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SEEMINGLY UNREASONABLE AD HOMINEM FALLACIES AND LEGITIMATE PERSONAL ATTACKS

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1. Introduction

When language users are confronted with clear cases of violations of rules for critical discussion they consistently judge these discussion moves as unreasonable. This is the main conclusion of the comprehensive empirical project on the conventional validity of the pragma-dialectical rules for critical discussion carried out by Van Eemeren, Meuffels and me (2009). Overall, the respondents in this study believed that fallacious discussion moves were indeed unreasonable while non-fallacious discussion moves were regarded reasonable. This especially goes for violations of the pragma-dialectical freedom rule, such as the abusive *ad hominem* fallacy (or the direct personal attack) in which the addressee is portrayed as uninformed, ignorant or even bad or stupid. In the experiments time and time again we found that language users denounce direct personal attacks. The alternative explanation that these moves are mainly seen as unreasonable because they are highly impolite was ruled out: by way of a number of operations we could safely deduce that our respondents denounced the *ad hominem* fallacy because of its argumentative unreasonableness, not because of their impoliteness value (van Eemeren, Garssen & Meuffels, 2007).

The tests in this study were constructed with one question in mind: to what extent are ordinary arguers in agreement with the theoretical norms of critical discussion? The study was not about recognizing fallacies and the factors that facilitate this recognition. The focus in the study was on the opinions of the respondents about certain moves. It was therefore pertinent that all fallacious messages were clear cases of rule violations and that they were presented in a relatively simple context.

From this comprehensive study we can safely conclude that language users denounce the abusive *ad hominem*. The question arises why this fallacy occurs so often in oral and written argumentation and, at the same time, why the abusive fallacy remains undetected so often by listeners and readers? What factors make the personal attack look less unreasonable in some contexts? An analysis of the *argumentum ad hominem* from the perspective of strategic manoeuvring may be help in answering this question. In this paper I intend to take a look at the formal characteristics of the abusive *ad hominem* and to compare this fallacy with legitimate personal attacks.

2. The abusive *ad hominem* as a violation of the freedom rule

In the pragma-dialectical theory of argumentation the *argumentum ad hominem* is seen as a fallacious discussion move that is made at the very beginning of a discussion: the confrontation stage. In the confrontation stage the parties involved in the discussion establish that there is a difference of opinion: a standpoint is advanced by one party and questioned by another. The overall goal of the discussion – resolving the difference of opinion on the merits – can only be reached if the difference of opinion has been fully brought to light. Therefore, the dialectical goal of the confrontation stage is to further the expression of differences of opinion (van Eemeren & Grootendorst 1992, p. 107). This means that the speech act of putting forward a standpoint cannot be subject to special preparatory conditions with respect to the status or position of the speaker nor with respect the to the propositional content of the speech act involved. The same goes for the speech act of questioning a standpoint. These restriction come to light in the freedom rule designed for the confrontation stage: ‘Discussants may not prevent each other from advancing standpoints or from calling standpoints into question’ (van Eemeren & Grootendorst 2004, p. 190).

The freedom rule can be violated in a number of ways. The first type of violation occurs when a discussant imposes certain restrictions on the standpoint that may be advanced or called into question. In this type of violation restrictions as to the content of the standpoint are imposed. The second type of violation occurs when a discussant denies the opponent the right to advance a standpoint he would like to advance or to criticize the standpoint he would like to criticize. In

doing so the discussant infringes his opponent's personal liberty by denying him the right to advance a standpoint or to criticize it. This can be seen as an attempt to eliminate him as a serious partner in the discussion (van Eemeren & Grootendorst 1992, p. 108).

The direct personal attack is a rule violation that belongs to the second category. In practice, personal attacks only occur in reaction to a standpoint or expression of doubt. Strictly speaking this means that personal attacks do not prevent advancing standpoints in a literal sense: the opposing party already put forward a standpoint or expressed his doubt. However, the effect remains the same: from the start, the opponent is discredited as a serious party in the discussion and his freedom to express his opinions. In that way an abusive *ad hominem* shuts down the discussion before it really starts.

