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Claims as Departure Points for Transcendental Arguments: Understanding Argumentation as a Game

Abstract: The usual logical analysis of argument focusses on the content and form, and not on the performative aspects. But, as it is proposed here, it is the proponent's claiming (i.e. making a claim) that allows for an opponent in a dialogue situation to succeed with a transcendental argument. To work out this idea, a dialogical-logic inspired model of argumentation—as a fair game between a proponent and an opponent—is sketched. It is discussed what it means to play well, and to win in this game. It is also shown how, in different versions of transcendental arguments, the success of such arguments depends on the successful attribution of claiming. Such attribution relies on interpretation and on a —to some extent—shared praxis of interpretation. This does not require us to presuppose any common core of shared propositions, though; it is enough that we presuppose sufficiently large similarities in our beliefs and practices to make sense of ourselves as acting, reflecting and deliberating together. Only then, however, transcendental arguments can be successful.

I Claims

The notion of a claim, or of claiming, is sometimes seen as unproblematic, such that it can be used to explain rather than being itself in need of explanation. "An assertion is a speech act in which something is claimed to hold", writes Pagin (2014). Some proposition is claimed to be true, for example. Or to be morally right: I do not want to confine myself to veridical speech only, when it comes to the type of claims. Moreover, I do not want to confine myself to claiming as an all-or-nothing enterprise: So when you claim something, then you are not always so certain that you claim something to hold, 100%, full stop. It could also be only likely, or favourable, or a mere hypothesis. So we do not always claim with the full fervour of conviction, "aus vollster Inbrunst". Maybe we claim something because we believe it and think that we have good reasons for this belief. But, as I see it, belief comes in degrees, and justification can seem better or worse. So even if I claim something because I am convinced of it, I might be more or less convinced of it—and I take this to be a generic property of conviction as well as claims. Call this the intensity of a claim. The other aspect of the

lack of full fervour of conviction is a modal one. E. g. sometimes we do claim something as *advocatus diaboli* or as a hypothesis to see whether it can be proven wrong or right, or because we think that there is at least something in this position such that it is worth exploring it, etc. In discourse, you might claim something that you do not straightforwardly believe. And we have a whole modal vocabulary to express these "not straight" modes of endorsement.

So we have type, intensity and mode of a claim. But there is also the evaluative scope of a claim: Quite general, in putting forth a claim, we can submit us to the judgement of others. This is not meant as factual agreement, but as a validity presupposition. Therefore, when I claim that for me, as a European, doing this-and-this is good, then this might mean the following: That Europeans profit from doing this-and-this, and since I am European I will profit. However, how do I know that other Europeans do also judge it as good what happens to them if they do this-and-this. But this is not the validity presupposition sense that I was talking about. In this sense, it is not us as the common recipients of some good that is meant but us as the community of evaluators. So if I claim that insofar as I am European, doing this-and-this is good, then this is ambivalent. It could mean that is we Europeans benefit from it, or that, whoever may benefit from it, we Europeans are those who evaluate this benefit. It is the latter that I will call the evaluative scope of the claim. Matthias Kettner, when he speaks of more or less universal reasons, speaks of the projectability of reasons, and the common property that the respective group shares that is seen as in charge when it comes to evaluating a reason he calls the "Projektionseigenschaft", the projection property, of this reason (Kettner 1998, p. 23).

Some claims—just as some reasons—are restricted in scope, some are not. However, and the same holds for reasons, claims are rarely those that I see only myself fit to evaluate. On one conference, one philosophy colleague countered a social theory of knowledge with the remark that only he himself would be knowing the colour of his underpants, and that the community has nothing to do with this his knowledge. Fair enough, there are these claims where—under contingent circumstances—this is so. But as a matter of principle, why should only he be in a position to evaluate the colour of something, and be it his underpants. Normally these narrow-scope claims would be claims of perceptual experience, that only I had, or feelings or pain or so. Universal claims, to the contrary, come with an unlimited scope. Here it is everyone who is in the position to evaluate the claim. Again, contingent circumstances may prevent one from doing so, but 'universal' means that there is no a priori limitation of the evaluating group.

