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## *AD MISERICORDIAM* REVISITED

**Abstract.** The paper discusses the nature and functioning of *argumentum ad misericordiam*, a well-known but less theorised type of argument. A monograph by D. Walton (1997) offers an overview of definitions of *misericordia* (which he eventually translates as ‘pity’), as well as the careful analysis of several cases. Appeals to pity, Walton concludes, are not necessarily fallacious. This view seems to be supported and further refined by the critical remarks of H. V. Hansen (2000), as well as the recent work of R. H. Kimball (2001, 2004) and A. Aberdein (2016) focusing on the virtue ethical aspects of such arguments. There is, on this account, a difference between *ad misericordiam* arguments and fallacies, even though the former may be fallacious in some cases. In this paper I argue for a narrower concept of *ad misericordiam*, as distinguished from the more generic class of appeals to pity, limiting it to cases in which someone asks for the non-application of a certain rule, clearly relevant to their case, with reference to some (unfavourable) circumstance, which is, however, irrelevant for the application of the rule.

*Keywords:* *ad misericordiam*, appeal to pity, fallacy, normativity, fairness, justice.

### Introduction

The fallacy known as ‘appeal to pity’ or *argumentum ad misericordiam* is a quite frequent one in everyday persuasion. It is not unknown in an academic context either: almost everyone teaching university courses has met such requests from students which were aimed at mitigating the consequences of assignments not submitted or badly done, and based on allegations that the ill-performing student would get into trouble without the leniency requested.

A typical example, which one wishes was fictitious:

- [1] May I ask you to have another look at my test, and help me complete the course so I can obtain my law degree next semester. I attended all the

lectures and the seminars, and therefore ask you, for reasons of equity, if you see it possible, to revise my mark and let me pass the exam. I repeatedly emphasise that this is the only mark necessary for me to finish my studies next semester.<sup>1</sup>

Although the appeal to pity is not the only argument deployed in the above text (the student also refers to her regular attendance at lectures as well as ‘equity’), it is still the focus of the claim: if the student fails the exam, she cannot finish her studies within the time limit expected, which doubtless puts her at a disadvantage.

Recent scholarship on argumentation has raised the idea that appeals to pity are not necessarily fallacious. In his monograph *Appeal to Pity* (Walton 1997), after surveying both the history of the term and textbooks on fallacies, Douglas Walton argues that the acceptability of appeals to pity depends on the pragmatic status of the specific argument. Such appeals may serve the (legitimate) function of providing a decisive momentum for the acceptance of a practical argument that is not fallacious. One of his examples is the then widely discussed case in which the testimony of a young Kuwaiti woman on the atrocities committed by the occupying Iraqi forces during the first Gulf War allegedly influenced the resolution of the US Congress in favour of military intervention to a great extent (see *ibid.*, ch. 5).

That position seems to be followed in more recent scholarship as well. As argued by the author of a textbook published a decade after Walton’s work, “[a]ppeals to pity and empathy may be reasonable in exceptional cases where the claim to be accepted has a substantive link to those emotions or the values resulting from these” (Margitay 2007: 543).<sup>2</sup> In practical arguments, i.e. those aimed at a certain action, “its scope of relevance may be broader”. For instance, “[i]t is perfectly in order to appeal to empathy if one wishes to justify the claim that in a given situation [sc. if one cannot pay his or her phone bills] helping one’s friend is the right thing to do” (*ibid.*: 544).

These considerations are especially important as they classify *argumentum ad misericordiam* as an appeal to emotion, and hence regard it as a neutral (weak, but not necessarily illegitimate) argument. When assessing the persuasive power of these arguments, the decisive factor seems to be whether the emotion aroused has a relevant connection to the judgement or practical decision it seeks to trigger.

