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Virtuous Vices: On Objectivity, Bias, and Virtue in Argumentation

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Abstract: How is it possible that biases are cognitive vices, objectivity is an exemplary intellectual virtue, but objectivity is itself a bias? We argue that objectivity is indeed a bias but an argumentative virtue nonetheless. Using courtroom argumentation as a case study, we analyze and explain objectivity's contextually variable value. The conclusions from this study ground a response to recent criticisms from Goddu and Godden regarding the conceptual foundations of virtue-based approaches to argumentation.

Keywords: argument, virtue argumentation, objectivity, bias

1. Introduction: objectivity, bias, and virtue in argument

How is it possible that objectivity is an exemplary intellectual virtue and biases are cognitive vices, when objectivity itself qualifies as a bias? In this paper, we argue that objectivity, as a character trait, is indeed a kind of bias. However, we do not think that this alters its status as an argumentative virtue. Rather, it leads us to rethink whether biases are always vicious. Like many biases, as well as many virtues, objectivity's effects are neither uniformly negative nor uniformly positive. Whether a given character trait will be beneficial in some specific argument depends on contingent features of the context, of the argument, and of the goals of the participating arguers. However, no single context can determine which traits will be beneficial, nor which ones should be cultivated, nor how those descriptive and normative projects are correlated. A broader perspective is needed. We believe that virtue argumentation theory (VAT) provides that perspective.

We begin with an analysis of courtroom argumentation as a case study. The assigned roles in legal settings provide high-definition examples of how the value of argumentative virtues can differ from situation to situation and from role to role. Objectivity, for example, is a more important virtue for judges than it is for either the prosecuting or defense attorneys, for whom it could have negative consequences. Conversely, bias is a less pernicious vice for defense attorneys. Rather, the bias of the defense attorney for his client is an important and necessary part of the argumentative machinery at work in the criminal courtroom. It helps ensure that the criminal courts reach conclusions of guilt *only if* reasonable doubts about a defendant's guilt could not be established despite the efforts of someone arguing on her behalf. In this setting, a defense attorney's bias is a virtue. We will use courtroom roles as stand-ins for the variety of roles we are all called on to fill in ordinary argumentation.

In the next section, we address some general objections to virtue-based argumentation theories that are particularly relevant to their application here. Independently, Goddu (2015) and Godden (2016) have raised questions about VAT's foundations and, in consequence, identified a problem in how argumentative virtues are identified. If objectivity is only sometimes a positive attribute for arguers, is it only sometimes a virtue? If not, what criteria justify its constant status as a virtue? If those criteria depend on concepts and values that precede or are independent of the virtues, e.g., the concept of a good argument, does that mean virtue theories are superfluous? If not, then what connects the designated set of character traits to good argumentation? We take our cue from the conventions of courtroom argumentation: those conventions serve both to constitute *and* to regulate legal argumentation and what counts as good legal arguments and legal arguers.[1] The governing conventions for argumentation play a similar dual role, reflecting the co-evolution of the concepts of good argumentation and good arguers.[2] We argue that, if the ideas of what makes an arguer virtuous and what makes and argument good have developed while mutually influencing each other, then there is no need (although not necessarily the desire) for conceptual bedrock.

The concluding section returns to the specific cases of bias and objectivity to complete the explanation of, and argument for, the claims that objectivity can indeed be a "vicious virtue" and biases can be "virtuous vices."

2. Order in the Court

In one scene in the movie *The Bridge of Spies*, a Russian spy, having been captured by the Americans, sits in his cell and awaits trial. He is talking to his defense lawyer, who has already helped him a great deal and thereby gained his trust. The defense lawyer enters the cell and offers the spy cigarettes. The spy says, "You've never asked me whether the charges were true. If I am indeed a spy." The defense lawyer answers, "This is how we do it: the case against you matters. Making them <u>prove</u> it matters. The fiction is, whether you did it or not doesn't matter. The state has to prove it, that you're a spy."[3] The truth does not matter. He already knows what he is going to argue for. He does not know the truth; he does not even *want* to know the truth.

