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Patrick Bondy
Trent University

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Bias in Legitimate Ad Hominem Arguments

PATRICK BONDY

*Department of Philosophy
Trent University
1600 West Bank Drive
Peterborough, ON
Canada
patrbondy@gmail.com*

Abstract: This paper is about bias and ad hominem arguments. It will begin by rehearsing some reasons for thinking that there are both legitimate and illegitimate ad hominems, as well as reasons for thinking that biases can be both justified and unjustified. It will explain that justified biases about people with certain social identities can give rise to both legitimate and illegitimate ad hominem attacks, while unjustified biases only give rise to illegitimate ad hominems. The paper will then describe Audrey Yap's view that even when an unjustified bias is made explicit and shown to be unjustified, it can still make certain fallacious ad hominem arguments seem persuasive. Finally, it will set out the opposite sort of problem: just as unjustified biases can make fallacious ad hominems seem persuasive even when the bias is made explicit, so too can unjustified biases make legitimate ad hominem arguments seem unpersuasive, even when the bias is made explicit.

Keywords: bias, ad hominem, testimony, argument evaluation, magical thinking

1. Introduction: bias and ad hominems, legitimate and illegitimate

The term "bias" applies when we judge a person, group of people, or institution, according to a comparatively very harsh or very easy standard (compared, that is, to the standards we use for judging other people, groups of people, or institutions). Or, similarly, we are biased when we are naturally more prone to thinking good things or bad things about a person or group of people than about other sorts of people. Often biases operate at an implicit level, though we are also sometimes conscious of our biases, and we sometimes have reasons that we can call to mind which support them. So that's one thing: biases can be positive or negative (biases are either in favour of or against someone).

Now normally, when we talk about biases, we have in mind the use of an *unfairly* harsh or easy standard. (Unfair standards seem more important to talk about than fair ones.) And when we employ unfairly harsh or easy standards, our biases will be unjustified; it's just part of what it means to say that a bias is unfair, that there isn't an adequate justification for applying that standard. And of course, biases *are* often unjustified. We tend to focus on the unjustified ones, because those are the ones that give rise to so many important kinds of injustice.

But it's worth keeping in mind that the application of comparatively harsh or easy standards to people's assertions and their actions can, after all, be justified. There are certain formal and informal group identities that people might have, such as being a member of the KKK, or being someone who's been convicted of running confidence schemes and defrauding people, that could justify us in holding them to an unusually harsh standard when it comes to the way we are going to receive their testimony about certain topics. If I know that Jerry is a con man, and he tells me something about how to improve my financial situation, I would be justified in just ignoring him. And Jerry could quite reasonably complain that I'm biased against him, since I'm not willing to listen to his advice or to his reasons for giving it. But that wouldn't bother me, because my bias is justified.

In addition to justified negative biases, there can be justified positive biases, too. For example, the bias in favour of hiring Canadian citizens over equally qualified foreign nationals, which Canadian institutions that receive public funds are required to display in their hiring decisions, is justified by the obligation that governments have to promote the wellbeing of their own citizens.

So there are positive and negative biases, and there are justified and unjustified biases. Now the next thing to note is that there are positive and negative ad hominem arguments, and ad hominem arguments can also be either legitimate or illegitimate. Everyone agrees that there can be illegitimate ad hominem arguments, so I won't spend any time arguing for that claim. The claim that there can be legitimate ad hominem arguments goes against 20th-Century argument theory tradition, but many argumentation scholars have endorsed it in recent years (see Hitchcock 2007; Woods 2007; Aberdein 2010 and 2014; Battaly 2010; Bowell and Kingsbury 2013; Bondy 2015).

Why should we think that there can be good ad hominem arguments? Briefly, it's because ad hominem responses can provide us with good reasons to think that we should doubt a speaker's premises (both explicit and implicit), when the speaker's competence or sincerity are called into question. And ad hominem responses can also provide us with good reasons to think that we should accept a speaker's (explicit or implicit) premises, when they show that the speaker is sincere and competent.

