Dressed arguments in legal speeches: The use of style formulas[1]

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ABSTRACT: The aim of this paper is to provide an analysis of communication in forensic situations. First, we will define style formulas and brocards as typical linguistic expressions of legal experience, then we will focus on forensic practice. Style formulas are, mostly, used as rhetorical and argumentative presentational means: in fact, their use is not neutral but deceiving for what they do not say.

KEYWORDS: legal argumentation, legal communication, style formulas, rhetoric, forensic cooperation

1. INTRODUCTION

The aim of this paper is to provide an analysis of communication in forensic situations, drawing on expertise from forensic linguistics. Most crucially, the authors will focus attention on linguistic forensic practice of law, which is characterized by the frequent use of style formulas and brocards. They are included in defensive speeches and even in judgments, consisting in terms or concise juridical maxims, often expressed in Latin words or phrases, which correspond to general principles and behavioural norms. Their meaning and their use is understandable only by experts of the field.

Doctrine and jurisprudence have mainly analysed the use of style formulas in contracts, for instance in order to limit parties' obligations; on the contrary, their use in forensic communication does not seem to be of particular interest.

The purpose of this paper will be to highlight the role played by these technical formulas in forensic practice, whose use seems functional to the progressive construction of a common argumentative ground, to which the parties cooperate in the complex dynamic of practical judgment.

Style formulas are, mainly, used as rhetorical presentational means: the authors will explore their use in the judicial context and they will show that their use is not neutral but deceiving for what they do not say.

[1] This is a multiple authored research article: F. Puppo wrote par. 1 -3; S. Tomasi wrote par. 4-5; M. Manzin wrote par. 6-7.

2. A DEFINITION OF STYLE FORMULA

First of all, it is necessary to give a definition of what we propose to call "style formulas": a type of legal practice's linguistic expressions used in different legal fields (in contracts, in notarial acts, and in trials) by different subjects (by notaries, lawyers, and judges). In the Italian legal order, they are a type of formulas mainly analysed and evaluated in contract law, where they play an important role for contracts' drafting: that is why, as a first insight, it is necessary to refer to the definition given by *Corte di Cassazione*, the Italian Supreme Court:

> Style formulas are generic phrases we usually find in contracts or notarial acts, with a mere function of completion for their excessive indefiniteness: for this reason, style formulas cannot be considered capable of expressing a concrete and given will in connection with the deal in discussion[2].

From this point of view, typical examples of style formulas in contracts, which can assume the form of binomials or trinomials, are formulas like:

... the terms and conditions set forth in this agreement ...
... the same may be amended, supplemented or modified in accordance with the terms hereof ...
...unless the contract provides otherwise...
... in the absence of a provision to the contrary...
... except when otherwise provided by the contract...

Legal scholars and jurisprudence are mainly devoted to discuss the legal value of this kind of expressions in order to understand if contracts (or parts of contracts) with that kind of formulas, considered to be excessive indefinite, could bind the contracting parties or not. This is a real legal topic, but we cannot deal with it now[3]: rather, we would like to underline the fact that, as we are going to see in the next sessions of this paper, we should find examples of style formulas not only in contracts or notarial acts, but also in litigations, lawsuits or processes, in civil, administrative and criminal trials, in speeches by the parties (in this case it is common to speak about the formulaic recitation of a cause of action's elements) or even by the judge.
In fact, in all these kind of legal speeches, jurists usually use expressions and linguistic formulas that we can recognize as style formulas' examples because of their main character: that is the fact that style formulas can be recognized as such for their, so to say, "settled stylistic practice". From this point of view, a linguistic formula can be defined as "style formula" if it faithfully repeats an established and common phrase, again and again repeated in legal speeches or acts (see Bonamini 2016, 5).

3. STYLE FORMULAS AND BROCARDS

From an historical point of view, it could be of some interest to remember that these formulas were used in Roman legal experience and in Medieval times, playing an important role in the development of legal knowledge: they were considered the expression of a sort of common legal wisdom (see Messineo 1961, 820ff.; Bonamini 2016, 15ff.).