And yet, we, the audience, find something admirable in that.

How can this be? We assume that in argumentation, objectivity is a virtue and bias a vice.[4] Yet, here we are, confronted with a situation in which someone clearly displays his bias and is clearly disposed to argue based on it, but we cannot bring ourselves to judge him as acting according to vicious impulses. It appears to us that he is, in this moment, the person he should

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[1] John Searle's treatment has become the *locus classicus* for contemporary use of this distinction: "Regulative rules regulate antecedently of independently existing forms of behaviour… constitutive rules do not merely regulate, they create or define new forms of behaviour" Searle (1969, p. 33).

[2] Two comparisons are instructive here: Fricker (2009) reconstructs a genealogy in which an operative concept of good informants *precedes* the concept of knowledge. The relational social (communicative) phenomena enable the construction of individual properties. The argumentative theory of reasoning offered in Mercier and Sperber (2011) also prioritizes the social-relational aspects of reasoning over individual rationality. We are sympathetic with (and grateful for the insights from) both of those endeavors, but we see the emergence of the concepts of virtuous arguer and good argument as symbiotic throughout their joint evolution. See section 3 below.

[3] From the screenplay of *Bridge of Spies,* (Matt Charman, Ethan Coen, Joel Coen, *Bridge of Spies*, p. 34).

[4] Being biased is generally considered a bad thing. Accordingly, a lot of research about biases is set out to find answers to the question of how we can de-bias ourselves, or how and under which circumstances we can become more objective. This is true also of literature dealing with biases and objectivity that is related or makes reference to virtues in argumentation. See, e.g. Ballantyne (2015), Zenker (2013), and Howes (2013).

be. He signals that, in his role as the Russian spy's defense lawyer, he will argue with only one goal in mind: He will attempt to convince the judge or the jury – his audience – of the innocence of his defendant, no matter whether that defendant is guilty. If he enters the courtroom and argues with this goal in mind, he will be a clear example of an arguer acting under the influence of bias.

What does it mean to say that he is biased in arguing? Take the question: "Is the defendant guilty?" Suppose she is. We might come to believe in her guilt on the basis of *evidence*, i.e., reasons that directly impact the plausibility that the defendant is guilty. But we can also come to this answer for other non-evidential sorts of reasons.[5] There are general reasons why we might *prefer* some sorts of conclusions over others, with consequences for individual cases, including whether the defendant in a specific case is guilty. A biased arguer can be characterized as someone who argues in order to reach conclusions on the basis of antecedent preferences.

On this account, a judge or juror whose answer to the question, "Is the defendant guilty?" is partly determined by antecedent preference for one of the two possible answers – "She is" or "She is not" – counts as biased. It need not be the sole or even the determining factor in the choice of conclusion because there can be degrees of bias, but to the extent that an antecedent preference is present and has some effect, the arguer is biased, even if only slightly so. Biases are often pernicious, especially when they lead us to prefer conclusions which are most personally advantageous. A judge who finds a defendant guilty because he was bribed is the example that comes most readily to mind. But biases can also be benign. Attorneys argue for a defendant's innocence because they are hired to do so. Their retainers make them biased, but not necessarily in an objectionable way. Lawyers also take on *pro bono* cases. They may do so in order to gain fame for themselves, out of a sense of duty to society, in pursuit of justice, for noble ethical reasons, for ignoble personal reasons, or even just for the intellectual challenge. In all these cases, the truth is at best a secondary consideration when it comes to why they argue. A lawyer who is quick to offer *pro bono* services to suspected perpetrators of racial violence might have racist motivations of his own – a bias on anyone's account – but the attorney who automatically jumps in to defend the accusers in stereotypical "he said-she said" cases of sexual assault might also be described as arguing under a bias.

