

6. Burdens of Rejoinder¹

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Background

1. *Presenting you with arguments* is offering you reasons for doing something – reasons for accepting a certain proposition as true, or reasons for trusting a particular source I intend to cite, or reasons for voting for a particular candidate in an election.² Presenting an argument can effect important changes in communicative contexts,³ even if the reasons offered don't induce anybody to do what they are reasons for doing.⁴ As soon as somebody has rendered a reason *manifest* in a certain context, the fact that it *is* manifest can affect the communicative behaviour of participants in ways that may profoundly influence future developments in that context.

For example, where a reason for accepting the proposition that *p* has been laid out and has not been challenged, participants will be – or at least will appear to be – justified in appealing to the “fact” that *p* in their attempts to argue for further conclusions. An argument for *p* makes that proposition *available* to play the role of premiss, so long as that argument hasn't been effectively challenged. Even if an argument for *p* hasn't really persuaded very many of the truth of *p*, doubters can find it difficult to object to its use as a premiss without challenging arguments previously offered in its favour in the context at hand.

Moreover, just as an argument for accepting a proposition can render that proposition available in a communicative context, so an argument for *rejecting* it – for considering it false – can render it *unavailable*. Even if nobody is really persuaded by the reasons offered for rejecting *p* as false, it can be difficult for me to appeal to *p* in support of some further point without challenging reasons previously offered for rejecting it in the context at hand.

¹ This paper appeared in Hansen and Pinto, *Reason Reclaimed* (Vale Press, 2007): 75-88.

² Offering reasons can be a matter of *giving an explanation* as contrasted with *presenting an argument*. In general, when I offer reasons for doing something as part of an *argument*, the reasons that I offer are reasons for *the person whom I am addressing* to do what the reasons are reasons for doing. In explanations, that is rarely if ever the case. For example, if I give you reasons for *me* to do something, I am typically *explaining* to you why I did or am about to do that thing. But if I give you reasons for *you* to do something, I am typically *presenting you with an argument* for doing it. In what follows, I will confine my self to cases in which reasons offered are reasons for the *addressee* to do something.

³ A communicative context is the transactional context within which messages are exchanged. An argument occurs in such a transactional context if it included in a message exchanged in that context. See Pinto 2003a, section 2 and Appendix A.

⁴ In Pinto 2003a, I identified a variety ways in which reasons can induce significant alterations in the cognitive, conative and evaluative attitudes of those to whom they are addressed, even when they don't persuade addressees to do what they are reasons for doing (pp. 9-10, where 7 ways this might happen were explained). I called such effects *non-persuasive effects* of presenting an argument.

This potential impact of arguments on the *context availability*⁵ of propositions is compounded by the fact that it's not always possible or feasible to mount a challenge to such arguments, even when they are seriously defective. You may find the arguments in question totally unconvincing, but not be able to put your finger on exactly what's wrong with them. Or you may lack the informational resources to make a case against them on the spot. Or the information needed to counter them may be confidential or of a "delicate" nature.⁶ Or the case to be made against them may be a complex one, which your audience will not be able to follow or which will take more time than is allotted to you to speak. Or again, you may judge that focusing on the offending argument will divert attention from more fundamental issues (you don't want to be *sidetracked* or *bogged down* in secondary issues),⁷ or that addressing them will simply give false information wider circulation (you want to *let sleeping dogs lie*).⁸

The issue

2. Consider any manifest reason for accepting or rejecting a proposition which has not in fact induced widespread acceptance or rejection of that proposition. It will still have an impact on the *context availability* of that proposition provided that

- (a) it gives rise to *expectations of a rebuttal* from speakers who would appeal to that proposition in the face of the reason for rejecting it or from speakers who would object to that proposition in the face of the reason for accepting it, and
- (b) no one is willing or able to provide a rejoinder which is at least minimally effective.

The questions I want to address are these: When *ought* a manifest reason for accepting or rejecting a proposition give rise to an expectation of rebuttal? And, what is not the same thing, when if ever does such a reason give rise to a *burden of rejoinder*? And more generally, how in such situations do burdens of rejoinder arise – what is their basis?

⁵ See Pinto 2003a: 10-12 for a more extended discussion of context availability.

⁶ See Pinto 2003a: 11ff. "The forces that filter out 'epistemically acceptable' propositions are various. Social disapproval of the expression of certain opinions, reticence about matters considered 'personal' or 'private,' loyalty to friends, family or country, obligations to employers or clients, fear of reprisal – these and a host of similar factors can inhibit what discussants are prepared to *say* and thereby eliminate or reduce the chance that certain arguments get made."