Hence we end up with type, intensity, mode and evaluative scope as formal qualifications of claims. Now, as I see it (and have argued elsewhere, cf. Gottschalk-Mazouz 2000, pp. 264 – 266), we can transform every claim into a veridical

binary straight universal one by making explicit the nature of the claim and its intensity and mode and scope, and then asserting it veridically, binary and straight and universally. I do not preclude other, so to say, coordinate systems apart from this one, to which other claims can be "reduced"; so I do not want to say that the veridical binary straight universal form is *the* basic form, but just that it is *a* basic form insofar as we can "project" other forms on this one. Such a transformation involves interpretation, of course, that ultimately has to be validated by the author of the original claim. But, just as asserting is "generally thought of being open, explicit and direct, as opposed e.g. to conveying something indirectly, without explicitly saying it" (Pagin 2014), so is claiming. In our normal conversations, we are well aware that when somebody is claiming something, *that* he is claiming, and that he is claiming *something*. Nevertheless, this explicitness is a matter of degree and perspective. More precisely, it is the contents as well as the form of a claim (along the four dimensions, type, intensity, mode and scope) that may be more or less explicit. This is so because of the more or less vague and divergent meanings of our sentences and their words on the one hand, and our practices on the other hand.

II Claims as departure points

When asking: "What are the most promising departure points for transcendental philosophy: Action? The capacity for action? Normative identity? Argumentation? Putting forth a normative aim?", one might expect that Discourse Ethic's answer will be: "Putting forth a normative claim!" But, for the Apel tradition of Discourse Ethics, this expectation has to be modified—because Apel in his seminal book started with veridical (and not normative) discourse (Apel 1973, p. 401). "Putting forth a claim", thus, would have made more sense. Anyway, I am prepared to argue that we should consider claims, or putting forth a claim (=claiming), as the most promising departure point for transcendental philosophy. At least for one type of problems that is prevalent in moral theory: convincing a sceptic to accept some normative claim. (And, similarly in epistemology, convincing a sceptic to accept some descriptive claim). The reason is that for this type of philosophical enterprise you need arguments. So identifying departure points for transcendental philosophy, in this respect, means identifying departure points of arguments.

I would like to suggest that the departure point for transcendental philosophy, insofar as it is focussing arguments, should be what seems to me to be the sound departure point of any argument: And that is a claim. But before we can

further discuss which claim, or what kind of claim this might be, we should look at what a transcendental argument is (or is usually taken to be).

III Transcendental Arguments

As far as arguments in general are concerned, I would point to the Toulmin Scheme to explain what they are (cf. Toulmin 1958, p. 104). In this scheme, a certain piece of data can be brought under a rule (which itself is backed by some warrant) that (under normal conditions) allow to infer a certain conclusion. As far as transcendental arguments are concerned, we should try to figure out what the elements could be. The most peculiar item here is the rule. Robert Stern begins his Stanford Encyclopedia entry like this (2015):

> As standardly conceived, transcendental arguments are taken to be distinctive in involving a certain sort of claim, namely that X is a necessary condition for the possibility of Y— where then, given that Y is the case, it logically follows that X must be the case too.

So the scheme, he suggests, of a transcendental argument is something like:

(TA)   Y, X is a necessary condition for the possibility of Y, thus X.

While Y corresponds to Toulmin's data, what figures as a rule here is the necessity claim. I will scrutinize it later. First of all, I would like to discuss the nature of the elements. If we want to argue, or so I wrote, then we have to consider claims, not facts. So that Y is the case, cf. Stern, or that some rule holds, does not start an argument. Facts do not start arguments; they are strictly speaking not even parts of arguments. That is why they can not *be* departure points, but they can *figure in* departure points. Only if someone claims something to hold, in the above sense, an argument can start. So as candidates for departure points of transcendental arguments, we would naturally see 'Y' or 'X as a necessary condition for the possibility of Y'—if the single quotation denotes the resp. claim.

In the literature, we find various positions towards the nature of the necessity claim in (TA). Illies, in his book-length treatment, distinguishes explorational from retorsive transcendental arguments. Explorational transcendental arguments have a form similar to (TA), namely:

(ETA)   Y, Y only if X, thus X.

According to Illies, "Y only if X" shall be the same as "if Y then X" and the scheme (ETA) just the *modus ponens* (Illies 2003, p. 33). Now, this understanding

of the second premise looks weaker than Stern's, because it would translate only to "X is a necessary condition for Y" and not "… for the possibility of Y". Let me call the first the weak version of the necessity claim, and the latter the strong version of it.

It is a general feature of transcendental arguments, Illies explains, that the necessity condition holds "in every possible world" (Illies 2003, p. 30), however. To me, this seems to rule out the weak reading. Later in his book, Illies tries to figure out what would be needed in an argumentation to convince the sceptic, or to put forth a transcendental argument as in Kant's transcendental deduction. There, he explains the "only if" shall be taken as a "rational necessity". It shall be neither contingent nor stipulative. "Y only if X" would then have to be read as "any coherent understanding of Y will include X". So we end up with the strong reading of the necessity claim.