According to the epistemic approach to argument analysis and evaluation that I am working with here, arguers put forward premises as true (or rational to accept as true), in support of the claim that the argument's conclusion is also true (or rational to accept as true). Sometimes we have to attribute implicit premises to a speaker, and sometimes we don't. In reconstructing arguments, we need to identify the explicit premises, the conclusion, and try to charitably identify any missing premises that the arguer intends to be conveyed. And the key features of an argument that we need to look at, in deciding whether the argument is good, are whether the premises are rational to accept as true, and whether the premises provide good inferential support for the conclusion.¹ So we may legitimately challenge (if the speaker is present) or reject (if the speaker is on television, or something like that) an argument, if we judge that it's not rational for us to accept the premises, or if we judge that the inferential support that the premises offer is not adequate.

Now often, when a speaker puts forward an argument, we are asked to accept some of the premises of the argument on the speaker's say-so, as pieces of testimony. And there is a presumption, in normal circumstances, in favour of accepting people's testimony: people are generally truthful, when they have no vested interests or ulterior motives, and so when a speaker *S* asserts that *p*, *S*'s assertion provides us with some evidence in support of the truth of *p*. But of course, when we know that *S* has some reason to be dishonest, that knowledge undermines the evidential support which *S*'s assertion provides for the truth of *p*.

So imagine that we come across an argument put forward by a speaker *S*, and we know that *S* has a vested interest in getting us to accept the conclusion, and we have no prior knowledge bearing on whether the premises of *S*'s argument are true. In this kind of case, we could be justified in giving a circumstantial ad hominem response to *S*'s argument: we could justifiably remain skeptical of the truth of *S*'s premises, given that we know something about *S* that justifies us in thinking that *S* might be providing us with false or misleading information.

¹ Even if we determine that an argument is good, of course, we might yet have good reason to reject its conclusion – say, if there are well-known arguments against the conclusion, which the argument fails to address. This “dialectical tier” of argumentation is important, and a full account of argumentation needs to incorporate it. But for the purpose of articulating criteria for evaluating individual arguments, this can be set aside.

Because this ad hominem response is a response to a part of an argument, and it's on the basis of this response that we judge that the premises don't give us good reason to accept the conclusion as true, this is an ad hominem attack on an argument. And it is a legitimate kind of attack.² So there are legitimate ad hominem arguments.

2. When ad hominems express bias

There are two ways an ad hominem argument can be fallacious: it can violate the requirement that premises must be relevant to the conclusion, or it can violate the requirement that premises must be rationally acceptable. When a respondent's biases give rise to an ad hominem argument, (i) it will sometimes violate the relevance condition, and (ii) sometimes it will violate the rational acceptability condition, but (iii) sometimes it will violate neither.

(i) Many people have a bias against Donald Trump, in the sense that they are predisposed to treat Trump's assertions with a much greater degree of skepticism than normal.³ So, imagine that Trump goes ahead and endorses the legitimacy of waterboarding and other even harsher tortures, on the basis of the claim that these tortures are effective and necessary means for keeping America safe.⁴ It's very natural, for people who are not Trump supporters, to just think, "Oh, crazy Trump is at it again. He's argued for the claim that torture is a good thing in some nonspecific circumstances, but anyone with any sense and humanity rejects the use of torture, and Trump is kind of a jerk, so we can reject his argument."

What's going on in this case? We have a speaker, Trump, who puts forward an argument. And we have a respondent, my imaginary Trump-critic, who claims that Trump's argument is bad, on the basis of a character judgment about Trump. Suppose that this character-judgment, and people's consequent bias against Trump, is well justified. Even so, a judgment about Trump's character isn't relevant to the quality of his argument in this case; it doesn't bear on whether it's rational to accept Trump's premise (that torture is an effective and necessary means for keeping America safe) as true, nor does it bear on the strength with which that premise supports his conclusion (that America should use torture).

(ii) Consider one of Miranda Fricker's (2007) central cases of epistemic injustice: in the screenplay *The Talented Mr. Ripley*, Ripley commits some murders. The first victim is Dickey. At first, no one is the wiser, but eventually, Dickey's girlfriend Marge grows suspicious, and then certain, that Ripley has killed Dickey, because she sees Dickey's rings in Ripley's bathroom. But the male characters, especially Dickey's father, brush off her certainty as mere unfounded female intuition, which isn't founded on good evidence.