[2] See for example Cass. Civ. nr. 1950/09.
[3] It is sufficent to remember that these kind of formulas are supposed to have stylistic and not legal function: in other words, they are usually considered to be legally invalid and ineffective.

As such, style formulas could be seen as part of a broader set of legal expressions, usually known with the name of "brocards" or "*brocardi*": a noun that

> «from an etymological point of view, […] comes from the French *brocard*, cognate with Medieval Latin *brocarda*, *Brocardicorum opus*, a collection of canonical laws written by the bishop Burchard of Worms (died 1025). A *brocard* is a legal principle expressed in Latin (and often derived from past legal authorities or Roman Law), which is traditionally used to express concisely a wider legal concept or rule»[4].

Examples of brocards are the following ones:

> *Iura novit curia* (The judge knows the law – technically, there is no need to "explain the law" or the legal system to a judge/justice in any given petition).
> *Ignorantia legis non excusat* (Ignorance of the law is no excuse – not knowing that one's actions are forbidden by the law is not a defense).
> *Nullum crimen, nulla poena sine praevia lege poenali* (There can be neither crime nor punishment unless there is a penal law first).

These kind of formulas could mainly have rhetorical function, since they are commonly used to give elegance and strength to judicial and legal speeches, since brocards are able to recall, so to say, a common legal knowledge which is time immemorial (see Velo Dalbrenta, 2007). But brocards could also play an argumentative role, since they can be used as legal discourses' premises, especially when the maxim they express is actually included in legal orders and expressed by legal norms: for example, that is the case of the brocard "*audiatur et altera pars*" (in English: "hear the other side") at first expressed by Aeschylus' *Oresteia* and now formally included in many State's Constitutions (for example in the art. 111 of the Italian Constitution).
At the same time, it is clear that someone could be recognized as a jurist also because she knows brocards and style formulas and she uses brocards and style formulas in a right way: from this point of view, brocards and style formulas can be considered to be the traditional and inner part of the technical legal language. At the same time, brocards and style formulas contribute, in the linguistic practice of law, to the development of homogeneous communities: who wants to be considered to be part of them is expected to speak and understand that kind of specialized language (and, by the way, a part of legal education consist of this kind of linguistic training).
But this is not the only specific character we could recognize in the use of brocards and style formulas in legal speeches. In fact, we should remember that a peculiarity of legal context is that law regulates the cases and forms of the enforcement of justice: so legal opinions follow always a regular template, which also implies recurring style formulas.

4. THE USE OF LEGAL LANGUAGE: GOING BEYOND THE JUDICIAL TEMPLATE

Court practice analysis is a source of information to identify the uses of arguments in judicial communication and to evaluate their effects.
In this section, the research topics arise from the legal reality in Italian jurisprudence: we will present the results of a document analysis, by selecting some case-study and drawing conclusions on how courts apply certain style formulas, shared in legal context, and how they finally manoeuvre their communication.

[4] «Brocard», availbale at: https://en.wiktionary.org/wiki/brocard.

The court practise analysis is a valuable instrument for legal practitioners: it allows to get information about the court management and to provide support in case of legal appeal. In the course of this analysis, it become evident that the use of recurring formulas, shared by legal practioners, as brocards or style formulas, is not neutral: despite the fact their use is undisputable and their content is steady and permanent, they turn to be strategic arguments to dress.

As known, judicial opinions are written decisions, authored by judges, developed according a legal template. Statute law provides the formal framework for writing the judicial opinion, labelling "frozen" parts and "free" parts. According to the Rule of Law, the legal opinions are subject to such certain constraints, both with respect to content and form.

As for the frozen components, it is possible to recognize the heading, the preliminary stuff, the body, and the disposition. The Heading recalls the constitutional principles concerning the Judiciary, so that Justice is administered in the name of the people and Judges are subject only to the law. In the preliminary stuff, the court, its components, the parties, their lawyers are identified. As for the body of the opinion, the first part is usually devoted to precise the concluding legal requests of the parties involved; then, in the following section, the judge clarifies the "facts" of a case, the events that occurred before the legal case was filed in court, and that led to the judicial the case. Most opinions also include a section on the procedural history of the case: that is, what happened in the case after the case was filed in court. After the opinion has presented the facts, it will then discuss the law. This section of the opinion describes the legal principles that the judge will use to decide the case and reach a particular outcome. Finally, the disposition usually appears at the end of the opinion and reveals what action the court is taking with the case.