We can call the explorational argument, in its weak or strong form, reflective because it answers to the question of how something, that we take for granted, is possible. But "possible" now not just so, but in which respect something is "only possible". We are not asking for the conditions of something to be real(ly the case). This would lead to sufficient conditions, and it is unclear whether we could enumerate all these conditions even for any single token ("case") Y. We are asking for a certain subset of these, those that are indispensable for any case of type Y. This is the necessity of the "only if" that we are after. It is strong in the sense that it denotes necessities that do not only hold in a certain case, but in every similar case (i. e. similar enough to also call it "Y"). For a single case Y it does not make sense, I want to suggest, to speak of necessary conditions. I mean, in a world of necessity, every condition is a necessary condition. It is only in comparison with other cases that it makes sense to use modal terms. What is meant, I propose here, with the necessity is that they are conditions that are required for every instance of Y (now taken as a type). In exactly this sense they are also conditions for the possibility of Y (which might also be a fair reading of Kant's "Bedingungen der Möglichkeit", 1998 B39 ff.).

According to Illies, there is not only the explorative, but also the retorsive type of transcendental arguments. The retorsive type does not start with just any Y and proceeds to some X, but shall be used to point out that the denial of some proposition, call it R, is pragmatically inconsistent. This is the case when denying R would presuppose R. For expressing this, he introduces 'R', in single quotes, as the speech act of asserting R (and 'Not-R' for the speech act of asserting Not-R, i. e. the negation of R) and writes (Illies 2003, p. 48):

(RTA*) R, Either R or Not-R

(RTA) 'Not-R' only if R, 'R' only if R, thus R

According to Illies, (RTA*) is merely preliminary because R does not figure as a premise, and Either R or Not-R is a logical law (the excluded third). So (RTA) is the core argument. In it, 'Not-R' only if R means that 'Not-R', the speech act of asserting Not-R, which is the same as denying R, is always unsuccessful. If we now find propositions R_i that are not only contingently undeniable but are so independently of who the speaker is or when he or she speaks, then we would have found necessary conditions of any possible claiming.

Stern seems to take it for granted that the argument (TA) starts with the premise Y. Illies agrees, as far as the explorational type is concerned. But for retorsive arguments, he writes, it is R that is the "starting point" of "the reasoning", whereas "the actual argument" begins only with Either R or Not-R. This creates the oddity that the reasoning shall start not with a premise but with the conclusion. Whereas the actual argument, for Illies, starts with a logical law, i.e. with a tautology, that again is not a premise but has to be presupposed for (RTA) to work.

I think that these suggestions are hard to evaluate if we do not take possible argumentation situations into account. Only then we can decide what are most promising departure points for transcendental arguments. I have stated above that it is the discussion with a sceptic that many moral theorists see as their main challenge. Now I will explain in more detail how it is most promising to understand this situation, and how transcendental arguments would look like that might be applied in it.

IV Argumentation as a game

There might be different setups, but for the purpose of discussing the argumentation with a sceptic, I suggest to pick up ideas of dialogical logic (Lorenzen/Lorenz 1978) and understand it decidedly as a game, i.e. the goal is not to discover some dialog-external truth but to play well and to win against the other player. If we imagine the argumentation situation as one of two persons, be it in my head or not, then it would be one of the persons who makes the first move. This can be the opponent (the sceptic) or the proponent. They do not need to take turns in making a move. In an argumentation game, as I see it, it will not do if only the proponent moves. But it may be fine if only the opponent moves. The game is asymmetric. The proponent wants to demonstrate to the opponent that he should accept a certain claim (or at least that he cannot successfully deny this claim). The opponent has the aim of not having to accept this certain

