On Appeals to Non-existent Authorities as Arguments from Analogy

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Abstract: Herein, I consider arguments resting on an appeal to a non-existent authority as a species of argument from authority, and ultimately show them to be reliant on arguments from analogy in their inferential force. Three sub-types of argument are discussed: from authorities as yet unborn, no longer living, or incapable of ever doing so. In each case it is shown that an element of arguing from analogy is required since there can be no direct evidence of any assertions of the source. In conclusion, it is suggested that such steps of analogy are employed frequently in traditional arguments from authority.

Résumé: Ici, je considère les arguments fondés sur un appel à une autorité inexistante comme une espèce d'argument d'autorité et je montre en fin the compte que leur force inférentielle repose sur des arguments par analogie. Je discute de trois sous-types d'arguments: ceux d'autorités encore à naître, d'autorités ne vivant plus et d'autorités incapables de vivre. Dans chaque cas, il est démontré qu'un élément d'argumentation par analogie est requis puisqu'il ne peut y avoir de preuve directe d'aucune affirmation provenant de la source. En conclusion, je suggère que des arguments par analogie sont fréquemment utilisés de cette façon dans les arguments traditionnels d'autorité.

Keywords: appeal to expert opinion, appeal to authority, ad verecundiam, non-existent authorities, argument schemes, originalism

1. Introduction

The argument from authority has received a good deal of attention in recent years from argumentation scholars, much of it relating to

the different types of authority it is possible for an individual or institution to possess, and what characteristics such an authority must demonstrate in order to be considered an expert (Goodwin 2011, Quast 2018), much also to how strong such arguments can be (Hinton 2015, Botting 2018, Liao 2020). Despite the fact that such appeals are often traced back to the Lockean fallacy of *ad verecundiam*, which is really something quite different, the appeal to authority is, in fact, one of the most important, and essential, defeasible argument forms in human interaction: the entire foundation of education, of medicine, and, more generally, the division of labour which makes advanced society possible, rests upon the idea that certain individuals can be trusted to provide information which is reliable and can be safely acted upon; and the acceptance of other forms of authority underpins much of our social structure. No author, then, claims that appeals to authority are inherently fallacious—only that they might be if the source has the wrong kind of authority, or, indeed, none at all.

In this paper, I turn attention to one particular variety of appeal to authority which might well be thought especially vulnerable to accusations of fallacy, and that is the appeal to authorities which do not actually exist. I look at how such appeals are used in natural argumentation and investigate their full structure, comparing it to that of the standard appeal to an actual source, in order to consider whether they can ever constitute good arguments.

Such appeals seem to come in three varieties: to the as yet unborn, to the already dead, and to those who will never be either—the mythical, the legendary, and the fictional. There is a possibility for overlap between these groups: the dead may be mythologised, creating a fictional figure on the basis of a historical personage; and perhaps the unborn may be too, via prophesy of a messiah or chosen one. Indeed, the Messiah of Jewish tradition may be placed in any of the three groups, depending on one's perspective and beliefs.

The aims of the paper are, then, twofold: there is an examination of a form of argument, which I take to be quite popular, and of which, certainly, examples are plentiful and easily found, but which I suspect might more usually be dismissed as a rhetorical device rather than treated as a real argument. There is also, per-

haps more importantly, a reflection upon what light the structure of such reasoning might throw onto the wider class of arguments from authority.

2. Arguments from Authority

The literature on arguments from authority is extensive and wide-ranging, and I have no intention of trying to cover all of the angles from which they have been approached in recent research. Certain considerations which have direct impact on the discussion of arguments from non-existent authorities, the central concern of this paper, must, however, be examined.

Firstly, there have been a number of works making clear the distinction between the various types of authority which an individual may possess, with the most important division separating deontic from epistemic authority. Jean Goodwin distinguishes three main categories of authority and notes their relationship to Locke's famous fallacy: "the authority of command, the authority of expertise and the authority of dignity—the real *ad verecundiam*" (1998, p. 278). This last is frequently ignored: Walton focusses on the separation of administrative and cognitive authority (1992, p. 48), recognising that they are sometimes found in the same individual. The attention of argumentation researchers has mainly been on the second of these, the cognitive or epistemic authority, and that work is complemented by the vast wealth of studies into experts and expertise conducted by social epistemologists (e.g., Anderson 2011, Brennan 2020, Collins and Evans 2007). These lines are not always as distinct as they are sometimes painted, and the examples presented in the section below illustrate how the mix of epistemic and deontic authority is particularly potent when the authority is not a living person: even if the source is considered authoritative for reasons which might be called epistemic, the very fact of being cited as a source on the basis of reputation, image, or tradition, leads towards a deontic weight's being placed on their purported opinion. This leads into the next point.

