

The Rejection of Testimony and the Normative Recommendation of non-fallacious *ad hominem* Arguments Based on Hume's *Of Miracles* and Canadian Law

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Introduction

As a long-term admirer of David Hume, I was struck with some astonishment, on a second reading of *Of Miracles*, that someone so influential and profound could make such an obvious and seemingly deliberate logical fallacy. Moreover, the fallacy Hume commits—the *ad hominem* fallacy—is not a minor error insignificant to the whole of his argument, but is a major component to Hume's rejection of miracles and, more generally, to his dismissal of testimony as sound epistemology. My astonishment at Hume's remarks, coupled with my bias of his philosophy, led me (rightly or wrongly) to want to justify—and perhaps apologize or even excuse—his personal argument against the credibility of those professing to have been witness to a miracle. Help in this regard came from an unlikely source: Formal testimony in Canadian law.

The thesis I will argue for is that arguments of the form *argumentum ad hominem* (literally, 'argument against a man'), when they are of the non-fallacious type, are forms of critical reasoning every thinking person is obliged to commit. In other words, I'll argue for the normative justification of non-fallacious *ad hominem* arguments.

Since the distinction between fallacious and non-fallacious forms of *ad hominem* arguments is well known, I will restrict myself to the following brief characterization. It is not the case that every instance of an *ad hominem* argument is fallacious. Consider,

[I]n some cases a successful argument against the person can bring into question an arguer's impartiality, sincerity, or trustworthiness. This may be a weak form of argument, but it

may be enough to alter the burden of proof on a controversial issue. And therefore it can be a reasonable criticism. On controversial issues, hard evidence that can be directly brought to bear on a disputed proposition may be lacking. In such a case, reasonable dialogue may be the only available way of deciding to accept a conclusion, short of deciding by random choice or by following one's dogmatic inclinations. Here, understanding the arguer's positions both pro and con may help to make a commitment, if a decision must be made. If an arguer's position is open to fair criticism of internal inconsistency, that could be a good reason for anyone to withhold acceptance of the arguer's conclusion based on that position (Walton, 1989, p.156).

On this view, the legitimacy of *ad hominem* arguments depends on the *relevant circumstances* surrounding the acceptance or rejection of testimony *t*. These circumstances include such determining factors as the impartiality of the speaker, their sincerity, or trustworthiness. Of course, other characteristics such as reliability and general honesty could be added, expanding the scope of what should be taken into consideration. The criterion of relevant circumstance allows an interlocutor to consider and use non-fallaciously in judgment antecedent conditions surrounding the arguer's position or, depending on the case, their testimony. With this justificatory aid, one is in a better position to arrive at an informed and considered judgement of the argument at hand, than if we were to consider the argument either uncritically as true or, more typically, by questioning the truth of its premises. It is precisely the difference between 'relevant' and 'irrelevant' considerations that warrant either the fallacious or non-fallacious application of this form of argument. It is indefensible to argue, due to factors that bear no relevance to the argument at hand (say, that Jones is an Aristotelian and certainly *they* cannot be trusted), that the argument offered is therefore false. On the other hand, it is defensible to argue, due to factors such as, for example, the impartiality, sincerity, or trustworthiness of the arguer, that the position being advocated may not be true. We could say, then, that the justification for (non-fallacious) *ad hominem* arguments is any reasonable person's commitment to what might be called Intellectual Responsibility—what I call the 'responsibility thesis' (RT).

According to RT it is any reasonable person's obligation to consider any facts that may be relevant given testimony t, before accepting/rejecting testimony t.

This essay will determine how Intellectual Responsibility justifies Hume's position lest, of course, my admiration of Hume be lost.

