

USE OF AD HOMINEM ARGUMENT IN POLITICAL DISCOURSE: THE BATTALINO CASE FROM THE IMPEACHMENT TRIAL

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The *ad hominem* argument is not a new phenomenon in American political discourse. A pamphlet was circulated telling of Andrew Jackson's "youthful indiscretions". Newspapers attacked Abraham Lincoln's policies using the words, "drunk", "too slow" and "foolish". What is new is the greatly increased and much more visible use of negative campaign tactics, and the accepted relevance of the character issue. Personal matters that were once "off limits" for media reporting are now probed into, using opposition research, and routinely used in attack ads. The abundance of these *ad hominem* arguments in current political discourse provides much interesting material for studying how to evaluate the strengths and weaknesses of this type of argument. In this paper, one specimen that poses some interesting problems has been selected for study.

Prior to the evaluation problem, in dealing with *ad hominem* arguments, there is an identification or classification problem. Many different subtypes of *ad hominem* argument have been shown to have distinctively different forms as arguments (Walton, 1998). There are also many other kinds of arguments that are associated with *ad hominem* arguments, but are not themselves *ad hominem* arguments. These arguments are easily confused with *ad hominem* arguments, or misclassified as *ad hominem* arguments. The lack of any standard system of classifying all these various forms of arguments has stood in the way of any serious study of the *ad hominem* argument. Now that problem, at least to some encouraging extent, has been solved. But the problem of refining and extending the systems of classification (Lagerspetz, 1995; Walton, 1998) still exists.

Since each different type of *ad hominem* argument needs to be evaluated differently, the question of how to identify the type of an argument, when confronting any argument used in a given case, is highly significant. But reality being what it is, there are borderline cases where it is very difficult or even impossible to tell whether a given argument used in a text of discourse is one type of *ad hominem* or another. Or it may even be hard to tell whether it is a genuine *ad hominem* argument or not. This is the problem Hamblin (1970) called "pinning down" the fallacy in a given case. The problem posed by the case studied in this paper is that the argument looks like an *ad hominem* argument, but on closer inspection, doubts are raised. It is arguable that it is not an *ad hominem* argument at all. The case in question is a fairly short and relatively self-contained segment of dialogue from the televised impeachment trial of President Bill Clinton in February, 1999. Before turning to the presentation of this case, an introduction to the viewpoint of informal logic is given, and a summary of the various forms of argument at issue is given. Once getting past these preliminary matters, the reader can proceed straight to this case.

1. The Viewpoint of Informal Logic

When it comes to studying arguments, there are two points of view, or ways of analyzing and evaluating an argument, that need to be distinguished. First, you can study the argument empirically to try to judge what effect it had, or will be likely to have, on an audience. This viewpoint would seem to be one that would fit the kind of approach and methods of the social sciences. The other point of view is logical. You can classify the argument as being of a particular type - meaning, in logic, that you fit it as an instance of some abstract form of argument - and then you can determine whether the argument is correct or incorrect (valid or invalid, reasonable or fallacious) - according to the normative standards of correctness that this type of argument is supposed to meet. It has been thought, since the end of the nineteenth century, that these two tasks were entirely independent of each other, and that they should be carefully separated, and never mixed in together. But recently, the feeling is that this separation is not as clean as we thought.

The following thumbnail sketch of the history of logic will amplify this point the above remarks. Aristotle's syllogistic, along with the Stoic logic of propositions, developed into the science of deductive logic which, in the twentieth century, became mathematical logic. On the other hand Aristotle's practical logic - which comprised the study of "sophistical refutations" or fallacies, which comes under the heading of "dialectical reasoning", in which two parties reason with each other - fell into obscurity and neglect. Something approximating it was attempted to be resurrected in the nineteenth century, most notably, when idealist philosophers wrote about so-called "laws of thought". With the ascendancy of formal (mathematical) logic, however, the whole idealist vision of laws of thought was sharply repudiated, and called "psychologism" - a pejorative term, as then used in logic. A sharp separation was made between how people actually think (psychologically) and how they ought to think (logically) if they are to be rational.

Now to return from this thumbnail sketch, it can be seen why in logic there is thought to be a sharp separation between the empirical and normative viewpoints. Recent developments, however, have started to indicate that this separation is not as clean or sharp as it was thought to be. One recent development is the return to the quest, originating in Aristotle's older logic of the *Topics* and *On Sophistical Refutations*, to study informal fallacies. It has been found that to study the fallacies with any hope of success, attention must be paid to realistic cases in which arguments are used for conversational various purposes in different contexts. Such an approach requires getting beyond simplistic one-liner examples of fallacies, and looking at individual cases in some detail on their merits. Needless to say, such a pragmatic case-oriented approach to realistic argumentation introduces something of an empirical component. While the abstract form of the argument (the so-called argumentation scheme) is still very important, one also has to look seriously at how an argument has been used for some conversational purpose (supposedly, from what can be judged from the given text of discourse). The pragmatic study of arguments use in a given case is no longer purely formal and abstract. It becomes contextual. Much depends on how you interpret a given text of discourse as expressing an argument or some other speech act. This pragmatic approach seems to make the traditional separation of abstract form and contextual content much more difficult to cleanly make.

This pragmatic approach to taking actual cases seriously is characteristic of the schools of thought now called informal logic and argumentation theory. The general theoretical approach can be described briefly as follows. The goals are the identification,

analysis and evaluation of argumentation. The field of argumentation is centrally concerned with arguments, but must also take account of related things, like explanations and the asking of question, that are not themselves arguments, but nevertheless occur in an important way in the course of sequences of argumentation. The ultimate goal is to evaluate arguments - that is, to judge in given a given instance of its use how strong or weak an argument is. What is meant is to judge whether the premises support the conclusions as good reasons for accepting the conclusion.