In what follows, I shall focus on the place of *ad misericordiam* within the broader category of appeals to pity, using some examples and Walton’s overview as my starting points. My contention here is that the name *ar-*

*argumentum ad misericordiam* is best kept, in a narrow sense, for the kind of fallacy traditionally described in textbooks on argumentation. My argument falls into two parts. First, looking at the examples, I am going to argue that what are regarded as legitimate uses of *ad misericordiam* either consist of an argument related to the application of a rule *and* an appeal to emotions, or are appeals to empathy without pretending to make any argument in the strict sense. Second, looking at the ethical concept of *misericordia* and contrasting it with the related concepts of justice, fairness, and clemency, I hope to show that it is inherently linked to injustice caused by the non-application of a relevant rule. Thus, *ad misericordiam* as an argument cannot but be fallacious, and should be distinguished from appeals to emotions that are not arguments, but may be useful for (legitimate) emotional persuasion.

### *Argumentum*

In literature on argumentation studies, one finds a range of examples for *argumentum ad misericordiam*. I shall now look at some of its types, setting them alongside the example [1] given above, which I regard as representing the ‘focal case’ of appeal to pity, to help identify the role of emotions, such as pity or empathy, in persuasion.

In example [1], as we have seen, the student has failed the test and, therefore, has to retake the course. Were that not the case, she could receive her degree in the coming semester. (Focusing on the structure of the arguments, I assume, here and in the following examples, that the claims made are all true.) Such a delay is a substantial disadvantage, which may (so the student hopes) make the lecturer marking her test change her mark. She also mentions that she has attended all the lectures, thus placing the question of desert into a broader context: even though she does not deserve to pass on the basis of her performance documented by the test results, a failure would mean disadvantages being inflicted on a student whose overall diligence nevertheless makes her deserve to graduate on time. It is important to note that the latter claim (diligence) only works in connection with the former (disadvantage). Having attended lectures does not in itself ground any claim to a better mark, and it is not usually used in such arguments. (It does however occur in arguments stating that despite such diligence, someone could not understand the material or pass the test). Yet in these cases it is not the desert, but the frustration resulting from failure that is the basis of *ad misericordiam*.<sup>3</sup>

In our case, however, it is the juxtaposition of desert and disadvantage that makes for the tension necessary (if not sufficient) for persuasion. It is meant to balance the fact that from a moral perspective, bad performance in the test (as an institutional sign of undeservingness) justifies failure, and that the student cannot thus object to the application of the rules.

In what follows, I first discuss two relevant examples given in the recent textbook of Margitay (2007), then two others taken from the rich material in Walton (1997).

- [2] —I am fed up with all these charities bullying me everywhere with their advertisements to give them money. What good is that?  
—We do need them, believe me. They help poor people in distress, who have no home, who are sick, hungry, or struck by a disaster, and have no access to state aid, or just too little. How could they raise money for all these without the ads? (Margitay 2007: 543–544)

In Margitay’s view, “the speaker legitimately appeals to empathy” in order to support her claim (i.e. that the work of charities, as well as their advertisements, serves a noble purpose) (*ibid.*: 544). That is certainly true, yet one needs to consider exactly where and how empathy appears in the argument.

Looking at example [2] one has the impression that what the first speaker objects to is not the existence of charities, but the frequency (“everywhere”) or tone (“bullying”) of their advertisements. What the second speaker seeks to prove is that the work of charities is indispensable (“we do need them”), which in turn justifies their advertising. Words appealing to empathy (“people in distress”, etc.) appear in the first part of the argument, suggesting that charity work is useful as it helps those in need. In addition, the claim is made that such work is also essential, since “state aid” cannot alone solve the problems. The second part of the argument then points out that without the advertisements these organisations could not do their work efficiently.

All that suggests that the actual debate is about the advertisements, and that the response does not claim anything other than that the advertisements mentioned by the first speaker are necessary parts of charities’ activity. If emotions play a role here, it is linked to the advertisements, but in a descriptive rather than an evaluative way. The second speaker might as well say that the frequency and tone of advertisements (the latter possibly aimed at provoking pity) contributes to their efficiency, which is absolutely

necessary for the functioning of the organisations using them. In that sense, the argument is a rational and relevant one, yet it is one about, rather than based on, emotions. We can understand the way advertisements function without being affected by them.