⁷ Edwards official reason for not challenging Cheney's false claim that he had never met before the vice-presidential debate – a claim that Cheney was using to argue that Edwards hadn't discharged his duties as a Senator very faithfully.

⁸ Presumably the reason why in the run-up to 2004 US presidential election the Kerry people initially ignored the attacks on Kerry's war record by the Swift Boat Captains for Truth.

3. These questions fall within the ambit of what Jean Goodwin has called the *normative pragmatics of arguing*,⁹ since according to Goodwin (p. 6)

[t]he key task of any theory of the normative pragmatics of arguing is to tell some sort of story about where the norms governing our arguing come from -- and, one hopes, not just a "just-so" story.

Goodwin sees two main approaches to explaining the origin of such norms, which she contrasts as follows (p. 10):

- (i) the approach exemplified in *dialogue theories* of argument, where “norms arise because arguers are bound to cooperate to achieve a social function” and where “a theory ought to define the constitutive and regulative rules for the dialogue” – Doug Walton and the Amsterdam school are cited as examples of such an approach,¹⁰
- (ii) the approach exemplified in what she calls *design theory*, where “norms arise because arguers so act as to impose them on themselves and each other” and where “theory ought to analyze the arguers' strategies and explain how they work” – several papers by Fred Kauffeld are cited as exemplifying this approach.

Although in a previous discussion of context availability I flirted with a “dialogue approach” to burdens of rejoinder (Pinto 2003a: 12), greater familiarity with the work of Jean Goodwin and Fred Kauffeld strongly inclines me to look for a design-theoretic account of any “burden of rejoinder.”

As a matter fact, Kauffeld has dealt with something close to the problem I’m concerned with in a design-theoretic way. In Kauffeld 1999, he attempts to show that

- (a) speech acts of proposing and, under special circumstances, of “imperative” advising do create obligations to answer objections to one’s proposal or advice,

but that

- (b) the obligations so created are limited in scope and don’t create a threat that “the dialectical tier opens out into a regress of objections and supplementary arguments which can only restricted on an ad hoc basis.”¹¹

⁹ See Goodwin 2002: 4. Goodwin quotes with approval earlier uses of this expression in van Eemeren 1994, Jacobs 1999 and Jacobs 2000.

¹⁰ She views people like Ralph Johnson, Chris Tindale and Trudy Govier, who do not “who do not explicitly take arguing to be a dialogue” as nevertheless operating on the “in the penumbra of dialogue theory.” This is because they “have made remarks that suggest similar commitments to either or both of the claims that arguing performs a social function and that arguers are obliged to cooperate to achieve it.” See Goodwin 2002:7.

¹¹ Kauffeld 1999 reviews the problems that Govier 1998 identifies in Ralph Johnson’s early formulations of an arguer’s “dialectical obligations” and also attempts to assess the adequacy of Govier’s suggestions for dealing with those problems.

According to Kauffeld's account of proposing, for example, a speaker can engage a hearer's attention to her proposal only if, in offering a proposal, she makes a commitment to *defend* the course of action proposed. The obligation to answer objections arises because of a *commitment* the proposer makes, and has a strategic reason for making.

However, there are at least two respects in which the examples Kauffeld uses to make his point differ from the sorts of case I'm interested in:

- 1) the cases I'm interested in are by no means limited to obligations created by *proposals for action* or by *offering advice*
- 2) in Kauffeld's examples, the objections to be met by person X are objections raised against the core of something which person X is advancing, whereas in the cases I'm interested in the points at issue are frequently only obliquely related to the core of what person X is advancing.

Nevertheless, I think it is worth pursuing the idea that expectations of rebuttal and burdens of rejoinder arise when and because participants in a communicative context have strategic reasons for raising such expectations and assuming such burdens.

What follows is a brief preliminary sketch of how that idea might be fleshed out at a level of generality greater than the level of generality found in Kauffeld 1999.

Sketch of a solution

4. There are two distinct sorts of case I want to consider, each of which turns on the occurrence of a certain sort of speech act in a particular set of circumstances.

- a) *Objecting to* the use of a proposition that has previously been defended in the context at hand, where the previous argument offered in its defence has not yet been criticized or rebutted in that context.
- b) *Appealing to* a proposition that has previously been attacked, by employing it as a premiss in an argument, where a previous argument offered in the context at hand to show it to be false or unacceptable has not yet been criticized or rebutted in that context.

One who objects or appeals to a proposition in either of these circumstances *may* assume an obligation to provide a rejoinder to the argument previously offered for or against that proposition. My task is to illuminate *how* and *why* such obligations are assumed when they *are* assumed, and also *what one obliges oneself to do* when one assumes such an obligation.