The typical kind of case dealt with is a case in which an argument of some sort has supposedly been put forward in a text of discourse in a given case. In this typical kind of case, the proponent is not around to defend her argument. The argument is expressed in some fairly short text of discourse presented in the logic classroom. The source of the text is known. It may be a magazine or newspaper article, a book, a transcript of a political speech, a transcript of a legal case, or any sort of text of discourse that appears to contain an interesting argument of some sort. The critics, usually a professor and a group of students, then undertake the task of identifying, analyzing and evaluating the argument. Usually a particular argument is selected out because it is interesting or controversial for some reason. In many cases, it is selected out because it fits the format of one of the famous informal fallacies. However, such arguments can be quite reasonable in many instances, and are by no means necessarily fallacious. The game is to try to judge, in a given case, whether the given argument, as far as it can be analyzed and pinned down, should be evaluated - is it fallacious, or just weak in certain respects, but not so badly off that it should be called fallacious? Or is it reasonable - that is, should it be judged to be basically correct from a structural point of view, even though it may have parts that are missing, or that are not very well backed up, as far as can be judged from what is known from the given text of discourse and its presumed context. In many cases, there simply isn't enough context given to support a definitive evaluation. Even so, in such cases what is called a conditional evaluation can be very informative and even enlightening.

The viewpoint of informal logic is typically from a backwards perspective. That is, you are typically confronted with a "dead specimen" - an argument that has already been put forward and is now embedded in some text of discourse that is being examined. The argument, presumably, is already over, and you are looking it at retrospectively. For example, the case you are studying may be from a political debate in a parliament or legislative assembly. The debate has already been concluded, perhaps long ago. So you are looking at it with all the benefit of 20/20 hindsight.

2. Classifying the Types of *Ad Hominem* Argument

The *ad hominem* argument has a long history of being treated as a fallacy in logic textbooks. Hardly anyone questioned the general assumption that this type of argument can be routinely dismissed as fallacious until Johnstone (1952; 1959) pointed out that many famous philosophical arguments are *ad hominem* arguments of a kind that do not appear to be fallacious. Johnstone was the first to seriously question what had become a generally accepted tradition in logic of taking for granted that *ad hominem* arguments are fallacious. The assumption was that not much care was needed in evaluating individual cases of the *argumentum ad hominem*, because all instances of it are fallacious. Johnstone put this assumption sharply into question by citing cases of what not only appear to be *ad hominem* arguments in philosophical argumentation, but that also appear to be, on the

whole quite reasonable arguments. Certainly these cases could not any longer be brushed aside as fallacious just on the grounds that they fit the form of argument described as *ad hominem* in the logic textbooks. By showing that the *ad hominem* argument could be reasonable in some cases, Johnstone opened up the real problem to be solved - how can we tell on the basis of evidence in a given case, whether a specific *ad hominem* argument is reasonable or fallacious? This question poses the problem of evaluation.

Once the evaluation problem was posed, another problem was the so-called identification problem. The textbook accounts indicated that there are different types of *ad hominem* arguments. The problem was how to classify these different subtypes, and generally how to define the *ad hominem* as a distinctive and identifiable form of argument. In (Walton, 1998), four main types of *ad hominem* argument are defined. In the direct, or so-called abusive type of *ad hominem* argument, the proponent argues that the respondent is a bad person, and that therefore his argument should not be accepted as being as plausible as it was before. There are several background presumptions. One is that there are two parties, called the proponent and the respondent. Another is that the respondent has put forward some particular argument that has some initial degree of plausibility. Another is that the respondent is assumed to have some ethical qualities of character, like honesty and integrity. When the proponent says that the respondent is a bad person, he means that the respondent has displayed some negative ethical quality of character, like dishonesty or hypocrisy. At any rate, these are all the properties of the direct *ad hominem* as a type of argument.

The circumstantial *ad hominem* argument, unlike the direct one, is always based on an allegation of inconsistency. The proponent alleges that the respondent is committed to some kind of inconsistency, and then uses that allegation as a springboard to argue that the respondent's argument is not plausible. Typically the allegation of inconsistency takes the form of the argument to the effect that the respondent "does not practice what he preaches". The classic case is the smoking example. In this case, the parent argues to the child that he should not smoke, because smoking is unhealthy. The child replies, "What about you? You smoke. So much for your argument against smoking!" What is going on in this case is that the child observes an inconsistency - the parent argues against smoking, but the parent herself smokes. Citing this pragmatic inconsistency, the child rejects the parent's argument. The smoking case is tricky to evaluate. On the one hand, the child is right to note the pragmatic inconsistency, and to question the parent's credibility as a spokesperson for an anti-smoking argument. On the other hand, the child may be over-reacting by rejecting what may be a good argument against smoking.

The form of the circumstantial *ad hominem* argument has been presented as follows in (Walton, 1998, p. 219). The small *a* stands for an arguer, the Greek α stands for an argument, and the capital *A* stands for a proposition.

Circumstantial *Ad Hominem* Argument

1. *a* advocates argument α , which has proposition *A* as its conclusion.
2. *a* has carried out an action or set of actions that imply that *a* is personally committed to not-*A* (the opposite of *A*).
3. Therefore, *a* is a bad person.