We have also seen that words related to pity already appear in the first half of the argument, in what is meant to justify the activity of charities. But how far does that argument build on emotions? As quoted above, Margitay thinks that such arguments may be relevant if “the claim to be accepted has a substantive link to those emotions or the values resulting from these” (Margitay 2007: 543). That formulation seems puzzling because it does not make clear how values can result from emotions. What makes it nevertheless important is that it highlights the link between this type of argument and moral values. I shall come back to that problem in due course, but first we need to clarify whether the claim made in the example refers to values or emotions. The bad news is that that question is not easy to answer. It is difficult (if at all possible) to decide whether the emphasis is on the claim that certain people really need help, and helping them is the right thing to do (in which case “distress” may mean that their predicament is not due to their own fault), or the speaker just wants the interlocutor to better understand their situation and become more sympathetic to the goals of charities.

Yet, whatever is the case, we have seen that the argument does not stand alone: the insufficiency of state aid is also alluded to. Thus, one might say that even if the attempt at persuasion does contain an emotional element, it is not more than incidental, and serves to give emphasis to the claim that “the work of charities is indispensable”. Yet, the success of persuasion does not depend on it, as the argument can be reconstructed without emotionally charged expressions.

[3] —Give me some money. I am horribly broke. My phone will be shut off if I can’t pay the bill. I have no clue when I can pay it back, though. You know what it’s like if one has got absolutely no money (Margitay 2007: 544).

Unlike in the previous example, persuasion here is aimed at a specific course of action. The speaker wants to borrow some money, admitting at the same time that she does not know when she is going to be able to pay it back. One specific disadvantage is mentioned, the shutting off of the phone. The speaker presumably wishes to obtain the sum covering that debt or part of it. Empathy is referred to in the last sentence (“You know what it’s like”). Contrary to example [2], but similarly to [1], pity and empathy

would serve directly to support the request, and it is also obvious that the speaker wants to provoke these emotions rather than just referring to them in an impartial, descriptive manner.

It is important to know, however, the relationship between the two emotions as well as their relationship to the request. The next three sentences in the example describe the situation of the speaker, and can therefore be regarded as the reasons for the request. Paradoxically, that applies to the claim “I have no clue when I can pay it back.” ‘Reasons’ only mean that the propositions prove that the speaker actually needs the money, that she is not joking, and she would not spend the money on some unnecessary luxury. Thus, they underline the existential weight of the request, as well as its honesty. The addressee only appears in the last sentence, where empathy is being aroused. Yet, we find no direct reason for action: the claim is only meant to bring the addressee closer to the speaker, making her consider what has been just said. Any claim that in such a situation “helping a friend is the right thing to do” does not result from that in any sense.

Persuasion will be successful if the addressee of the request adds the latter claim as a premise, and concludes that (s)he should give money to the speaker. What the speaker does to achieve that is only to describe her predicament (pity) and assume a certain attitude on the part of the addressee (empathy), to make the latter more receptive to the request. No attempt at rational persuasion or argument is made.

If we now compare that with example [1], then we see that the speaker of example [3] makes a similar move. The main reference is the disadvantage she cannot avoid by herself, which can be, however, prevented with the help of the addressee. In [1], that is supplemented with a reference to the writer’s own desert, while in [3] the additional reference is to (assumed) shared experience.

There are, however, important differences as well. The parties in example [1] are in a clear hierarchical relationship: it is the addressee who is meant to evaluate the writer’s performance, by applying a measure previously set. The writer now pleads for an exception.

One may of course construct the relationship in example [3] as a hierarchical one, with the speaker being in a subordinate position, her fate depending, to a certain extent, on the decision of the addressee. One may also argue that here, too, we are dealing with an exception from a general rule: one does not usually lend money for an indefinite time. It is important to see, however, that the subordination results from the request, that ‘rule’ cannot here mean any obligation, but just some prudential standard

or principle, and also that the addressee is entirely free to decide whether or not to apply that ‘rule’. In example [1], the situation is different. There, the relationship between the two persons is already given, and the criterion to be applied is also independent of the person of the addressee (at least in the sense that (s)he has to set it on the basis of certain rules made by some independent authority).

Summing up the above observations, we can say that a reference or allusion to pity may not in itself justify classifying a given utterance as *argumentum ad misericordiam*. Pity has to play a role in the argument, and what is being said has to be aimed, partly at least, at arousing pity. For this reason, example [2] does not seem quite relevant: even if the speaker provokes pity towards those supported by charities, that is merely incidental to the argument (s)he makes.