5. Let me begin by offering a general observation about *how it is possible*, by engaging in a speech act, to assume or become entangled in an *obligation*.

I submit that something like the following principle captures part of what makes this possible:

P1 By doing x a person S assumes or becomes subject to an obligation to do or to have done y if

- (1) by doing x S gives someone else O a reason to believe she can rely on S to have done y or to do y
- (2) S knows or ought to know that by doing x she will give O a reason to so believe, and
- (3) giving O a reason to so believe is likely to induce O to perform some action that would be a waste of O 's resources if S has not done y or would fail to do it when called upon to do so.

What I'm trying to capture is the idea of circumstances under which a person R , who has relied upon the supposition that S has done or would do y , would have a *legitimate complaint* against S for not having done y or for not doing it when called upon to do so.

Without attempting to argue the point in detail, I think it should be clear that a principle like P1 would explain why promises and contracts create *obligations*, and would also explain why Kauffeld's accounts of the burdens assumed by those who propose, accuse or offer imperative advice fall into the category of *obligations* or *duties*.

Where we want to claim that an obligation – for example, a burden of rejoinder – is *freely* assumed, we must be able to specify

- (1) the action whose performance gives another person reason to believe he can rely on some further action having been performed or being performed on request – call it the *committing action*
- (2) the action which the committing action commits one to – call it the *action committed to*, and
- (3) plausible *reasoning* by which someone can be led from the fact that the committing action has occurred to the conclusion that he can *rely* on another to have performed the action committed to or to do so if called upon to do so.

Kauffeld's work on presumption (especially Kauffeld 2003b) and on proposing, accusing and advising (Kauffeld 1998, 1999) – as well as his recent work on the presumption of veracity (Kauffeld 2003a) – provides important clues to a kind of plausible reasoning that would meet condition 3. Key to that reasoning, in Kauffeld's accounts, is the "risk of resentment." Person R reasons that person S would not risk the embarrassment, censure, legal consequences, etc., that would result if, having performed action x , she has failed or should fail to perform action y .

6. How does this apply to the two types of committing action I'm interested in? Recall that they were:

- (a) *objecting to* the use of a proposition previously defended in the context at hand
- (b) *appealing to* the use of a proposition previously attacked in the context at hand

Why would someone engaging in *these* types of action give others a reason to suppose she can be relied upon to provide a rejoinder if called upon to do so? With respect to dissent *in general* it is not reasonable to think we can expect a dissenter to offer a rejoinder to arguments supporting what he dissents from. A dissenter does not *in general* risk embarrassment or censure if he says: I don't agree, I'm not convinced, but I'm not interested in pursuing the matter further.

But speech of types (a) and (b) have features which might be thought to give rise to a reasonable expectation of rebuttal.

By engaging in such speech acts of types (a) and (b), I am appealing to the use of a proposition *as a premiss*, or objecting to its use *as a premiss*. I thereby entangle myself in *controversy* or *dispute*, and involve myself in *the public consideration of reasons*. I cannot beg off with the excuse "I don't want to get involved in a debate," because the very action of using a premiss or of raising an objection to the use of a premiss involves me in something like a debate – a public consideration of reasons in a context of controversy.

But why should the fact that *S* performs an action having these characteristics *provide someone else with a reason for supposing or presuming* that she can be relied upon to provide a rejoinder if asked to do so?

In explaining the obligations that arise in proposing and advising, Kauffeld has said

The problems which typically animate proposing and accusing arise because the presumption of veracity, upon which statements fundamentally depend for their efficacy, does not carry enough practical weight to fulfil the speaker's purpose in the face of doubt, disagreement, evasion, and opposition. [Kauffeld 1998: 259]

The presumption of veracity is the presumption that a speaker has made a reasonable effort to ascertain the truth of *p*. And when a speaker *invites* that presumption in "serious speech," she assumes a responsibility for having done so (see, for example, Kauffeld 2002: 11). Seriously saying that *p* – in a situation where I have reason to expect that others will rely on what I've said at some non-negligible cost to themselves – will involve an obligation to assert only things I have reasons to think are true. But a burden of proof or rejoinder is something more than this; it is an obligation to *produce* those reasons or to make them manifest if requested to do so.

Why, in a context of controversy, would a speaker be saddled, not just with the responsibility of *having* reasons for what she says, but also with an obligation to *produce* them on request? Such contexts, by definition as it were, involve doubt and disagreement in the face of which the ordinary presumption of veracity might well prove insufficient for a speaker's purposes. Hence claims made in such contexts *might* – like proposals or imperative advice – require something over and above the presumption of veracity to achieve their purposes.