Secondly, I make it clear at this juncture that I shall not engage in discussion of what makes a source an expert, how experts may be evaluated, or how compared with one another. These are issues

which I have addressed elsewhere (Hinton 2018a, 2018b, 2019) as have several of those cited above as well as the likes of Goldman (2001), Shanteau et al. (2002), and, more recently, Collins (2018) and Watson (2019), among many others. An expert is understood as someone in possession of epistemic or cognitive authority: someone regarded as an expert by whomever is making the argument. As I noted above, this does lead to many questions concerning the way in which they have obtained that authority and how others may recognise it, but these questions, while interesting and important, are irrelevant to an examination of the form of the argument: in the arguments considered herein, it is claimed that a source is an authority despite the fact that that source does not exist. What is most interesting here is to examine how such claims are possible, and upon what manner of reasoning they lie, rather than to investigate again the concept of expertise and the status of experts. Indeed, the structure of the argument itself is not much affected by exactly what is meant by 'expert', only the way of evaluating and responding to it.

Thirdly, one point which does not appear to have received a great deal of attention in the literature is the distinction between the source as person, and the source as statement. This is vital for our purposes here: all of the examples considered are of appeals to a person, precisely because the source as statement does not exist. I do not take a claim based on the writings of Aristotle to be an appeal to a non-existent authority simply because Aristotle is no longer alive: it would only be of interest here if it were a claim based on what Aristotle would have said on a certain question if he had said anything, when, in fact, he did not. One important result of making this distinction is the impact that it has on difficult questions concerning the relativity of expertise and whether or not figures from the past can be considered experts or not, given that their field of knowledge may have advanced beyond all recognition (see Seidel 2014). By keeping the person and their pronouncements separate we can comfortably say that Isaac Newton was a great expert but some of his work is no longer authoritative, or that the opinion of the cleverest child in the class is authoritative in a particular case, despite her not qualifying as an expert to society at large.

In the matter at hand, this distinction allows us to keep apart the extant statements of historical individuals and their wider personae. It should be acknowledged that the same could be applied to living authorities: that there is a difference between appealing to them and appealing to what they have said. Appeals to what living people might say, if they were asked, are not considered in this paper for two reasons: that the intention of the arguer is likely to be very different (which is somewhat vague) and that the critical questions one would ask and general procedure of evaluating the argument would be very different (which, I think, is clear and obvious). I shall return to this species of argument in the conclusion, however.

Finally, although I have criticised Walton's scheme for arguments from expert opinion in the past (Hinton 2018a), that criticism centred largely on the critical questions (see also Wagemans 2011, p. 334). The form of the argument itself is fairly straightforward, and I employ Walton's elaboration of it in what follows as the one most familiar to readers. I also argued in the paper just cited that the distinction between arguments from expert authorities and those from other sources in a position to know is often unhelpful as it puts too much emphasis on the semantics of the word 'expert,' where attention would be better placed on the relevance of the testimony offered to the actual case at hand.[1] The scheme that I offered then for a generalised argument from testimony is of no use here, however, since we are dealing with appeals to authorities which have not provided a direct testimony. It is always important to bear in mind when discussing Walton's approach that he was particularly concerned with expert witnesses in a court of law—that focus goes some way to explaining why his scheme and questions may seem inadequate in other contexts. For the purposes of this paper, the well-known argument scheme will certainly suffice, and the word 'expert' will be understood in a broad and non-technical sense to cover a range of figures possessing varying kinds of authority.

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[1] This question is considered to a greater degree in the extended critical questions listed in Walton et al. (2008).

3. Non-existent authorities

In this section, I shall try not to get bogged down in metaphysical considerations, but rather to put forward what I conceive will be accepted as a simple, everyday view of existence and non-existence, sufficient for our purposes. It will be seen in due course, that deeper philosophical investigation into this matter would be unlikely to yield any greater enlightenment on the point at hand. For our purposes here, then: the non-existent is that which does not exist in the present, but which we can name meaningfully in speech; it may have existed in the past; may be expected to exist in the future; or may be an entity which can be referred to, despite its not being considered part of the physical world, a literary character, for instance. Non-existent entities to which an arguer might appeal as an authority can, therefore, be divided into the unborn, the already dead, and the fictional.

3.1. The unborn

One form of argument which can be particularly awkward to combat is the appeal to future generations. Perhaps the most famous instance of this is the well-known First World War recruitment poster bearing the question 'Daddy, what did you do in the Great War?' The force of that argument—that one should act now so as to avoid shame and embarrassment later on—is not based on authority, but an appeal to pride or feelings of guilt; it shares, however, important features with other such appeals, in particular, that one cannot say for sure that the person as yet unborn, or, at least, not yet able to form an opinion on the matter, will not say what is being suggested. One's children might ask such questions, and what then? If one has no children now, well, one might in the future—especially if one avoids the fighting. Because the premises cannot be disproved, a seed of doubt is sown which cannot be dug up. Technically speaking, the burden of proof is on the person making the claim—the author of the poster—to show that it is likely; but in reality, the claim is made and the possibility that it might be true is left to linger, in the hope that it will be enough to provoke the desired response. How much this is a genuine argument and how much a psychologically manipulative move, and

whether a distinction between them can sensibly be drawn, I leave open at this point.

