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The Textbook Treatment

The *argumentum ad misericordiam*, or appeal to pity, is standardly listed as one of the fallacies in twentieth-century logic textbooks.[1] The following two textbook accounts of the fallacy, each of which covers about half a page, are highly typical of the entries one finds.[2]

Kaminsky and Kaminsky (1974, p. 46) define the appeal to pity (*argumentum ad misericordiam*) as the type of argument that "makes an unwarranted appeal to obtain sympathy for the cause or demands of an individual or a group." They give the following example (p. 46):

> *Case* 1.1: We must give the engineering position to Henry Jones. After all, he has six children to feed and clothe.

Conceding that sometimes the appeal to pity is viewed as warranted on humanitarian grounds, Kaminsky and Kaminsky add that logical considerations in this case suggest that if Mr. Jones is not qualified, and the job requires a qualified engineer, then Jones should not get the job. Hence the appeal to pity in case 1.1 is fallacious.

Crossley and Wilson (1979, p. 40) characterize appeal to pity, or "playing on your feelings" as "a technique for bypassing one's thinking abilities." They give the example of the following speech, given by a senior citizen to a group of city councilors (p. 40):

> *Case* 1.2: How could anyone consider the unreasonable increase in the price of senior citizen bus passes from $10 to $20 a year? Are you not aware, my dear friends, that

> you are deliberately penalizing that small and helpless group of older people who built this city of ours? There are many of us who scrimp and save on our meager incomes just to make ends meet—and you want to impose another heavy burden on us at a time when we can hardly afford to keep ourselves alive. I plead with you to reconsider this proposal. If you won't do it for me, then do it for an older loved one who needs your support.

The fallacy in this case, as Crossley and Wilson see it (p. 40), is the speaker's use of "highly emotive terminology" to "play upon the hearer's feelings" to gain acceptance of his conclusion. They warn the reader to try to avoid "irrelevant considerations and illegitimate appeals" (p. 40).

In this case, it is not so clear that the appeal to pity is altogether irrelevant or illegitimate. But even though much depends on the context, it is not too hard to see what Crossley and Wilson are driving at.

1. IRRELEVANCE

In the modern textbooks where *ad misericordiam* is recognized as a distinctive fallacy in its own right under that name, in fact the leading characterization of it as a fallacy is as a failure of relevance. Relevance is not defined in these textbooks, in any general way. But most of them take their cue from Aristotle's fallacy of *ignoratio elenchi*, defining the fallacy as a failure to prove the conclusion an arguer is supposed to prove.[3] Although Aristotle did not include appeal to pity in his list of fallacies—see chapter 2, he did define the fallacy of *ignoratio elenchi*, in *On Sophistical Refutations*, as the failure to refute the proposition you are supposed to refute, in a dialectical exchange.[4] The problem is that this is broad failure that could include all kinds of fallacies. But at least it gives us a specific clue why *argumenta ad misericordiam* might be thought generally to be fallacious.

Joseph (1916, pp. 590–91) classifies the *argumentum ad misericordiam* under the heading of *ignoratio elenchi* or irrelevance—"proving another conclusion than what is wanted." Thus Joseph sees the *argumentum ad misericordiam* as an inherently fallacious type of argument. He illustrates it using the classic case of Socrates' refusal to use this kind of argument, as described in the *Apology*:

> Subterfuges of that kind are however so frequent a resource of the orator, that it is hardly necessary to illustrate them. Every reader of Plato's *Apology* will remember how Socrates refused to appeal to his judges with tears and entreaties, or to bring his wife and children into court to excite their commiseration; for his part was to persuade them, if he could do it, of his innocence and not of his sufferings.
>
> Such appeals as Socrates declined to make are sometimes called *argumenta ad misericordiam*, arguments addressed to show that a man is unfortunate and deserves pity, when it ought to be shown that he is innocent, or has the law on his side.

Subsequent textbooks that also cite the case of Socrates' refusal to appeal to pity in the *Apology* include Copi (1961, p. 59), Carney and Scheer (1964, p. 24), and Frye and Levi (1969, p. 221). I will comment further on this passage from the *Apology* in the historical considerations on appeal to pity in chapter 2.

Joseph and a later text, Castell (1935), share a similar account of *ad misericordiam* as a fallacy of irrelevance. But there are some differences in how they define the *argumentum ad misericordiam*. Both define it as appeal to pity, but Castell also describes it as an appeal to sympathy.