The sections, mentioned above, are fixed by statutory provisions (i.e. art. 132 Italian Code of Civil Procedure; art. 118 disp att.) in order to secure the jurisdiction by law.

As for the free component, all judicial decisions shall also include a statement of reasons. Maurizio Manzin, representing the ideal scheme of a judicial opinion (Manzin, 2014, pp. 147-172), makes clear that the duty of motivation has two main function: on the one hand, it regards the internal structure of the text; on the other hand, it is connected to extra-processual and social elements. According to Manzin, the judge is required to check both the topical extent and the coherence among the arguments. The disposition and its grounds are mutual dependant: so, the disposition has to be based on reasonable grounds. Moreover, the duty of motivation is embodied by art. 111 Italian Constitutional Act, according to which all court trials are conducted with adversary proceedings and the parties are entitled to equal conditions before an impartial judge in third party position. That is to say, that all citizens have the right to check the social acceptability. The motivation is first functional to the parties to detect the points of the opinion on which appeal for revision. It is also functional to the appeal court to understand the grounds of the inferior court. It is functional to the Supreme Court in order to ensure the uniform interpretation of the law.

The concern of this research is to explore legal opinions and assess them, going beyond formal accreditation.

As a matter of facts, legal practice reveals many forms of deviation from rule of law formalities, especially in the use of style formulas.

Legal language consists in conservative expressions, established formulas or formulas shared by participants at legal communication. These formulas are generally considered as lexical items commonly recognized as hallmarks of legal discourse.

This study will show that what seems to be an undisputable stylistic, choice in compliance with the Rule of Law and with the common use of legal language, shared by legal practitioners, turns to be a complex argumentative interplay in the decision making process.

In the court practise analysis, the hint is to develop these research questions: are there any patterns in stylistics? What is the effect produced by the use of the style formulas?

5. CASE STUDY: EXAMPLES OF STYLE FORMULAS

Since then we have carried out over 50 analyses, we select three recurring examples of use of style formulas. The database consisted in legal opinions delivered by the Criminal Court of Trento, assessed by local companies of lawyers in the last decade.
More than one judges wrote these formulas, trusting them as knowledgeable as regards the court system and administration of justice. These formulas appear as a 'format' shared in the legal context. We argue that this is not only a stylistic choice but a mode of arguing that invoke implicit entities, that may be defined and conceptualized.
This issue builds on the tradition established by Informal Logic. Ralph Johnson and Anthony Blair characterize informal logic in part as "a focus on the actual natural language arguments used in public discourse, clothed in their native ambiguity, vagueness and incompleteness" (Blair and Johnson 1980, p. x).
Leo Groarke has argued that when we analyse real life arguments, our first task is the dressing an argument, that is the identification of its component parts. In the case of arguments, there is a distinction between "arguments on the hoof" and "dressed arguments": the former are arguments as they appear in their real life contexts, the latter are those arguments after having identified and isolated their key components, for argument evaluation.
We should investigate the use of these formulas and, specifically, the extension of these arguments in the legal opinion. The argument is always a propositional entity but, despite the fact some verbal arguments are common, their argumentative use implies that one would dress.
In order to have a comprehensive account of style formulas in legal opinion, let's consider some examples.

Example (1)
Considered art. 133 Criminal Code, the final punishment can not exceed 10 years of imprisonment.
The Italian Criminal Code provides for maximum and minimum of imprisonment. Art. 132 provides that judicial discretion must be exercised within the legally established penalty ranges. Art. 133 defines the criteria that should guide the judge in exercising the discretionary power under 132. These criteria concerns the type of offense but also the offender (the previous conduct, the criminal record, the family status).
The style formula mentioned above is a recurring expression which rests on the formal adherence of the opinion of the provision. No statement of reason is added. It delivers the final measure of the punishment.
We need to isolate the premises in order to evaluate the penal decision.