If pity is placed in the focus of the argument, it changes the character of persuasion entirely:

[2'] —I am fed up with all these charities bullying me everywhere with their advertisements to give them money. What good is that?

—We do need them, believe me. They help poor people in distress, who have no home, who are sick, hungry, or struck by a disaster, and have no access to state aid, or just too little. How could they raise money for all these without the ads? *We must help them if we can!*

In the modified example, the situation of those in need is focused on, instead of the fundraising efforts made by charities. The speaker, thus, does not actually respond to the explicit question, but seeks to address the objection formulated with an emotional appeal. Were we to keep the last sentence of the original example as well, the argument would stand on its feet again, working in parallel with the emotional effect.

Example [3], in turn, shows a situation in which the speaker does not actually use arguments, but does not pretend to do so, either. *Misericordia*, rather than *argumentum* is in the focus, which does not discredit the utterance.

Looking at the history of the Latin name used for the fallacy, Walton points out that the expression *argumentum ad misericordiam* was not used in English texts before the 19th century. The earliest occurrence of the term in its current sense can be found in an article published in the *Edinburgh Review*, but without any further reflection. It is thus more illuminative to look at a somewhat later example quoted by Thackeray, looking back at his experience as editor of the *Cornhill Magazine*:

- [4] Sir, May I hope, may I entreat, that you will favour me by perusing the enclosed lines, and that they may be found worthy of insertion in the Cornhill Magazine. We have known better days, sir. I have a sick and widowed mother to maintain, and little brothers and sisters who look at me. [...] Heaven knows it is not for want of will or for want of energy on my part, that she is now in ill-health, and our little household almost without bread. (Quoted in Walton 1997: 39–40.)

Thackeray summarises the ‘logic’ of the letter as follows: “I am poor; I am good; I am ill; I work hard; I have a sick mother and hungry brothers and sisters dependent on me. You can help us if you will” (*ibid.*: 40). Yet the poem enclosed is unpublishable because of its poor quality. Walton rightly points out (*ibid.*: 193) that the case is similar to the one illustrated with example [1], and also that it is not the request in itself that is illegitimate, but the abuse of its (emotional) persuasive power, “so that it is applied in a situation where it is not appropriate, and even an obstruction to making a good decision” (*ibid.*: 41).

Pity or empathy can be, according to Walton, legitimate means of persuasion depending on the circumstances of the individual case. A negative argument for that can be found in the case of the Kuwaiti woman’s testimony mentioned above. Some two years after the testimony given by the young woman, Nayirah, at the Congress hearing on the atrocities committed by Iraqi soldiers in a hospital (the soldiers taking incubators, leaving the babies there treated lying on the floor), *New York Times* published an article explaining that Nayirah was, in fact, the daughter of the Kuwaiti ambassador. The author of the article, J. R. MacArthur claimed that this fact had been known to Senators T. Lantos and J. E. Porter, who initiated the hearing. Moreover, dissemination of the story was to a great extent organised by the PR agency Hill and Knowlton, hired by an organisation seeking to promote Kuwaiti interests.

- [5] When the Kuwaitis hire Hill and Knowlton to represent their interest, to get them to argue the case for military intervention, Hill and Knowlton desperately needs a defining moment, a defining atrocity, something that is so emotional that the American people will not be able to ignore the plight of Kuwait. And Nayirah and the baby incubator story provide that defining moment. (MacArthur *apud* Walton 1997: 131.)

What was illegitimate here, Walton argues, was not the appeal to the emotions of the audience, but concealing the family relationship between

the alleged witness and the Kuwaiti ambassador, together with the unfounded claims made about the atrocities. If Nayirah's account had been true, there would be no objection to the appeal to pity, as it only provided a "defining moment" for persuasion.