Fricker's point in talking about cases like this is that when you have certain social identities, such as being a young woman, sometimes people will refuse to grant you the credibility you deserve. This is because there has traditionally been, and to a significant extent there still is, a deep implicit bias against taking women seriously. And the credibility deficit that Fricker is concerned

² Could there be legitimate ad hominem attacks on the inferential link in an argument? I doubt it, but it's not important to decide this for the purpose of this paper. I elaborate on this point in my (2015).

³ An important, but separate, bias is that Trump is a rich white man in a suit, which predisposes us to take him more seriously than we would people from other social categories. I think that the fact that there are these two biases that people are disposed to have toward Trump make him a rich subject to discuss. (It's a pun! But it's true, too.) We'll come back to this other positive bias below.

⁴ At the time of writing this paper, I'm watching Trump make just such an assertion on that basis on the news.

with causes very real harm: it undermines a person's ability to both generate and transmit knowledge.

My point here is that this bias is unfounded: there's no good reason to treat women as less credible than men. So any time this bias manifests itself as the basis of an ad hominem argument, that ad hominem will be illegitimate, because it will have an unjustified basis. To illustrate: in the *Ripley* case, we have Marge arguing that Ripley has killed Dickey. Her premise is that Ripley has Dickey's rings.⁵ Then Dickey's father dismisses her conclusion (her accusation that Ripley has murdered Dickey), because of the biased belief he has that Marge is a silly woman who doesn't understand that you need good evidence to support your claims, or something like this. But Dickey's father's biased belief that women don't understand evidence isn't justified. (Women are perfectly capable of understanding evidence, so his belief is false – but not only that: it's *obvious* that women are capable of understanding that you need evidence, to anyone who thinks about it at all. So his belief is fairly obviously unjustified.) And so his dismissal of Marge's argument, which results from his biased belief, is an illegitimate ad hominem response.

(iii) Sometimes a bias will give rise to an entirely appropriate ad hominem response to an argument. Imagine that you have two young daughters, Carla and Marla. One afternoon, Carla runs up to you, to hide from Marla. Marla storms in, shouting,

“Mom, Carla stole my shoes!”

“No I didn't!” Carla shouts back. “I couldn't have stolen them, I was asleep until you started shouting!”

Now, you've had plenty of experience with your girls and with how they bicker and how truthful they are. And, while Carla has never told a lie that you're aware of, Marla is, sadly, prone to fabricating stories. As a result, you've developed a bias in favour of trusting Carla over Marla when their stories conflict. (The bias here is the comparatively harsher standard that you apply to Marla's assertions, especially when they conflict with Carla's.)

So here, you have an argument that Carla is offering in her defense – Premise: she was asleep; Conclusion: she didn't steal the shoes – and all you have to go on in deciding whether to accept the premise is her word. So you decide to accept Carla's assertion that she was asleep, and therefore to accept her conclusion that she didn't steal the shoes. And so, you interrupt their shouting:

“CARLA. Are you sure you were asleep the whole time?”

“Ya-huh I was Mom!”

Marla keeps trying to interject, but you gently but firmly grasp her by the shoulder, saying, “Marla. You know how you are. Carla says she was asleep. You just need to look harder for your shoes.”

So Marla storms out of the room, complaining, “MOM. Carla's turned you against me. You're SO unfair. You NEVER take my word for it.” And Marla's right that you are biased against her. But she's wrong that your bias is (epistemically) unfair.⁶

This is a case where you have accepted an arguer's (Carla's) premise based on what you know of that arguer's character. Your habit of accepting her assertions is an expression of a bias

⁵ In the screenplay, Ripley also apparently decides to kill Marge, when he realizes that she is on to him, but then he's interrupted – this is part of why we feel there is such an injustice going on when people dismiss Marge's accusation. Let's ignore that for now and just take the evidence of the rings.

⁶ Perhaps it's unfair from the perspective of healthy parent-child interactions? Not having children of my own, I won't try to speak to this.

that you have in favour of Carla. But it's a perfectly (epistemically) justified bias, since you are aware of no lies from Carla, and of many lies from Marla.

So: we've now seen that justified biases can give rise to both acceptable (when relevant) and unacceptable (when irrelevant) ad hominem responses to arguments. But it's never the case that unjustified biases give rise to acceptable ad hominem responses to arguments. Ad hominems based on unjustified biases will always violate the rational acceptability condition on good arguments.