Example (2)
Even according to the most authoritative jurists interpretation,…
As known, in Italian legal system there are no general rules directly concerning precedents in the proper meaning of the word. In some rules of the code of civil procedure there are only indirect references to precedents. According to art. 118 disp. att. Code of Civil Procedure, which define the criteria for legal motivation, in deciding a case judge may make a reference to corresponding precedents in the opinion that justify the decision. About legal sources in deciding the case, the provision specifies that no direct authority can be cited from books.

This statutory provision in Italian Legislation forbids a judge to quote the opinions of jurist.
But what appears in text is different.
The style formula reveals the awareness that a judge does not decide based exclusively on statutory law: the decisions do not automatically sprout from the statutes.
This formula is compatible with the statutory provision but covers a pattern of argument from authority. Who is the doctrine? Is that doctrine all about the issue? The questions regards the premises of the argument.
The formula respect the formal interplay of academics and judges in the decision making process as required, but conceal the real concurring source of judging.

Example (3)
Judicial costs will be balanced considering the originality of the issue at dispute.
In Italian legislation, the costs of a case depend on its final outcome. According the statutory provision, the party who has lost the case is supposed to pay the courts feed and the feed charged by the lawyers of the parties. The losing party will support the prevailing party's lawyers 'fees. The other costs (i.e., expert costs, fitness costs) must generally be borne by the losing party (according art. 92 Code of Civil Procedure)
If there are exceptional reasons, the costs may be compensated by the parties. But the judges may explain the reasons of exceptions.
In the final part of motivation, the Court often wrote the recurring formula of justification "*considering the novelty, originality of the issue*". It turns to be a presumptive argument to dress: what is new? new regarding what (facts/law)?

In all these cases, beside the adherence to statute law, these expressions, familiar to judges and lawyers, are arguments to dress. Legal practitioners have a feel for these formulas because they belong the their habits: their use could be deceiving as they hide implicit premises and conclusions.

6. DRESSED ARGUMENTS IN JUDICIAL CONTEXT

When speaking about things like style formulas, it should be taken into consideration the fact that all of these "arguments on the hoof"/"dressed arguments" are used in legal speeches and that these speeches are made in peculiar contexts. In this regard we could distinguish either between private, tort, penal, administrative, constitutional, international etc. legal domains or between the degrees of judgement (first degree, appeal, supreme court etc.) – and, actually, each of these contexts has its own specific standards. Nevertheless all different linguistic uses (and all possible implicatures) of "arguments on the hoof" dealing with such contexts are in the very end conditioned by the possibility of a legal controversy. In this sense we could say that, implicitly or explicitly, the target of "arguments on the hoof" is always the (occurring or eventual) judicial context.
Communication in the judicial context communication is characterized by some pragmatic features which can be sketched as follows:
a. the judicial communication is *controversial:* the dialogue between the parties is not aimed at an exchange of information, feelings etc. but it is a sort of match in which every party wants to win the case;
b. the judicial communication is *triadic*: none of the parties supposes to persuade the opposing one, but both aim at persuading the decision-maker (the judge or the jury) which is 'third' and stranger to the parties;

c. the judicial communication is *linguistically vague*: strict legal terms (which anyway are just a part of the terms used in legal speeches) are expressed in natural language and they are not formalized in the way scientific terms like "point" or "zero" are. They are at most technical terms, meaning that they are used by and within a linguistic community of experts who know what were things like "adverse possession" or "complicity" even though there are no axioms or demonstrations dealing with them;
d. the judicial communication is *institutionalized*: the procedural rules of the judgment are not established in advance by the parties but they simply exist as a part of the legal system in which the parties act. This fact implies the acknowledgment and effectiveness of a number of social phenomena like "rule following" (Hart 1994, Poscher 2015), pre-establishment of a scene (the trial) with its own actors (judges, lawyers etc.) and some precise expectations (acquittal, punishment etc.).
According to the Gricean "principle of cooperation" all participants in a communication should know the implicatures of the terms and utterances used in the conversation. In the contexts of common conversations, public discourses, media etc. this clarity about the meaning of the words is usually obtainable also when "dressed arguments" are used.
Let us think for instance to a very common expression like *all in all* and imagine a conversation like the following between John and Mary:

