

# Subjunctive *Tu quoque* Arguments. Commentary on *TU QUOQUE* ARGUMENTS, SUBJUNCTIVE INCONSISTENCY, AND QUESTIONS OF RELEVANCE

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## 1. THE TRADITIONAL PICTURE OF *TU QUOQUE* REPLIES: A LEGITIMATE REQUEST FOR COHERENTISATION BUT NOT A GOOD ARGUMENT

In their paper “*Tu Quoque* Arguments, Subjunctive Inconsistency, and Questions of Relevance” (= AAC <sup>1</sup>) Colin Anderson, Scott F. Aikin and John Casey have made important proposals; in particular by introducing the concept of a subjunctive *tu quoque* argument they enrich our understanding of and our dealing with *tu quoque* arguments. In the following, I will discuss these proposals in detail. However, this first requires an explanation of what the problems of *tu quoque* arguments are.

The situation  $\phi$  of a *tu quoque* is that someone, here called the “opponent”, has claimed that  $p$ , where  $p$  can be any thesis and in particular a thesis like ‘To do  $A$  is the best / right action to do’, which comes up to a practical proposal. The *tu quoque*, now, is some arguer’s reply to this claim  $p$ : that on another occasion, here called “ $\psi$ ”, a reference person  $s$  has claimed something,  $q$ , incoherent with  $p$  or has acted in manner  $B$ , i.e. in contrast to  $A$  that the opponent is now proposing. This reference person  $s$ , is usually identical with the opponent; but in some cases  $s$  may also be a different person who is an authority for the opponent so that her claims and deeds can in some way also be ascribed to the opponent. However, in the following we can ignore this possible complication so that the reference person  $s$  and the opponent can be taken to be identical. (Some further specifications are: In case of a practical *tu quoque*, i.e. where the reference person  $s$  (in situation  $\psi$ ) is acting against her own proposal to  $A$ , the action descriptions “ $A$ ” or “ $B$ ” used here, more precisely refer to *rules* of the kind ‘if condition  $F$  holds perform an action of type  $A$ ’. According to the structure of *tu quoque* replies, to do  $B$  in situation  $\psi$ , of course, excludes doing  $A$  under condition  $F$ , i.e.  $B$  implies not- $A$ .  $q$ , what person  $s$  claimed the other time, implies not- $p$  but it need not be identical to not- $p$ .) In this commentary I will always call the (first) thesis just held by the opponent or the proposal

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<sup>1</sup> The present contribution is a comment on the paper: Colin Anderson; Scott F. Aikin; John Casey: *Tu Quoque* Arguments, Subjunctive Inconsistency, and Questions of Relevance. Presented at the OSSA Conference, 19-21 May 2011, University of Windsor. – This paper here will be referred to as: AAC. The number  $n$  in a reference “AAC:  $n$ ” refers to the  $n^{\text{th}}$  page of AAC (and not to page number  $n$ ). – Five major examples are discussed in AAC. I have numbered them consecutively and will refer to them occasionally by these numbers: example 1 = Capital Punishment; example 2 = Ius in bello; example 3 = Dirty Football; example 4 = Traditional Marriage; example 5 = Zero Tolerance Policies.

to do A, i.e. the thesis that it is right or optimum to do A, “*p*” – independently of how this thesis is called by Anderson, Aikin and Casey. And I will always call *s*’s dissenting claim, held on a different occasion: “*q*”; a dissenting action of *s* here will be called “*B*” – again independently of how our authors have called them. To sum up, the verbal exchange in the case of a *tu quoque* will be abbreviated as follows:

*Tu quoque* exchange:

Situation  $\phi$ : opponent: ‘*p*’ (in particular: ‘*p*’ = ‘To do A is the best / right action to do’).

*Tu quoque* reply: arguer: ‘(In situation  $\psi$ ) *s* claimed: ‘*q*’ / *s* did *B*.’.

(*p* is incompatible with *q*; doing *B* is incompatible with doing A; mostly: *s* = opponent.)

In any case, under a weak interpretation *Tu quoque* replies can be understood as a hint to some contradiction in the position of the opponent or of the reference person *s*. According to the rules of argumentative discourse, in a kind of Gricean implicature, such a contradiction note, entails a request to retract at least one of the contradicting claims or, in case of a practical *tu quoque*, to retract proposal A or, because the already executed action *B* cannot be retracted, i.e. undone, at least to explain it (coherentisation request). (Cf. Lumer 1988: 455 (C2); 458 (R1a); 460 f. (R8).)