4. Therefore, a 's argument α should not be accepted.

When this form is applied to the smoking case, it may not seem that the subconclusion 3 really applies to the case. After all, is the child really claiming or asserting that the parent is a bad person, as part of the argument? Although no such assertion is explicitly made by the child, it can be inferred as a nonexplicit part of the argument. For presumably the reason that the child is rejecting the parent's argument against smoking is that the child sees the parent is a smoker, and then draws the inference that the parent is not sincere in what she advocates, based on the perception of the inconsistency. For the argument to make sense, there needs to be an implicit conclusion drawn by the child that the parent lacks some kind of personal ethical quality like sincerity or integrity. Whatever we might call it, the quality of character involves a consistency between a person's principles and her personal actions. At any rate, assuming that the child's argument in the smoking case has this component, it can be classified as an instance of the circumstantial *ad hominem* type of argument. If it lacks this component, it would be classified in (Walton, 1998, p. 251) as an argument from pragmatic inconsistency, but one that is not a genuine type of *ad hominem* argument (in the narrower sense in which *ad hominem* is a personal attack argument).

A political example of the use of the circumstantial *ad hominem* argument is the following case. This case comes from *Time* magazine's *Election Notebook* of November 18, 1996 (p. 16), a page on which *Time* gives out "Campaign '96 Awards" to "recognize outstanding achievements by politicians, their relatives and their hecklers". Two of the awards are directly quoted below.

THE SLIGHT-INCONSISTENCY MEDAL: To Al Gore, who left not a dry eye in the house at the Democratic Convention as he described his sister's death from smoking-induced lung cancer. Gore failed to mention that for some years following her death, his family continued to grow tobacco and that he continued to accept campaign money from tobacco interest.

THE MOST NAUSEATING SPIN: Gore explained the above by saying, "I felt the numbness that prevented me from integrating into all aspects of my life the implications of what that tragedy really meant."

No author of the *Election Notebook* page was given. The page simply appears as an editorial column, with accompanying pictures (including one of Gore, in a speech-making pose). The argumentation in this case fits the form of the circumstantial *ad hominem* argument, because it seems to imply that Gore's actions are inconsistent. On the one hand, he has made a passionate speech about his sister's death from smoking-induced lung cancer in which he appears to have denounced the evils of tobacco. On the other hand, for some years after his sister's death, his family continued to grow tobacco and "he continued to accept campaign money from tobacco interests." This apparent inconsistency made Gore look like a hypocrite who is not sincere about what he preaches. Thus the argument is a circumstantial *ad hominem*.

The weakest part of this argument is that Gore is only indirectly tied to growing tobacco through his family. One might also question whether it is an *ad hominem*

argument on the grounds that it is not clear that the attack on Gore is being used to attack some specific argument that Gore put forth. Further consideration of these points is taken up in a more extensive analysis and evaluation of this case in (Walton, 1999). Certainly this case has a number of interesting aspects. But for our purposes here, it can serve to illustrate how the circumstantial type of *ad hominem* attack is used in political argumentation.

In the bias type of *ad hominem* argument, the proponent argues that the respondent is biased, or has shown some sort of bias, and argues that therefore the respondent's argument should not be taken to be as plausible as it might have appeared before. Bias of this sort can be shown by a number of indicators, like having something to gain, or being strongly committed to a viewpoint (Kienpointner and Kindt, 1997). Bias is not always a bad thing in argumentation. How bad a bias is, in a given case, depends on the type of conversational context the argument was used in. The very same argument if used in an editorial column might be quite OK, but when used in a news report, could exhibit a kind of bias that should rightly open it to criticism. At any rate, the bias type of *ad hominem* is different from the direct and circumstantial types. It does not focus on character, or on an inconsistency, but on the bias an arguer is alleged to have shown in her argument.

The fourth type of *ad hominem* argument is the poisoning the well type. In this type of attack, the proponent alleges that the opponent is so strongly committed to some position, in a rigid and dogmatic way, that he can never be trusted to judge an argument on its merits, in an open-minded way, and will always push instead for the side of his preferred position. The classic case (Walton, 1998, p. 15) is the attack on Cardinal Newman, in which it was alleged that as a Catholic, he always reverts to the Catholic position on any political dispute on any subject, and can never therefore be trusted to take an open-minded view of the matter. Newman replied that such an attack, if taken seriously, meant that he as a practicing Catholic, could never really take part in any political debate on any issue with any credibility.

All four subtypes of *ad hominem* are personal attack arguments in which one party, called the proponent, attacks the person of the second party (the respondent) in a dialogue in which both parties are arguing about something. The basis of the argument is that the proponent is attacking the credibility of the other respondent, and then using this proposed lowering of credibility to argue that the respondent's argument should be reduced in plausibility value. One assumption is that the respondent has put forward an argument, and that this argument has a certain degree of plausibility, or worth of acceptance as an argument. Another assumption is that this plausibility value can be raised or lowered by considerations of the person, or personal characteristics of the respondent as a participant in argumentation. Yet another assumption is that both parties have something that could be called personal credibility that also can be raised or lowered in the course of argumentation. The final assumption is that a lowering of the personal credibility of an arguer can result in a lowering of the plausibility value of the argument that the arguer has put forward. All these interconnected assumptions are parts of the structure needed to evaluate *ad hominem* arguments. So it is not difficult to see that the *ad hominem* is a complex form of argument in its own right which has many components that require an analysis that goes well beyond the traditional structures of deductive and inductive logic.

What consideration of the *ad hominem* argument does is to bring the notion of the person, or the arguer as person, into logic. Of course, this intrusion has traditionally been

resisted in logic. Logic is seen as an abstract and formal science of propositions and truth values. But to get any kind of useful and workable way of analyzing and evaluating *ad hominem* arguments, the notion of the arguer as a person, or as an entity with credibility and character qualities, must be taken into account. Many in traditional logic might be reluctant to take such a step, because it would broaden the subject of logic into the whole area of persons, seeming to make logic subjective in way that is inappropriate and even dangerous.

3. Argument from Commitment

The circumstantial *ad hominem* argument is a subspecies of a more general form of argument called argument from commitment. It is vitally important to distinguish between these two types of argument, and the whole history of the subject has been terminologically clouded by the fact that, especially since Locke's influential remarks (Hamblin, 1970, p. p. 160), *ad hominem* argument has prominently been taken to be equivalent to argument from commitment.