3. The abusive *ad hominem* as a derailment of strategic manoeuvring

According to van Eemeren and Houtlosser (2004), fallacies can be seen as derailments of strategic manoeuvring: what is initially seen as reasonable derails and become fallacious. They give 'an account that explains why fallacies are usually not *apparent* to everyone. In everyday argumentative discourse, arguers who manoeuvre strategically will normally uphold a commitment to the standards of critical reasonableness and their interlocutors will expect them to live up to such a commitment' (Van Eemeren and Houtlosser, 2004: 3).

A first step to get a better understanding of the abusive *ad hominem* as a derailment is to identify its possible occurrences in the dialectical exchange that takes place in the confrontation stage. The possible moves and their relative positions in a certain stage given a certain point of departure can be represented in a *dialectical profile* van Eemeren, Houtlosser & Snoeck Henkemans, 2007: 18). A dialectical profile of the confrontation stage provides an indication of the different patterns that may normatively occur in the moves that are made in the different rounds, leading to a dispute of a particular type. The simplest type of difference of opinion is a *single non-mixed dispute*. In a single non-mixed dispute there is only one issue under discussion and only one of the parties puts forward a standpoint about this issue; the other party expresses doubt. A dispute is initiated when one party (arguer 1) puts forward a standpoint and the other party (arguer 2) makes it clear that he does not share this standpoint. In the confrontation stage

both parties have the opportunity to maintain their position on further consideration or not. A single non-mixed dispute ‘arises because A2 doubts A1’s standpoint, and both parties maintain their position, or because A2, at first, expresses a standpoint that is opposite to A1’s standpoint, but, on second thoughts, reduces it to doubt’ (van Eemeren, Houtlosser & Snoeck Henkemans, 2007, p. 25). These two possibilities are represented in the dialectical profile in figure 1.

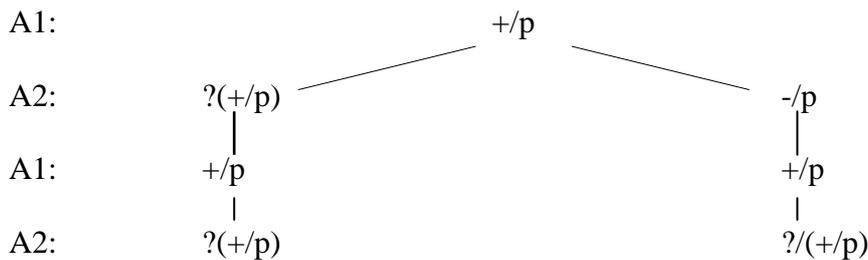


Figure 1: Dialectical core profile for a single non-mixed dispute (van Eemeren, Houtlosser & Snoeck Henkemans, 2007)

As the dialectical profile for the confrontation stage shows, dialectical relevant reactions in the confrontation state are 1) expressions of doubt and 2) maintaining a standpoint as a reaction to doubt. In the second round A2 may react to the initial expression of the standpoint by doubting the standpoint or by putting forward the opposite standpoint. These discussion moves derail when A2 shift the focus of attention from the proposition content to personal characteristics of A1. In principle the same can happen in the fourth round. A1’s reactions in the third round can derail in a similar manner. This reconstruction is possible because of the position of the legitimate moves in the profile: they are a reaction to an expressed standpoint or expressed doubt and they refer to a negative aspect of the position of the contender. In all cases the move derails when it shifts the focus from the utterance of the speaker to the character of the speaker.

The characterization of abusive *ad hominem* attacks as derailments of legitimate moves in the confrontation stage already explains why in some contexts they may seem reasonable discussion moves. In appearance however, they are not very similar to expressions of doubt; they look like other types of personal attacks that may not be automatically fallacious at all.

This brings up the question of exactly in what circumstances a personal attack should be seen as a fallacious (*ad hominem*) attack and in what circumstances it involves a reasonable move. Before these questions can be answered a specification of ‘direct personal attack’ in a discussion

is necessary. First of all, this is an attack on a party in the discussion (not just any person).¹ Second, the attack by definition involves a negative characterization of the opposing party. In short:

A personal direct attack:

1. is directed to the opposing party in the discussion
2. is about the opposing party's character, knowledge, abilities, skills etc.