claim (or, even better, to be able to uphold its denial).[1] Both players have the further aim of being able to hold on to those claims that they each consider to be valid outside of the game ("background"). Because of this, and because we usually care about the validity of our claims also outside of the game situation, this game can be classified as a "serious" game (cf. section VI). Because the game situation is open, i.e. we do not know exactly which rules apply and which backgrounds the players have, the proponent cannot win by just presupposing that the opponent endorses certain claims, logical laws etc. without reconfirming them with the opponent. So, a player can only suggest to play a game that presupposes some set of standard logical laws, or of definitions, of common sense truisms or empirical propositions. But it would amount to playing unfair if a player would just insist that every argumentation game has to be like this (even more so if it makes a move possible that allows him to win the game every time) or that it has to be played with a certain background. So, while any player might make any claim he wants in the game, he can use only those claims to convince the other player that have been endorsed by this other player. To sharpen the rules of the game, or to draw from the assumed background of the other player, a player can try to let the other player acknowledge claims. In any such case, technically speaking what is made is a concession request ("do you concede Z?") which is an essential element of the logic of dispute (Hegselmann 1985, p. 49). The response can be to concede it or not to concede it. Not to concede it comes is two flavours, one is to deny it (i.e. to concede Not-Z), the other is to reject the request. Denying means essentially rejecting the request and committing to Not-Z (which is OK since one can commit anytime to any proposition, with one consistency restriction, see below). So one reason for rejecting a request would be that one likes to commit to its negation. Other reasons might be that the request is not precise enough, or that it suffers from a presupposition mismatch. Every question presupposes something that might not be shared by the other, so we have to allow for rejection if we do not want to let commitments be forced upon players. Of course, after a rejection the other player might follow up with concession requests that are more precise or contain less or alternative presuppositions, etc. A disputable issue is whether one should require giving reason for a rejection. While in most argumentation situations we would expect our opponent to give us at least some clue, I do not see that every situation has to contain certain (which?) justification rules for the rejection of requests. The same goes for the justification of one's own claims. So while the

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[1] For both players, the moderate and the ambitious goals do coincide if the opponent acknowledges the law of the excluded third and the proponent is willing to make use of it if suitable.

player will under normal circumstances have some expectations and will see them met, there are no pre-argumentative rules to hold fixed such that they would constitute an argumentation situation. So I think that it is fair not to require any justification for any move of any player. Any player can always commit or not commit without penalty. This does not mean that the players cannot agree on adding certain rules in these respects, but again I do not think that we should see those rules as constitutive of every argumentation game.

Another respect in which the game situation is open is with regards to the forms of claims that are allowed in it. For the game itself it might be handy to restrict oneself to a certain form, a basic form, of claims only. But this is an issue that has to be settled just like any other rule. Furthermore, the problem is imminent whenever something from the background shall enter the game: Because outside of it, we normally do not restrict us to some "basic" claim form. Insofar as the form can be made explicit, it is possible to reconfirm in which way a certain claim is meant, so it is not self-destructive to leave the form of claims unregulated at the start of the game. Most probably, the exact rules of the game will vary according to the forms of claims that are being used. Rules of inference are usually taken to be different for different forms of claims. But this is something that does not need to bother us here, because we can leave that to the players.

While the game situation is open in many respects, it has to be a game situation though. For games like our argumentation game, this means that the players (and any observer, by the way) has to be able to determine what counts as a move; and to move in this particular game is making a claim. So, for the game of argumentation, as it is construed here, there is only one constitutive minimum requirement, and that is that we have to be able to make a claim, and decide whether a claim has been made. That is why, and here I follow Aristotle (Met. 1005b), players in an argumentation game have to accept the principle of noncontradiction. If we allowed for a player to claim Y and claim Not-Y (in the same respect etc., cf. Aristotle), then we would not be able to attribute any claim about Y to this player. So, the player would not make a move in the argumentation game. For our game this means that on an apparent contradiction by one player, the other player may demand that one or more commitments be taken back or modified such that the contradiction disappears, and it is clear again what moves have really been made. Apart from that, the practices of the players must be similar enough that they both realize when the other made a claim (and this more or less reliably, even though they may turn out to be wrong some of the time)—such that they can reassure themselves that they play *this* game and not some other, or no game at all—and that they better see themselves as involved in some other social practice.

I would see even the logical law of the excluded third as not essential (contrary to Aristotle, Met. 1008b). If it is approved by a player, then *ex-negativo* arguments are allowed to be put forward against him. In general, committing to additional rules by a player means to license its adversary to demand in additional situations that the player takes back a move. In terms of chances of winning (as defined by reaching the first aim), this makes a player worse off. But it makes a win appear more impressive, in the eyes of the adversary and the player itself) if he succeeds nevertheless. Moreover, winning is not everything (see below). Finally, if you are so keen on winning, you might try your luck with conditional commitments of the sort: If you commit to this law, I am doing so as well. Or to propose mutual commitment that overarch multiple games (in which you are sometimes opponent and sometimes proponent).

V Departure points of transcendental arguments in games

In transcendental argumentation games that instantiate ETA or RTA⋆/RTA, either the opponent or the proponent moves first.

a) If the opponent moves first, he might do so by endorsing some claim Y or R. For explorational arguments, this allows for an interesting continuation, because the proponent can then ask for the assertion of the conditional, and demonstrate that the opponent should assert X. For retorsive arguments, things are different. Since the opponent already endorsed R, it is pointless to enter an argumentation that shall convince him of R. The proponent would rather want to convince him that R is a *necessary* truth. But the opponent might also start with the attempt to deny R. Then the proponent can try to demonstrate that this attempt is failing. And again, what he might want to convince him of is that R is an undeniable, and in this sense: necessary truth.