Argument from commitment has the following form (Walton, 1996, p. 56), where *a* is an arguer and *A* is a proposition.

Argument from Commitment

a is committed to proposition *A* (generally, or in virtue of what she said in the past).
Therefore, in this case, *a* should support *A*.

The example given in (Walton, 1996, p. 55) is the following case.

Bob: Ed, you are a communist, aren't you?

Ed: Of course. You know that.

Bob: Well, then you should be on the side of the union in this recent labor dispute.

In this particular case, it may be that Ed is on the management side. But if so, he will have to offer some explanation why. Otherwise, given his commitment to communism generally, there is a presumption that he would normally tend to side with the union on labor disputes. So we see that argument from commitment is defeasible. It creates a presumption in favor of drawing an inference. But the inference is subject to default in the face of new information that might come in regarding the particulars of the case.

Now the big issue is whether the circumstantial *ad hominem* (or possibly the other forms as well) is the same thing as argument from commitment, or whether they are two different types of argument. The contention argued for at length in (Walton, 1998) is that the two types of argument are different, basically for two reasons. One reason is that that all *ad hominem* arguments are personal attack arguments, but since it is not the case that all cases of argument from commitment are personal attack arguments, it follows that some arguments from commitment are not *ad hominem* arguments. The other reason is that circumstantial *ad hominem* arguments are always based on an allegation of inconsistency, as indicated above. It is this allegations inconsistency that is their central characteristic that separates them from the other subtypes of *ad hominem*. But not all

cases of argument from commitment make an allegation of inconsistency, as shown by the Bob and Ed case above.

From a viewpoint of argumentation theory, it is vital to be clear about the distinction between the circumstantial *ad hominem* argument and argument from commitment. But it is very easy to confuse these two types of argument, from a practical point of view. One reason is that the circumstantial *ad hominem* is subspecies of argument from commitment. Another reason is that argument from commitment is very often a lead-in or prior argument to the use of the circumstantial *ad hominem* argument. In individual cases, it may be hard to tell exactly where the one from of argument changed into the other. Before argumentation theory can advance much further as a field, these problems of argument classification needs to be sorted out. One of the reasons that there has been so little advance for so long must surely be the conflicting definitions of the *ad hominem* and its various subtypes in the logic textbooks. At any rate, let us now go on to examine a case that appears to be somewhere on the borderline between argument from commitment and circumstantial *ad hominem* argument.

4. The Battalino Case

This case occurred in day 16 (February 6, 1999) of the senate impeachment trial of Bill Clinton in which several important witnesses were interviewed, including Monica Lewinsky and Vernon Jordan. In the late stages of the hearing, manager Jim Rogan, with little time left, made one last point, in response to two previous arguments that had been used by the Democrats. One is called the idea of proportionality of punishment. The other is the argument that everybody lies about sex, therefore perjury should be minimized in a case of this sort. To counter these arguments, Rogan cited a case in which an attorney and Veterans Administration doctor, Linda Battalino admitted having sex with a patient, Ed Arthur, in her office in June of 1991. Dr. Battalino had asked Arthur – a veteran who had served two tours of duty in Vietnam, and was suffering from post-traumatic stress disorder - to come to her office. She announced she had “feelings” for him, and performed oral sex on him. She then began a four-month intimate relationship with him. In 1992, Arthur sued her for sexual harassment, and Battalino denied in court that anything of a sexual nature had taken place in her office. But Arthur had tape recorded about twenty-five hours of conversations with her that proved she had lied under oath. Jonathan F. Mitchell, the lawyer for the fraud section of The Clinton Justice Department’s criminal division, prosecuted the case against Dr. Battalino. She lost her medical and legal rights to practice, resigned her position, was fined, and was sentenced to six months of imprisonment under electronic monitoring. The case had been reported in *The Boise Weekly* in 1991, but was not widely known until it was discovered by the media in 1998 in response to the question of perjury in the Lewinsky case.

In questioning Battalino, Rogan draws explicit comparisons to the case of Bill Clinton and Monica Lewinsky. In the following sequence of questions and replies quoted from the (CNN.com) transcript, he shows that the two cases are alike in central respects, but the key difference he draws out is that Battalino was not treated with leniency by the Clinton Justice Department.

ROGAN: Dr. Batta --

BATTALINO: Battalino.

ROGAN: Battalino. Your case intrigues me. I want to make sure I understand the factual circumstances. You lied about a one-time act of consensual sex with someone on federal property.

BATTALINO: Yes.

ROGAN: Is that correct?

BATTALINO: Absolutely correct.

ROGAN: And this act of perjury was in a civil lawsuit, not in a criminal case.

BATTALINO: That's also correct. And that --

ROGAN: In fact, the civil case eventually was dismissed.

BATTALINO: Correct.

ROGAN: Yet, despite the dismissal, you were prosecuted by the Clinton Justice Department for this act of perjury, is that correct?

BATTALINO: That's correct.

ROGAN: What I want to know, Dr. Battalino, during your ordeal, during your prosecution, did anybody from the White House, from the Justice Department, did any members of Congress, did any academics from respected universities, ever show up at your trial and suggest that you should be treated with leniency because everybody lies about sex?

BATTALINO: No sir.

ROGAN: Did anybody ever come forward from the White House or from the Justice Department and urge leniency for you because your perjury was only in a civil case?

BATTALINO: No.

ROGAN: Did they argue for leniency because the civil case, at which you committed perjury, was ultimately dismissed?

BATTALINO: No.

ROGAN: Did anybody from the White House ever say that leniency should be granted to you because you otherwise did your job very well?