There seem to be two situations in which a personal attack can be put forward without violating any rules for critical discussion. The confrontation stage provides the first possibility. Putting forward a standpoint about the character of the opposite party is in principle not unreasonable. The party who puts forward the standpoint in which negative character traits of his opponent are revealed does not violate the freedom rule. Putting forward such a standpoint does not in any way block or frustrate the goal of the confrontation stage. This means that if a personal attack is part of the propositional content of the standpoint under discussion, it cannot be seen as a violation of the freedom rule and hence it is not an *ad hominem* attack. Similarly, personal attacks that are part of the propositional content of arguments that are put forward in defence of such a standpoint can in principle not be seen as rule violations.

A second instance of a personal attack that in principle constitutes a reasonable discussion move is criticism regarding authority argumentation in which the speaker presents himself as the authority or expert. While superficially this move looks like an *ad hominem* fallacy, it is not. In fact, it is radically different type of move.

Here, I will focus on the second type of reasonable personal attack. In contrast to an *ad hominem* attack this sort of move happens in the argumentation stage of a critical discussion and consequently it cannot be a freedom rule violation. This type of move is part of the critical testing procedure in which the protagonist and the antagonist establish together by means of critical questions and answers to these critical questions whether a certain premise provides adequate support for the standpoint at issue.

In the testing procedure the antagonist criticizes the use of a certain argument scheme the protagonist applies in his argumentation. In case the protagonist uses argumentation based on authority, the antagonist has the right to ask questions related to this particular use of authority

argumentation. In one of the variants of argumentation based on authority the protagonist can refer to a person who may be regarded as an expert in a certain field of knowledge, an authority in a certain area of decision making, or a witness. According to the argument scheme rule an arguer should rely on a well-chosen scheme and apply this scheme in the right way. This rule does not prevent the protagonist from using argumentation based on authority in which he himself is presented as the authority. However, this goes wrong when the protagonist boasts about his good character, good deeds, many friends etc. if these facts are not at all relevant in defence of the standpoint. In that case the protagonist's utterances can be qualified as non-argumentation which is regarded as a violation of the relevance rule.

The questions in the testing procedure for argumentation based on authority are all directed to the person who is presented as an expert, authority or witness: Is this person really an expert, is he really an expert in the relevant field, are his statements not contradicted by other experts in the field? This means that by definition this testing procedure is personal and directly related to the protagonist when he presents himself as an authority. In that sense the critical reactions in this testing procedure resemble abusive *ad hominem* fallacies.

However, this can only be the case if when it is clear that the protagonist put forward argumentation based on authority and the questions and comments by the antagonist are related to the authority claim. Personal attacks such as 'but you are not knowledgeable in this field at all', or 'but you did not read all those books' can in principle be reasonable attacks provided that they are critical reactions to authority claims.

In other words, there are two distinct types of personal attack, which can be characterised as follows:

A fallacious personal direct attack

1. takes place in the confrontation stage
2. is a reaction to an expressed opinion or to expressed doubt
3. is an attempt to prevent the other party to advance standpoints or doubt
4. can be put forward by both the antagonist and the protagonist of a certain standpoint

A critical question or critical remark as a reaction to 'personal' authority argumentation

1. takes place in the argumentation stage

2. is a reaction to authority argumentation in which the protagonist refers to himself as the expert
3. is an attempt to elicit additional argumentation, or to get the protagonist to give up his position
4. can only be put forward by the antagonist of a certain standpoint

Seen from the perspective of the pragma-dialectical model, not every personal attack is an *ad hominem* fallacy. Whether it is or not depends on the context (the stage of critical discussion and the location within that stage) and the function of the attack in the dialectical exchange. In any case, only when the personal attack is an attempt to shut the other party up in the confrontation stage, it is an *ad hominem* fallacy. The formal similarities between *ad hominem* attacks and legitimate discussion moves such as critical questions or remarks, may provide the explanation why the *ad hominem* attack sometimes is not recognized as fallacious. They provide the arguer who violates the freedom rule by putting forward an *ad hominem* attack with means to strategic manoeuvring that conceal the unreasonable nature of this move.