It seems, however, that the decision aimed at in the Nayirah case can be reconstructed in two different ways, quite independently of the question of truth. One possible reading may be that the decision-makers were completely free to decide on the intervention in Kuwait. In that case, "the plight of Kuwait" can be regarded as a weighty factor in an argument, and Nayirah's story was only an illustration, as it were, to make the audience more attentive to that factor, thus contributing to a decision favourable for the Kuwaitis. We are dealing, then, with an emotional appeal, even an appeal to pity, but not one that would work as *ad misericordiam*. The decision may be then based on an incorrect understanding of the situation in Kuwait, but not of the nature of the decision. The other account would regard the decision as a case of rule application, and Nayirah's appeal to pity as an argument for abandoning the rule. In that case, the decision-makers would make an error in letting themselves be persuaded by the emotional appeal, whether or not the claims made in the testimony were true. Clearly, Walton (rightly) accepts the first interpretation. There, however, the appeal to pity does not play the role of an argument.

If we compare that to example [4], we see that Thackeray interpreted his own situation as one of rule application. The publication of a poem has to be decided on the basis of aesthetic standards, and the request he received was meant to make him decide on different principles. It was not to make him more perceptive to relevant factors, but to adopt irrelevant ones. In what follows, I wish to point out that *misericordia* by definition refers to such a move.

### *Misericordia*

Walton argues that the generally negative appraisal of appeals to pity is partly due to the fact that pity itself is often regarded as something negative. One of his examples is the case of The Jerry Lewis Telethon for Muscular Dystrophy. In that televised event, organised since the mid-60s, the popular TV personality raised money for MD patients. Criticism formulated against the show focused on the perceived highlighting of patients' weakness, which amounts, on certain interpretations, to a denial of their human dignity, and their moral equality with those watching the show (Walton 1997: 65–69).

Pity here actually appears as distinct from compassion or empathy, and that contrast is made by several moral philosophers (see e.g. Nussbaum 2001: 301–302, Kimball 2004: 303, Crisp 2008: 233–234). Walton therefore suggests that for suspicious arguments one should first clarify whether they are aimed at pity or empathy.

This path is further explored by the recent work of R. Kimball, who argues that pity itself can be justified in a number of cases, and hence “*appeal to pity* as a fallacy is a misnomer which unjustifiably generalizes from undesirable characteristics of extreme cases to reject a wide range of altruistic moral emotions or attitudes” (Kimball 2001: 344). While compassion may be considered as more valuable in general, since it entails actively seeking to help someone in distress, there are situations in which the “distancing attitude” characteristic of pity seems appropriate. The predicament of the tragic hero may be an example: there is no way for us to help her, yet “we have to be able to appreciate what it would be like to suffer that kind of loss” (Kimball 2004: 309). As for the specific cases of appeal to pity, in which the speaker seeks to provoke pity for oneself, Kimball claims that the general disapproval (also reflected by the notion that it constitutes an argumentative fallacy) may be due to the “confusion of ordinary pity and tragic pity”. In such cases, he explains, “appealing to pity for ourselves we represent ourselves as in a condition to which tragic pity is appropriate, but we cannot be in such a bad situation if we’re asking for action” (*ibid.*: 315; cf. also Hansen 2000: 171).

In a similar vein, A. Aberdein approaches fallacies from a virtue ethical perspective, focusing on the virtues and vices at work in argumentation (Aberdein 2016). Yet his main objective is not to offer an alternative interpretation of *ad misericordiam qua* fallacy, but to examine appeals to pity from a quite different angle, thus “provid[ing] an independently useful account of how argument can fail” (*ibid.*: 421). The vices characteristic of *ad misericordiam* are, in his analysis, sentimentality on the part of both the proponent and the respondent, together with insincerity for the former and inanity for the latter (*ibid.*: 420).

These are important insights indeed, since the name *ad misericordiam* apparently refers to a moral background. However, focusing on the ancient virtue ethical concept of *miser cordia*, rather than a broader analysis of pity and compassion, may be more useful if we are to understand the argumentative or quasi-argumentative structure of *ad misericordiam*.