BATTALINO: No.

ROGAN: Did anybody ever come forward from Congress to suggest that you were the victim of an overzealous of a sex-obsessed prosecutor?

BATTALINO: No.

ROGAN: Now, according to the "New York Times" they report that you lied when your lawyer asked you at a deposition whether, "Anything of a sexual nature" occurred. Is that correct?

BATTALINO: Yes, that's correct.

ROGAN: Did anybody from Congress or from the White House come forward to defend you saying that that phrase was ambiguous or it all depended what the word "anything" meant.

BATTALINO: No sir. May I just -- I'm not sure if it was my lawyer that asked the question, but that is the exact question that I was asked.

ROGAN: The question that you were asked that caused your prosecution for perjury?

BATTALINO: That's correct.

ROGAN: No one ever asked if that that phrase itself was ambiguous, did they?

BATTALINO: No.

UNIDENTIFIED JUDGE: Does the gentleman yield?

ROGAN: Regrettably, my time is limited and I will not yield for that purpose. Now Doctor, you lost two licenses, you lost a law license...

BATTALINO: Well I have a law degree, I was not a member of any bar.

ROGAN: Your conviction precludes you from practicing law?

BATTALINO: That's correct, sir.

ROGAN: You also had a medical degree?

BATTALINO: That's correct.

ROGAN: You lost your medical degree?

BATTALINO: Yes. I am no longer permitted to practice medicine either.

ROGAN: Did anybody from the White House or from Congress come forward during your prosecution or during your sentencing and suggest that rather than you suffer the incredibly difficult punishment of no longer being able to practice your profession, perhaps you should simply just receive some sort of rebuke or censure?

BATTALINO: No one came to my aid or defense, no.

ROGAN: Nobody from the Justice Department suggested that during your sentencing hearing?

BATTALINO: No.

ROGAN: Has anybody come forward from the White House to suggest to you that in light of circumstances as we now appear to see them unfolding, you should be pardoned for your offense?

BATTALINO: Nobody has come, no.

(END VIDEO CLIP)

ROGAN: That's how the Clinton administration defines proportionality and punishment. Mr. Chief Justice, we reserve the balance of our time.

Towards the end of the sequence of dialogue quoted above, Battalino replied, in answer to Rogan's questions, that because of her conviction, she is no longer allowed to practice either medicine or law. Driving his point home, Rogan also has her admit that nobody from the White House or Congress came forward to suggest that she should only be "receive some sort of rebuke or censure" instead of the harsher punishment she received. The intended parallel to the Lewinsky case is highly evident at this point.

Rogan's argument is clearly an argument from analogy. He is comparing the earlier case of Battalino's perjury about an act of consensual sex with someone on federal property with the Lewinsky case. But the argument is more than just an argument from analogy. It would appear that it can also be classified as an instance of the circumstantial *ad hominem* argument. What has been shown above is that it is characteristic of this form of argument that one party attacks another party by arguing that the first party "does not practice what he preaches", and then uses this allegation of inconsistency to undermine the first party's prior argument. Rogan's argument can be so classified, provided it can be analyzed as putting forward the following premises and conclusions.

Premise 1: Clinton lied under oath about an act of consensual sex in his workplace, but argues that he ought to be treated with leniency

Premise 2: In an earlier case where a woman lied under oath about an act of consensual sex in her workplace, Clinton prosecuted the case, and did not treat the woman with leniency.

Conclusion: Clinton does not practice (in the earlier case) what he now preaches (in this case).

The secondary conclusion Rogan's argument leads to, based on the first conclusion above, is that Clinton's argument for leniency in his own case, is not worth much. Clinton, according to Rogan, has argued that he ought to be treated with leniency on various grounds. One is the idea of proportionality. The other is that everybody lies about sex, and that minimizes the perjury. But the fact is that the Clinton Justice Department, when faces with a similar case, did not show leniency, and prosecuted the case without leniency. The ultimate conclusion that Rogan's argument implies is that Clinton's own actions belie the sincerity of argument. He wants leniency for himself, but did not give it to someone else who was in the same situation. It would seem then that, at least on the basis of this brief outline of what is taken to be its main structure, Rogan's argument fits into the form of argument identified above as that of the circumstantial *ad hominem*. But is this circumstantial *ad hominem* argument really the argument that Rogan is putting forward in the impeachment trial? The first problem is to identify the argument, before going on to attempt to analyze or evaluate it.

5. Classifying the Argument in the Battalino Case

In attempting to identify, analyze or evaluate any real argument, there are always many uncertainties, questions of interpretation, and rough edges. And so it is with this case. Some may be inclined to doubt, for example, that Rogan really meant to make a circumstantial *ad hominem* type of argument. There are four interrelated grounds for doubt that call for discussion. These four grounds for doubt are all based on considerations that have a basis in the text and context of discourse of the case.

The first consideration is that Rogan is arguing against prior arguments for leniency and for the principle of proportionality. Citing the Battalino case could be just directed at attacking these arguments rather than directed at attacking Clinton personally. After all, Rogan was only citing a precedent - a similar case. Citing of precedent is not an *ad hominem* form of argument, at least necessarily. And the case was from a trial that took place six years before the impeachment trial of Clinton. It's not like the smoking case, where the problem was a conflict between what was argued and what was presently being done. Maybe Rogan was just arguing that there was no leniency in this other case. And if the ruling in that case can be defended as reasonable, there should be no leniency in this case. This argument is not an *ad hominem* argument, but just an argument from precedent.