This understanding of bias works well with our intuitions about the bad effects bias may have on an arguer. Biases may manifest themselves in all aspect of our epistemic agency, from data gathering and initial belief formation to subsequent justification and general system management, but they become especially visible in arguments. When someone adamantly resists good reasons for a conclusion in favor of weaker reasons for a contrary conclusion, we justifiably suspect there must be biases at work.[6] We tend to distrust those who we think are biased. They lose status as epistemic agents, and not just in arguments, but also in offering testimony. The mere fact that they disagree is no longer able to lower our confidence in our own beliefs.[7] This makes sense: We do not think that they disagree with us for reasons directly

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[5] These reasons could be irrational or irrelevant. For example, we might decide someone's guilt on the basis of a strange glint in her eye. However, they do not need to be. Just as simplicity, elegance, utility, or other features that are not necessarily indicators of truth may play a role in scientific theory selection, there are factors that will quite appropriately influence us in argumentation.

[6] This phenomenon is discussed in, e.g., Ballantyne (2015).

[7] Ballantyne (2015, p. 142).

applicable to the subject matter of disagreement – and their reasons for why they might *want* or *need* to come to some conclusion might not apply to us.

Objectivity is often associated with a simple lack of biases, but that is problematic for those who want to simultaneously criticize the partiality of, say, patriarchal society as well as the notion of objectivity itself.[8] In one way, objectivity-as-an-absence makes sense. When we are being objective, we are not influenced by reasons like our wish to preserve our world-view or our striving for personal advantages. But in another way, objectivity is not at all the same as the mere absence of bias. The absence of all bias would produce an arguer who does not argue with any idea of what kind of conclusion she wants to reach in mind, but instead follows the flow of the argument wherever it might lead her. We need a more positive account of what objectivity is. After all, the objective arguer is not a blank slate. She approaches arguments with a desired goal already in mind, viz. the *correct* conclusion.[9] When it comes to empirical questions, she wants a conclusion that will give her a true belief. When it comes to normative questions, she wants to reach a conclusion that will give her a good decision. Even in matters where there might not be anything like "*the* correct conclusion," such as aesthetic questions, the objective arguer can still be said to want *a* correct conclusion, one that will ground an adequate understanding and provide an elegant interpretation. She will not be happy with any conclusion that does not fulfill these prior desiderata. Not every arguer wants these kinds of conclusions, so any explanation of why a given arguer accepts the conclusions she does will refer, to some extent, to the preferences of the arguer. Thus, in the broadest sense, then, the objective arguer *is* biased according to the positive account of bias proposed here. Of course, the bias for truth, like its brethren biases for justice, goodness, and beauty, happens to be one that we generally do not find objectionable.

All that has been said so far serves mostly to re-confirm the idea that objectivity is good, bias is bad (and at best benign), and the arguer whose character leads her to be objective in argument is virtuous, while the one disposed to bias is vicious. How do we explain our earlier confusion?

Let us return to our defense lawyer in *Bridge of Spies*. He is clearly not being objective. He will argue in court about an empirical question, the question of guilt, and he will do so for non-evidential reasons deriving from the preferences of the legal system. In fact, we assume that defense lawyers are *usually* not objective, and we assume the same of prosecutors. Moreover, we routinely believe that lawyers *should* be biased in these ways. The reasons for this have been described vividly, for example, in John B. Mitchell's half-autobiographical paper "The Ethics of the Criminal Defense Attorney – New Answers to Old Questions."[10] There he defends his work as a criminal defense attorney, and his commitment to arguing in court with the goal to defend even those he knows to be guilty. He justifies himself by referring to the kind of role he plays in the criminal justice system. The goal of this system, according to his assessment, is not primarily to determine the *truth* about the guilt of the accused. Rather, it is to treat everyone who enters it *justly*. This includes a *preference* that gives more value to the acquittal of the innocent than the conviction of the guilty.[11]

Mitchell's account illuminates the complementary roles that attorneys play in a system built to accomplish justice rather than truth – and the complementary roles for bias and objectivity, too. William Blackstone's principle that "it is better that ten guilty persons escape

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[8] Antony (1992) frames this problem very well.
[9] This understanding of objectivity conforms also to Moira Howes' concept of objectivity in Howes (2013).
[10] Mitchell (1980).
[11] Mitchell (1980, p. 300).

than that one innocent suffer" is the answer that we have adopted for the question of how a just system of criminal law should function.[12] We have, accordingly, built a bias for the defendant into the system. It instructs judges to ask not whether the defendant in a criminal case is guilty, but whether she is guilty *beyond* reasonable doubt. That is the question that demands the *correct* conclusion, and that is why and where it is important that judges be objective.