As for the explorational type, the opponent may also start by endorsing the second premise, the necessity claim (which is a conditional). This would also be a promising start because the proponent can then look for good candidates for Y (i.e. the antecedents of it). If he finds any, he can ask the opponent whether he concedes it. Or wait until the opponent says or does something that looks like he would presuppose something that would work as Y (in this respect our argumentation game is interwoven with other practices) and then let him concede it.

But the opponent may, in the case of an explorational argument, also start

with the denial of X, and we could then let him concede Y and then the conditional, and then ask him to decide between the denial of X (which would mean to take back at least one of the concessions) or the acknowledgement of X (which would mean to step back from the initial denial claim). So, as it seems, it would always be an inviting starting point if the opponent tries to deny the conclusion. The proponent would then try to prove him to be inconsistent, etc. This allows for more starting points than the argument schemes show. Moreover, any argument scheme can be embedded in other schemes, such that it becomes more or less futile to look for "the" starting point.

b) But the proponent can also start the argument. He can simply put forth the conclusion, as a bait for the opponent. As an opponent, he may then deny it or at least show that he is free to endorse it or not.

The proponent might also start with a concession request regarding any other claim that he sees fit, favourably with a request regarding any of the premises of the argument, or the rules, and work forward from there towards a complete argument.

Of course, how I set up the minimal rules, the opponent can just reject any concession requests and win nevertheless. Though that would make this game completely boring. And why should the opponent have decided to play this game, then? After all, no one is forced to play. This brings up the question of motivation, which I think is more complex as it may seem.

VI What does it mean to play, to play well, and to win?

It may be assumed that both the proponent and the opponent have some motivation to play the game. This can be a serious moral motivation, of the proponent, who wants to convince the other of the validity of some moral principle. Or it can be a more playful motivation of figuring out where certain claims will, or would, take us. The reward is always a gain in self-reflection, a better understanding of oneself—of one's beliefs and their subjective statuses as e. g. plausible, certain or undeniable—with the help of the other, be it in person or in my head, acting sincerely or as an *advocatus diaboli*. And a better understanding of the other. And of the unity or disunity in views on what argumentation is and on valid moral principles. Even if our views do not match, it will help us to plan and coordinate our actions accordingly, because we then have learned not only about ourselves, but also where we agree and disagree with the other, and we know that the other knows etc. etc.

Fair enough, the attribution of making a claim relies on not only the endorsement of something like the law of noncontradiction, but also on interpretation and ultimately on a to some extent shared praxis of interpretation, claiming and arguing. But, this does not require us to presuppose any common core of shared substantial propositions or further logical laws, though; for meaningfully playing the game of argumentation, and taking part in any other social practice that might be interwoven with it, it is enough that we presuppose sufficiently large similarities in our beliefs and practices to make sense of ourselves as acting, deliberating and reflecting together.

In the picture suggested here, some rewards already come from playing. I assume that players have mixed motives, they want to play well, and they want to win. To achieve the mentioned reflective-hermeneutic aims, you have to play well. Playing well means that a player should acknowledge requests that adequately meet his background, and that he should risk some of it in the argumentation. As for winning, there are different types of winning in this game. The opponent might just deny to commit to any interesting claim. This would be an "easy win" (or: an "empty win") for the opponent. But not well played. The opponent might also endorse the target claim (i. e. X or R) straightaway. This would be an "easy win" for the proponent. But again not well played. Apart from that there may be more interesting, or substantial, wins of the proponent or opponent if also parts of the argument are conceded. After all, this is how we usually characterize knowledge, as *justified* true belief, so apart from it to be true (which I do not discuss here) there is some value we see in justification of beliefs.

For a "full win" of the proponent in this game, he must be in a position where the opponent in the end has been conceding all the premises, and (at least: cannot deny) the conclusion. And, with that, the rules of logic that allow to proceed from the premises to the conclusion—such that the conclusion appears to really be a *conclusion.* A "full win" of the opponent, on the other hand, would mean that the proponent has to give up some part of his alledgedly, successful argumentation (or at least its conclusion) with which he originally wanted to convince the opponent.