In the secondary literature, Hume's argument against miracles is usually presented in two parts. First, the entire human experience of the uniformity of nature amounts to a 'proof' of sorts against the veracity of miracles (Beckwith, 1989, p.24). "A miracle", Hume writes, "is a violation of the law of nature; and as a firm and unalterable experience has established these laws, the proof against a miracle, from the very nature of the fact, is as entire as any argument from experience can possibly be imagined" (*EHU*, p.76). Such an argument, thinks Hume, 'diminishes extremely' the assurance we often assume from natural testimony. Consider: Our experience of the uniformity of nature is much more consistent than a 'proof' for the opposite thesis—*viz.*, a particular speech-act to the effect that a violation of the law of nature has occurred. For Hume, when we thus have 'proof against proof' we weigh the probability (a 'probability judgment') that nature's laws have been violated against the probability that they have not been violated and conclude by rejecting the greater 'miracle' (or the one with the lower probability). For Hume, when considering whether a miracle has occurred, we end up 'checking' testimony against our overwhelming experience of the uniformity of nature, and even though miraculous reports excite the passions and imagination, thereby inciting us to believe, we ought not to, but should instead reject such reports using our experience as a conclusive arbitrator. Hence, when deliberating on putative miracles Hume writes,

I weigh one miracle against the other; and according to the superiority, which I discover, I pronounce my decision, and always reject the greater miracle. If the falsehood of his testimony would be more miraculous than the event which he relates; then, and not till then, can he pretend to command my belief or opinion (*EHU*, p.77).

Notice, Hume does not juxtapose 'demonstration against demonstration' whereby he would be referring to conclusions that follow self-evidently from given premises. Instead, 'proof' in this context refers to arguments yielding only practical certainty (Burns, 1980, p.146). In this way, the extraordinary nature of a miracle, of a violation of the law of nature, actually counts against a miracle from occurring. In the second part of Hume's argument he demonstrates that there has never been evidence for a miracle that constitutes a full proof (Beckwith, 1989, p.22). This is where we take leave from the secondary literature and focus instead, and in greater detail, on an early chief point Hume raises against miracles.

Hume's *ad hominem* Argument

In one way there is nothing really new in *Of Miracles* that we have not already seen in Hume before. In the *Enquiry*, as throughout the entire Humean corpus, Hume maintains a critical philosophy—at least for theoretical purposes (or, that is, until a good game of backgammon (*T*, p.175)). What *is* new in this text is Hume's uncharacteristic aversion to inducing scepticism through his standard arguments. Quite the contrary. Hume is not interested in miracles as autonomous metaphysical entities and therefore does not (and indeed cannot) dispel with miracles using the same criterion that he has used to reject the objects of metaphysics proper. Hume does not ask, for example, 'From what sensory impression is the idea of a miracle derived?' Doubtless Hume realized that one could actually experience a complex impression that constitutes a violation of the laws of nature. In terms of the metaphysical implications of Hume's epistemology, it is not impossible that we should have a complex impression, which begets a complex idea, of 'miracle'. We could simply experience one. What is decidedly impossible, however, is that we should ever, as judicious inquisitors, satisfy the conditions Hume thinks need to be satisfied in order to assent to the testimony of others. Strictly speaking, knowledge for Hume is a product of experience *and only your experience*. Empirical knowledge cannot be obtained indirectly through testimony. It follows, upon hearing the testimony of others, that the question is not one of obtaining knowledge as such, but is

a question of belief and assenting that the propositions that constitute the belief are true. The question is simply 'Should I believe testimony *t* or not?' The issue of whether to assent to the testimony of others is not only critical to Hume's position on miracles, but actually constitutes a remarkably encompassing thesis on Hume's part: "There is no species of reasoning more common, more useful, and even necessary to human life, than that which is derived from the testimony of men, and the reports of eye witnesses and spectators" (*EHU*, p.74). Much turns, to be sure, on what compelling reasons there may be for accepting (or rejecting) the testimony of others.