3. The lingering effects of exposed biases

The main reason we offer critical thinking and argumentation courses is to try to improve people's skills at reasoning and arguing. And, one might naturally think, once we've learned a bad way to argue – say, once we've learned that irrelevant or unjustified ad hominem responses to an argument should not affect our assessment of the argument – we're then in a position to correct our assessments of arguments, when we realize that they fit into a bad pattern.

But, as Audrey Yap (2013) has recently shown, it turns out that when a respondent R gives an ad hominem attack in response to a speaker S's argument, and R's ad hominem attack relies on or expresses an unjustified bias – *and we come to see that R's response rests on an unjustified bias* – the ad hominem response will still often seem persuasive to us. This is because of what Govier (1993) calls “rhetorical credibility”: there are implicit social epistemic norms, according to which some people, because of their social roles, socioeconomic backgrounds, the colour of their skin, and the way they dress, are granted extra credibility or reduced credibility. An old man in a suit behind a podium at a press conference often just *feels* a little bit more persuasive, saying the same things as someone with a different social identity, who is dressed differently, (etc.), would seem.

Yap's point is that the effects of these biases can linger, even once attention is drawn to them, and even when we recognize that an ad hominem response to an argument rests on a bias that isn't justified. To borrow an example that Yap (2013, p. 105) borrows in turn from Woods and Walton (1998, p. 9):

Bill stands accused of being a simpleton, and Sue of being a typical woman, who therefore is no good at reasoning. The abuse is obvious, and so obviously misconceived or irrelevant as to stand little chance of success as a deception. (Though if passions run high enough, even a gross and stupid remark can be enraging and can, therefore, subvert the objectives of the argument.)

Woods and Walton point out that the attacks on Bill and Sue are so obviously irrelevant to any arguments they might make that no one would ever think that the abuse is a good response to Bill's or Sue's arguments.

But what is interesting about Yap's paper, I think, is that she points out that in spite of the fact that no one would ever be taken in by the attack on Sue, that attack can nevertheless damage her rhetorical credibility by calling attention to an implicit (and sometimes explicit) social epistemic norm according to which women's arguments can be ignored (and that they shouldn't even seriously try to reason about difficult matters) because they aren't good at reasoning, or at least at reasoning in abstract or complicated ways. In spite of the fact that we all recognize that this isn't a legitimate norm, and no one would really cite it as a reason for not accepting Sue's argument, it can still damage Sue's credibility in the situation once it's brought up. The damage to

her credibility can result in her audience's feeling some amount of dissatisfaction with the dialectical situation, and casting about for further arguments put forward by others, for example, or even just expecting that Sue will try to argue further for her conclusion.

It is also worth noting, I think, that this doesn't only happen with unjustified negative biases like the bias against trusting women to be able to reason well; it also happens with unjustified positive biases, in favour of trusting the subject, like the bias in favour of trusting the things that well-dressed men behind podiums say. For example, I recall reading the following explanation in a discussion on Facebook about Donald Trump⁷: people who've grown up in the 1970s, 80s, and 90s have grown up constantly hearing Trump's name used synonymously with success and wealth. And so, when Trump argues that he is uniquely qualified to be President of the USA, because of his great wealth and success as a businessman, there is a strong pull in favour of accepting that this is, in fact, at least one good reason for electing him. This is in spite of the fact that it's common knowledge that Trump has invested in many different business ventures, some of which were not even close to being successes. And there were four occasions on which his businesses filed for bankruptcy. But we still hear the name "Trump" and think "business success," even when it's explicitly brought to the front of our minds that his record as a businessman is very checkered. And this association of "Trump" with "success," which Trump himself has carefully cultivated over the years, can lead us to avoid appealing to his business failures as reasons for doubting his qualification for the Presidency.

Yap is concerned with showing that unjustified negative biases can damage a speaker's rhetorical credibility, even when the bias is made explicit and everyone recognizes that it's an unjustified bias. The case of the bias in favour of Trump illustrates the opposite sort of problem: this is a case where an unjustified positive bias is shown to be unjustified, and yet the effects of this positive bias linger, and continue to lend support to Trump's rhetorical credibility.

4. Bias and magical thinking

Why do these unjustified or irrelevant negative biases have the power to undermine, and unjustified or irrelevant positive biases have the power to bolster, a speaker's rhetorical credibility, even when we recognize that the bias is unjustified or irrelevant?