This type of argument is related to the 'appeal to future genera-tions' which is often invoked as a reason to act on climate change (see e.g., Lawrence 2013, Gonzalez-Ricoy and Rey 2019). This appeal generally seems to go unchallenged in public debates, even if it doesn't actually motivate action, but the degree to which current people have a moral responsibility to future people is, I think, an interesting and unclear issue.[2] This is not the place for a discussion of inter-generational ethics, but this common form of arguing is worth mentioning as another variety of appeal to the unborn. There is a sense in which such arguments commit the error which Locke originally referred to as the *ad verecundiam*, in that we are encouraged to consider the opinions of the unborn as it would be morally shameful to ignore them.[3]

Still, the people of the future to whom we appeal don't have to be those we personally care for: they may also be those whose opinions we (shall) respect, those who will have more information than we do currently, those who will judge us, not for our personal courage, but for our reason. These are the authorities of the future whom we hope will approve of what we have done.

In a recent *Guardian* article, British historian Charlotte Lydia Riley noted with some discomfort that: "The appeal to the future historian is a common trope in times of crisis," but a strategy which can easily be seen through:

> What we want is to be proved right. This is the other function of the "historian of the future": to reassure us that our interpretation is correct, and that we truly understand what is going on. When people say that historians of the future will argue X, Y or Z, what they are doing is arguing X, Y or Z themselves, but clothing that argument in the moral and intellectual authority of some mythic future scholar (Riley 2020).

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[2] For some recent discussion on this topic see Jensen (2015), Karnein (2016), and Sanklecha (2017); or the classic account in Parfit (1984, pt.4).
[3] My thanks to an anonymous reviewer for this point.

Riley shows good insight into argumentation strategy here. It is easy to see why young historians would be unhappy about being put in this position. It is also a move which undercuts much of the traditional approach to assessing claims based on cognitive authorities, or experts. Walton's well-known six basic critical questions (Walton 2006, p. 750) for the argument from expert opinion are all rendered impotent since each of them refers to characteristics or acts of the expert in question or to that expert's peers, yet, in this case, none of these people exists.

It is easy to find examples of what Riley is talking about. On Democrats who brought about the first set of impeachment proceedings against Donald Trump:

> Historians in the future may judge them far more harshly for abusing the impeachment power in the Constitution. That provision was not intended to allow 285 members of Congress—a simple House majority and two-thirds of senators—to remove a duly elected president for partisan reasons or over matters of style, no matter what his margin of victory in the last election (von Spakovsky 2020).

And on Republicans who saw them fail:

> However the Republicans try to spin this, ultimately, history will judge them furiously for their willingness to see the Constitution, and its checks on unbridled presidential power, shredded simply to protect their man in the White House from the consequences of his actions (Abramsky 2020).

It seems that historians of the future will be harsh on the Democrats and furious with the Republicans, which may seem fair overall, but shows how this argument form can be used by anyone to defend any position. It is a claim we can make without any responsibility, we do not have to check our facts, we do not have to show the credentials of our source. That the historians of the future are always right in their judgements is taken as read, though as Riley points out ruefully "the people who invoke historians of the future are less keen on listening to actually existing historians today" (Riley 2020).

The appeal to unborn authorities obviously has something in common with the appeal to existing authority, in that it rests upon an assumption that since what those with cognitive authority say is generally true, we should believe what they say in particular instances. Yet, the argument is clearly very different, and, as stated above, the traditional critical questions for appeals to expertise are of no use in its evaluation.

Walton's scheme (Walton, 1997, p. 223), which altered a little over time, the warrant often remaining unstated, looks something like this:

> *Source Premise*: Source E is an expert in subject domain S containing proposition A.
> *Assertion Premise*: E asserts that proposition A (in domain S) is true (false).
> *Warrant Premise*: If source E is an expert in subject domain S containing proposition A, and E asserts that proposition A (in domain S) is true (false), then A may plausibly be taken to be true (false).
> *Conclusion*: A may plausibly be taken to be true (false).

This can be adapted for our purposes to say:

> *Source Premise*: Source E **will be** an expert in subject domain S containing proposition A.
> *Assertion Premise*: E **will assert** that proposition A (in domain S) is true (false).
> *Warrant Premise*: If source E **will be** an expert in subject domain S containing proposition A, and E **will assert** that proposition A (in domain S) is true (false), then A may plausibly be taken to be true (false).
> *Conclusion*: A may plausibly be taken to be true (false).

All critical questions concerning E's being an expert are moot: the person being referred to is simply 'whoever is an expert in the future.' That person is, by definition, an expert, in S, containing A. The question that counts, therefore, is:

> CQ: What evidence exists that suggests E will assert that A?