The trial is set up as an argumentative encounter between an advocate for the defendant's guilt and an advocate for the defendant's innocence specifically to help the judge and jury answer that question correctly. The prosecution's role is to argue that the defendant is guilty beyond a reasonable doubt; the defender's role is to argue that there is reasonable doubt. That is, able prosecutors and defenders *should be* biased arguers: they argue for conclusions determined by their role-related preferences, rather than by considerations of truth and falsity.

The role our defense-attorney plays in the criminal justice system explains why we do not think his bias is a vice. A vice is a character trait that disposes a person to bad actions – either actions that regularly have bad consequences, or actions that are regularly motivated by bad intentions.[13] But that the defense attorney argues with a bias within the context of the criminal trial is the result of a preference but *not the result of a disposition to act badly*. The defense-attorney's bias for the innocence of his client furthers the goal of the system of criminal law, to ensure that the defendant will be treated justly.[14] We may go further: A defense attorney who did not display a bias for the conclusion that her client is innocent while arguing in front of the court would not fulfill her argumentative role well. An objective defender would hinder, not further pursuit of the justice system's goals. Indeed, even *sincerity,* letting on that he *believes* the defendant is guilty even though he is arguing against a conviction, would compromise his role as a defense attorney. Bias in argument, therefore, turns out not always to be a sign of vice. For some of the goals of argumentation, biases are very useful.

It is possible to generalize the insight that bias is not necessarily an expression of a vicious character. It can be a virtue for an arguer to adopt some kinds of bias when filling certain roles at some stages in some arguments – including truth-seeking arguments – because doing so can actually serve to further the chances for successful argumentation. For example, feminist argumentation theorists have noted that subjecting new ideas and underdeveloped arguments to immediate critical scrutiny before they have been fully developed can lead to "premature rejection" resulting in the further silencing of marginalized voices.[15] These ideas need a defense attorney. It can, therefore, be appropriate to adopt an initial, defeasible bias *for* theses simply because they have been suggested by minorities or represent different perspectives, independent of, or in addition to considerations of truth, while supporting argumentation develops. As we have argued elsewhere, a virtuous arguer will be disposed to adjust how she argues to the context of the argument. Forceful adversarial argumentation may be a good way to get to the truth when the playing field is level, but that is not always the case. Nor *should it* always be the case, as exemplified by our own virtuously biased criminal justice system.[16]

What this shows is that whether bias or objectivity is advantageous for argumentation depends on the context in which we argue and our roles with those arguments. Thus, against our

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[12] Blackstone (1965).

[13] Some accounts tend to treat vice as the absence of virtue, e.g., Aberdein (2016). See, e.g. Battaly (2015) for a more positive treatment.

[14] And it is quite possible – and in the case of the attorney's character in the *Bridge of Spies,* or in the case of John Mitchell – indeed true, that the intention behind this bias is also good.

[15] See, e.g. Moulton (1983) and Gilbert (1994).

[16] See Stevens (2016).

first intuition, bias is not always vicious. Furthermore, we can also conclude, as an immediate corollary, that objectivity understood as the preference for truth (or goodness, or elegance) over all other values is itself a bias.

3. Before virtue

Thus far, we have argued for the claim that objectivity is a more important argumentative virtue for judges than it is for prosecuting and defense attorneys, for whom objectivity can even have negative value. Embodied in this claim are three theses that generate two important corollaries and give rise to one over-arching question. The three explicit theses are:

> (T-1) Objectivity is not uniformly valuable for all arguers in all circumstances in all arguments.

There is not a lot of news-value here. That's just how virtues work. Bravery (for unfathomable reasons, a favorite example for virtue theorists) is more salient for those who play the role of soldiers than those who are shoemakers.