This may be illustrated by means of an example. In a public argument between the Dutch journalist Jort Kelder and lawyer Bram Moszkowicz, who is famous in the Netherlands for defending serious criminals, the personal attack seemed to be the main means of argumentation. Moszkowicz is the attorney for Willem Holleder, who served 8 years for kidnapping beer manufacturer Freddy Heineken and is now facing new charges. Before defending Holleder, Bram Moszkowicz defended Willem Endstra, an Amsterdam businessman, who was also known as the 'banker of the underworld'. Endstra was involved in Holleder's criminal activities and was killed in 2004 by members of the Amsterdam underworld. So far, it has not been established whether Holleder killed Endstra. It is clear however that they were not exactly friends.

On a talk show broadcasted on 9 January 2007 Kelder claimed that 'the big-star advocate Moszkowicz is morally wrong in defending both Endstra and his enemy Holleder [...] he should be thrown out of his profession, right away. [...] This is morally so low. He sent his bills to Endstra and he defends the person who probably killed Endstra. This is nothing but a shame'. Later Kelder called Moszkowicz a 'Mafia pal' and a 'professional liar'.

That same night Moszkowicz hit back on a news show, by proclaiming 'It is striking how everybody interferes in matters like these nowadays. Even quizmaster Jort Kelder said something

about it today. Yes, a quizmaster, who likes to babble with ladies on television. He is a narrow-minded pseudo journalist. What I want to say is that this man knows nothing of these kinds of affairs. That is my problem in this case: people who do not know what they are talking about. You [the presenter of Nova] have good objective questions and you do not express your opinion about this. But others... they all know so well. And that is dangerous’.

Jort Kelder, who attacks Moszkowicz personally, does not react to an expressed opinion. In fact, Kelder started this discussion by claiming that Moszkowicz is morally wrong. In doing so, Kelder does not violate the freedom rule. This is because the personal attack actually forms the content of Kelder’s standpoint. Moszkowicz, on the other hand, does violate the freedom rule when he says that Kelder should shut up because he is not informed just like so many others who make his life miserable. Kelder did not claim that he is a lawyer or that he is an expert in these matters and therefore his expertise is not under discussion. By stressing the fact that Kelder is just a journalist and not even a good one it seems as if Kelder initially uses his own ethos, but this – as we know – never happened. Moszkowicz presents himself as a victim of Kelder’s alleged ignorance by saying that it can be dangerous if non-experts start to interfere with these kinds of problems. At the same time, Moszkowicz exploits the idea that Kelder is a public figure who presents himself as an authority in certain areas. In this discussion however, Kelder never refers to himself as an expert in the field of law. From the fact that neither his interviewer nor other commentators point to the fact that he crossed a line, we may take it that Moszkowicz is quite successful in manoeuvring this way.

Let me return to my initial question. How can it be that some direct personal attacks look reasonable? The answer to this question takes two steps. The *ad hominem* attack is a derailment of a legitimate dialectically relevant move in the confrontation stage and it takes the place of a reasonable move. At the same time it may resemble a legitimate move in the argumentation stage. Apart from plain insults, many abusive *ad hominem* attacks may have the appearance of the critical questions that go with the argument scheme that is based on a relation of authority. Because asking a critical question about an arguer’s expertise is a reasonable move in a discussion even if formulated in a potentially hostile way, perhaps the fallacious counterparts that occurs in the confrontation stage has the appearance of being reasonable.² This kind of explanation can be the starting point for new empirical research aimed at explaining in what way

fallacies can be effective. The main question in this research is whether this type of strategic manoeuvring really is effective in covering up the unreasonable nature of rule violations.

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¹ This means that only if the person under attack can be seen as a real party in the discussion, the attack is *ad hominem*. This sometimes is overlooked when attacks on parties outside the discussion are called ‘*ad hominem*’.

² Something similar can be said for the *circumstantial ad hominem*. In a legal procedure, for instance, it seems highly relevant to test the impartiality of the witness or expert. Questions about bias can, in that situation, be part of a critical testing procedure.