What I take to be at the same time the most important—and alarming—criticism of Hume's attack on miracles is their foundation in the testimony of a witness who lacks the credibility to be believed. Hume makes his intentions clear: He will settle for nothing less than silencing "the most arrogant bigotry and superstition, and free us from their impertinent solicitations" (*EHU* p.73). For Hume, the conditions of psychologically accepting the testimony of others cannot be satisfied. It is not the case that Hume is maintaining, as we see Descartes maintain, an infallibilist conception of knowledge, but one, at least in regards to testimony, that is fatalistic to testimony as epistemology. The foundation for believing in the testimony of a witness, or in other words of assenting to the propositions that form the testimony as true, depends solely on the credibility of the witness. In response to the question 'How do you know the witness is credible?' and hence 'How do you know that the propositions that form the content of testimony are true?' Hume's answer is that you don't. And if you have no good reason for thinking the witness credible, although it does not mean the witness is not credible, it is better to err on the side of caution by doubting (or rejecting) their testimony rather than by accepting it. To put the point in different terms, the credibility of a witness can always be doubted and therefore we can always doubt or reject their testimony. According to the Western tradition that is one criterion of an *ad hominem* argument (Kelly, 1988, p.138). Of course, this still leaves open the possibility that there are credible witnesses and that their testimony could be assented to. A possibility I will address below. But what exactly

are the conditions that Hume thinks need to be satisfied, but that cannot be satisfied, before assenting to *t*?

Call *p* the criteria Hume determines for accepting *t*. Hume formulates *p* as follows:

Upon hearing the testimony of others, “. . . I immediately consider with myself, whether it be more probable, *that this person should either deceive or be deceived . . .*” (EHU p.77, italics mine).

I have already mentioned that this is a point of departure in the secondary literature, which, as far as I know, almost exclusively deals with miracles as metaphysical events—events that Hume does not characteristically approach. Whether a miracle has actually occurred, whether a violation of the laws of nature ‘should really have happened,’ does not matter one way or another in regards to the testimony of the witness. What is important is whether Hume regards the character of the speaker as credible; not whatever in particular the speaker has to say. Hume is saying, in effect, ‘I just don’t trust this person’ or ‘I think this person could possibly be deceived by others or would willfully try to deceive me—I can’t accept what they say.’ Remarkably, Hume counsels, if, by your best and honest estimation, you think it is *only possible* that this person would deceive you, or that this person has the mere *capacity* to be deceived, then forget it, their testimony is worthless. It cannot satisfy Hume’s stringent criteria. Now, by arguing against the credibility of someone professing a miracle is Hume not committing a fallacy of ‘rational’ thinking? Specifically, by arguing against the credibility of someone professing a miracle, is Hume not grossly committing a form of the *ad hominem* fallacy? Not only is the use of the fallacy obvious and evident but when it is of the non-fallacious kind—as Hume’s is—it is entirely justified.

Ad hominem Fallacies

While there are different forms of fallacious *ad hominem* arguments, all of them involve an attempt to avoid or dismiss dealing with a statement (*q*) based on the merits of *q* itself. In each case, moreover, the method is one of rejecting *q* based on some

(perceived or actual) negative trait of the speaker (Kelly, 1988, p.137). *Ad hominem* arguments may take the shape of mere personal insults—such and such is an idiot, lazy, a slob, a plumber, or whatever—so I have no reason to accept what they say. This type of *ad hominem* attack asks the question ‘What can this person know?’ Another form of *ad hominem* argument involves rejecting what someone says based on inconsistencies between testimony and practice. Hence, as the story goes, when Aristotle counseled Alexander to have nothing to do with Phyllis, as not to distract him from his studies, The Philosopher later replied after having been caught in a compromising position with her, ‘do as I say, not as I do’.¹ This version of the argument asks ‘Why should I believe or do something if you don’t believe or do it?’ Lastly, *ad hominem* arguments may take the form of impinging upon someone’s objectivity by claiming that they have a vested interest in defending the veracity of their own position (Kelly, 1988, p.139). Claiming that Tarot card readers are unwilling to reasonably entertain criticism because they have a vested interest in perpetuating the ‘truth’ of astrology is an example of this kind of argument. In all cases, *ad hominem* arguments have the following form

$$\frac{(x \text{ says } q) + (x \text{ has some negative trait})}{\text{So } q \text{ is false}^2}$$