There will be a strong chance that the response here will be to beg the question and say 'because *E* will be an expert.' In that case, the experts of the future simply are the ones who will state that which the arguer believes they should state. A more encouraging line would be to look for similar judgements made by current experts and argue from analogy. The chances of success here are limited though. In the case of historians, as Riley notes, there is usually no consensus opinion among the experts on the events of the past, so if any analogy is useful, it is likely to be one that argues against the idea of invoking future historians, on the basis that they will certainly disagree amongst themselves. These considerations make one tempted to dismiss the very possibility that an argument from future expert opinion could ever be a good one.

Still, this analysis shows that if, and it's a big if, the proponent of the appeal to future historians, or others with authority as yet unbestowed or unearned, can provide good reasons to think that they will assert that *A*, then his argument does carry weight. Whether or not it has any effect on actions in the present will depend, however, on whether those doing the acting are interested in their future representation in history books or not.

3.2. The already dead

Here, there is a need, of course, as described in section 2, to distinguish between the dead who remain genuine authorities, existing, in a manner, through their extant writings or recorded utterances, and the dead invoked as probably approving or disapproving of something on which they never actually pronounced an opinion, via a kind of *ad hominem* appeal to their person. What I am focussing on here is appeals to what the dead would have thought or said on points which they did not address in any known, extant, utterances. In colloquial English, such appeals are often formed with the constructions 'x would have been proud/delighted' or 'x must be spinning in his grave.'

This latter affliction seems to particularly affect deceased figures from football and politics: "George Best would turn in his grave if he knew how the Northern Ireland players are relaxing" (Dillon 2016) and "Shankley would turn in his grave to see what football has become" (ArthurThistlewood, Guardian Sport 2020).

In both of these cases disapproval of behaviour is being expressed, and support for the position taken is provided by reference to the memory of past heroes. The second example refers to Bill Shankly, not only a very successful manager of Liverpool Football Club (1959-74), but a man who frequently demonstrated respect and concern for the club's fans during his career, and who has become symbolic of the less commercialised era of professional association football. In the first, the phrase is actually being used somewhat ironically: Best, generally considered the greatest player to emerge from anywhere in the British Isles, was also famous for his partying lifestyle and, in particular, indulgence with alcohol. The article in which this phrase was used as a headline was actually pointing out how modern players relax in rather more professional ways, which are less interesting for the tabloid press. The disapproval, then, is of a nuanced nature.

Another interesting example concerns Napoleon Bonaparte:

> France's honours system was branded a laughing stock this week after Mexican-born sex symbol Salma Hayek was made a knight. It led to one former minister refusing the same award, with others suggesting the 45-year-old's new status would see Napoleon Bonaparte 'turning in his grave' (Allen 2012).

This is intriguing because it isn't at all clear that Bonaparte would be generally considered as an authority on whom modern France should be honouring, and, indeed, many people, in France and beyond, might see the extension of high honours to include a woman of Lebanese-Mexican descent as a positive step.

One final example shows a slightly different use: "Adam Smith would turn in his grave, if he knew what was being said in his name" (Harrison 2016). Here, Adam Smith is being cited as an expert on what Adam Smith would say, which seems reasonable —that is to say, there is little doubt that Smith was an authority on what can be said in Smith's name: the question is whether Harrison can be considered an expert on how Smith would have exercised that authority.

These examples with the unpleasant image of a revolving corpse are not, of course, the only way to invoke the supposed opinions of the dead. One thing which links them all is their status

as almost 'legendary' figures, despite their being historical. This status gives them authority and has the persuasive influence of attracting anyone who wishes to be associated with that particular legend. This brings these examples close to the type discussed in the next sub-section below. Other ways of referring to dead authorities, however, will almost inevitably cite a particular instance of something they said or did, making the source of the authority extant; yet, that instance can only be, at best, analogically related to the matter at hand.

These cases have clear differences, but they are united by the degree of reconstruction necessary to turn the authority premise into an actual argument. For instance, the argument is: Napoleon was an authority on the dignity of France, and he would have said that honouring Hayek is wrong, so it is wrong. All of that must be extrapolated and inferred from the simple statement that he is spinning in his grave about the honour.

One intriguing and more serious category of arguments based on the views of the departed which includes both citation of an actual text and a degree of interpretation as to the wishes of its writer is the legal tradition of originalism, often invoked in discussions of the United States Constitution. Solum (2011) points out that there is a degree of disagreement about the meaning of this term and that its use has evolved somewhat over time, but, with a pleasing circularity, we can take the original definition of the 'framer' of the concept as authoritative for our purposes:

> By "originalism" I mean the familiar approach to constitutional adjudication that accords binding authority to the text of the Constitution or the intentions of its adopters (Brest, 1980, p. 204).