Castell (1935, p. 31) defines the *argumentum ad misericordiam* as an inherently fallacious type of argument where "appeal is made to one's sense of pity." Castell (p. 31) sees the fallacy as a failure of relevance—more specifically, a failure to produce relevant evidence, accompanied by an attempt to cover up the failure rousing (irrelevant) feelings of pity:

> To show that some proposition should be believed, one should produce evidence in the light of which the said proposition is more probable than any other one. Such a procedure may be inconvenient, difficult, or impossible. Under such circumstances attention may be drawn to some otherwise irrelevant facts which rouse one's feelings of pity in such a manner that one is prepared to agree to the truth of the proposition being argued for, despite the lack of relevant evidence. One is thereby convinced by an Argumentum ad Misericordiam.

Interestingly, Castell adds (p. 31) that a lawyer who "convinces a jury that the accused is not guilty, by playing on their sympathy"

also commits the *ad misericordiam* fallacy. This wording seems to suggest that in the *ad misericordiam* argument, there may be little or no difference between pity and sympathy, or at any rate, that one can be used as a fallacious irrelevant appeal, just as much as the other, an assumption we will later question.

Little, Wilson, and Moore (1955, p. 38) define the *argumentum ad misericordiam* in such a way that it can be either an appeal to pity or an appeal to sympathy:

> If a person uses an appeal to sympathy or pity instead of presenting relevant evidence, he is committing the fallacy called *argumentum ad misericordiam*. This kind of argument is frequently heard in courtroom trials, when an attorney for the defense may ignore the relevant facts and try to get favorable consideration for his client by playing upon the sympathy of the jury.

Although they explicitly state that sympathy is "a noble human emotion" that should "motivate many of our actions," they see the fallacy of *ad misericordiam* as occurring where appeal to sympathy replaces or obscures "relevant facts" (p. 39).

This account too appeals to the concept of relevance as an explanation of why the *argumentum ad misericordiam* is fallacious. But it also brings in an additional dimension of suppressing or ignoring facts, suggesting appeal to sympathy is not "factual evidence."

Another textbook defines *ad misericordiam* as appeal to compassion or sympathy, instead of pity. Toulmin, Rieke, and Janik (1979, p. 175) cite a fallacy called *appeal to compassion*, which they see as "not necessarily fallacious," but is so in cases where "human sympathy" is used or played on, to obscure an issue. They give the following example (p. 175). The idea of obscuring an issue suggests irrelevance as being the basis of the fallacy:

> *Case* 1.3: Defense lawyers in criminal cases will often resort to this tactic, if not to convince the jury that their clients are innocent, at least to lessen their sentences. Thus, in defending a young car thief, a lawyer may underline the facts that his client came from a home where he was insecure and continually lonely; that his parents abused him, and he ran away from home to avoid this; that he fell prey to the influence of hardened criminals, who were the first persons to

> treat him with any appearance of kindness—and ask the court to take all these facts into consideration before pronouncing too heavy a sentence.

This case is an interesting one, rightly suggesting that appeals to sympathy are widely used in courtroom argumentation. But one aspect of it is puzzling.

While sympathy, compassion, and mercy may be appropriate at the sentencing stage of a trial, where leniency may be argued for explicitly and appropriately, the same kind of plea for compassion might be quite inappropriate at the earlier stage, where evidence is supposed to be used to decide whether the charge is justified.

One question about the *ad misericordiam* is whether it is only a fallacy because of a failure of relevance, or whether there could be other explanations for its being a fallacy as well. Frye and Levi (1969, p. 221) opt for the former account of the fallacy. They describe appeal to pity (*argumentum ad misericordiam*) as an "address to pity or sympathy." They write, "This case of irrelevant conclusion is distinctive merely for naming a specific emotion" (p. 221). According to this account of the *ad misericordiam*, it is only fallacious because of irrelevance, and comes entirely under the wider fallacy of irrelevant conclusion, except that a specific emotion (pity or sympathy) is aroused in order to avoid discussing the merits of a case.

2. APPEAL TO PITY AS INHERENTLY FALLACIOUS

Other textbooks portray appeal to pity as fallacious on the grounds that such an appeal to mere emotion is a failure to give (actual, factual) evidence. Some of these textbooks are pretty hard on the *ad misericordiam* argument, stating or implying that appeals to pity (compassion, sympathy, and the like) are inherently fallacious. The idea seems to be that emotions or feelings are worthless as evidence. This approach suggests a tendency, often prominent in Western thought since Plato, to condemn the emotions as inherently misleading or untrustworthy.[5] The general approach presumed here is one of driving a sharp wedge between emotion and reason, as reminiscent of the Stoic view of emotions found, for example, in Seneca (see chapter 2).

Several textbooks define the *argumentum ad misericordiam* in a way that presumes that argumentation of this type is inherently fallacious. This approach seems to obviate the need to even

give any explanation or justification for evaluating specific instances of the *ad misericordiam* as fallacious.