> – John: I've got a new smartphone!
> – Mary: All in all my mobile still works well

In this conversational exchange it should be sufficiently clear to John that her friend has considered some evaluation elements dealing with her smartphone (state of conservation of the hardware, battery life, updating of the software, things that can be still done with it etc.), and she has concluded that in the end positive elements are more numerous than the negative ones, so it is not the case to waste time and money to buy a new mobile.
All in all in this conversational context is a "argument on the hoof" which can be easily "dressed" by the participants, thus it is not necessary to provide further information in order to reach the communication goal – nothing has been hidden by anyone.
On the contrary in the judicial context style formulas and *similia* could stay "on the hoof" without revealing their hidden implicatures. Let us think for instance to an expression very familiar (in Italy) to administrative lawyers like: *all presupposed, consequent and connected acts*. It is obvious that *all* is a dramatically wide category and that there could be desirable as well as undesirable acts (for one or both parties) implicated by the established action(s) which is/are presupposing or producing or somehow connecting some others.
That is the reason why there have been (in Italy) many legal decisions by administrative courts of different degrees according to which "such style formulas are neither effective nor legally valid, not being able to specify". The ratio decidendi of all of these decisions[5] was that

> the style formula "all presupposed, consequent and connected acts" on the ground of which such acts have become objects of a legal controversy cannot be used to indicate acts that are not specifically declared in the appeal, for the fact that this formula is not appropriate to determine a specific object of appeal, whereas only a clear indication of petitum allows the counterpart to fully exercise her right of defence.

Thus, the question at this point is: given the fact that style formulas which are not (or cannot be) specified have been considered by the courts neither effective nor legally valid, is it the

[5] See Italian courts rulings: T.A.R. Piemonte Torino, Sez. II, 14 gennaio 2010, n. 200, T.A.R. Lazio Roma, Sez. III, 26 luglio 2007 n. 7013, Consiglio Stato Sez. V, 16 settembre 2004 n. 6018, Consiglio Stato Sez. VI 07 luglio 2003, n. 4037, T.A.R. Lombardia Milano, Sez. I, 6 ottobre 2010 n. 6879.

case to keep on using them in legal discourses? More roughly: are style formulas good or not for law?

Before answering this question it would be appropriate to deepen some aspects of the contemporary legal scene which could affect the use of style formulas. We must remember that formulaic expressions and brocardi have a long tradition – substantially uninterrupted – in legal speeches dating back to the age of Roman and medieval law. There is a number of reasons to justify such a long life: philosophical (as the capability to find the common in the different – Velo Dalbrenta, 2007), historical (the 're-descovering' of the *corpus iuris civilis* and the birth of the universities in the Middle Ages), sociological (their use distinguishes a social group of learned people), even psychological ones (it strengthens the sense of belonging). It is not our aim to analyse now all these reasons and the connected ones, but only to notice that, regardless of the effectivity degree in our day, style formulas operate in a context which has some remarkable peculiarities if compared to the previous one in the last decades. These peculiarities could be very generally summarized this way:

a. *legal system.* Today we have to take into serious account the phenomenon of the s.c. "fluidization" of the (once) system of legal sources as it is going on especially in the European Union, where the new paradigm of governance has modified the rigid hierarchy of legislation established by constitutional rules;

b. *new legal sources.* Then we must consider the connected occurrence of legal sources different from the national legislatures (s.c. "legal pluralism"): international and transnational treaties, declarations and charters on various specific rights, lex mercatoria, "soft law" by EU officials, legal opinions by foreign supreme courts – all of which have a certain strength over judicial decisions;

c. *principles and rules*. Besides that it should be stressed the influence of ideas coming from "constitutionalism" and "new constitutionalism" in contemporary jurisprudence. Meta legal values (or "principles") are acknowledged today as the benchmark for either general or individual legal norms, whereas in the past legal positivism had maintained a strict divide between *sola lex* and moral criteria;

d. *moral pluralism*. Finally, we face nowadays a growing 'axiological multiplicity' caused by epochal events like globalization, migrations and multiculturalism. Rapidity and pervasiveness of information, economic exchanges and social mobility, intertwined with expectations on individual rights and positive actions, make available a lot of moral criteria (or "values") not infrequently at odds with each other.