> (T-2) In some contexts, objectivity can actually be a *negative* character trait for successful argumentation.

This is a little more interesting, but still not all that conceptually challenging: honesty is a virtue for humans, but it is sometimes a burden in our roles as friends, diplomats, merchants, and undertakers.

However, as we have already indicated, we are committed to arguing that,

> (T-3) Objectivity remains a virtue for arguers *regardless of its value*.

OK, now this should get our attention. Aren't virtues supposed to be goods – both in themselves and instrumentally?[17] If objectivity is a virtue for us *as arguers*, similar to the way that bravery is a virtue for us *as soldiers*, objectivity should be good in arguing just as bravery is good for fighting. Otherwise, where is the motivation to be virtuous? The idea of a "detrimental virtue", if not actually self-contradictory, creates tension in the *why-be-moral* neighborhood.

The two immediate corollaries are:

> (C-1) The possible *dis-utility* of objectivity applies to both the process of argumentation as well as to individual arguers.

That is, not only can the negative effects of objectivity serve to thwart the various goals of individual arguers, objectivity can be a spanner in the works for argumentation. (Consider how sincerity can get in the way for proxy arguers, like defense attorneys.)

> (C-2) The utility of objectivity is an empirical and contingent matter, both in given *specific* contexts and *generally*.

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[17] The account of virtues assumed here is heavily informed by Zagzebski (1996) and Annas (2011), particularly for their emphases on the need for motivational and acquired components.

For all we know, prior to any investigation, objectivity could be detrimental in a preponderance of occasions; for that matter, its net, cumulative effects could be negative, too. The feminist critique noted earlier of how appeals to objectivity can be used as a weapon that effectively silences marginalized voices points to the gravity of this problem.[18]

That brings us to the problem of the criterion, the question that has loomed over the whole enterprise:

> (Q-C) Where do the argumentative virtues come from? What qualifies a character
> trait as an argumentative virtue?

The question is not as much about identifying particular virtues as it is about the need to identify the proper *criterion* to use in identifying the virtues. For example, we have the strong intuition that objectivity is a virtue but the discussion of courtrooms shows we need to be able to explain *why* in order to justify it. Several factors make this a particularly pressing problem for virtue-based theories. First, because argumentative virtues have to bridge the gap from abstract, general theorizing to specific applications, they need to be "thick" concepts. The virtues' normative and descriptive components need to be integrated.[19] Moreover, the normativity of arguers' virtues has to be connected to the evaluation of their arguments. If there is more to arguments than just their illative (inferential) core, as surely there is, then good arguments and good arguers cannot be independent concepts.

What, then, is the direction of dependence? Are the virtues *derivative* from a prior concept of good arguments or are the virtues *constitutive* of good argumentation? Which has conceptual priority?

The problem of the criterion thus becomes a search for foundations.

> (Q-F) What are the foundations for virtue argumentation theories? To put it
> starkly: What comes first: good arguments or good arguers?

If whatever it is that determines the virtues precedes the virtues, i.e., the virtues rest on more foundational values, then determining the virtues becomes the wholly empirical job of determining which character traits are best suited to bringing about the desired outcomes. While that would certainly be a practical, pedagogically useful exercise, it would make VAT theoretically eliminable. It would be worthwhile as a valuable heuristic perhaps, but nothing more. This would be the case if, as in reliabilism, the concept of a good argument is taken as conceptually prior so that it can be used in defining argumentative virtues, which, in turn, are constitutive of good arguers. This approach summarily defines out of existence the possibility of virtues whose disutility is not the rare exception (which some see as a feature rather than a glitch).

The other option is to take the argumentative virtues as more foundational, so that they can be used in defining good arguers on the way to evaluating good arguments and good argumentation. Two challenges face this tack. One is how to recover the objective criteria normally included in argument evaluation such as premise relevance, inferential validity, and

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[18] Susan Bordo provides an important account of the gendered construction of rationality in Modern philosophy in *The Flight to Objectivity* (Bordo 1987).