Copi (1961, p. 58) defines the *argumentum ad misericordiam*, which he translates into English as "appeal to pity," as "the fallacy committed when pity is appealed to for the sake of getting a conclusion accepted." This way of defining it makes the *argumentum ad misericordiam* inherently fallacious as a type of argument. For so defined, every argument that appeals to pity "for the sake of getting a conclusion accepted" is fallacious.

Another textbook that treats the *ad misericordiam* as a fallacy of relevance is Engel (1982). According to Engel (p. 181) the *fallacy of appeal to pity* exploits the emotion of sympathy "to win people over" by "playing on their emotions." Engel (p. 181) explains the Latin name of the fallacy, *argumentum ad misericordiam*, as meaning "literally, an argument addressed to our sense of mercy." The reason such arguments are fallacious, according to Engel (p. 182) is that "however moving they may be, they may be irrelevant to the issues, in which case they should carry no weight with us." Engel's account is a good example of a textbook treatment that cites only irrelevance as the factor that makes an appeal to pity fallacious. That is, he does not consider the possibility that an appeal to pity could be relevant, but still be fallacious, in some cases. Neither does Engel include or consider cases where an appeal to pity is nonfallacious.

Clark and Welsh (1962, p. 141) also describe the *argumentum ad misericordiam* as a fallacious appeal to pity that appeals to emotion instead of offering proof of a thesis:

> The *argumentum ad misericordiam* (roughly: appeal to pity) appeals to the emotions of the hearer instead of offering proof of its thesis. A lawyer, for example, would commit this fallacy were he to show that a man is unfortunate or had bad luck or deserves sympathy when he should be showing that he was innocent or illegally charged; or if he shows that a man had served his country well when what is needed is proof that he is innocent of tax evasion.

The example given seems to evoke irrelevance as the basis of the failure of the argument. But it also presumes or suggests that any appeal to emotions, like pity, is a failure to offer proof of a thesis.

Hurley (1991, p. 112) is an instance of a recent textbook that still continues to characterize the *argumentum ad misericordiam* or appeal to pity as being a fallacy, implying that it is always wrong to appeal to pity in an argument:

> The fallacy of appeal to pity occurs whenever an arguer poses a conclusion and then attempts to evoke pity from the reader or listener in an effort to get him or her to accept the conclusion.

However, a difference between Hurley's treatment and that of some other textbooks that also treat appeals to pity as inherently fallacious is the following point. These other textbooks define the type of argument equated with *ad misericordiam* or appeal to pity as being irrelevant appeals, attempts to cover up for lack of relevant evidence, and the like. Hurley does not build the inherent fallaciousness into the definition of the type of argument categorized by the name *argumentum ad misericordiam*. Instead he defines it as evocation of pity to try to get a respondent to accept a conclusion, presuming that this type of tactic in argumentation is generally or inherently fallacious.

The Clark and Welsh definition leaves more room for the appeal to pity to be used nonfallaciously. It seems to leave open the possibility that an appeal to pity might be all right logically if it appealed to emotion, but did not do so in place of offering proof for a thesis. According to the Hurley definition, however, any evoking of pity to get a listener to accept a conclusion is fallacious.

Soccio and Barry (1992, p. 134) define *the fallacy of pity* as "an argument that arouses compassion to advance a conclusion." Like the accounts of Copi and Hurley, this definition of the *ad misericordiam* is dismissive, in the sense that it builds a blanket rejection of appeals to pity into the definition itself as fallacious. It obviates the need to deal with appeals to pity on a case by case basis, or to consider the possibility that such appeals could be legitimate evidence, or good reasons for drawing a conclusion, or choosing a course of action, in some instances.

3. NOT ALL CASES FALLACIOUS?

Many of the more recent textbooks have become more sophisticated and less dismissive in their treatments of the *ad misericordiam*. In varying degrees, they have become more receptive to leaving open the possibility that *ad misericordiam* arguments could be nonfallacious in some cases.

Harrison (1992, p. 493) defines the appeal to pity as a fallacy that "occurs to the extent that, instead of giving evidence to support a conclusion, an arguer appeals merely to the pity of the receiver to

accept the conclusion." The idea is that the fallacy occurs because there has been an appeal to pity made in place of giving evidence to support a conclusion. This suggests that an appeal to pity could never, in itself, be a kind of evidence, even of a weak sort, to support a conclusion—a dismissive kind of approach.

However, Harrison does not claim that all appeals to pity are fallacious, and cites a case (p. 494) where an appeal to pity is put forward as an excuse on reasonable grounds, as part of a moral argument.