This weak or minimalist interpretation, i.e. to interpret the *tu quoque* as a coherentisation request to retract at least one of the contradicting claims, is uncontroversial in the sense of not entailing steps which are difficult to justify. This is different with a stronger interpretation of *tu quoque* replies where these are taken – and often by the arguer also intended to be – *arguments* for a certain thesis, usually the thesis that not-*p*, i.e. that the claim currently held by the addressee is false, or that the currently proposed action A is inadequate. To repeat, I am making a distinction between the weak interpretation, which I call “*tu quoque* *objection*”, and the strong interpretation, which I call “*tu quoque* *argument*”, where the weak interpretation is fine and the strong interpretation problematic. The problem with this stronger interpretation of *tu quoque* replies as *arguments* is that such *tu quoque* arguments are fallacious for two reasons. First, the argument’s content, in particular the argument’s claim is unclear; usually, *tu quoque* replies only hint at the contradiction but they do not even formulate a thesis, and it is not clear what the thesis should be. At least one of two contradicting claims must be false, in our case *p* or *q* so that not-*p* or not-*q* would be true; but the fact that *p* and *q* contradict each other does not imply which of the two is false, and hence whether not-*p* or not-*q* is true and, thus, should be the arguer’s thesis. These are already two possibilities. If, however, *q* is not simply the negation of *p* there are essentially five possibilities for dealing with the contradiction: 1. to maintain not-*p* and leave open whether *q*, 2. to maintain not-*p* as well as *q*, 3. to maintain not-*q* and leave open whether *p*, 4. to maintain not-*q* as well as *p*, and 5. to maintain not-*p* and not-*q*. (To maintain only *q* and leave open whether *p* makes no sense because as a consequence of the contradiction *q* implies not-*p*. The analogue holds for *p* and leaving open whether *q*.) Each of these five possibilities might be the conclusion of the *tu quoque* argument. There may be further indicators making it quite clear which of the five possible claims the arguer would like to defend; but these indicators are not part of the *tu quoque* reply. Therefore, the *tu quoque* objection by itself does not imply which of these five

propositions would be the thesis of the alleged *tu quoque* argument; hence an essential part of the argument would be missing. Second, and this is the more serious problem, even if it is quite clear from the context which of the possible claims the arguer wants to defend, in particular that the thesis  $p$ , currently defended by the opponent or the reference subject  $s$ , is false (and perhaps that the previously defended thesis  $q$  is true) the *tu quoque* objection does not provide a sufficient reason for this claim. The fact that  $p$  and  $q$  contradict each other – and this (apart from the premises that the reference subject  $s$  under condition  $\phi$  has claimed  $p$  and under condition  $\psi$  has claimed  $q$ ) is the only substantial premise we have so far – this implies only that  $p$  is false or that  $q$  is false; but it does not imply which of the two or five possibilities listed above holds. Therefore, a *tu quoque* argument would always imply a *non sequitur*. To sum up, the *tu quoque* objection pragmatically implies a legitimate request for coherensitisation, i.e. it is a correct moderate attack in an argumentative discourse, but it is not a good argument – though many people think that it is. At least this is the traditional picture of *tu quoque* objections as I have outlined it, in accord with many others, in my own account of fallacies. (Lumer 2000, 413; 414 ; Lumer 1990, 448 f.)

## 2. ANDERSON'S, AIKIN'S & CASEY'S THEORY OF SUBJUNCTIVE *TU QUOQUE* ARGUMENTS – SOME MAJOR PROBLEMS

Now, Anderson, Aikin and Casey have added the possibility of a subjunctive *tu quoque* to this traditional picture (AAC: 2). And I think this is really an important extension of the theory of the *tu quoque*. In addition, they have developed and defended the hypothesis that apart from fallacious *tu quoque* arguments there are also good, non-fallacious (subjunctive) *tu quoque* arguments (AAC: 2) (the whole section 3 (AAC: 4-7) is dedicated to them), where their validity depends on the relevance of the counterfactual situation  $\psi$  of claiming or acting for making a judgement about  $q$ . This implies that they have – at least implicitly – tried to provide an answer to the two problems just analysed. Perhaps their subjunctive approach even resolves the first of the two problems just sketched for the following reason. In contrast to factual *tu quoque* arguments, where the arguer depends on what the reference subject  $s$  has actually said or done in her dissenting expression, in a subjunctive *tu quoque* argument the arguer can freely choose the situation  $\psi$  in which the reference subject would make the claim  $q$ , which the arguer takes to be relevant and strengthening his own case. Thereby he makes the reference subject into a kind of authority for his, the arguer's, own position. Now, as an answer to the lack of thesis problem, Anderson, Aikin and Casey insert tacit conclusions in all their examples, and these go in the direction just described (cf. examples 1, 3 and 5 (AAC: 3; 5; 6)) – but not entirely: In their second example (*Ius in bello*) the arguer's alleged thesis is completely different (AAC: 4); but let us leave this aside for the moment, I will come back to it below. In their third example (Dirty Football) the alleged thesis is ' $q$ , or  $s$  is not justified in holding  $p$ ' (AAC: 5), and in their fourth example (Traditional Marriage) it is only ' $s$  is not justified in holding  $p$ ' (AAC: 6). Our authors do not motivate this inhomogeneity and I do not see much reason for it; so these variations may simply be inconsistencies in their exposition. And because the last thesis would be very weak, probably too weak to merit being called a "*tu quoque* argument" – which literally means "you too" said / did it and hence may be understood as an attempt to engage the opponent