[19] For an account of the necessity of "v-principles" for making values as general dispositions action-guiding in specific situations, see Thorson (2016).

truth. While these factors cannot tell the whole story when it comes to evaluating argumentation, they do need to be part of the story. Fortunately, satisfactory stand-ins are available.

For example, warranted acceptability, as reconstructed by virtue epistemology, can replace a realist metaphysics of truth for many purposes, including *all* the ones pertaining to argumentation. There is, to be sure, an obvious and important objection that can be raised concerning the "cautionary use" of a truth predicate ("*Yes, it's warranted, but is it really true?*") that prevents a complete elimination of objective truth.[20] However, that is nothing more than a benign corollary of the open-endedness of argumentation ("*Yes, your argument seems cogent, but does it really prevent all possible future objections?*").

Similarly, subjective, agent-based reconstructions of objective validity can be offered in terms of arguer satisfaction. Again, there is an obvious and important objection to raise concerning the possibility of a mistaken consensus: outsiders might see a glaring invalidity that insiders cannot. What this objection misses is that once those outside critics engage with the argument, they become participants in the argument[21] – or, if you prefer, an extension or expanded version of the argument. In other words: An outsider who engages with the argument by evaluating its validity thereby enters the argument in the role of an interlocutor and becomes another arguer[22] – and it is no longer true of the argument, now expanded to include the critic, that all its participants are satisfied. But couldn't we *all* be wrong in judging an argument valid? Yes, and should that occur, we may be convinced to revise our judgment; otherwise, our judgment will abide. Doesn't that describe how we do in fact operate? Agent-based theories fare a lot better at the job of evaluating the arguments that arguers produce than product-focused theories fare at the job of evaluating the arguers who produce them.

The criterial and foundational questions are connected by common assumptions about the nature of argumentation. For starters, there is the felt need for foundations. Now, foundations *would* be required if the goal of argumentation were apodictic demonstrations to ground indubitable knowledge. But that is not true of all argumentation. Argumentation covers a broader array of intellectual endeavors than that. We have seen this in the example of the criminal court: Here, the goal is not to find the *objective truth* about the guilt of the defendant. If this was the case, we would be content to convict innocent people as often as we let guilty people go, as long as both happen as little as possible. We would not expect to find a burden of proof on the state as heavy as *beyond reasonable doubt*. However, the goal is to convict those *and only those* defendants about whose guilt we can be absolutely sure – even if that means that we get it wrong about guilty defendants slightly more often than otherwise. Within the system of the criminal law, the ultimate goal of arguing is not truth; it is justice. The systematic implementation of biases helps accomplish this goal.

Again, if we were to assume that there is a single *telos* for argumentation, the search for grounding becomes a quest for the single criterion that makes an argument good for all situations – the Holy Grail of Argumentation Theory – but that assumption cannot be taken for granted. Argumentation covers too broad an array of communicative activities for that kind of a one-size-fits all characterization. Arguers need a wide variety of skills. *Good* arguers have, in addition, a

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[20] See Kasser and Cohen (2003), partly in response to Allen (1998) and Johnson (1999), for the ineliminable role of objective truth. The line of argument follows Putnam's adaptation of Moore's open-question argument for the irreducibility of *goodness* (as a metaphysical property) to apply to *truth* (as a predicate).

[21] Cohen (2013) argues for including critics and spectators among the *dramatis personae* of arguments.

[22] This effaces the boundary between argument and meta-argument from without, reaching the same place that Finocchiaro (2013) reaches from within.

correspondingly wide array of virtues that insure they deploy those skills responsibly in pursuit of their diverse goals. There are, accordingly, many ways to be a good arguer: winning arguers, persuasive arguers, reasonable arguers, effective arguers, responsive arguers, responsible arguers, and helpful arguers are all "good" arguers in the contexts that ask for these kinds of arguers. The implicit assumptions behind the foundational and criterial question ought to be taken off the shelf and put back on the table for discussion, but then, we suggest (while apologizing for the mixed metaphor), they need be moved to the back burner. Our proper concern is *the virtuous arguer* in all her shapes and sizes.