7. To see how an obligation to produce a rejoinder might arise, consider first the *general* case of burdens of proof in a context of controversy.

In the literature on persuasion, it has been noted that those who receive messages containing an argument respond to those messages with varying degrees of attention to and consideration of the arguments they contain. Their thinking about the argument can exhibit varying degrees of “elaboration” or “issue-relevant thinking.” Sometimes addressees engage in a very low level of issue-relevant thinking, relying on “heuristics” or shortcuts – their reaction to a message is largely influenced, perhaps, by a speaker’s credibility or by the reaction of others to the speaker’s message. At other times addressees will scrutinize the argument presented, reflecting on issue-relevant considerations and assessing the argument in light of information at their disposal and other arguments which they devise or recall from memory.¹²

How might a speaker who wants her claim to be seriously entertained by an addressee best deal with this situation. She might simply assume the addressee will engage in issue-relevant thinking and will therefore be interested in any reasons the speaker has for her claim – an assumption that might well prompt the speaker to lay out her reasons for any particularly controversial claim that she makes. But that assumption could well lead to a less than optimal strategy.¹³ For one thing, the addressee may not in fact consider the speaker’s claim at all doubtful, and might view a rehearsal of reasons for it an unnecessary waste of time. For another, stating reasons for a claim could well invite dispute about the reasons themselves, diverting attention from the claim itself and reducing rather than increasing the likelihood the claim will be taken seriously. Finally, if the addressee is not inclined to engage in a high degree of issue-relevant thinking, a speaker might do better to keep her reasons to herself, emphasizing other factors that could influence “peripheral route” persuasion. A wise speaker will offer reasons for a claim *only if it is has been made clear that reasons for that claim need to be offered*. At the same time, she will want to encourage an addressee who is inclined to engage in issue-relevant thinking to consider *her* reasons for thinking the claim true. The optimal strategy is for the speaker to state her claim, unaccompanied by reasons, while making it clear that her reasons for thinking it true are available on request.

Any speaker adopting such a strategy – any speaker who makes a claim, signalling reasons are available on request – will in light of P1 thereby assume a burden of proof. I would hypothesize that controversial claims made in contexts of controversy typically involve freely assuming a burden of proof, for something like the strategic reasons I’ve just set out.

8. Consider now the special case of a speaker who puts forward a claim in a context where reasons which call her claim into question have already been set out. Two things should be immediately clear:

¹² This descriptions is based on the useful summary of dual-process accounts of persuasion that can be found in O’Keefe 1996. See also chapter 6 of O’Keefe 2002.

¹³ Beth Manolescu has called my attention to a passage in Whately 1963: 161-82, where Whately cautions against arguing too forcefully – which, though not quite the same point I am making, it is not unrelated to it.

- (i) By virtue of the very fact that she's advancing a claim against which an argument has already been presented, she will be making a claim that is in dispute. As a consequence, she will typically freely assume a burden of proof with respect to the claim she is advancing.
- (ii) If she is acting responsibly – i.e. has made a reasonable effort to ascertain the truth of her claim – she will have considered recently offered arguments which call that claim into question and will have found them wanting. An addressee can therefore presume that among the speaker's reasons for thinking her claim is true will be reasons for thinking that the argument which calls it into question is wanting. As a result, her burden of proof – her obligation to produce her reasons for thinking her claim true – will give rise to an obligation to explain why she found the argument recently made against it wanting. In other words, her burden of proof will give rise to a burden of rejoinder.

Hence an obligation to provide a rejoinder, if requested to do so, will arise in these cases for the same *sorts* of reasons for which burdens of proof generally arise in contexts of controversy, but will depend on the fact that an argument casting doubt on a speaker's claim has recently been set out in the presence of both the speaker and the addressee.

Suppose for the moment the preceding considerations capture, in a very rough way, what lies behind burdens of rejoinder in cases like the ones I'm considering. What light can this shed on (a) the situations in which burdens of rejoinder will and will not arise and (b) the standards of adequacy for rejoinders?

