognize the applicable argumentation schemes in the first place nor could one raise the corresponding

critical questions in a sensible way; in the best case, one could only generate very general questions in a mechanical way but remain blind to the critical possibilities they might offer. Equipped with common sense, however, a person is sensible enough to develop criticism, without having to engage herself or himself in tiresome reconstruction work.

6. *The End of Reasonableness*

On a more general and fundamental level, the pragma-dialectical approach can be criticised for endorsing a false ideal of reasonableness: it is based on the illusion that all debates can *in principle*, if the pragma-dialectical rules are respected by all parties involved, be settled by rational argument, that is by a fair exchange of opinions, founded on established facts and good reasons. Thus it fails to appreciate that, in the end, all interesting normative matters, that is, matters that involve basic notions of human existence, cannot be settled by means of argumentation. Every normative position presupposes metaphysical axioms, which cannot be put into question and which cannot be proven 'without reasonable doubt' either.

One of the constitutive axioms of the pragma-dialectical approach itself is an assertion that, by necessity, contradicts its own rule of non-contradiction: "Protecting certain standpoints and immunizing them against criticism are thus out of question" (Van Eemeren & Grootendorst 2004, p. 36 fn.). It is precisely this 'putting out of the question the putting out of the question' that makes the pragma-dialectical project possible: standpoints that are beforehand excluded from the discussion have to be excluded (except for the standpoint that excludes the exclusion of all other standpoints), otherwise there can be no "rational" and "reasonable" critical discussion and, ultimately, no dialectical resolution of the debate in consensus. However, this contradiction shows that full argumentative openness to competing claims is impossible. One can never be open to claims that put one's own mode of existence into question and that conflict with one's core convictions. Pragma-dialectics has to commit itself to the ideal of reasonableness, despite the inevitable contradiction it generates, because otherwise it would no longer be able to play its self-assigned role of a formal and neutral referee of critical discussions. [vi] Whether reasonableness really "exists" or constitutes a valuable ideal cannot be settled argumentatively; it is a presupposition that simply has to be taken for granted.

Similarly, the discussion between competing conceptions of equality cannot be settled by means of argumentation. As Kymlicka (2002, p. 44) argues, the

question of equality “is a moral question whose answer depends on complex issues about the nature of human being and their interests and relationships.” In utilitarianism, a constitutive axiom is that happiness should be spread over the people equally. What happiness is and whether it should constitute the ultimate goal in life is not open to critical discussion, but is a matter of personal choice, taste, belief and the like: one cannot ‘convince’ someone else that he or she should not be happy while eating meat, seeing other people suffer, listening to speed metal, and so on. Kant rejected utilitarianism, basically because he considered happiness a too subjective and unreliable standard upon which no moral law or normative ethics could be based. Moreover, in his view, it wrongly conceives of morality in terms of means and ends. In his deontological theory, moral standards exist independently of utilitarian ends. An act is right insofar as it satisfies the demands of some principle of obligation. As highest principle or moral law Kant posited the well-known categorical imperative that every moral agent recognizes in accepting an action as morally obligatory. This imperative states that ‘I ought never act except in such a way that I can also will that my maxim become a universal law.’ In fact, the categorical imperative formulates the equality postulate of universal human worth. According to Kant, the duty of equality has priority over other duties, because it is a purely rational principle based on *a priori* principles only (Kant 1793/1970, p. 63).**[vii]** Both conceptions of equality have an intuitive appeal: on the one hand, the utilitarian idea that each person has to count as one in the calculation and dissemination of happiness; on the other hand, the Kantian notion that general moral rules should be applied to everyone equally. In both conceptions, the principle of equality does not exclude the possibility that relevant differences are taken into account, for example, between children and adults or between mentally ill people and ‘sane’ people.**[viii]** The crucial question is, however, which differences are relevant under which circumstances. The answer to this question cannot be derived from the equality principle itself, whether in a utilitarian or in a Kantian conception, but is a matter of personal conviction. A religious person might find it acceptable that women are excluded from political functions; a feminist may oppose against this exclusion and may defend a preferential treatment of women over men in politics instead. No argument, however rational or reasonable from a certain point of view, will succeed in bridging the gap between these incompatible world-views.

That is not to say, of course, that arguments do not matter. But when it comes to matters that matter, they can never be *decisive*. As Kelsen has argued, “[t]he

problem of values is in the first place the problem of conflicts of values, and this problem cannot be solved by means of rational cognition. (...) Norms prescribing human behavior can emanate only from human will, not from human reason" (Kelsen 1971, p. 4 and 20 respectively). The pragma-dialectical ideal of reasonableness disguises the potential violent nature of argumentation: when it comes to political and legal decision-making, it is mostly not the 'force of argument' that triumphs but the force behind the argument - the 'human will' that is powerful enough to exert itself at the expense of other wills. In real life, debates are often ended, not because reason has finally won or consensus between the parties involved has been reached, but because a certain authority - a judge, a minister, a police officer, to name a few - decides it is time to stop.**[ix]** In this respect, the pragma-dialectical approach is less neutral and formal than it appears to be: by depoliticizing argumentation, it hides from view that in actual political, legal, and other norm-setting practices decisions are taken for which no sufficient grounds are given or ever can be given.