When, then, are such appeals fallacious? Harrison judges them so (p. 493) when they are irrelevant to support the conclusion that is supposed to be at issue in a case. Thus Harrison's treatment combines irrelevance with lack of evidence as a basis for judging *ad misericordiam* arguments fallacious, but in a way that leaves some room for nonfallacious cases.

Damer (1980, p. 87) defines the fallacy of appeal to pity as "attempting to persuade others of one's point of view by appealing to their sympathy instead of presenting evidence." This seems to imply that the type of argument described is inherently fallacious. However, Damer explicitly denies this, claiming that "there may be some situations" where appeal to pity is relevant (p. 87), especially in moral reasoning (p. 88). In such cases, however, Damer contends that the arguer who appeals to pity should make clear why the appeal is relevant.

This seems to be a burden of proof kind of approach. That is, Damer appears to suggest that there should be a general presumption in place that appeals to pity are, or tend to be, irrelevant in argumentation. However, this rule or warning is not absolutely true, without qualifications. Hence if an appeal to pity is made in a given case, arguers who made it should be prepared to answer the objection that it is irrelevant, and should even answer this objection in advance, at the same time they put the appeal to pity forward as an argument.

Some of the more recent textbooks distinguish between appeal to pity and appeal to mercy, as subspecies of the *argumentum ad misericordiam*. Moreover, some of these texts do not make the claim that all such *ad misericordiam* arguments are fallacious. Barker (1965, p. 193) claims that a distinction can be made between the fallacious and nonfallacious uses of the *ad misericordiam* by citing several contrasting types of cases:

> An appeal to pity or a plea for mercy is not a fallacy unless it is claimed to be a logical reason for believing some conclusion.

> The *ad misericordiam* fallacy is committed by the employee who argues "Please, Boss, you can see that my work is worth higher wages; I've got many hungry wives and children to feed." And a criminal would be committing this fallacy if he tried to offer evidence about his unhappy childhood as a reason why the court should believe that he did not perform the killings of which he stands accused. (However, it would be no fallacy for him to offer evidence about his unhappy childhood in trying to show that he deserves to be treated leniently.)

This approach is a big step forward from so many of the earlier texts, where any appeal to pity or *argumentum ad misericordiam* is described or even defined as being inherently fallacious.

Vernon and Nissen (1968, p. 150) take this a step further by redescribing and qualifying the fallacy as "illicit appeal to pity," implying that appealing to pity can be nonfallacious in some instances. They give two contrasting cases to support this claim (p. 150).

> This long-familiar fallacy is sometimes referred to by a Latin name, *ad misericordiam*, or "(appeal) to pity." The name we have used is less misleading, however, since not all appeals to pity in an argument are illicit, or irrelevant. In the course of an argument for euthanasia, for example, it would not be irrelevant to call attention to the suffering of a person in the last stages of an incurable cancer. However, such appeals are often used irrelevantly. An example is the student who tries to persuade his instructor to change his grade from a *D* to a *C* on the ground that, if he receives a *D*, his parents will cut off his allowance, or he will be ineligible for a fraternity membership. Such considerations, however moving, are of course quite irrelevant to the student's grade, which is nothing more or less than an indication of academic performance.

Here a fallacious case (see section five below) is contrasted with the case of an argument for euthanasia, where appeal to pity (or compassion, or sympathy, even more plausibly) could be relevant. It is not hard to imagine that there must be some cases of arguments where appeals to feelings like sympathy could be quite appropriate, and relevant to the conversation or issue being discussed.

Yanal (1988, p. 392) has a generic category of fallacies called *appeals to feeling*, which he sees as generally being bad arguments.

However, he does claim that some appeals to feeling are nonfallacious. The example he gives is a charitable appeal that would be classified as an *ad misericordiam* by most textbooks that include this fallacy:

> There are cases in which some sort of appeal to feeling produces an acceptable argument: *There are thousands of undernourished, diseased babies in Ethiopia. So it is urgent that you donate to the Red Cross.* This is a kind of appeal to feeling. It summons up images of starving, dying children, hence feelings of pity and (the arguer hopes) the desire to help them. It makes the listener disposed to accept the conclusion. Yet the argument does provide a reason to donate to the Red Cross: There are thousands of undernourished, diseased babies in Ethiopia. In other words, this argument is not a fallacious appeal to feeling, even though feelings may well be aroused in the course of considering the argument.

This makes a good deal of sense, and as we will see below (section seven), a consideration of charitable appeals does not take long to establish that such appeals to feelings can be a legitimate and appropriate part of the sequence of argumentation.

Of course, once this possibility is admitted, the job of evaluating specific cases of the *ad misericordiam* becomes nontrivial. One text, in particular, acknowledges the problem.