The answer, I suggest, is bound up with the way that humans are prone to "magical thinking." This is the tendency to think in terms that violate laws of nature, e.g. about established ways that energy or information can be transmitted.⁸ Consider a few examples of magical thinking:

- (1) When a corner store sells a scratch lottery ticket that wins big, I've known people who would then buy scratch tickets from that store, at least a few times, even if that location is a little bit out of the way. This is in spite of the fact that winning scratch tickets are printed and distributed randomly, and everyone knows that.
- (2) People will tend to refuse to eat chocolate if it's shaped like dog feces, or like a cockroach, even if they know that it is pure chocolate – even if they've seen the chocolate poured into the mould and then taken out after it has solidified.

⁷ I didn't ask permission to quote the speaker, so I'll leave it anonymous, but it's a recognizable bias on favour of Trump – a bias, in fact, that he has deliberately fostered.

⁸ This is a widely recognized phenomenon in the psychology literature. See, e.g., Keinan (1994); Zusne and Jones (1989); Rozin et al (1986); Tykocinski (2008).

(3) People will tend to be averse to drinking something innocuous, like sugar water, if it is placed in a glass labeled “poison.” This effect occurs even if the subjects themselves are given identical, unlabeled glasses, and they apply the label themselves arbitrarily to one of the glasses.

In cases like these, subjects consciously recognize that there is no reason at all for engaging in the behaviour or having the preference in question; they know that the shape of your chocolate is irrelevant to how delicious and sanitary it is, for example. But the (obviously irrelevant) similarity in the appearance between a piece of chocolate and a cockroach still leads people to have the unsupported preference and engage in the unsupported behaviour.⁹

The same mechanism is at work, I suspect, in cases where people consciously deny some fairly obviously false (or irrelevant) epistemic norm, like the norm that we may safely ignore arguments put forward by women because of their natural difficulty with abstract reasoning. Almost everyone accepts that this is not a real norm; and yet, when someone appeals to this norm in response to an argument put forward by a woman, it is liable to at least partly undermine her rhetorical credibility. Similarly, most of us know that Trump has had a number of serious failures as a businessman, and yet whenever anyone mentions his name, an image of a successful businessman is liable to come to mind.

This seems to be in an important respect like our tendency toward magical thinking. With respect to the false and unjustified biases, we recognize that they are false, but because they’ve been ingrained in fairly deep and subtle ways into our minds as we’ve grown up in the society that we have, they retain a hold on us even when we bring them out into the open and make it explicit that they’re both false and unjustified. With respect to appeals to irrelevant biases, which might or might not be justified, it’s recognized that the bias is irrelevant to the appraisal of the argument at hand. The partial persuasive force that the appeal to such norms has is just like the cases of magical thinking: in those cases, there are certain social behaviour norms (e.g. “you should be disgusted by dog feces and cockroaches”) that we learn as we grow up in our society, and these norms, whether or not they are correct, are recognized to be inapplicable in the situation at hand.

So the way that the effects of unjustified or irrelevant biases linger is in important respects like the tendency toward magical thinking. The tempting thing to do at this point is to suggest that whatever the best way to eradicate magical thinking may be, that will also be the way to undermine the grip of these unjustified biases. But the often-discussed cases of magical thinking are more or less just curiosities – they aren’t important enough to try to eradicate. Still, it is to be hoped that research on magical thinking will yield effective practices for undermining it, in which case we could adopt those same practices to combat the lingering effects of unjustified or irrelevant biases in argumentative contexts.

5. Conclusion

We’ve seen that there are legitimate and illegitimate ad hominem arguments, and that there are justified and unjustified biases. Justified biases can give rise to legitimate and illegitimate ad hominem arguments, while unjustified biases only give rise to illegitimate ad hominem arguments. But even if we recognize that an ad hominem response to an argument is illegitimate, because founded on an unjustified or irrelevant bias, the bias is still liable to either partly undermine or partly bolster a

⁹ Speaking just for myself, there is no question: I would eat a piece of inferior chocolate that’s shaped in a normal way before I would eat an excellent piece of chocolate shaped like a cockroach.

speaker's rhetorical credibility. This tendency, I suggest, is a malignant cousin of the garden variety types of magical thinking.

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