7. CONCLUSION

In conclusion, if we are planning to use "arguments on the hoof" like style formulas, we should pay attention to the possibility of very different implicatures coming from the kind of legal system, legal source, constitutional principles and moral criteria which are at stake. In other words, there could be various and even opposite ways to "dress" style formulas, with a consequent injury to the certainty of law.

Let us try to make an example for clarification.

When speaking about a *presupposed, consequent or connected act* dealing with the obligation to exhibit an identity document if requested by a policeman we could refer: to a legal system where such condition is peremptory (as in Portugal) or to another in which, for instance, it is sufficient to declare one's personal details (as in Italy); to a document that is valid or expired (validity of ID card, in Italy, is necessary to go abroad but not to go to vote); to an exhibition of personal data which could be intended as confidential (if connected to the right of privacy) or not confidential (if connected to public security). The simple presupposition of having a

valid ID document in our pocket is therefore depending upon the implicatures of the formula. This is why, as mentioned above, we should seriously wonder if using style formulas in legal discourses were appropriate or not.

In our opinion arguments like formulaic expressions and *brocardi* are typical rhetorical tools. As such they are so to say 'double-sided': they can be exploited in order to create a shadow area from which the party could take out favourable elements for her strategic manoeuvring, or otherwise they can be used as *topoi* in a critical discussion. In the former case the arguer would act against the principle of cooperation, and the formulas would be mere presentational devices. In the latter the arguer would be committed to "dress" the formulas, identify its elements and avoid trickery. So before getting rid of style formulas insofar as they are considered deceptive, it would be challenging to find a way to "dress" them – in other words, to work out a normative model for argumentative moves based on style formulas.

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On the many logical ways to counter an argument

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ABSTRACT: My aim here is to give an adequate definition of counterargument, establishing a suitable typology of counterarguments grounded on Toulmin's model. This typology is based on a double criteria: the target of criticism and the force or strength of the attack as expressed by the appropriate argumentative connector. I thus distinguish four main kinds of counterarguments: dismissals, objections, rebuttals and refutations.

KEYWORDS: argument strength, counter-analogy, counterargument, dialectics, dismissal, objection, rebuttal, refutation, Toulmin's model

1. INTRODUCTION

Elsewhere (Marraud 2015) I have distinguished two conceptions of dialectic. Dialectic can be conceived of as the art of controversy or debate, with confrontation of opinions and hence of arguers. The focus of dialectics thus understood is the conventional rules and procedures governing such confrontations. This is what I call *arguers' dialectic*. But dialectic can also mean the study of the oppositions between arguments. This *arguments' dialectic* is historically linked to the notion of argument strength, and can may even be defined as the study of argument strength. Argumentative connectors are the main device for expressing relations among arguments. These are words or phrases that link two or several statements, assigning them a particular argumentative role.

The concept of counterargument lies at the heart of argument's dialectic. The importance attached to the relations between arguments – especially those of opposition- establishes a clear distinction between the theory of argument and formal logic. My purpose in this paper is twofold. First to give a suitable definition of counterargument; second, to establish a typology of counterarguments. I will confine myself to *logica*" counterarguments: arguments criticizing another argument on account of its logical properties. Thus, ways of attacking an argument for being ineffective for a given audience, or for procedural matters will not be taken into account.

Let us begin with some preliminary definitions. To argue is to present to someone something as a reason for or against something else. An argument is a reason for (Pro argument) or against (Con argument) some claim. Hence a con argument is a reason to reject some claim. These are more or less standard definitions, though many scholars define argument either in terms of its purported aim (justify, persuade, etc.) or of its structure (premises and conclusion).

According to the *Merriam-Webster Dictionary* to counterargue is to give (reasons, statements, or facts) in opposition to an argument or in support of an opposing argument. Hence a counterargument is a reason to reject some argument.

Therefore there is a clear difference between a con argument, a reason against a claim, and a counterargument, a reason against the cogency of an argument.