NOTES

[i] Following Rawls, Kymlicka (2002, p. 10) argues that "utilitarianism operates as a kind of tacit background against which other theories have to assert and defend themselves."

[ii] In a forthcoming article, we will apply the pragma-dialectical approach to two other types of normative reasoning: deontological theory (Kant) and virtue ethics (Aristotle).

[iii] Exceptions are rule-utilitarianists like R.B. Brandt and R.M. Hare.

[iv] See further section 4.

[v] These objections are discussed in Royakkers, Van de Poel & Pieters (2004, pp. 65-67).

[vi] Like every argumentation theory, the pragma-dialectical approach considers itself to be a formal and neutral approach that aims at remaining silent in substantive matters of justice and truth: "Instead of concerning themselves with the question of who is right or wrong, or what exactly is true or untrue, argumentation theorists concern themselves with the way in which acceptability claims, such as claims to being right or truth claims, are (or should be) supported or attacked" (Van Eemeren & Grootendorst 2004, p. 12).

[vii] In a forthcoming article, we will discuss this position in more detail.

[viii] The following reflections are inspired on Kelsen (1971, p. 14).

[ix] Cf. Van Klink (2005, pp. 118-120).

REFERENCES

- Beaucamp, T.L. (2001). *Philosophical ethics. An introduction to moral philosophy*. Boston: Mc Graw Hill.
- Dworkin, R. (1977). *Taking Rights Seriously*. Cambridge: Harvard University Press.
- Dworkin, R. (1988). *Law's Empire*. Cambridge: Harvard University Press.
- Dworkin, R. (2000). *Sovereign Virtue. The Theory and Practice of Equality*. Cambridge: Harvard University Press.
- Feteris, E.T. (1989). *Discussieregels in het recht*. Dordrecht & Providence RI: Foris Publications.
- Hare, R.M. (1984). Rights, utility and universalization: a reply to John Mackie. In: R. Frey (Ed.), *Utility and Rights* (pp. 106-120), Minneapolis: University of Minnesota Press.
- Kant, I. (1785/1995). *Foundations of the Metaphysics of Morals* (second revised edition). Upper Saddle River: Prentice-Hall.
- Kant, I. (1793/1970). On the common saying 'this may be true in theory, but it does not apply in practice'. In: Reiss, H. (Eds.), *Kant's Political Writings* (pp. 61-92), Cambridge: Cambridge University Press.
- Kelsen, H. (1971). *What is Justice? Justice, Law, and Politics in the Mirror of Science*. Collected Essays. Berkeley: University of California Press.
- Kienpointner, M. (1992). *Alltagslogik*. Stuttgart: Frommann-Holzboog.
- Korsgaard, C.M. (1996). *Creating the Kingdom of Ends*. Cambridge: Cambridge University Press.
- Kymlicka, W. (2002). *Contemporary Political Philosophy. An Introduction* (2nd Edition). Oxford: Clarendon Press.
- Rawls, J. (1971). *A Theorie of Justice*. Cambridge: MA: Harvard University Press.
- Ross, W.D. (1930). *The Right and the Good*. Oxford: Clarendon Press.
- Royakkers, L., Van de Poel, I. & Pieters, A. (2004). *Ethiek & techniek. Morele overwegingen in de ingenieurspraktijk*. Baarn: HB uitgevers.
- Schellens, P.J. (1985). *Redelijke argumenten*. Dordrecht: Foris.
- Van Eemeren, F.& Grootendorst, R. (1992). *Argumentation, Communication, and Fallacies. A pragma-dialectical perspective*. Hillsdale, N.J.: Lawrence Erlbaum.
- Van Eemeren, F. & Grootendorst, R. (2004). *A Systematic Theory of Argumentation. The Pragma-Dialectical Approach*. Cambridge: Cambridge University Press.
- Van Klink, B. (2005). An effective-historical view on the symbolic working of law. In: Zeegers, N., Witteveen, W. & van Klink, B. (Eds.), *Social and Symbolic Effects*

of Legislation under the Rule of Law (pp. 113-145), Lewiston: The Edwin Mellen Press.

Williams, B. (1973). Problems of the self. *Philosophical papers 1956-1972*. Cambridge: Cambridge University Press.