As I put it, even for a full win the proponent does not have to endorse all the claims himself—what makes him win is that the opponent endorses them. This might seem unsatisfactory, and indeed a win appears to be even stronger if the proponent can (and maybe has done so in the game) acknowledge all these claims himself. I would like to call such wins "epic" or "harmonic", because they allow to reassure both the proponent and, ultimately, also the opponent of some consistent and unrivalled scheme of right and wrong.

We can then, if we like, "run the argument" as often as we like, which would mean then would mean really going through it, from the perspective of the other,

and arguing for the conclusion. To use the type-token distinction here: The argument type alone does not convince anybody. Convincing can only be an argument-token, more precisely: an argument-tokening (which points out not so much the objective instance but the intentional "performance" of a type; cf. Brandom 1998, p. 303). I would compare this to a chess game where, after the game is over, we can then follow the game using some notation, can comment on the moves, and can say from where on it was pretty much a lost case for one of the players or the like. We can mentally replay it, or we can actually replay it, with somebody else or with ourselves, to understand the game and see what happens when one varies the original game.

VII Apelian and Gewirthian openings

Within this framework, how can we understand the arguments that Apel and Gewirth offer to justify moral principles, as transcendental arguments?

With the above distinctions in mind, it is easy to see that Apel's first argumentative steps in his foundation of ethics in the 1973 version is explorational, as is Gewirth's. That is because Apel begins with *whatever* claim the sceptic makes, typically a (maybe binary straight and universal, in my vocabulary, but in any case:) veridical claim (Apel 1973, p. 401), and Gewirth begins with some particular claim (about agency—this is how he puts it what he is doing: "to follow out the implications of the concepts of action and agent"; Gewirth 1985, p. 748). So Apel's first move is broader and easier to do because he can pick on whatever claim the opponent makes, he takes it to be a veridical claim, and he does not have to let the opponent concede a particular claim. I will start with the discussion of Apel's proposal and then move to Gewirth's.

It is clear that Apel starts with taking a claim, say 'Y', of some fact Y, as the first premise. The necessity premise is not introduced as a claim of the opponent, nor is the conclusion. In the necessity conditional we have the reference to not *the fact* Y but to *the claiming of the fact* Y. Because of this internal reference we can call this type of argument a reflexive-explorational argument. It has this form:

(RE)   'Y', 'Y' not without X, thus X.

It differs from the scheme (ETA) mainly by the single quotation marks around the Y. It denotes the claiming of something, here: Y. So 'Y' means claiming Y, which is neither identical to the fact that Y nor the fact of claiming Y. I prefer the "not without" to the "only if" because it makes clear that the latter is necessary but (usually) not sufficient for the former, and the if...then-relation in formal

logic is notorious for being not the lifeworld one. But it shall denote the same relation.

In the proposed game framework, what we have to get the opponent to acknowledge to succeed with our argument, is the claim *that he has just been making a claim Y*, and the claim *that making this claim Y is not possible without X*, and *that conceding the premises and the rules of inference make it (in the sense determined by be rules) logically necessary for him to accept X* (or at least, if he does not accept the law of the excluded third: ... *for him not to deny X*). While the first premise is already introduced as a claim, the second is not (nor is the conclusion). The Apel school is well aware that, for the first premise to appear as a claim, we need some notion of claiming (that also figures in the necessity claim). Let us put this aside for the moment and just assume that there is some notion available on the side of the opponent (who is making the claim Y) that the proponent can draw on. The proponent can then use in the argumentation with the opponent both Y and '.', i. e. the fact that Y (the opponent claimed this fact) and that he claimed something (whatever it is, indicated by the point between the quotation marks). If the first is used, I will call this the content route. If the second is used, I will call this the performance route. They do not exclude each other. On each route, the proponent would have to let the opponent acknowledge the appropriate conditional and then the conclusion. As I see it, Apel is going down the performance route, and Gewirth the content route.

Here is an example of, after the first concession request (which is a double request, hence the "and"), going down the performance route. Let (Ack) denote the acknowledgement of the concession request.

O: 'Y'

P: Y and '.'?

O: (Ack)

P: '.' not without X?

O: (Ack)

P: X?

O: (Ack)

Note that the last request (for X) is not redundant; before it we were in a situation where the opponent should acknowledge X, but does not have to. If he does not acknowledge it, however, he should (i. e. the proponent can demand him to) give up one of the commitments made earlier. If he does not do this, upon request,

then something is wrong with the terminology, i.e. here with the "not without"—
and requests could go in this direction.

Now, as for the initial claim Y, it does not matter whether the opponent
claims Y or Not-Y because as it seems both of these claimings would be impos-
sible without X. So we can easily form a twin reflexive-explorative argument.

(TRE) 'Y', 'Y' not without X, thus X.