The difference between the text and the intentions is so wide from our perspective here that it is hard to see how the two could be contained within one 'ism,' nonetheless, the general idea that the intentions of the original writers are authoritative in the interpretation of constitutional, and, presumably, other types of law looks like an entire theory based upon appeals to non-existent authorities. It seems at first glance an obvious matter that little can be known for sure of those intentions. A certain amount of investiga-

tive work into the individual's life and other writings, however, as well as consideration of the norms of the time, might yield relevant information. What is of more interest is the very suggestion that the writer of the law maintains the authority to determine its meaning long after his death, even when the law is being applied to situations which he could not have predicted. It is not a simple matter to say whether this authority is cognitive: that the writer knows what was meant, or deontic: that the writer was entrusted with the task of law-making. The whole situation is complicated by the need to include the authority of those in the legislature who granted the text its legal power.

Perhaps the most infamous example of this kind of thinking is found in the judgement of the US Supreme Court in the Dred Scott v. Sandford case. In point I.9 of the decision, the judges declared that:

> The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted (Scott v. Sandford, 1857, p. 394).

They used the belief that the framers of the constitution did not intend for anyone of African race to be granted citizenship of the US to argue that Scott was not legally a citizen and, therefore, had none of the privileges or rights of citizenship. This in spite of their acknowledgement that attitudes had already shifted by then. The paramount authority granted to the framers here is actually in contradiction to the words of the text which quite clearly state that everyone's included. The argumentation employed is quite fascinating and also involves an *ad ignorantiam* argument based on the fact that the framers did not say anywhere that black people could be citizens, something which Abraham Lincoln himself exposed as fallacious (Gerber, 2014, p. 10).

Naturally, there is a great tradition of literature in legal theory which considers the soundness of such arguments with which we have no time or space to concern ourselves; this example does show, however, that even the most serious of cases may be decid-

ed by appealing to authorities who are dead and whose actual opinion on the matter at hand we can only piece together tentatively by granting relevance to other information not directly approaching the question.

These types of argument, if the necessary reconstruction is allowed, can be expressed in the following argument scheme adapted from Walton:

> *Source Premise*: Source E **was** an expert in subject domain S containing proposition A.
> *Assertion Premise*: E **would have** asserted that proposition A (in domain S) is true (false).
> *Warrant Premise*: If source E **was** an expert in subject domain S containing proposition A, and E **would have** asserted that proposition A (in domain S) is true (false), then A may plausibly be taken to be true (false).
> *Conclusion*: A may plausibly be taken to be true (false).

The critical questions in this case differ from those above concerning the unborn: here the source premise can be meaningfully examined and the credentials which the deceased held can be assessed in more or less the same way as those of a living source, depending on how long ago that person lived and how much is known about their life.

> CQ 1: Was E an expert in S containing A?

The difficulty is that, as the examples illustrate, such arguments often refer to a source of moral rather than epistemological authority.

Assuming that a reasonable claim can be made that the authority was a genuine one, the arguer employing this source now faces the more difficult task of answering the critical question analogous to the one above:

> CQ 2: What evidence exists that suggests E would have asserted that A?

Possible responses here would include the claim that *A* is in ac-cordance with general principles expressed by *E*, or that *A* is anal-ogous to assertions made by *E* whilst still alive. In cases where a general principle is clearly expressed in the recorded utterances of the source, the source can be treated as, in fact, existent. For in-stance, if in Napoleon's verified writings, he stated that no woman from Mexico should ever be given an honour by France—or simp-ly no woman, or no-one from Mexico—those writings would be an existing source. What we are concerned with here is appeals to sources which do not exist: to opinions which are assumed on the basis of what is known about the deceased person, but cannot be verified. In such cases, the best argument that can be made is one of analogy—in similar cases the source did say similar things.

There are two more crucial critical questions, however:

> CQ 3: Is there reason to believe that the opinion of *E* would not have changed, given the advances of the intervening period?

> CQ 4: Might *E* have had conflicting principles which would un-dermine the likelihood of the assertion?

In the first case, these advances could obviously refer to scien-tific discoveries of which the source was not aware, but, more controversially, the same might also apply to social progress, as in the Dred Scott case. So, while a geocentrist might cite various respected early astronomers as likely to agree with his view of the solar system, CQ 3 would throw up the fact that any serious as-tronomer entering the debate today would know of the evidence showing that the solar system is heliocentric, meaning that the source, if a credible one, would certainly have changed his opinion by now. Similarly, a good many writers of the past made highly dubious remarks concerning issues of race, which, given that they showed great insight and intelligence in other fields, were likely the result of an ignorance and carelessness which, one hopes, no educated person would show today. Making claims about what they would say if they were alive today based on the views ex-pressed then seems a dubious practice—how much they may be

forgiven for what they did say at that time, however, is a matter of debate.[4]