Hume seems to be incorporating two versions of the fallacy. First, by questioning whether someone is susceptible to deception, Hume is rather politely forwarding a personal insult. Although Hume does not give a detailed explanation why, I take him to be insinuating criticism along the following lines: On the basis of their background, lack of education, lack of credentials, particular social status, and so on, x cannot possibly be of such discerning character that he or she is beyond being fooled. Second, by questioning whether x would willfully deceive you, Hume is suggesting that they have some vested interest in the affair (maybe x wants attention, or is religiously inclined, or wants to impress you, or is motivated by what he or she may get in return). Hume’s

criteria for accepting the testimony of others—the criteria I labeled *p*—can be formulated in terms of simple modes tollens

P1/ If *x* is to accept the testimony of *y*, then *y* must be of scrupulous disposition (*viz.*, *y* could neither be deceived nor would willfully deceive).

P2/ It is impossible for *y* to be of scrupulous disposition.

C/ So *x* is right to reject the testimony of *y*.

There is good reason for thinking it impossible to find individuals of 'scrupulous disposition'. There are none. In principle, it is impossible that someone could be of such sound mind and disposition that he or she is beyond even the possibility of being deceived and, subsequently, of passing that deception on to you. It is also quite impossible to be absolutely certain that someone who reports a miracle would not willfully try to deceive you. After all, Hume thinks, "it is nothing strange, I hope, that men should lie in all ages. You must surely have seen enough instances of that frailty" (*EHU*, p.80).

In the last section, I raised the possibility that, if a person reporting a miracle happened to be of reputable character, then principally, even Hume could assent to their testimony. At this point we have reason to doubt that this is the case. There is no reason to suppose, of course, that someone who is in good standing with us is immune from the error possibilities mentioned. In other words, it is simply false that someone of good character could possibly satisfy Hume's impossible criteria. Besides, supposing someone of strong disposition reports on bearing witness to a miracle, Hume can still use his initial argument from the uniformity of experience as a conclusive refutation. Although Hume does not offer a disputatious refutation of testimony, he clearly thinks that the criteria that need to be satisfied cannot be satisfied. (The stronger claim would be—and this contention would require a paper of its own – that this component of *Of Miracles* is a continuation of a general problem of Renaissance theology and philosophy, the Problem of the Criterion).

The deeper philosophical issue being raised here by Hume is that human beings are not infallible epistemic and moral agents.

To be sure, it is just a fact about the human condition that we are subject to all kinds of errors. Granting such 'error conditions' or 'error possibilities,' scepticism about testimony is inherent in the epistemological and moral constitution of rational agents. By raising the spectre of epistemic and moral fallibility, Hume is throwing the door wide open to a whole scepticism designed to undermine testimony as a means of reliable—let alone actual—knowledge acquisition. Unlike his standard sceptical arguments, which have a legacy at least as far back as Algazali's *The Incoherence of the Philosophers* (and a disputed history as far back as Sextus' *Outlines*), this new non-metaphysically orientated scepticism is, as far as I can tell, original to Hume's philosophy.

The appeal to the universal conditions of human fallibility, I suggest, is also quite successful against the argument claiming that *ad hominem* arguments are fallacies only in certain contexts, and hence are fallacies of relevance. Hume's criteria are always relevant since they refer to the basic features of human beings as moral and psychological agents capable of error. To be sure, there is a 'relevant entailment' between the speech-act of testimony itself and the circumstances surrounding its utterance that can only be ignored at the cost of falsely believing that the propositions expressed in *t* are true. Although one doubts the extent that these criteria could legitimate all forms *ad hominem* arguments, undermining testimony through the fallibility of rational/moral agents has the domestic effect of allowing one to unconditionally dismiss the testimony of the speaker as *incredible*. By questioning whether *x* has the capacity to deceive or be deceived Hume is adducing criteria for the acceptance of testimony that cannot be positively answered.