9. *Situations in which burden of rejoinder will arise.* Burdens of rejoinder arise when, in order to secure serious consideration of an argument or objection involving a claim that's in dispute, a speaker must commit herself to produce such a rejoinder upon request. Burdens will arise only in contexts in which it is reasonable for a speaker to think that an "offer" of rejoinder is necessary to gain consideration of her point. Among the circumstances in which such an offer will not be deemed necessary are the following:

- (i) The arguments which might stand in the way of a speaker's point are arguments which gain no purchase with the audience to whom the speaker is appealing – e.g., arguments based on religious tenets which the overwhelming majority of an audience do not share
- (ii) Familiar arguments to which there are familiar rejoinders which an audience would deem it pointless for the speaker to rehearse
- (iii) Arguments which it would be unreasonable to expect a speaker to address – e.g., where advocates of a position attempt to overpower opposition by sheer numbers of arguments (in something like a denial of service attack), it is not reasonable to expect dissenters to provide rejoinders to every such argument and therefore no obligation to do so arises.

In these situations, and many other situations like them, a speaker may be able to press her point, even in the face of contrary argument, without making herself liable to produce a rejoinder.

10. *Standards for judging rejoinders.* Rejoinders, when called for, can take a variety of different forms. Here are some of the more prominent ones.¹⁴

- (i) a rejoinder can amount to straightforward *rebuttal* of an argument, which shows either (1) that one or more of its crucial premisses is false or implausible, (2) that its premisses don't genuinely support its conclusion, (3) that additional information undermines the reasons which the argument provides for its conclusion or (4) that there are reasons for thinking the argument's conclusion is false which override the reasons offered for thinking the conclusion is true.¹⁵
- (ii) a rejoinder can provide *a reason for discounting an argument* and setting it aside, without actually rebutting it. For example, (1) it can be maintained that, for one or another specific reason, the argument does not "merit serious consideration" (Kauffeld 1999) or (2) it can be maintained that the argument draws on considerations that are inappropriate to the context at hand (Pinto 2003b: 6).
- (iii) a rejoinder can *neutralize* an argument, for example (1) by providing reasons for considering its conclusion false which *counterbalance* the reasons for considering it true or (2) by reminding an audience that the argument is just one argument of many that have frequently been used in attempts to settle an issue which remains controversial
- (iv) a rejoinder can provide a reason for *bracketing* the argument, or holding it in abeyance (see Pinto 2003a: 9 on bracketing arguments) – for example, if (1) it is unclear whether one or more crucial premiss is true or (2) the argument is new or unfamiliar and more time is needed to assess its merits.

Now burdens of rejoinder arise in connection with (a) acts of *using* the disputed point *p* as a premiss in an argument or (b) acts of *objecting* to the use of *p* as a premiss in an argument. The

¹⁴ In addition to these, there are communicative responses to arguments that I would not call rejoinders because they make no attempt to deal with features of the argument. Among them are

- a) ridiculing the argument
- b) ad hominem attacks on the arguer
- c) making excuses for not mounting a rejoinder (e.g., lack of time).

¹⁵ On the difference between undermining and overriding, see Pinto 2001: 14, 28 and 102-103.

type of rejoinder required to discharge that burden will vary with the *type of act in connection with which it arises*.

- (i) If I am *objecting* to the use of a proposition as a premiss, a rejoinder need only put arguments that support *p* “on hold.” It will suffice to offer reasons for *bracketing* them or reasons which *neutralize* them. Such moves will usually suffice to deprive *p* of context availability.
- (ii) If I am trying to *use* proposition *p* as a premiss, bracketing or neutralizing an argument against *p* won’t be enough. For the existence of a bracketed or neutralized argument for *p* may still suffice to call *p* into doubt. At the very least, therefore, I must offer a *rebuttal* of the argument, or a reason for *discounting* it.

Conclusion

11. If this account of the burden of rejoinder in the cases I’m discussing is more or less accurate, it has several interesting consequences.

- (i) The burdens of rejoinder I’ve talked about always concern an argument for a *specific point* which has been rendered *salient* to participants in a context at hand because it has already been explicitly used in that context. If assumed, there are obligations to give a sensible reason for discounting or bracketing such argument, or a reason which neutralizes or rebuts them.
- (ii) What occasions a burden of rejoinder is an act of *using* the specific point as a premiss in an argument or of *objecting* to the use of that point as a premiss in an argument. But no burden arises unless a speaker sees a need to openly assume it in order to gain consideration for her point of view.
- (iii) The type of rejoinder required to discharge that burden will vary depending on the type of act that gives rise to it. If I am *objecting* to the use of a proposition as a premiss, it will suffice to offer a reason for *bracketing* the argument or a reason which *neutralizes* the argument. Such moves suffice to put the argument and the proposition it supports “on hold” and therefore deprive that proposition of context availability. But if the burden is created by my attempt to *use* the proposition as a premiss, bracketing or neutralizing the argument won’t be enough. At the very least, I must offer a *rebuttal* of the argument, or a reason for *discounting* it.

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