Munson (1976, p. 269) stresses that identifying the *ad misericordiam* can be difficult in some cases. He presents an example (p. 269) to show that some appeals to sympathy can be relevant arguments:

> The *ad misericordiam* is a particularly tough fallacy to identify in some cases. Not all mention of factors which appeal to our sympathies is irrelevant, and the trick is to distinguish legitimate appeals from spurious ones. Suppose someone argued, for example, that our system of welfare payments ought to be changed because it produces much misery and suffering. As evidence, he describes cases in which people on welfare are harshly and unfairly treated. The situation he presents is a moving one, but is he guilty of using an *ad misericordiam* argument? Not necessarily. One of the standards by which social policies and institutions are judged is the extent to which they alleviate human suffering. Accordingly, the fact that people are

made miserable by a system not only elicits our pity; it counts as a reason for altering the system. It would be quite relevant in an argument demanding a change in welfare policies and practices.

Even a brief consideration of such a case suggests that appealing to pity could be a relevant argument in some cases.

And once you start to consider even some of the standard cases given in the logic textbooks to illustrate, in more depth, the *ad misericordiam* fallacy, the idea of this type of argumentation as being inherently fallacious starts to crumble.

This suggests that what we need to do is to survey and examine some of these key cases in greater detail and depth, to try to sort out between the fallacious and nonfallacious aspects of the *argumentum ad misericordiam* in each case. Munson's surprising remark that appeal to pity can be quite relevant as an argument in some cases puts the problem in a new perspective. If we can no longer be dismissive with critically evaluating appeals to pity as arguments, a deeper analysis of them is called for.

4. LEGAL CASES

One of the most plentiful types of cases of *ad misericordiam* cited in the textbooks are the legal cases, where typically the defendant in a murder trial appeals to pity in an emotional way. As we will see in chapter 2, this tactic has been well known and used in the courts since ancient times. The modern textbooks, however, have generally presumed that the *ad misericordiam* argument can be generally categorized as a fallacy in legal argumentation, on the grounds that it is not relevant evidence in a court of law.

Copi (1961, p. 58) gives as an example of the *argumentum ad misericordiam* the address of Clarence Darrow to the jury, in defense of Thomas Kidd, an officer of the Amalgamated Woodworkers Union, who was indicted on a charge of criminal conspiracy:

> *Case* 1.4: I appeal to you not for Thomas Kidd, but I appeal to you for the long line—the long, long line reaching back through the ages and forward to the years to come—the long line of despoiled and downtrodden people of the earth. I appeal to you for those men who rise in the morning before daylight comes and who go home at night when the light has faded from

> the sky and give their life, their strength, their toil to make others rich and great. I appeal to you in the name of those women who are offering up their lives to this modern god of gold, and I appeal to you in the name of those little children, the living and the unborn.

This argument could be described as a kind of dual appeal to pity and sympathy. To the audience of those who see themselves as being in the downtrodden working person class cited, the appeal would be to sympathy with their fellow workers. To those who do not perceive themselves as being in this class, the appeal would be pity for these poor souls. Either way, the argument finds a receptive audience whose feelings it would appeal to compellingly.

This same case was previously cited by Werkmeister (1948, p. 59), who described the *argumentum ad misericordiam* as an appeal to both emotions of pity and sympathy.

Another example (Little, Wilson, and Moore, 1955, p. 39) suggests consequences being appealed to as an instance of the *ad misericordiam* fallacy:

> *Case* 1.5: The attorney for the defense may, for example, bring into the courtroom the poorly-dressed wife of the defendant, surrounded by pathetic children in rags, and thus say in effect to the jury, "If you send my client to the electric chair, you make a widow of this poor woman and orphans of these innocent children. What have they done to deserve this?"

This very same type of case is also cited by Blyth (1957, p. 37), who describes it as an *argumentum ad misericordiam* because pity is "substituted for relevant evidence." Because of the common use of argument from consequences, this case seems similar to the *ad misericordiam* in the student's plea case. But there is a difference. In this case, the trial is supposed to determine guilt or innocence, and the appeal to pity does not seem relevant to this legal finding, one way or the other. As Blyth puts it, it is not "relevant evidence."

The case cited by Copi is somewhat different. It is more of a flowery appeal using emotional language and a kind of rhetoric of belonging and sympathy. Yet the problem in both cases seems to be one of questionable relevance.

Manicas and Kruger (1968, p. 346) define the *argumentum ad misericordiam* disjunctively as "the appeal to sympathy or pity."

They cite as an example "the appeal that the lawyer uses when he introduces the accused's wife and children." They see such an appeal as irrelevant in one sense, yet relevant in another (p. 346):

> The fact that the accused has a wife and many children, however, is irrelevant to whether or not he is guilty, though it might have a bearing on the punishment to be meted out *if* the relevant facts show that he is guilty.