3.3. The fictional

There are a number of possible sub-types here, all of which lead the evaluator in slightly different directions. The source appealed to may be a fictional character, either as personality: 'what would Sherlock Holmes do?' or as direct source 'Sherlock Holmes once said…' which then raises the question of whether the latter instance can be considered a case of appealing to the authority of Conan Doyle. As well as already 'existing' fictional characters, there are *ad hoc* inventions: 'my Great Aunt Nelly always said…,' 'there's an old Chinese proverb …,' or, more seriously, 'some scientists say…' which, *prima facie*, look hard to defend. Then there are the mythological, the legendary, and the divine. By legendary, I understand those who are at least presumed to have been real characters, but whose reputations are based on stories told about them, rather than their own recorded utterances. At one end of that scale would be the likes of King Arthur, who, since kings certainly existed in the time and place he is said to have lived, may well have been based on an actual person, but about whom so little can be said for sure that he is little more than myth, and at the other, say, the Buddha, who is considered to be a real historical person and probably said and did much of what is claimed about him, but whose life-story is still more legend than historical record. The truly mythical, I understand as those whose exploits are unconnected with the reality of human experience, such as the Greek heroes, or Beowulf: even if there were real people at some point in history who bore the names Achilles and Odysseus, they could not actually have done the things for which those names are now famous. This brings us to the most delicate of the sub-types: the divine. The Gods of the ancient Greeks, Norsemen and Egyptians we are happy to describe as part of their mythology, although they were once part of a, presumably, sincere religion; and even

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[4] See the recent decision to rename the David Hume Tower at Edinburgh University in the light of Hume's very explicit claims of white supremacy (Richards 2020).

the most committed believer will accept that other sects attach themselves to false Gods, who are, as it were, fictional. Thus, even for the theist, there is clearly a category of appeals to non-existent deities. For the non-believer, all divine entities are myths. That does not mean that they are automatically excluded from playing a role in argument, however; but it does mean that their role is equivalent to that of an acknowledged fictional character if they are appealed to in their divinity, or to that of a deceased personage if their actual recorded life or work is the relevant source. These are subtle distinctions, and Jesus provides the best example: Jesus may be appealed to as the son of God, as God Himself; or he may be appealed to as an historical preacher whose words are recorded in an authoritative work; or he may be appealed to as a character in the Gospels, considered as stories largely fictional. The first and last of these are to be considered under the current heading, the second would make for an argument of the type discussed in the previous section.

This can be further illustrated by considering the slogan 'What would Jesus do?' taken from the title of an 1896 novel by Charles Sheldon. The slogan is a nice example of erotetic reasoning, arguing through questions (see Wiśniewski 2013). The implication is that one should consider what Jesus would do and then follow His example. What is interesting is that it doesn't matter how one sees Jesus for this implication to work as an argument. In every case, one has to work out what Jesus would do—or say on the matter—based upon what is recorded in the Gospels. Assuming that can be done, the only difference is in how authoritative we find Jesus' advice: if Jesus is God, that's very authoritative; if Jesus is a charismatic preacher who inspired a world religion, that's also pretty authoritative; and even if Jesus is only a character in a story, he's a character widely known for moral wisdom—just as Holmes is known for brilliant detection—and so his opinion is worth considering.

Still, in any particular case where what Jesus would say or do is cited as an authority, just as in the examples above, there are two points to the argument—that it matters what Jesus would say and that Jesus would say that: that E is an expert and that E asserts A.

These two premises reveal the clearest divide in the "fictional" authorities variety. Those who appear in acknowledged works of fiction, or texts of uncertain authorship, do have actual utterances attributed to them. This means the second premise, that *E* asserts *A*, can be assessed in the same way as it would be for confirmed historical characters: either an assertion was made which makes the view of this person clear and the source can be treated as extant, or the argument is being made on an assumption of what the person would have said based on other things which that person did say, or do, by force of analogy. As above, here we are concerned with attributions of opinions made on behalf of the source, rather than citations of their words.

As to whether the source can be considered an expert, or an authority, that depends upon how that person is considered by the audience in cases of legends and Gods, and on how the creator of that character is considered in cases of obvious fiction: if we think of Charles Dickens as an authority on the London in which he lived, for which there is good evidence, then we may think of the words of his characters as carrying the weight of that authority when they are used to describe the reality of the city at that time. Fictional characters, of course, do not always tell the truth even within the world of their story, and certainly cannot be taken to be at all times the mouthpieces for the views of the author.

The scheme could be adapted thus:

Source Premise: Source *E* **would be** an expert in subject domain *S* containing proposition *A*.

Assertion Premise: *E* **would** assert that proposition *A* (in domain *S*) is true (false).

Warrant Premise: If source *E* **would be** an expert in subject domain *S* containing proposition *A*, and *E* **would** assert that proposition *A* (in domain *S*) is true (false), then *A* may plausibly be taken to be true (false).

Conclusion: *A* may plausibly be taken to be true (false).