Another ground for doubt concerns the person who is the subject of the argument. The point is that the Battalino case was prosecuted by "the Clinton justice system", to use Rogan's terms. It was not prosecuted by Clinton himself, as the prosecuting attorney in the case. Also, it's not Clinton himself who is making the plea for leniency in the impeachment trial. It is his attorneys who are pleading for leniency on his behalf. So it is not the same person who put forward the arguments in the two allegedly similar cases. So Rogan's argument is not really a circumstantial *ad hominem* after all. The main problem here is that Clinton was governor at the time, so it was "his" justice system that prosecuted the Battalino case. But he may have had nothing to do with it, directly. He may have even strongly disagreed with the judgment in the case. But perhaps he could not have intervened in the case, or thought it inappropriate to intervene, or maybe he didn't even know about the case.

The third ground for doubt is that if Rogan's argument is a personal attack (*ad hominem*) argument on Clinton, this aspect of it is not stated explicitly. On the surface, the argument seems to be an argument from commitment of the following form.

Premise 1: Nobody from the White House, the Congress, or the Clinton Justice Department argued for leniency in the Battalino case.

Premise 2: The Battalino case was an instance of perjury relating to an act of consensual sex in the workplace.

Conclusion: They are committed to non-leniency in cases of perjury relating to acts of consensual sex in the workplace.

The upshot of this argument from commitment is that these people should be committed to non-leniency in this case too. Therefore they should prosecute Clinton without leniency – they should be on the side of impeachment. But this argument from commitment is not, by itself, an *ad hominem* argument. The doubt then is whether Rogan is making an *ad hominem* attack on Clinton at all. Maybe he is just putting forward an argument from commitment, and we are just reading into the text that there is an *ad hominem* argument there.

There is a form of argument called argument from pragmatic inconsistency (or, say one thing, do another) identified in (Walton, 1998, p. 218).

Argument from Pragmatic Inconsistency

a advocates argument α , which has proposition *A* as its conclusion.

a has carried out an action or set of actions that imply that *a* is personally committed to not-*A* (the opposite, or negation of *A*).

Therefore *a*'s argument α should not be accepted.

It is argued in (Walton, 1998, p. 219) that this type of argument should not be classified as a species of *ad hominem* argument. The reason is that it lacks the premise to the effect that *a* is a bad person. But if the implication that *a* is a bad person is there, the argument then becomes an *ad hominem* argument. For example, if in using argument from pragmatic inconsistency, the arguer says that *a*'s actions represent his true commitments, and the conclusion is drawn that *a* is deceiving us, or that *a* is a hypocrite, or something of that sort, then the argument is a genuine *ad hominem*. In short, the general problem posed by the third ground for doubt is whether Rogan's argument is really an *ad hominem*, or whether it is only an argument from pragmatic inconsistency, but not one of the *ad hominem* type.

The fourth ground for doubt relates to Rogan's intentions. We, as critics in this case, do not really know what Rogan's intentions were, in citing the prior Battalino case. Rogan never uses the expression *ad hominem*, or some equivalent expression. And he does not appear to come right out anywhere and claim that Clinton is bad person, or that Clinton is a hypocrite, or anything of that sort. Maybe then, he didn't really intend to attack Clinton with an *ad hominem* argument at all. Maybe he merely meant to cite the difference between the two cases, and leave it at that. Or maybe, as suggested above, he was only using argumentation from commitment, but stopping short of a full *ad hominem* argument of the kind that essentially involves personal attack. After all, if Rogan didn't really intend to attack Clinton personally, how can we fairly classify his argument as a circumstantial *ad hominem*, a personal attack argument?

I believe that each of these four of these grounds for doubt has some evidence to support it, and that each argument merits discussion. But I also think that all four grounds for doubt can be adequately replied to, based on the textual and contextual evidence given in the Battalino case text of discourse quoted above. Let's start with the fourth one. The basic point to be made here is that when we evaluate an argument in a given case, we don't need to prove what the arguer's intentions really were in the case. For example, it has been held that since a fallacy is an intentional deception, in order to prove that fallacy was committed in a particular case, it has to be shown that the arguer had an intention to deceive. But this view has been rejected as a form of psychologism by Govier (1987). To show that an argument is fallacious in a given case, all you need to prove is that it is an instance of one of the the types of argument that can be used fallaciously, and that in this case it has been used in a way that falls into a certain pattern as an argumentation tactic. Carrying out such a task of evaluation does not require proof that the arguer had guilty motives, or an intention to deceive.

6. Evaluating the Argument

After the passage quoted above, the impeachment hearing went on to discuss Monica Lewinsky's prior testimony. Nor reply to Rogan's argument on the Battalino case was made, nor was the case discussed any further. So we don't really know what impact it had on the trial, if any. Nor do we know how Clinton's defenders replied to it. Rather than speculate on such matters, however, the more interesting dialectical task is to try to analyze and evaluate the Battalino case as an argument. In particular, it is interesting to try to evaluate the *ad hominem* argument that is apparently contained in it. Should it be judged to a reasonable *ad hominem* argument or a fallacious one? Or does it lie somewhere between these extremes?

One reply to the argument is that it is not relevant, because the Battalino case took place over twenty years before the impeachment trial. Clinton could have changed his views since then. And anyway, he was only remotely related to the case, and was not himself the prosecutor. Therefore, it could be argued, the relevance of the Battalino case to the impeachment case is tangential and minimal. Against this argument is the argument for relevance. The two cases are quite similar. Both involve prosecution of a case of consensual sexual relations in a Federal Government workplace between a powerful person and someone who was dependent on, or in a subordinate position to the offender. The Clinton policy has been strongly against sexual harassment in all forms, both then and now, and presumably this policy has not changed. So the Battalino case would seem to be quite relevant to the present one under consideration in the impeachment trial. At least, making a strong case for relevance seems to be possible.