An argument that is relevant at one stage of a trial may not be relevant at another stage. This suggests that relevance is best seen as contextual—that is, as depending on the context of dialogue or conversation, and in particular, on the stage a dialogue exchange has reached.

The problem indicated here is that appeal to pity could be relevant as an argument, at the appropriate stage of the development of a dialogue exchange. So it should not be dismissed, at least automatically, as fallacious on grounds of irrelevance.

Fearnside (1980) describes the *argumentum ad misericordiam* as an "appeal to pathetic circumstances" or "crybaby" argument. He is careful to indicate that this type of appeal is not always inappropriate in legal argumentation. He cites the difference in a criminal trial, between the stage of determining guilt and the latter stage of sentencing. At the one stage, the appeal to pathetic circumstances might be quite irrelevant, while at the later stage, it could be appropriate:

> *Case* 1.6: Take the criminal prosecution in which conviction will mean great hardship for the accused and his family. The jurors have sworn to make a finding of "guilty" if and only if guilt is shown by evidence beyond reasonable doubt; otherwise they are to find "not guilty." Appeals to pathetic circumstances are not a proper way to influence the jury's determination of guilt, and some of the rules of evidence are framed to limit their use. Since a trial at law is often closer to a dogfight than a search for truth, one may expect to find counsel for the defense busy making appeals to sympathy wherever possible. And the jury, unfortunately and despite all oaths, may well be swayed by these considerations irrelevant to the question "Did the accused do the act charged?"

> Incidentally, where a defendant is found guilty and special hardships are involved, these are proper matters for the judge to take into account when choosing between the alternatives of fine, imprisonment, or suspended sentence. The law provides counsel with opportunity to bring out mitigating circumstances *after* the question of guilt is decided.

This makes the good point that an *ad misericordiam* argument in a legal type of case could be relevant at one stage of the proceedings, yet the same appeal could be irrelevant at another stage. If so, the textbooks seem to be on shaky ground in their tendency to dismiss *ad misericordiam* arguments as irrelevant and fallacious generally in legal argumentation.

One textbook, however (Harrison, 1992, p. 493), seems to take the line that even after an admission of guilt, a plea for mercy in sentencing should be judged as a fallacious appeal to pity. Harrison cites the following case where a lawyer "all but weeping" pleads for his client:

> *Case* 1.7: My client did in fact murder Carlos Cervera in an attempted robbery. And you have justly found him guilty of that crime. No matter what you do now, Mr. Cervera cannot be returned from the dead. Yet my client has young children. Think of your own children when you vote on whether to sentence my client to be executed or not. Therefore, I beg you not to sentence my client to death.

Evaluating the plea for mercy in this case, Harrison (p. 493) comments:

> Touching as this scene might be, merely appealing to the pity of the jury is irrelevant to support the conclusion of the defense lawyer. Whether the defendant ought to be executed or not is a matter of applying the law in a consistent way to a particular situation. Of course, in a particular case there might be legitimate considerations mitigating against imposing the death penalty. But merely feeling pity for that individual is not one.

This evaluation seems to go against the general presumption in law that pleas for clemency or leniency in sentencing are, in many cases, given some consideration, once the charge has been determined and the person found guilty. However, Harrison does admit that, in some

cases, mitigating circumstances might be legitimate considerations.

Perhaps he does not think that this case is one of these cases. Or perhaps he thinks that "merely feeling pity" should not be the basis of such an appeal. At any rate, there appears to be some uncertainty in the textbooks on when appeal to pity is appropriate or not as an argument in a legal context.

5. THE STUDENT'S PLEA CASE

Castell (1935, p. 31) cites the case of a student's appeal to pity to try to save himself from failure, classifying it as a fallacious *argumentum ad misericordiam*:

> *Case* 1.8: A student who tries to save himself from a failure by reminding his instructor how disastrous such an event would be, is trying an Ad Misericordiam. The unfortunate consequences entailed by any fact do not render it any less a fact. The failure to see this is the essence of the Ad Misericordiam fallacy.

Although that is all Castell has to say about the case, it is interesting to see that he sees the fallacy as utilizing a species of argumentation from consequences. Castell classifies the *ad misericordiam* fallacy as a species of failure of relevance, or failure to present relevant evidence to prove a point at issue. Hence the failure in this case turns on the irrelevance of the unfortunate consequences to the student. As Castell puts it, the consequences do not render the fact of the student's poor showing on his assignments "any less a fact."

What is quite remarkable in Castell's brief treatment of this case of appeal to pity is that he clearly identifies it as a kind of argument from cited consequences. This comes to be of some importance, as shown in section eight below.