2. MAIN KINDS OF COUNTERARGUMENTS

To argue is to present something to somebody as a reason for (or against) another thing. Hence the minimal autonomous unit of argument is a compound of one or more premises, the "something" in the above definition, and a conclusion, the "another thing" in the same definition.

When a reason for a conclusion is presented to someone but she does not endorse it, there are four possible moves.

1. She might reject the argument as a whole, alleging that there must be something wrong on it.
2. She might challenge some of the premises: "Where do you get that from?".
3. She might also question that the reason offered is a good reason for that conclusion: "How do you get there?"
4. Finally she might try to show that the conclusion should still be rejected, offering an opposite reason: "Yes, but…".

Therefore there are four main strategies for attacking an argument: challenging the argument as a whole, challenging some of its premises, challenging its warrant, or challenging its conclusion. But counterarguing requires more than challenging some of the parts of an argument: one has to give reasons for rejection. Thus one can either meta-argue that the offered argument is not cogent, or one can argue some of the premises are not true or acceptable, that the warrant is not valid or cannot be applied to the case, or that the conclusion is nonetheless false. Accordingly I shall distinguish four main kinds of counterargument, which I term, respectively, dismissal, objection, rebuttal and refutation.

3. DISMISSAL

An argument can be rejected as a whole for a variety of reasons; for instance, it can be adduced that argument A has been rejected for most philosophers, that A it is not a scientific argument, that A it leads to an unreasonable conclusion, etc. The rationality of such holistic counterarguments has been advocated by Daniel Cohen (2001). Here is an example:

> […] as we saw before, states and corporations differ in one crucial respect. The shareholders of a corporation voluntarily take on the obligations of the corporation when they purchase shares; indeed, the corporation's obligations are reflected as a discount in the price of a share. People who are born into citizenship of a state do not consent in a similar manner to take on the obligations that others have acquired in the name of the state. Although Locke argued that people give implicit consent to their government by not emigrating, no one takes this argument seriously anymore. Consent requires more than the ability to choose an extremely disagreeable alternative." (Posner, 2003: 1906).

For our present purposes Locke`s argument can be summarized thus:

A. People give implicit consent to their government by not emigrating, so people have an obligation to live up to the state's obligations.

The corresponding counterargument then runs as follows:

CA. No one takes this argument seriously anymore

Thus a dismissal is an argument whose-conclusion is an assertion to the effect that a given argument is not cogent. Since a meta-argument is "an argument about one or more arguments or about argumentation in general" (Finocchiaro 2013:1), dismissals are meta-arguments.

4. OBJECTION

An argument A is an objection for an argument B when A's conclusion is incompatible with some of the premises of B'. This is obviously the case when they are mutually contrary or contradictory, but in argumentation there are also less stringent forms of incompatibility. A successful objection suspends the conclusion. Here is an example:

> A. This patient has a streptococcal infection, so presumably this patient needs penicillin treatment.
>
> CA. Infection diagnosis is only based on symptoms, no clinical tests have been performed.

5. REBUTTAL

I am using "rebuttal" in a sense close to Toulmin (2003). To prevent possible confusions, notice that Pollock (2007) uses "rebutting defeaters" and "undercutting defeaters" for something close to what I call refutations and rebuttals, respectively.

The question "How do you get there?" can be answered in either of two ways: (a) Resorting to analogy: step from P to C is like (is analogous to) the already accepted step from P' to C'; or (b) Providing a warrant, i.e. a general, hypothetical statement, which can act as a bridge, and authorises the sort of step to which our particular argument commits us (Toulmin 2003, p.91). *Mutatis mutandis*, the inference proposed by an argument can be rejected arguing either that that it is analogous to another already rejected inference (counteranalogy or rebuttal by comparison), or that the warrant is problematic (warrant rebuttal). Rebuttal is similar to objection in that a successful rebuttal suspends the conclusion.

Let us illustrate first counteranalogy or rebuttal by comparison (example retrieved from https://undark.org/article/assisted-suicide-physician-health/).

> A. As a physician and medical ethicist, I am opposed to any form of physician assistance with a patient's suicide. The Hippocratic Oath — arguably, the most important foundational document in medical ethics— clearly states: "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect."
>
> CA. There was a time and place for the Hippocratic oath to work, it doesn't mean it's always appropriate for all situations far into the future. That would be like the idiots who argue that we should always be allowed to keep guns just because it's in the Constitution.