An *ad hominem* argument should be evaluated in light of how it can respond to critical questioning in the type of dialogue it was put forward as a contribution to. Six critical questions corresponding to the circumstantial type of *ad hominem* argument are presented in (Walton, 1998, pp. 224-225).

1. What are the propositions alleged to be practically inconsistent, and are they practically inconsistent?
2. If the identified propositions are not practically inconsistent, as things stand, are there at least some grounds for a claim of practical inconsistency that can be evaluated from the textual evidence of the discourse?
3. Even if there is not an explicit practical inconsistency, what is the connection between the pair of propositions alleged to be inconsistent?
4. Is there a practical inconsistency that can be identified as the focus of the attack, how serious a flaw is it? Could the apparent conflict be resolved or explained without destroying the consistency of the commitment in the dialogue?
5. Does it follow from *a*'s inconsistent commitment that *a* is a bad person?
6. Is the conclusion the weaker claim that *a*'s credibility is open to question or the stronger claim that the conclusion of α is false?

The analysis above, just at the end of the CNN Transcript, shows what the two propositions are that are alleged to be practically inconsistent. So the first critical question, and with it the second and third ones, can be answered. Of all the six critical questions, the one that is the hardest to answer affirmatively is question 5. The main problem in this case is that Rogan never explicitly states, in so many words, that Clinton is a bad person, or that members of the the Clinton administration are unethical – for example that are liars. The best we can say is that this implication that the Clinton administration has been less than forthright is suggested by what he says. The best evidence that Rogan is drawing such a conclusion, or trying to get the audience to draw it, is his last statement: “That’s how the Clinton administration defines proportionality and punishment.” This remark has an edge of irony to it, suggesting that the Clinton administration has not been forthright about how they define proportionality and punishment. Hence there is evidence that Rogan’s argument is an *ad hominem*, but it is not conclusive. So here we are back to the classification problem again. Evaluation of the argument as weak or strong must depend on how it should be classified. Is it an *ad hominem*, or merely an argument from pragmatic inconsistency?

Judged as an argument from pragmatic inconsistency, Rogan’s argument is reasonable, and not fallacious. It is quite a strong argument, because of the close similarity of the two cases. But it is subject to critical questioning. If the opposing side had wished to reply to it, they could find several weak points in it to question. They could show for example that the people who prosecuted that case may be different people from those who now argue for leniency. They could argue that the earlier case took place twenty years ago, and use that to question its relevance, or to argue that the situation has somehow changed. There are various avenues of critical questioning open. But as things stand, Rogan’s argument looks persuasive. It simply asserts that the Clinton administration prosecuted without leniency then, but is all for leniency now. This apparent inconsistency by itself, even without using it as the basis of an *ad hominem* attack, is a fairly persuasive. It indicates that the Clinton administration’s argument for leniency is somehow dubious, because it conflicts with what they advocated is a previous case, where they prosecuted without leniency. This argument by itself is sufficient to sow legitimate doubts in the minds of an audience.

Rogan’s argument, when judged to be an *ad hominem* argument, is a genteel and indirect one. He does not come right out and call the Clinton administration names, or say they are liars or hypocrites. His pointing up the inconsistency on how they have treated the two cases is only used to suggest that their argument for leniency and proportionality is not very credible. With respect to critical question 6. then, the answer is that Rogan is only claiming that the credibility of the Clinton administration is open to question. He is not making the stronger claim that the conclusion of the Clinton administration’s argument is false. He is arguing that their stance on prosecuting for perjury in the Battalino case has shifted to the opposite in the later Lewinsky case. What he is saying is that they may argue for leniency now, but when their interests were not at stake, in the earlier case, they did not prosecute with leniency. This argument suggests that the Clinton administration is just arguing this way because it is in their interests to do so. They are not arguing that way because they really believe the argument, or are committed to it.

But now notice we have come to the point where we are discussing an argument that was only suggested by the text of discourse in the Battalino case, but was not explicitly stated. We are getting into the area of suggestion, implicature and innuendo. Is that

legitimate? Can we attribute arguments on the basis of what was suggested in a case, as opposed to what was explicitly stated? The answer is – yes. If we are to understand and evaluate fallacies, we must deal with innuendo and suggestion. For it is the very factor of innuendo that makes many an *ad hominem* argument so powerful, and so difficult to refute.

7. Implicature and Innuendo

To analyze arguments based on implicature, innuendo and indirect speech acts, contextual assumptions about collaborative conversation in the form of so-called conversational postulates or ethical rules of polite discourse (Grice, 1975; Johnstone, 1981) are very important. To give a quick idea of how innuendo is based on such assumptions, an example from Grice (1975, p. 71) can be cited. Asked to write a letter of reference for a student who is applying for a job in philosophy, a professor writes, “Dear Sir, Mr. X’s command of English is excellent, and his attendance at tutorials has been regular, Yours, etc.” As we all know, this kind of letter would be interpreted by the reader as conveying the message that Mr. X is not a strong candidate. The writer of the letter has not gone on record as saying so explicitly, but that message can be inferred indirectly from what he wrote. Grice explains this phenomenon by appeal to a conversational postulate he calls the Maxim of Quantity (p. 68), which states that a contribution to a conversation should be neither more nor less than is required. Since the writer of the letter is saying too little, we search around for an explanation. He knows that more information is wanted, but since X is his student, he must have that information. The only plausible explanation that seems to be left is that he thinks that Mr. X is not a strong candidate.

What this case shows is that when a message is conveyed indirectly by innuendo, the receiver gets the message because of background assumptions that are not stated, but are known to the speaker and hearer. In this case, the two parties are engaged in an information-seeking dialogue, and both understand that there are conversational postulates governing this kind of collaborative dialogue. What is not said, taken together with the conversational postulate, suggests a particular conclusion or message that the receiver draws by inference.