The virtuous arguer is one who is disposed to argue *well*. Arguing well, we have argued, is partially determined by argumentative situations and roles. Good arguers are sensitive to these factors and produce their arguments in response. That is, a good argument is produced both responsively and responsibly. The good arguer does not always simply aim for the correct conclusion. First, they ask themselves – this time objectively – what kind of conclusion they *should* be aiming for. That could be the correct conclusion. But it could also be the thesis that has not been seriously considered so far, the judgment they have been hired to advocate for, or the claim that will emphasize their piousness.

Let us return to the courtroom: the skills and properties that make someone a good defense attorney are not the same properties that are constitutive of good prosecutors, good judges, good jurors, or good legal theorists. Nor are they necessarily the same as those of good collegiate debaters, good partisan advocates, good negotiators, or, casting the net more widely, good Talmudic *pilpul* or Buddhist, *gelukpa* arguers. More instructive is the contrast between what counts as arguing well in, say, the English common law or American civil law traditions with arguing well within the traditions of Islamic *sharia* courts or Catholic ecclesiastical inquisitions. In the latter, piety, deference to authority, and textual knowledge are prominent virtues; open-mindedness is not. The conventions that govern *how we argue* in those different contexts have evolved in different ways; so have the criteria for what counts as *good arguing*; and so, too, have the relevant argumentative *virtues*, i.e., what constitutes being a *good arguer*. The evolution of argumentation traditions involves a co-evolution of the concepts of good arguments and good arguers, so asking what comes first is less like a chicken-and-egg question than a mountain-and-valley one.

4. Conclusion: getting it right

We began with the common assumption that biases are always vicious. That appears to create a problem because with a sufficiently general understanding of what constitutes bias – any effective antecedent preferences for some sorts of conclusions over others – it turns out that objectivity counts as a bias. Since biases can have good effects, as shown by the actors in legal argumentation, it should not have to give us any pause to think of objectivity as a bias – except for the fact that the discussion also showed how objectivity can have negative effects. Thus, either virtues can be negative or objectivity is not a virtue. We do want to maintain that objectivity remains a virtue *even in those cases where it has negative value*.

If objectivity had negative value only now and then, that would not be particularly worrisome because virtues are dispositional character traits that need not be active or effective at all times, and their occasional harmfulness could be justified by a consequentialist argument from their generally reliable performance and their overall value. That route makes objectivity's status as a virtue an empirical and contingent matter, and it also confronts us with the

foundational and criterial problems for virtue argumentation theory. The solution to those problems – the co-evolution of the concepts of good arguers and good argumentation – also answers the question how objectivity can be a virtue *regardless* of its effects.

One of the lessons learned from considering the distinct roles in courtrooms is that different situations call for different kinds of good arguers. Criminal trials are just one idiosyncratic kind of argument. Had the protocols and conventions of courtroom argumentation evolved differently, objectivity could have taken a back seat to speculative creativity (as in argumentation in literary criticism), ideological orthodoxy and commitment (as in partisan political argumentation), or sensitivity and empathy (as in some forms of therapy). Nevertheless, objectivity does have a privileged – but not inviolable – place in argumentation.

As legal argumentation has evolved in the ways it has, a commitment to "getting it right" remains important. Even though justice may be a more important value, that is not to say that objectivity is not also tremendously important. On the contrary! To say, "*You're not even trying to get it right!*" is to charge someone with the argumentative equivalent of a mortal sin. It is a serious charge, but is a charge that seems to be serious no matter the kind of argument and no matter the ultimate values in effect. Objectivity is a wild card that can always be played. But it is not a trump card that always wins. It is a virtue, but its status as a virtue is not tied to its consequences. Instead, it is wrapped up in what makes an argument, what it is to argue well, and what it is to be a good arguer – namely, an arguer who fulfills her role in the argumentative situation in which she finds herself, by arguing for the conclusion she objectively *should be* arguing for

We think we got that right.

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