as a supporter of one's own thesis –, and because this weakening of the thesis does not resolve the *non sequitur* problem, I suggest that we ignore these deviances for the moment and stick to the reading that the thesis of the *tu quoque* argument would be *q*.

In addition, Anderson, Aikin and Casey have proposed an approach on how to resolve the second problem, i.e. the *non sequitur* problem. Their idea is that there are epistemically appropriate and inappropriate conditions under which to make a certain judgement, where conditions are appropriate if they are informationally richer. As a consequence, we might explicate what they do not write explicitly: making the judgement under the appropriate conditions will result in a true judgement and making it under inappropriate conditions will result in a false judgement. Our authors hold that *tu quoque* arguments implicitly refer to such appropriate conditions; they have made this explicit by inserting a tacit premise P3: 'Conditions  $\psi$  are the appropriate conditions to make a judgement regarding *q*, whereas conditions  $\phi$  are not.' (AAC: 3 (example 1); 5 (example 3); 6 (example 5).) Therefore, if the (real or possible) situation  $\psi$  of the dissenting claim *q* is really appropriate, i.e. if it is relevant for judging about *q*, hence if the inserted premise P3 is true in the respective case, then claim *q* should be true too and the *tu quoque* argument valid and sound. If, however, the situation  $\psi$  is inappropriate, namely irrelevant for judging correctly about *q*, then the inserted premise P3 is false in that case, hence the *tu quoque* argument is fallacious, and, as a consequence, the resulting claim *q* not necessarily but probably will be false too – the proposal of Anderson, Aikin and Casey says.

Let us consider the inserted premise P3: 'Conditions  $\psi$  are the appropriate conditions to make a judgement regarding *q*, whereas conditions  $\phi$  are not' – where the conditions  $\psi$  are conditions like: not being a fan of the football club under discussion (AAC: 5 (example 3)), or imagining oneself in the shoes of a person to be subjected to zero tolerance policies (AAC: 6 f. (example 5)). What does it mean that the conditions are "appropriate"? If the argument is to be valid appropriateness has to imply that *everyone* who judges about *q* in the situation  $\psi$  reliably and with certainty makes a true judgment. However, even if the situation  $\psi$  in fact is informationally richer than  $\phi$  this cannot be so for various reasons. First, all our judgements are fallible, even the seemingly most simple; we are not 100% reliable automatons. Second, the specific claims taken as examples by Anderson, Aikin and Casey contain particularly complex moral and political propositions, for which not even the truth conditions are clear and even halfway generally accepted and hence the less their precise application can be expected. Third, for many moral criteria the influence of an object under consideration on the interested persons' well-being has to be considered. The prospected well-being of other persons under various conditions, however, is notoriously hard to determine. To sum up, P3 with this strong interpretation is not true, hence the *tu quoque* argument is not sound.

Furthermore, to be in situation  $\psi$  is not only not a sufficient condition for judging correctly about *q*, it probably is not even a necessary condition but at best one which *facilitates* the judging on *q*; in contrast to e.g. observational judgements, for which one has to be in an appropriate observer position, for moral and political claims as those under consideration there are hardly even any particularly distinguished conditions under which to make them. This amounts to a quite general question regarding a central presupposition of the Anderson, Aikin and Casey approach, i.e. whether there are epistemically favourable or even necessary situations for making certain types of