The CQs here relating to the first two premises are likely to be difficult to answer unless the arguer is himself regarded as an expert authority on the source. For example, if J.K. Rowling were to claim that Harry Potter would make a certain assertion, then the

assertion premise would look pretty secure; alternatively, if a religious minister claims that a personage from a holy book would assert a proposition, we also have reason to accept this view on the basis of the minister's being an accepted authority on the interpretation of that book—whatever our view of that religion.

The degree to which fictional characters can ever be thought to fulfil the source premise is open to question. It would seem that such a personage could only be granted that status as a matter of faith. This is obviously the case with gods and prophets, but equally so with characters from books—Sherlock Holmes never actually solved a case, so appealing to his methods as examples of good practice is based only on the belief that the character was right about detection, not on any record he had. Equally, one might invoke the spirit of Robin Hood in defence of a theft from the rich, but Robin Hood only has authority on matters of property rights if one already agrees with what Robin Hood stands for—forced redistribution of wealth. There is no independent backing to give him standing in matters of morality more generally.

Appeals of this kind, then, are likely only to be considered strong by those who are already committed to accepting the authority of the character in question: Christians, by definition, accept the authority of Jesus; Star Wars fans acknowledge that of Yoda. Any more substantial evidence of their views is again likely to be reliant on the force of an analogy to make it relevant in the present case.

It is worth returning, however, to the above-mentioned ad hoc inventions, which can take on a life of their own, so to speak, and feature in very serious forms of argument. Philosophers and lawyers have used various formulations to stand for a non-existent reliable person, to whose opinion they can appeal.

In English law there is the long-standing tradition of the man on the Clapham omnibus.[5] This personage was described recently in a United Kingdom Supreme Court judgement thus:

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[5] There is a large literature on this topic, see *The Philosophy of the Reasonable Man* (1963) by J. R. Lucas and the more recent article by King (2017).

> The Clapham omnibus has many passengers. The most venerable is the reasonable man, who was born during the reign of Victoria but remains in vigorous health. Amongst the other passengers are the right-thinking member of society, familiar from the law of defamation, the officious bystander, the reasonable parent, the reasonable landlord, and the fair-minded and informed observer […] its most famous passenger, and the others I have mentioned, are legal fictions. They belong to an intellectual tradition of defining a legal standard by reference to a hypothetical person, which stretches back to the creation by Roman jurists of the figure of the *bonus paterfamilias* (Healthcare at Home Ltd v The Common Services Agency (Scotland), 2014 UKSC49, 1).

This statement makes it clear that arguments from what the man on the Clapham omnibus would do are actually arguments from a legal standard, and goes on to quote Lord Radcliffe, clarifying that: "The spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is and must be the court itself" (Davis Contractors Ltd. v. Fareham UDC, 1956 AC686, 728). This makes the circularity apparent: the court invokes the court as arbiter of what is fair.

This happens not only in law: pragma-dialectics sets great store by the "rational critic who judges reasonably" (van Eemeren and Grootendorst 2004, p. 37),[6] and Rawls, famously, stakes everything on the rationality of "persons in the original position" (1972, p. 142) whose great feature is their ignorance of themselves; even Wittgenstein allows himself to refer to what "a reasonable man will not doubt" (1969, sect. 19). In such cases, it is seldom stated that a proposition is true or acceptable because a reasonable man would think it so, but that is the implication. There is clearly a real danger here of begging the question: although Rawls's deliberators are "deprived of information about their particular ends, they have enough knowledge to rank the alternatives. […] They can make a rational decision in the ordinary sense" (1972, p. 143), which is to say that they have enough knowledge to reach the conclusions Rawls thinks rational.

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[6] See Perelman on the distinction between the reasonable and the rational (1979).

Thus, in all these cases, a hypothetical person is created in order to act as an authority, but actually represents by proxy the conception of reasonableness favoured by the arguer. Indeed, the Rawls example is a particularly striking one since his whole theory of justice is supported by the argument that its principles are those which would be chosen by a group of rational people.[7] This is perhaps the most influential argument from non-existent authority in modern philosophy.

4. A general scheme for non-existent authorities

In this section, I attempt to bring together the characteristics which unite the three main forms of arguing from non-existent authorities, and to use them in the construction of an argument scheme.

The general characteristics I take to be the following:

1. A standpoint is assigned to a person not currently living.

2. This standpoint is neither found explicitly, nor clearly implied, in the words of that person.

3. The assigned standpoint is based upon an interpretation of the acknowledged characteristics of that person.

4. The standpoint is implied or explicitly stated to be relevant to the present situation because of the authority of that person.

5. Since the person to whom the standpoint is assigned is considered an authority, that standpoint should be treated as a true statement.