Little, Wilson, and Moore (1955, p. 39) state their version of the student's plea case as follows:

> *Case* 1.9: A student's mother says to a faculty member, "How can you fail my boy, Professor Flunkmore? You have always been a good friend of the family, and you know the financial difficulties we are having in sending him to college."

This time the student's mother is doing the pleading. In addition to citing financial difficulties, however, she also tries to appeal to the

professor's relationship as a friend of the family. This is perhaps a somewhat different type of appeal from the *ad misericordiam*, and would nowadays be definitely seen as a breach of ethics. On many campuses, there are now rules prohibiting direct personal relationships, like those of family ties, between professors and students.

However, the financial difficulties aspect is definitely a use of appeal to pity. It is similar to Castell's case in that it involves citing of adverse consequences.

An even more detailed account of this type of case is given by Blyth (1957, p. 38). Blyth also sees it clearly as a kind of argument from consequences:

> *Case* 1.10: There is probably no person or group charged with the enforcement of a set of rules or laws that has not been exposed to the pressure of an appeal to pity. Suppose, for example, that a student has violated an explicit rule of an honor system under which examinations are administered. Even though there is no dispute over the facts of the case and the rules clearly prescribe the penalty to be imposed, there will almost certainly be an appeal to pity. The guilty party will point out all the dire consequences of an adverse decision even though the penalty be relatively mild. Suppose, for instance, that the penalty is that of receiving a failure in a course. This would have several consequences. The student would receive no credit for what he had done. He would have to repeat the course or take another. This might involve additional financial strain. He would always have a black mark on his record which might interfere with his future career. Through such an appeal it is hoped that the decision of the honor court may be affected. [p. 38]

Blyth's description of some of the context of this kind of case as an event that occurs in an institutional framework of rules and established procedures is revealing. The professor has the job of grading assignments on the basis of merit of performance, and is supposed to do so in a fair way that does not give special treatment to one and not to others. To assure this, rules are in place that are supposed to apply equally to all students. Blyth (p. 38) articulates the generality of the institutional situation very well, commenting that penalties for violation of a rule or law, by their nature, have bad consequences for

the offender. Thus citing these bad consequences after having violated the rule is irrelevant, if the claim is that the rule was not really violated. This is just not the right sort of evidence to back up the claim.

Evidently there is more to this story, however, for as Blyth (p. 39) notes, the law does describe some discretion in determining the severity of a penalty. Thus it may be relevant, in a legal case, for example to recommend or to plead for mercy due to undue hardship.

Here we seem to have a possible distinction between appeal to mercy and appeal to pity. In law, mercy appeals may be appropriate at the later, sentencing stage of the case, even if appeals to pity may be irrelevant during the earlier stages of the trial, where determination of the charge is the issue.

However, in the cases of *ad misericordiam* typically cited in the textbooks, while the excuses given could be classified, at least partly perhaps, as appeals to mercy, they tend to be very weak appeals, made in a context where they would not seem to be appropriate at all.

For example, Rescher (1964, p. 79) defines the *argumentum ad misericordiam* as an argument where the premises make an appeal to pity "in order to secure acceptance" of the conclusion. Rescher sees the fallacy of misuse of this argument as a failure of relevance, illustrated by the following case (p. 79):

> *Case* 1.11: Surely my paper is a better job than that D grade indicates, Mr. Instructor. I'm working to support myself at school and don't have as much time for reference-work as other students do. And my uncle who is contributing to my support will be very upset with me if I don't get at least a C in this course.

These are pretty weak excuses, and would not be appropriate in making a plea for a better grade just as a paper with a D grade is being returned to the student. Certainly, it is not too hard, at least, to imagine circumstances in which such an appeal to pity would be inappropriate as an argument for getting a better grade on a paper.

A different variation on the same case is given by Frye and Levi (1969, p. 221). They describe the *argumentum ad misericordiam* as an address to pity or sympathy using emotions to argue for an irrelevant conclusion:

Case 1.12: It has happened that a student anxious to receive a certain grade in a course enters into a discussion with his instructor, avoiding the question of what grade he has earned, and devoting himself to a sorrowful story of what will happen to him and his parents and the neighbors if he receives a lower grade.

Here the case is described, so that the appeal to pity or sympathy is fallacious, on the grounds that the student avoids the question of what grade he has earned—that is, there is a failure of relevance.

Michalos (1969, p. 370) offers a few other variations on the same theme:

Case 1.13: A student who missed practically every class and did nothing outside of class to master the material notified me that if he failed the course he would probably be drafted into the army. Others have been faced with losing their parents' support, being thrown out of school, losing their girls or their fraternity membership, etc. Even *after* the appeal to *pity* is explained to them, they come up with these howlers! But, of course, the question at issue in such cases is not what happens if the student fails, but whether or not he deserves to fail. The appeals to one's compassion are stimulating but irrelevant.