A reconstruction of that structure is offered by H. V. Hansen in his review of Walton’s book (Hansen 2000). Instead of ancient ethical ideas, Hansen grounds his assessment of appeals *ad misericordiam* in a distinction

of competing roles. He convincingly argues that the moral ‘ought’ entailed by such appeals may have various degrees of relevance, depending on the different roles of the addressee. In the case of the ill-performing student, for instance, the professor may be in “an internal conflict”, due to the different duties that result from her various roles: the obligations of a professor may conflict with those of a fellow human being, thus creating a situation where the decision which one to fulfil is inevitable. Moreover, Hansen points out that the ‘ought’ may either be presented as one of the morally relevant considerations, or as an “all-things-considered ought”, the first one allowing for a sound argument, and the second making the appeal fallacious (*ibid.*: 181–182).

Hansen’s interpretation is particularly illuminative since it shows that moral considerations are inherent to *ad misericordiam* appeals. Thus, what may be illegitimate about these appeals in terms of argumentation is not their affinity with pity, but the fact that they can make the argument invalid. In what follows, I am going to concur with much of that analysis. It seems, however, that taking the ancient concept of *misericordia* as our starting point can offer further, and partly different, insights into the “internal morality” of appeals to pity.<sup>4</sup>

Considerations of ancient virtue ethics are not absent from Kimball’s analysis, either. Yet in explaining pity, he turns to the Greek concept of *eleos*, which he then identifies as the positive, “tragic” form of pity (cf. Kimball 2001: 338–339, 2004: 306–310). That, in itself, does not explain how appeals to pity can be fallacious. Walton’s historical overview points to Aristotle’s caveat in the introductory chapter of the *Rhetoric*, where the Stagirite states that “it is wrong to warp the jury by leading them into anger or envy or pity; that is the same as if someone made a straight-edge ruler crooked before using it” (1354a 24–26, trans. Kennedy 2007; cf. Walton 1997: 49). Yet, Walton rightly adds, Aristotle here is not speaking against the use of emotions in rhetoric in general. Rather, he distinguishes between legitimate and illegitimate appeals to emotions (see also Dow 2007). Nor does he think that emotions would in themselves exclude rational persuasion (cf. the analysis of Sherman 1997). It is only in bad rhetoric that they are abused to conceal the weakness of one’s case.

It is only in the moral philosophy of the Stoics that *misericordia* is regarded as a vice. Their reproach is due to two distinct, but related, reasons. On the one hand, *misericordia* opens the door for passions disturbing rational deliberation. An example of that is Cicero’s reconstruction of the Stoic doctrine on passions in his *Tusculan Disputations*: “those who do not obey reason lower and contract their minds in circumstances which they believe

to be evil [...] Distress, then, is ‘a fresh opinion that an evil is present in which one thinks it right to lower and contract the mind.’ [...] Pity is ‘distress over the misery of another who is suffering unjustly’ – for no one is moved to pity by the punishment of a parricide or traitor.” (4.14–18, trans. Graver 2002).

On the other hand, *miser cordia* leads to injustice. That is pointed out e.g. by Seneca in his *On Clemency*, where he compares pity to clemency: “both vices, pity and cruelty, are close to clemency and strictness, and we must avoid them: ⟨we lapse into cruelty because it looks like strictness⟩, while we lapse into pity because it looks like clemency. Erring in the direction of pity entails less risk, but those who fall away from the truth err equally in both cases” (2.4.4, trans. Kaster in Kaster and Nusbaum 2010; cf. Flamerie de Lachapelle 2006: 309).

The relationship with justice is of particular importance for us here, since in typical cases of *argumentum ad misericordiam*, non-fulfilment of the request is labelled, sometimes implicitly, as unjust or unfair (see the reference to fairness in Example [1] above). Moreover, the universality of justice is mentioned by Kimball as a possible reason why pity can be regarded a vice from a logical perspective, “especially when it inhibits us from making universally justifiable evaluations” (Kimball 2001: 340, similarly Walton 1997: 53–54). It is therefore in order here briefly to compare justice (*iustitia*) and pity (*miser cordia*), together with the two intermediaries Seneca refers to: fairness (*aequitas*) and clemency (*clementia*).