Unequivocally, Hume is guilty of an *ad hominem* attack, though an *ad hominem* attack of the non-fallacious type. Not only does he attack the credibility of the speaker, but the criteria he determines for accepting their testimony are impossible to satisfy. Hume has quite successfully determined grounds for what might be considered, in some sense at least, an *a priori* rejection of the soundness of testimony. Since prior to hearing any testimony whatsoever Hume can reject it on the basis that it cannot satisfy his criteria, actually hearing the testimony is pointless; the testimony has *already* been dismissed. Yet, I've suggested that

Hume's criticisms are not as severe or as extreme as initial reactions may suggest. I think, rather, *ad hominem* attacks are to be recommended—even as desirable and as normatively prescriptive—in circumstances determining whether to accept the testimony of others. Such circumstances, in fact, are stipulated in Canadian law.

Ad hominem Arguments in Canadian Law

In terms of general legal tactics, the effort of the Crown or prosecution during cross-examination is to discount or, at the very least, to minimize the impact of witness testimony on the jury. To this end, either a witness's formal testimony itself is shown to be insubstantial, or the credibility of the witness is shown to be suspect. In the former case, Crown wants to demonstrate that there are limitations to a witness's ability to accurately recall an event or to have accurately observed an event (K. S. Brown, G. E. Dix, E. J. Imwinkelried, D. H. Kaye, R. P. Mosteller, E. F. Roberts, 1999, p.58). Typically, Crown argues that external conditions may have corrupted what a witness claims to have been privy to. Crown would do well to question, for example, environmental factors that may have contaminated ideal conditions of observation. Factors such as lighting, the distance between the witness and the event, the distracting presence of a crowd, or fast movements are all variables that may have obscured important and substantive details of the event. There are also internal conditions that affect reporting accurately on past events. Such internal conditions include mental stress, expectation, fatigue, memory, selective memory, as well as the impact of sudden events and preoccupation. In terms of legal tactics, the attempt of the prosecution is to demonstrate that the testimony of an eyewitness is incapable of withstanding scrutiny. Since internal and external conditions affect eyewitness reports, the reports themselves may be unreliable and therefore cannot be seen as affording an unequivocal measure of proof against the accused.

There are other cases, however, when the testimony of a witness is not called into question, but the credibility of the witness *as a means* to disregard their testimony. In other words, do not question

the limitations and ability of a witness to accurately recall an event, but question the reliability of the testimony based on the credibility of the witness. This is effectively the same line of argument we have seen Hume follow (*cf.* ‘*x* has the capacity to be deceived or would willfully deceive’—hence their testimony should not be accepted).

Now witness credibility is obviously valuable in the case of expertise. I am not competent to testify in the capacity of a psychologist and my opinions about the psychological dispositions and inclinations of a defendant would rightly be dismissed *ispo facto*. Attacking testimony based on the credibility of a witness is important in the event that said testimony depends on expertise. Are there any other circumstances involving the testimony of non-experts where it is both desirable and valuable (legally speaking) to attack the credibility of a witness and not the testimony of the witness? To put the question a different way, is it the case that prosecuting attorneys utilize *ad hominem* arguments and are such arguments (logical fallacies) justified? If the attacks are of the non-fallacious type, then the answer is ‘Yes’—on both counts. In the *Canadian Civil Evidence Handbook*, Cudmore outlines the circumstances for utilizing (non-fallacious) *ad hominem* arguments.

An initial problem is to delimit what sort of question is relevant for the purpose of attacking credibility or the weight of a witness’s testimony, and, perhaps surprisingly, there is little discussion in the decided cases on the proper limits to such questioning, at least when the witness is not also the accused in a criminal case. It is, on the one hand, the right and duty of the court to protect any witness from unfair harassment; questions designed only to embarrass or annoy with a view to intimidate the witness will not be permitted. On the other hand, it is the right of a litigant, or his or her council, to explore the credibility of an opposing witness and to minimize the weight that should be given to that testimony. Such questioning is legitimate (2003, § 11-6.1).

Legal testimony, then, not only depends upon matters closely related to the event (internal and external variables—lighting, preoccupation, and so on) but they are also based on “matters of

general integrity, truthfulness, objectivity, even lifestyle, antecedents, associations, and so on.” (2003, § 11-6.2).