As anyone knows, who has had much experience in teaching logic, it is remarkable how some students will persist with this kind of appeal to compassion line of argumentation, even after the *ad misericordiam* has been explained to them as a fallacious kind of argument.

Munson's version of the case is this (Munson 1976, p. 268):

Case 1.14: If I don't pass this course, I won't be able to graduate in the Spring, and I don't have enough money to go to summer school. Really, Professor Ruston, you just *have* to give me a C.

This version has the student putting more pressure on the professor by concluding, "you just *have* to give me a C." Like the last three cases, the appeal is pretty weak, and it would not be too difficult to get students in a logic class to accept the classification of these cases as fallacious appeals to pity.

A subtlety of the student's plea type of case is that the appeal to pathetic circumstances may be relevant to the argument. This aspect is noted by Manicas and Kruger (1968, p. 346) in their version:

> *Case* 1.15: [This is] the appeal that students use when they ask to be excused from an assignment or to be given a passing grade because of some personal misfortune. [In this case], the draft plight of the failing student is not relevant to the grade he *earned* in the course—if grades we must have—though his plight is very relevant to the *need* he has for the passing grade.

In one sense, the student's citing of his plight is relevant—it is relevant to his *need* of the passing grade. In the context of a plea for help to attain some need or goal, the appeal to pitiable circumstances does have a kind of practical relevance. Moreover, the plea could be relevant in various other ways. Perhaps the personal misfortune could involve a legitimate excuse—for example, to be given a deferred exam, on the grounds of some medical disability, or legitimate kind of exceptional situation recognized in the university calendar. So failure of relevance, at any rate, does not seem to be the whole story of what makes this type of plea a fallacious argument.

Using a somewhat different type of case, Runkle (1978, p. 292) argues that the *argumentum ad misericordiam* can be relevant and reasonable as one factor to be taken into account:

> *Case* 1.16: There are times, of course, when appeals to sad circumstances are not entirely irrelevant. One may argue against a proposed tuition increase by citing poverty-stricken students who just barely get by at the *present* rate. That there are some students who could not pay more or could do so only at great hardship is relevant to the issue whether tuition should be raised. The appeal to their plight becomes fallacious in the ad misericordiam manner only if it is presented as the *only* relevant fact and in such a way as to generate a lot of emotion. When pity is aroused in order to produce some kind of passionate oversimplification, a fallacy is present.

What this type of case suggests is that an appeal to pity can be relevant in some cases, but it could still be a fallacy, due to other factors. These other factors relate to how the argument is presented. If it is presented as the only relevant argument, this would be a fallacy of

oversimplification of the issue. The problem in this kind of case is not one of irrelevance, but one of giving due weight to an argument that is only one factor among many that ought to be taken into account.

It is not hard to see how the student's plea type of case came to be cited by so many of the textbooks. The textbook writers, as teachers in the universities, are constantly confronted with all kinds of subtle, and sometimes ingenious and fantastic variations on this appeal to pity argument. They are forever being put in the position of having to judge these excuses, and make rulings, according to university regulations.

But if you think of it, anyone in any kind of position of authority, who has to make rulings or implement them, will be familiar with this kind of problem of dealing with appeals to pity, sympathy, and compassion. It seems to be a nontrivial type of decision or judgment, and one that can only be made on a case-by-case basis.

6. EXCUSES AS ARGUMENTS

Excuses have had a longstanding place as legitimate appeals, in the right circumstances, in both ethics and the law. Standard lists of legal excuses often include items like the following: ignorance, immaturity, insanity, automatism, duress, necessity, coercion, compulsion, mistake, and accident (H. M. Smith, 1992, p. 345).

In law, excuses have long been recognized as a way of reducing or absolving guilt for an alleged crime. For example, even if a defendant in a murder case admits that he killed the victim, he can claim to be not guilty of murder on grounds of insanity. In effect, insanity, often defined in law as not knowing the nature and quality of the act, functions as a kind of excuse that lessens or absolves responsibility for an action.

The presentation of an excuse as a type of argument, in such a case involves a shifting of the burden of proof. For example, in law when a charge of murder is made, the proponent who brought the charge forward has the burden or proving it (beyond a reasonable doubt). But the burden shifts, if the defendant brings forward an insanity defense. Then the defendant has the burden of proving that he or she was insane, at the time the crime was committed. And this is the way excuses work generally. They provide a defense, often in the form of being a claim to be an exception to a rule, which requires the pleader to make a case by providing some sort of justi-