'Not-Y', 'Not-Y' not without X, thus X.

So no matter what Y you claim (including its negation), X will be the case. But its
performance seems strange, because we need to find an opponent willing to
claim Y *and* Not-Y. (And grant the conditional and the rules etc.). So maybe we
try it this way:

(TRE+) 'Y' or 'Not-Y', 'Y' not without X, 'Not-Y' not without X, thus X.

This twin explorative argument presupposes the law of the excluded third. Or so
it seems, were not the quotation marks. But it fits to taking the binary veridical
discourse as departure point (as in Apel 1973), because the proponent now just
has to wait for whatever claim to be made and can then proceed. To perform this
scheme, the opponent has just to acknowledge that he made some veridical
claim (whatever it is), and the two conditionals (or at least the one that is trig-
gered) and the rules of inference once acknowledged will allow the proponent
to say that the opponent should endorse X.

Now, if the opponent made not just any claim as a start, but a claim about
both of the conditionals to hold (notice that this involved a claim about claims,
and their requirements), we could cut out the first disjunction. We would then get:

(TRE++) 'Y' not without X, 'Not-Y' not without X, thus X.

Now as it seems we are better off than in the reflexive-explorational case because
we do not have to have the opponent acknowledge a claim to get started. But we
have of course now a twin conditional proposition that is fairly abstract that we
have to let us concede from the opponent (if we do not want to start with his as-
serting of other claims, that is), plus the rules of inference as always.

Anyway, its performance could look like this:

O: ' '.' not without X'

P: '.' not without X, and '.'?

O: (Ack)

P: X?

O: (Ack)

The opponent starts with a claim about what a claim requires. Regarding (TRE++), if we had Y=X (call it R), then this would bring us to:

(TRE+++) 'R' not without R, 'Not-R' not without R, thus R.

Which of course is equivalent to (RTA). The problem here is that I see no plausible performance of this scheme in real life. Suppose the opponent would start like this:

O: 'R'

Then the following would be redundant, but reassures the proponent of winning:

P: R?

O: (Ack)

And the request: 'R' not without R? would seem strange, and it had to be followed by the above reassuring move that could have been done directly anyway.

The opponent starting with 'Not-R' could even win the game, for he need not acknowledge: 'Not-R' not without R. If he wants to, however, the proponent can demand that he then retracts from Not-R. Both parts of the performance would together mirror what Apel called "Letztbegründung" (1978, p. 165): R cannot be justified without presupposing it, and it cannot be denied without self-contradiction. But all this works only if the opponent acknowledges something like: '.' not without X, and there is no way of getting around this proviso.

Gewirth, in this picture, does stay on the explorational side. Here the proponent starts with a concession request towards a basic concept, say of being an agent, if the opponent is unwilling to claim straightaway that this concept is correct. The proponent then has to do the same with the conditional, and will go down the content route. This means that he will reconfirm what is required by the conditional (to make shure), will request the next conditional etc. It should be clear from how the game is construed that there is no strategy for the proponent that guarantees a win. Even though the proponent might think that there is no good alternative to understanding oneself as a such-and-such actor which presupposes this-and-that etc., the opponent is allowed to acknowledge them or not, just as well as the methodological standard that guide them and the overarching aim of appearing rational or a free actor in a certain Gewirthian, Kantian or whatever sense. And depending on the background of the opponent, a denial of acknowledgement by him may or may not be well played.

VIII Moves that always win?

The search for transcendental arguments is comparable to finding strong moves that always, or at least usually, win certain games (hermeneutic-pragmatic language games). In moral theory, the target claims of these games often contain moral oughts, and playing and (thereby) analysing them may be helpful for the (formal and material) explication of concepts of agency, justification, and morality. There are different kinds of (moral) sceptics around and maybe there is an argument for each of them, but I can see no one argument for all of them. The most promising departure points for us, in terms of winning, are those that connect best to the adversary's background. The most promising departure points for us, in terms of playing well however, are those that connect best to the own background. By playing and eventually discovering such strong moves, we can make explicit some of the most central elements in the network of our commitments and entitlements, to use Brandom's terms (1998, pp. 159 ff.). Some of them seem indispensable to us. We think that everybody else should agree. We even have no idea how things could be otherwise. But this still does not license us to claim an a priori win. Or so I have argued.