Points 4 and 5 apply equally to appeals to existing authorities, which gives some justification for treating arguments from the non-existent as a class of the same pattern of reasoning. However, points 2 and 3 reveal a very different basis for the data claim: where a conventional argument from authority relies explicitly on what a source has said, arguments form non-existent authorities

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[7] It should, of course, be noted that Rawls devotes a great many pages to showing why the rational person, free of bias, would behave as he describes.

rely instead on what the arguer believes that source would say. This throws tremendous importance onto the authority of the arguer to form that belief. Arguments from non-existent authorities can, therefore, be seen as double appeals to authority: that the person appealed to would be an authority, and that the person appealing is an authority on what that source would say. It should also be noted in relation to point 2 that our authority on the non-existent authority may put a considerable amount of work into showing how a particular standpoint is, in fact, clearly implied by the known writings of the source taken together with other factors connected with the environment of the time. This is not the place for a thorough discussion of how clear such an implication might need to be, but there is a species of argument where the standpoint of the authority is constructed in this way, rather than assumed or guessed at on some vague basis.

A scheme following Walton's structure would look like this:

Source premise 1: Source E would be an expert in subject domain S containing proposition A.

Source premise 2: Source D is an expert on what source E would assert in subject domain S containing proposition A.

Assertion premise: D asserts that E would assert that proposition A (in domain S) is true (false).

Warrant Premise: If D is an expert on what E would assert and E would be an expert in subject domain S containing proposition A, and D asserts that E would assert that proposition A (in domain S) is true (false), then A may plausibly be taken to be true (false).

Conclusion: A may plausibly be taken to be true (false).

All of which is somewhat exhausting, but easy enough to follow, I think, if we bear in mind that D will often, though not always, be the person making the argument, rather than some supposedly independent authority. This structure allows us to apply CQs in a traditional way to evaluate the argument. The assertion premise is simple to assess since it is the actual assertion of D which is at issue, not a non-existent assertion of E. Further, as we have seen, since that assertion is not based on a knowledge of what E said on the topic, it is always based on an interpretation by analogy of

what *E* would say, if asked. This step moves from whatever is known about *E* to some new supposition about *E*'s views through the claim that the current matter at hand is analogous to some other matter on which *E*, or, in the case of future experts, someone like *E*, did express a view. Therefore, while the structure of the argument is that of an argument from authority, the force of its inference is that of an argument from analogy. This could be recognised explicitly in the scheme by modifying the assertion premise:

> Assertion premise: *D* asserts by analogy that *E* would assert that proposition *A* (in domain *S*) is true (false).

The list of critical questions might then look like this:

> CQ 1: Is proposition *A* in subject domain *S*?
>
> CQ 2: What evidence suggests that *E* would be an expert on subject domain *S*?
>
> CQ 3: What evidence suggests that *D* is an expert on what *E* would assert on proposition *A*?
>
> CQ 4: What did *D* say to assert that *E* would say that *A* was true (false)?
>
> CQ 5: What characteristic/assertion of *E* did *D* cite as evidence that *E* would say that *A* was true (false)?
>
> CQ 6: Is the cited characteristic/assertion analogous to an assertion about *A*?

5. Conclusion

All of these musings have some very serious implications for the general argument from authority. To come back to the metaphysics eschewed in an earlier section, there is a sense in which there is no such thing as the present: every source which we may cite in an argument is a source from the past or the future. In some rare cases the authority may be present with us at the time of the argument,

but generally, even when our authority is alive and well, what we actually have to deal with is a text recorded in the past, and often the subject matter will be only analogically linked to the question with which we are currently engaged. Opportunities to ask that authority what he or she actually thinks now occur only seldom. Even clearly expressed principles might be trumped by other considerations if the authority knew all the facts of our case. In practice, therefore, outside of situations such as court cases or parliamentary committee hearings, there is often little difference between a living source and a dead one.

We are, in actual practice, constantly appealing to authorities with the help of a bridging argument from analogy, because they are unlikely to have commented upon the exact same situation which we are currently discussing: that is to say, there is very often an assumption of relevance based on an analogy between the circumstances in which the opinion was given and those currently pertaining. This is recognised in Walton's critical question concerning the assertion, but it is not made explicit. It is rather assumed that the statement made which asserts that *A* is true or not refers directly to *A*, but it may be in many cases that while the assertion was actually made and has been understood, it is of only dubious relevance. The cases of non-existent authorities make this point much clearer.

As for the appeal to non-existent authorities itself, perhaps the most sensible course is to dismiss it as merely an underhand persuasive strategy masquerading as a respectable argument form. It is interesting to note that one might claim that improper or "fallacious" use of otherwise reputable argument schemes is very much how the business of persuasion is conducted. Douglas Walton wrote that: "A fallacy is an argumentation technique that could be used rightly in one context of dialogue, but is used wrongly in the particular case in question" (1992, p. 267), suggesting that fallacies simply are inappropriate uses of good, defeasible schemes, and this strategy, piggy-backing on genuine appeals to authority appears to provide a good example.

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