judgements – apart from observational judgements with their associated observation situations and apart from the absence of generally disturbing conditions such as being under pressure, exposed to noise etc. Even emotional involvement is particularly ambivalent for epistemological purposes: in the Capital Punishment and in the Dirty Football examples (examples 1 and 3) Anderson, Aikin and Casey take the emotional involvement to be an *obstacle* for making a considered judgement (AAC: 3; 5); in the Zero Tolerance Policies example (example 5), however, they *require* empathy as a necessary condition for making an informed judgement (AAC: 7). The truth seems to be that a considered moral judgement requires knowing about the feelings and well-being of *everybody* involved in the case to be judged. However, because this knowledge usually includes quite different perspectives it can be acquired only by and by and then, because the various perspectives have to be taken into account, weighted and aggregated according to moral principles to an overarching judgement in a calm and theoretic reflexion, there is probably no particular vantage situation in which to make the warranted right judgement. So a subjunctive *tu quoque* ‘In situation  $\psi$  you would hold  $q$  / do  $B$ ’ pragmatically and epistemically rationally should be more an invitation to reconsider a hasty judgement than an argument for a particular position. This implies that even the second part of P3, which says that the present situation  $\phi$  is not appropriate for judging about  $q$  or  $p$  (‘not appropriate’ in the strong sense of excluding recognition of the truth) and which shall falsify the present claim  $p$  of subject  $s$ , is not true either.

One could try to weaken the interpretation of ‘appropriate condition’ a bit so that P3 becomes true; one could take it to mean e.g. ‘very favourable condition’. However, with this interpretation, premises P1 to P3 no longer imply conclusion C; we have a *non sequitur*, an argument that is sound but not valid and hence again a fallacy. In the words of Anderson, Aikin & Casey and Govier or Johnson & Blair: With the weaker interpretation, P3, used in the right situation, is true and, yes, relevant (AAC: 5; 6; 7); however, according to Govier’s criteria, in a cogent argument the reasons have also to be good or sufficient (Govier <1985> 2010: 69; Johnson & Blair <1977> 2006: 55 ff.). And this condition is not fulfilled in this kind of *tu quoque* argument.

One could try to circumvent this verdict by reinterpreting the type of argument, taking it not to be a deductive but a plausibilist, e.g. a probabilistic argument. P3 should then be a relative frequency judgement, e.g.: P3f: ‘In situation  $\psi$  judgements about  $q$  (and  $p$ ) are significantly and overwhelmingly more often true than in situation  $\phi$ ’; and the conclusion would be: ‘ $q$  is much more probable than  $p$ ’. Though, on the basis of the arguments given above, I doubt that there are many judgements of the kind analysed in Anderson’s, Aikin’s and Casey’s paper for which such relative frequency judgements can be established, there may be some. In order to reveal them, however, a detailed epistemological analysis of the claim in question would have to be undertaken. If the relative frequency premise P3f is true, such an argument is probabilistically valid and sound. However, this *tu quoque* argument has yet a different defect: it is not adequate for rationally convincing the addressee (Lumer 2011) because the new premise P3f will not be epistemically accessible to the addressee and hence will beg the question. The problem with P3f is that P3f is still harder to verify than the claim  $q$  itself because in order to verify it we first have to know whether (and with which truth conditions)  $q$  is true, to be able to determine whether a given person’s factual answer to the question ‘ $q$  or not  $q$ ?’ is the right answer; in addition, we have to observe a sample of persons who make

judgements about  $q$  etc. Even if the relative frequency judgement is not based on a real count of answers in a sample but on a plausible estimate of the difficulty of making the judgement in a given situation, we need to know exactly how a subject has to proceed in making such a judgement correctly and what the results of the single steps in this investigation are – like a math teacher who, when putting together a class test, estimates the degree of difficulty of a possible test task. Hence even a justified estimate of the difficulties of premise P3f presupposes what shall be justified by its results, namely whether and for which reasons  $q$  is true. As a consequence, the probabilistically interpreted *tu quoque* too is not a good argument and is again fallacious.

The case of the relative frequency premise P3f brings out a further problem. By adding P3, Anderson, Aikin and Casey concede that *tu quoque* replies are at best enthymematic arguments. However, we cannot dress up every sequence of judgements to transform it into a good argument. There are limits to how much we can supplement sequences of judgements, which by themselves do not constitute a good argument, to obtain something, which is a good argument and still counts as the original author's argument. If an alleged argument needs improvements beyond these limits it is not a good argument. The principles which shall guide the interpretation of arguments, in particular enthymematic arguments, include authenticity and immanence. *Authenticity* requires that premises added by the interpreter may only be judgements which the original author accepts. And *immanence* requires that missing parts of the argument have to be inferable from the given material; i.e. no substantial reasons may be added. (Lumer 2003, sect. 4.) However, the relative frequency premise P3f most likely does not fulfil either of these two requirements. And I have very strong doubts as to whether Anderson's, Aikin's and Casey's original P3 fulfils these conditions; at least when previously analysing *tu quoque* replies this premise has not come to my mind. These doubts continue to increase for those premises P3 in their paper which do not have the prevalent form, namely premises P3 in their example 2 (*Ius in bello*) 'if any  $s$  would do  $A$  under conditions  $\phi$ , then  $s$  does not have a moral claim against any who  $A$  under  $\phi$ ' (AAC: 4) and example 4 (Traditional Marriage) 'the only moral difference between  $\phi$  and  $\psi$  is that  $s$  suffers from  $A$  not being performed. This is not a morally significant difference' (AAC: 6). I would not even have dreamt of these rather particular premises. If, however, *tu quoque* replies do not fulfil the requirements of authenticity and immanence then they are not good arguments but at best ideas for such an argument.