We act justly whenever we give the other person his or her due. What is due to someone is most obviously decided with reference to law. In certain cases, however, applying the general rule of the law to an individual case would result in injustice: going beyond the literal interpretation of law for the sake of justice allows for a fair decision (cf. Aristotle, *Rhetoric*, 1374a 26–b 1; on the argumentative aspects see Könczöl 2016). Clemency goes even further, ignoring the general rule as well as the momentaneous justice of the given situation: the reason for that is the expectation of the decision-maker, who trusts that not giving the other person his or her due (i.e. punishment) may allow them later to become worthy of lenience (cf. Seneca, *On Clemency*, 2.7.3, with Könczöl 2008: 68). Pity lacks even that kind of justification: mercy towards the other person is regarded as an end in itself.

What follows from all that in terms of argumentation? First, that a just decision (including cases of fairness) can be completely justified with a certain interpretation of a general rule, by applying it to the individual situation. Clemency requires further explanation, yet such explanation can still be given. Moving off the limits of the given situation, we may find the rea-

sons when looking at it from a broader perspective. *Misericordia*, however, cannot offer any kind of impartial justification. Thus, while there is considerable scope, even in Stoic terms, for situational considerations when applying a rule in an individual case, *miseriordia* falls short of rational criteria. The problem, then, is not with the presence of emotions in persuasion, but the lack of relevant justification for the request supported by an appeal to pity.

*Argumentum ad misericordiam*, taken literally, is a contradiction in terms. The expression therefore refers to apparent arguments rather than genuine ones. As in other cases of emotional fallacies, the argumentative malpractice consists in keeping the appearance of argumentation, while actually seeking to manipulate the addressee's emotions in order to provoke an unjust decision. That happens by giving the impression that an undeserved disadvantage could be avoided (as in Example [1]) or remedied (as in Example [4]) by the addressee's not applying a rule or criterion relevant to the case.

## Conclusion

*Argumentum ad misericordiam* invites a virtue theoretical analysis in addition to a purely logical one, as the concept of *miseriordia* stems from such a background. Adopting such an approach, the recent scholarship of Walton, Hansen, Kimball and Aberdein offers considerations on pity that contribute to a more nuanced assessment of appeals to emotions in an argumentative context. The merits of their work notwithstanding, I have in this paper argued for a more narrow, and indeed a more traditional understanding of *ad misericordiam*, which I regard as a sub-class of appeals to pity, and one that is inherently fallacious.

What I find distinctive about *ad misericordiam* within the category of appeals to pity is that here the moral element is not, or not only, supervenient to the argumentative aspect, but actually builds into it. That is due to the fact that *ad misericordiam* calls for pity in the context of decision-making where justice would require the application of a rule or standard, and urges a decision *contra legem*. Thus, the fallacy results from the proponent's attempt to impose a different moral framework on the assessment of the situation. In other words, an *ad misericordiam* is an irrelevant argument deployed in a case where the criteria of relevance are defined by justice. This is not to say that there is no scope for individualising the standards of decision (as in the cases of fairness and clemency), but that would require justification, which the proponent fails to provide.<sup>5</sup>

N O T E S

<sup>1</sup> For a similar example see Tindale (2007: 114–115). A number of examples from earlier textbooks are compared in Walton (1997: 15–20).

<sup>2</sup> Similarly Tindale (2007: 113): “There are circumstances in which it will be legitimate to awaken the appropriate sensibilities in an audience in order to induce them to think seriously about an issue and act accordingly.”

<sup>3</sup> See, however, Margitay (2007: 543).

<sup>4</sup> It should be noted that Hansen uses the term ‘*ad misericordiam*’ to avoid the negative connotations of ‘pity’ (cf. Hansen, 2000, p. 171) rather than as a reference to the Stoic concept that I think is key for understanding the *ad misericordiam* fallacy. In contrast, I am using the term ‘appeal to pity’ with more or less the same reference, to make clear that *ad misericordiam* fallacies are only a sub-class of that argument scheme.

<sup>5</sup> Earlier versions of this paper were presented at the Philosophy of Argumentation workshop convened by M. Hinton, within the PhiLang 2017 conference, at the University of Łódź, and the Work-in-Progress Seminar of the Hungarian Academy of Sciences, Institute for Legal Studies. I am indebted to the participants of both workshops, and especially to Sz. Tattay and the anonymous reviewer of this journal, for their comments and advice, which proved invaluable in helping my thoughts take shape.

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