Section 12 of the *Canada Evidence Act* stipulates that in the case when the accused has a previous criminal record,

(1) A witness may be questioned as to whether the witness has been convicted of any offence, excluding any offence designed as a contravention under the *Conventions Act*, but including such an offence where the conviction was entered after trial on an indictment.

(1.1) If a witness either denies the fact or refuses to answer, the opposite party may prove the conviction (Cudmore, 2003, § 11-18.4, 9).

In no uncertain terms, it is the prosecutions legal right, at least in criminal cases, to question ‘whether the witness has been convicted of any offence’. If not by name but by content, Cudmore clearly recognizes the *ad hominem* specter raised by previous convictions. “This section [s. 12 of the Canada Evidence Act] assumes what is perhaps an unwarrantable assumption, namely, that a witness with a previous conviction is less credible than one without such conviction regardless of the nature of the conviction or the date it occurred” (2003, § 11-18.4, 9). Nonetheless, the likelihood of past offences affording some measure of proof against the accused, as emphasized by the Ontario Court of Appeal (*R. v. Brown*), will vary from case to case according to the nature of the conviction, their number, and regency (2003, § 11-18.4, 9). Now because of the wording of the statute, a trial judge *cannot refuse* to permit questioning based on prior convictions to demonstrate the unfavorable character of a witness (2003, §11-18.4, 10). The discretionary power a judge retains is limited to the scope of questioning. It is the responsibility of the judge to determine what prior convictions should be heard by the court lest convictions not relevant to the present charge jeopardize the defendant’s right to an impartial hearing. If, in other words, “a mechanical application of s .12 would undermine the defendant’s right to a fair trial, then the question should be refused” (2003, §11-18.4, 10).

When questions arise as to which previous convictions are

permissible the judge should 'err' on the side of *inclusion* (Cudmore, 2003, §11-18.5). In *Thompson*, the counsel for the accused—a man on trial for murder related to the drug trade—requested that the defendant's lengthy criminal record (including dishonesty offences) be kept from the jury. The judge, favoring inclusion, allowed the defendant's legal history to be questioned during cross-examination "remarking that it would be misleading for the jury to be kept in the dark about his prior dishonesty" (Cudmore, 2003, §11-18.5). On appeal, a judge in the British Columbia Court of Appeal later wrote, "I cannot conclude that the accused was denied a fair trial by the exercise of the judge's discretion" (Cudmore, 2003, §11-18.5).

In other cases the prejudicial effect is clear. In one case, the accused stood trial for sexually assaulting his daughter. His prior criminal record included two convictions of rape and two convictions for wounding (a more aggressive form of assault and battery). The judge determined that during cross-examination the defendant's prior criminal offences "should be precluded only as a last resort" (Cudmore, 2003, §11-18.6). Later, the Court of Appeal felt that while the convictions for wounding should have been permitted, the convictions of rape should not have. The defendant's right to a fair trial was likely jeopardized by the prejudicial effect of the defendant's rape convictions.

One principle that has emerged relatively clearly is that the judge's discretion as to allow cross-examination on previous convictions is not an all or nothing application (Cudmore, 2003, §11-18.6). Doubtless, the history of a defendant has implications for determining a measure of guilt, but if unfairly characterized, the accused may face a prejudicial hearing and hence not a fair trial.

In terms of the *ad hominem* fallacy, Canadian law clearly values attacks of credibility (in the literature, in fact, it is often phrased as 'attacking credibility'). Such 'attacks', however, can only go so far. The reliability of the testimony of the accused is greatly diminished given a history of criminal activity. According to Canadian law, "Such evidence only goes to credibility and does not constitute character evidence against the accused" (Cudmore, 2003, §11-18.6). Clearly, the *ad hominem* factor is evident regardless of whether the character of the accused is a target of

official legal scrutiny. To put the point in a logical perspective, the law sanctions highlighting some *negative trait* of the defendant as a means of dismissing their testimony—and that is a text book example of the *ad hominem* fallacy.