Many of the most powerfully effective *ad hominem* arguments are cases where the proponent does not come right out and assert that the respondent has done something bad, or has exhibited some character flaw. Instead, the proponent only says that she has heard rumors to this effect, and although she does not believe these rumors herself, nevertheless that is the word that is going around. Another way of mounting the attack is to say that the allegations were “leaked” by a source who is close to the proponent, but who does not want to be identified. These ways of putting forward an *ad hominem* argument remove the requirement of burden of proof and leave room for plausible deniability. This type of *ad hominem* argument is often much more effective, because it can raise suspicions and doubts that can be highly damaging, it is impossible or extremely hard to disprove, and it does not really need to be proved, in order to be effective. For example, if put forward just before an election, the respondent may have no time to effectively rebut this form of *ad hominem* argument.

Rogan’s argument is not one of these tricky ones that is a tactic to evade burden of proof. But if it is an *ad hominem* argument, it is one that is based on suggestion. That should not be taken as meaning that it is a bad argument or a fallacious one. For many of

the most persuasive arguments work that way. For example, some facts may be cited, or a story told, or an inconsistency pointed out, but the ultimate conclusion to be drawn may never be explicitly stated. Even so, the audience may be quite capable of drawing it themselves. And when they do so, they may find it acceptable.

8. Evaluating the Argument Rhetorically and Dialectically

Looking at the Battalino case rhetorically, it is hard to judge what real impact it had on the impeachment proceedings, or the television audience that it also reached. There appeared to be no further discussion of this particular argument in the subsequent proceedings of the impeachment trial. Searching through *Newspaper Abstracts* on March 1, 1999, I could not find any further media commentary on the case. There was media commentary before the impeachment trial on how the Battalino case had originally come to public attention, however. Clinton's lawyers had complained that nobody had ever been criminally investigated for perjury in a civil case about sexual conduct. Monica Lewinsky's lawyer had said on NBC Today in February 1998, "I challenge you or any of the pundits on the air to find me a case of civil perjury that has been pursued criminally at the federal level in the last 100 years." A search for legal cases then turned up the Battalino case, among others. So by the time of February 1999 when the impeachment trial was underway, the Battalino case was known to the public. Rogan simply took advantage of it as the basis for one of his arguments used in the trial.

Looking at the argument dialectically, in the context of the impeachment proceedings, what thrust did it appear to have in the debate? Looked at from a narrow perspective, the thrust of the argument seems to be against leniency. If the Clinton justice system was not lenient in the Battalino case, then on the basis of argument from commitment, that would seem to be a good reason to be against leniency in this case.

But maybe the argument had a much broader import. The Clinton position, on the whole, is open to circumstantial *ad hominem* attack, because of the strong stand taken in the past by the Clinton administration on a case of a sexual relationship between someone in a position of power and someone in a position of dependency on that power. They have tended, in general, to have supported the strong prosecution of such cases. Citing the Battalino case not only reminds us of that commitment, but also excludes possible ways out by drawing a close similarity between the Battalino case and the Lewinsky case. Both were consensual, but both took place in a Federal Government workplace, and both involve a subordinate relationship in the hierarchy. By citing the Battalino case therefore, Rogan is posing quite a broad sort of attack on the whole Clinton administration, as well as the President in particular. Rogan is arguing that, on fundamental principles, the Clinton administration has always been strongly in favor of prosecuting such cases. But then, when it affects them – when one of them is prosecuted on this basis – they turn around and use all kind of arguments like the principle of proportionality to argue against prosecuting the case strongly. This argument then is a form of circumstantial *ad hominem* argument that has a broad sweep. It attacks the whole Clinton administration, and even the Democratic party as a whole, as well as Clinton himself, arguing that they don't follow their own principles. This is an attack on the basis of alleged hypocrisy that is potentially very powerful, not only in the impeachment trial, but as addressed to public opinion by way of the television audience.

One way to evaluate Rogan's argument is as an argument from analogy between the situation of Battalino and that of Clinton. The comparison between the two cases holds up persuasively in many relevant respects, as argued by Rogan. You could counter this argument by pointing out other relevant respects in which the two cases are dissimilar. For example, Battalino was a physician and Arthur was a patient in her care, whereas Clinton was President and Monica Lewinsky was an intern in his office. Using this kind of comparison, you could argue that Rogan's argument from commitment is weak. So just because the Clinton administration was not in favor of leniency in the Battalino case, it does not follow that they have to be against leniency in the present case. This is one way to evaluate the argument, but it misses the point, in certain important respects, because the real thrust of the argument is not just an argument from commitment. The real thrust of the argument is found in Rogan's closing remark, "That's how the Clinton administration defines proportionality and punishment." The thrust of the argument is that the Clinton administration's real view of proportionality and punishment in a case of perjury to conceal an improper sexual relationship is revealed or "defined" by their actions in the Battalino case. Contrasting their actions in that case with their argument for proportionality and leniency in this case suggests that their argument is not sincerely meant. What is suggested is that they do not really believe or support his argument themselves, and they only use it not because they really accept it, but only because it supports their interests.

So the real thrust of Rogan's argument is missed if it is just seen as an argument from analogy or an argument from commitment. It is both, but the hardest impact of it is as a circumstantial *ad hominem* argument which is used to suggest that the supporters of the argument do not themselves sincerely believe it, as revealed by their own actions. Assuming that Rogan has gotten the details of the Battalino case right, this circumstantial *ad hominem* argument is a reasonable argument. Its weak points have already been noted. The weakest part of the *ad hominem* argument is that "the Clinton administration" is treated as a single stable group that is the arguer in both cases. But on the whole, as a circumstantial *ad hominem* argument, Rogan's argument is a reasonably good one. It is weak in certain respects, but it is not one that should be judged fallacious.

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