I have the impression that the Gewirth school is closer to this view of argumentation-as-game than the Apel school insofar as they see a transcendental argumentation as a substantial hermeneutic enterprise. On the Apel side, there is the idea prevalent that some central part of the argumentation is necessarily successful, and the resp. knowledge infallible. According to this idea, some propositions and necessity claims can be taken for granted, by explicating some implicit knowledge, preferably about requirements of claiming. Marcel Niquet however put forth a concise criticism of this idea of "self-explicating" practical knowledge (1999, pp. 12 ff.). It can be presented in three points (cf. Gottschalk-Mazouz 2000, pp. 44 f.): First, it cannot be apriori right what we obtain by any real-world explicatory mechanism because any real-world mechanism can fail. But how can it fail, as it is construed to render infallible knowledge, and how could we check for failure? Second, suppose that it works and we can generate and validate some proposition as a presupposition, according to some test for pragmatic self-contradictions that is. Then this presupposition is unmarked concerning its quality as necessary or contingent. It is just a proposition and we have no a priori criteria to separate those—the "self"-transformation works for both and gives us only the proposition, but no knowledge of its status. Third, we cannot circumvent this problem by running the test in different situations and then see which conditions hold universally and which not, because even then we do not know whether our necessities are really strict and not just obtaining due to

some up to now empirically unknown, but, in every case looked at so far, fulfilled empirical conditions.

So, the transformation of some Y into some claim that Y and the acknowledgement of some necessity claim that Y not without X is something that should not be seen as intuitively clear or a priori. All the more a proponent should, in a transcendental argumentation, ask the opponent for the concession of those claims. Moreover, no argument, and a fortiori no transcendental argument, can take as its departure point some action, and be it the action of asserting, as such. And it cannot take any other fact in any other domain as a starting point, i.e. about being a person, having an/some identity, putting forth an aim or a normative aim, standing in relations to other persons, evaluating, cooperating, interacting etc. In those domains we might find hypotheses for our claims, but any inference from, e.g., apparently doing *phi* to attributing the claim of doing *phi*, or performing the action *phi*, is only abductive. In an argumentation situation vis-à-vis an adversary one cannot obtain premises directly from actions or any other real-world processes or states of affairs. This step requires interpretation, judgement and pragmatic fixation of meaning. To set up the argumentation game such that it allows the opponent to acknowledge or not to acknowledge what the proponent takes for granted means only playing fair. At least that is how I see it.

Bibliography

Apel, Karl-Otto (1973): *Transformation der Philosophie, Band II: Das Apriori der Kommunikationsgemeinschaft*. Frankfurt a. M.: Suhrkamp.

Apel, Karl-Otto (1978): "Einführung zu 'Der Ansatz von Apel'." In: Willi Oelmüller (Ed.): *Transzendentalphilosophische Normenbegründungen*. Paderborn: Schöningh, pp. 160 – 173.

Aristotle (1933): *The Metaphysics*. Trans. Hugh Tredennick. Cambridge, Mass./London: Harvard University Press.

Brandom, Robert (1998): *Making it Explicit. Reasoning, Representing and Discursive Commitment*. Cambridge, Mass./London: Harvard University Press.

Gewirth, Alan (1985): "Rights and Virtues". In: *Review of Metaphysics* 39, pp. 739 – 762.

Gottschalk-Mazouz, Niels (2000): *Diskursethik. Theorien, Entwicklungen, Perspektiven*. Berlin: Akademie Verlag.

Hegselmann, Rainer (1985): *Formale Dialektik*. Hamburg: Felix Meiner.

Illies, Christian (2003): *The Grounds of Ethical Judgement. New Transcendental Arguments in Moral Philosophy*. Oxford: Oxford University Press.

Kant, Immanuel (1998): *Kritik der reinen Vernunft*. Ed. by Jens Timmermann. Hamburg: Felix Meiner.

Kettner, Matthias (1998): "Neue Perspektiven der Diskursethik". In: Armin Grunwald/Stephan Saupe (Eds.): *Ethik in der Technikgestaltung. Praktische Relevanz und Legitimation.* Heidelberg: Springer, pp. 153–195.

Mittelstraß, Jürgen; v. Bülow, Christopher (Eds.) (2015): *Dialogische Logik.* Münster: Mentis.

Niquet, Marcel (1999): *Nichthintergehbarkeit und Diskurs. Prolegomena zu einer Diskurstheorie des Transzendentalen.* Berlin: Duncker & Humblot.

Pagin, Peter (2014): "Assertions". http://plato.stanford.edu/entries/assertion/ (visited on 2 March 2016).

Stern, Robert (2015): "Transcendental Arguments". http://plato.stanford.edu/entries/transcendental-arguments/ (visited on 2 March 2016).

Toulmin, Stephen (1958): *The Uses of Argument.* Cambridge: Cambridge University Press.