All these considerations reinforce my original opinion, namely that *tu quoque* objections hint at incoherencies and thereby imply a request to the opponent to coherentise her position by retracting at least one of her incoherent claims, however, they are not good arguments.

### 3. MINOR REMARKS

In the remaining part of this commentary I will provide some minor criticisms and offer some constructive suggestions.

*The subjunctive premise P2:* As emphasised at the beginning of this commentary, having enlarged the picture of *tu quoque* replies with subjunctive *tu quoque* is an important insight of Anderson's, Aikin's and Casey's paper. One should, however, stress a particular danger of these *tu quoque* replies, namely that the premise P2, in which

the counterfactual *tu quoque* is raised ('under condition  $\psi$  the reference subject  $s$  would claim that  $q$  / or do  $B$ '), is very risky. The addressee can deny it immediately; and being identical with the reference person  $s$  or at least nearer to  $s$ 's thoughts than the arguer, such a denial *prima facie* has more authority than the arguer's assertion of P2.

*Is quoque arguments:* Anderson, Aikin and Casey also introduce an example which they have called "*is quoque*" or "*ea quoque* argument" (example 2, *Ius in bello* (AAC: 3 f.)) and which they consider analogous to *tu quoque* arguments. I think, however, this analogy does not hold. The point in a *tu quoque* objection is that the opponent herself (or a different reference subject who is an authority for the opponent) has made the dissenting claim. Thus the subject  $s$  / the opponent herself, according to Anderson's, Aikin's and Casey's strong interpretation of the *tu quoque*, is appealed to as an authority sustaining the arguer's claim  $q$ . And according to the weaker interpretation, the *tu quoque* is a hint at an inconsistency in the opponent's commitment store, which implies a request of coherentisation. None of these epistemological functions could be fulfilled by an *ea quoque* for the simple reason that these are claims or deeds of a third person. The point in their *ea quoque* example, i.e. the *Ius in bello* case (AAC: 3 f.), is a completely different one, not an epistemological but a moral point. Namely, the argument appeals to a principle according to which someone who has violated some rule  $r$  is not entitled to demand observance of that rule towards herself. Even if this principle is rather questionable it is quite clear that the *Ius in bello* example appeals to this or to a related premise (like the premise P3 of Anderson, Aikin and Casey (AAC: 4)), i.e. a material *moral* principle and not an epistemological principle. Therefore, I suggest that this example be disregarded (or better: eliminated) since it is not a case of *tu quoque* or anything similar to it.

*Practical tu quoque:* The Traditional Marriage case (example 4) is the only example analysed in the paper which is a practical *tu quoque*. Since in practical *tu quoque* replies the dissenting expression is not a contradicting claim but an action of the reference person that does not conform to her present proposal (in situation  $\phi$ ), the reconstruction must be different from the reconstruction of cognitive or theoretical *tu quoque* replies. In particular, it has to be explicated how such an action can speak against a proposal or a thesis. Now, Anderson, Aikin and Casey have provided such a reconstruction (AAC: 5 f.). However, I found this reconstruction quite complicated and confusing and too much tailored to the particular example. If one wants to stick to Anderson's, Aikin's and Casey's general approach, a much more general premise which could cover all kinds of practical *tu quoque* would be required, e.g. the premise P3p: '(Conditions  $\psi$  are conditions under which a proposal to  $A$  has to prove; therefore:) if even someone who proposes and defends  $A$ , under conditions  $\psi$  does or would not act according to  $A$ , then the proposal to  $A$  is unreasonable (overarching, inadequate).' However, even though this suggestion is in line with Anderson's, Aikin's and Casey's approach – it makes the alleged argument deductively valid –, for objections similar to those raised in the last section, it does not make the practical *tu quoque* a good argument because a major problem with P3p is that in this general form it is not true for nearly every kind of action  $A$  and condition  $\psi$ : like all human beings even strong defenders of certain practical principles are fallible; and principles do not have to be respected by all the people all the time in order to be good principles. Therefore, P3p has only a heuristic but not a proving function.

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