Intellectual Responsibility

Of course, just because *ad hominem* attacks are used in the law and are considered legitimate, it does not follow that they are legitimate and that, moreover, the legal system does not capitalize, at times, on an overt logical fallacy. In terms of actually committing the ‘fallacy’, the legal system (in a corroboration of sorts with Hume) is a prime example of RT. *Accepting or rejecting testimony t is determined by more than t itself.* There are extenuating variables that bear directly upon the truthfulness and reliability of witness testimony. In Canadian law, variables such as the defendant’s prior convictions, associations, lifestyle, and so on, seem to be just as important as *t* itself. The variables and testimony form a ‘package’ of sorts which, after careful consideration, lend credibility to *t* and hence whether to accept or reject it. Witness testimony in Canadian law, therefore, is an example of considering facts relevant to said testimony before accepting said testimony—and that is exactly what Hume wants us to do in regards to testimony about the miraculous.

In Canadian law, as in Hume, accepting testimony *prima facie* is less intellectually responsible than entertaining testimony with an air of caution (‘reservation’). The ‘air of caution’ for Hume is an honest attempt to understand another person’s psychology; the ‘air of caution’ in the law is the probative weight assigned to a defendant’s history of criminal activity. The justification for *ad hominem* attacks is any reasonable person’s commitment to intellectual responsibility. It is their obligation, as rational agents, to consider all available or relevant facts about a person’s testimony. Anything less is intellectually *irresponsible*. To demonstrate the normative character of RT (the ‘responsibility thesis’) consider:

P1/ To be intellectually responsible is to utilize non-fallacious *ad hominem* attacks (*viz.*, facts other than those contained in

testimony *t* itself) that may be relevant to the acceptance/rejection of *t*.

P2/ Accepting *t* at face value is less intellectually responsible than not accepting *t* or ‘reserving’ assent to *t*.

P3/ It is the prerogative of any rational agent to be as intellectually responsible as possible. (It is better to be intellectually responsible than intellectually irresponsible. See P2).

C/ So it is the prerogative of any rational agent to utilize non-fallacious *ad hominem* attacks (*viz.*, facts other than those contained in *t* itself) before assenting/rejecting *t*.

Conclusion

The question as to why it is important to accept or reject testimony should now be clear. First, testimony is a philosophically substantive topic because it does entail a theory of knowledge. As J.L. Austin once wrote, “The statement of an authority makes me aware of something, enables me to know something, which I shouldn’t otherwise have known. It is a source of knowledge” (Coady, 1992, p.3). While it may be true that testimony has not played a significant role when contrasted with other competing historical epistemologies (divine illumination, rationalism, empiricism), Hume clearly recognized its importance for both philosopher and non-philosopher alike. If non-empirical knowledge of the world is derived, in part, through testimony, then said knowledge is only as sound as is the testimony itself. Since testimony is suspect for the reasons given, scepticism in regards to the knowledge based on testimony is an inevitable and foreboding obstacle to the acquisition of knowledge. As a means to this end—the rejection of testimony—non-fallacious *ad hominem* arguments provide a powerful objection to non-first person epistemological accounts of knowledge and, I suggest, to a scepticism unknown in early modern philosophy. Second, the issue of the soundness of testimony, whether questioned through the use of *ad hominem* arguments or not, is yet one more area that philosophy may lay claim to as having practical importance, without which philosopher’s are merely well paid hobbyists.

In sum, I have argued for the conclusion that non-fallacious *ad hominem* arguments are desirable and to commit them is to commit acts of intellectual responsibility. Arguing against a person, when legitimate, is the prerogative of any rational being. Hume commits himself to the argument and commits himself to it only as a judicious inquisitor responsible for the veracity of his own beliefs. The desirability of non-fallacious *ad hominem* ‘attacks’ is clear from their extensive use and rhetorical power in courts of law.

Notes

¹ This antidote appears in d’Andeli’s *Lai d’Aristotle*. Quoted from Simon Blackburn, *Lust*. 2004. Oxford: Oxford University Press. pp. 9-ff.

² Kelly, 1988, p.138.

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