A warrant in turn can be held to be problematic by one of two reasons: either the warrant is in general invalid, so that C cannot be inferred from P through W (*Plain rebuttal*), or the warrant cannot be applied in the case at hand, so that C cannot be inferred from P through W (*Exception*). There are weaker forms *(disclaimers*) of these, since the validity or applicability of the warrant may be controversial, so that C can only be inferred with reservations from P, "at your own risk". Thus we have four kinds of rebuttals: plain rebuttal, exception, warrant disclaimer and disclaimer by possible exception.

> Plain rebuttal.
>
> A. Since you want to live comfortably, you must attend university, for university graduates usually have higher incomes.
>
> CA. The reason why university graduates usually have higher incomes is that they normally come from wealthier families and they are more cleaver than the average.
>
> Exception.
>
> A. Polls give small advantage to candidate White over candidate Brown, so probably White will win the election.

CA. The advantage of candidate White over Brown is under the margin for error for these polls.

Warrant disclaimer (retrieved from https://www.indiewire.com/2014/06/the-fall-festival-50-our-wishlist-for-the-venice-telluride-and-toronto-film-festivals-84321/).

A. Primed for a November 7th release and coming from British powerhouse stable Working Title, the new film from James Marsh is a likelihood for a fall festival bow. Its biopic structure and potential crowd pleaser appeal hints at Toronto rather than Venice.

CA. Well, perhaps. But that's a pretty unreliable rule of thumb, and changing all the time.

Disclaimer by possible exception.

A. With the falling of the pound, Germany, for instance, will be a more attractive place for Spanish, Portuguese, Polish and Greek emigrants than the UK.

CA. Unless British companies raise wages to prevent the loss of labor force.

6. REFUTATION

I distinguish three kinds of refutation, associated with the phrases *A but B*, *A but also B*, and *Although B, A*.

In many cases when someone utters *A but B* she means that (1) she accepts *A*, (2) she accepts *B*, (3) *A* is a reason for some conclusion *C*, (4) *B* is a reason for some conclusion *C'* incompatible with *C*, and (5) in the situation of utterance, *B* outweighs *A*. When *A but B* is used in this way, the addressee is invited to infer *C'* from the joint consideration of *A* and *B*. In these cases I will say that the argument *B, so C'* is a *contradicting refutation*.

A. This patient has a streptococcal infection, so presumably this patient needs penicillin treatment.

CA. But this patient is allergic to penicillin.

The utterance in the appropriate circumstances of *A but also B* carries commitments similar to those in the former two cases. Yet the implicature is now that *A* and *B* are similar in force, so that they cancel each other out. When *A but also B* is a reply to *A, so C*, it is an attempt to suspend the inference of C from A. I will speak then of *cancelling refutation*.

A. Biofuels bring a number of environmental benefits, so production of biofuels should be promoted.

CA. However, it is also true that their production can have some adverse effects on the environment.

The difference between *but* and *although* in their relevant uses has to do with the suggested weighing. While *but* presents the second term as a stronger reason, *although* flags the weaker term. When someone utters *Although B, A* in the appropriate circumstances, she conveys the indication that *B* is insufficient to defeat the argument *A, so C*, so that, after weighing up *A* and *B*, the conclusion still remains *C*. Some authors contend that even if *B* lacks the force to defeat *A*, it still lowers the strength of the argument *A, so C*. Borrowing the term from Pollock (2010:11-12), in such a case I will say that *B, so C'* acts as a *diminisher* for *A, so C*.

A. It is impossible not to refer briefly to the Brahimi report and some of its main recommendations. The report clearly contains guidelines that, even almost 10 years after they were developed, need to be taken into consideration.

CA. Although the Brahimi report does not answer all of our questions.

7. WEIGHING

Notice that any refutation involves the weighing of pros and cons, since the conclusion is reached from the joint examination of positive and negative considerations. This feature relates refutation to Wellman's third pattern of conduction (Wellman, 1971:57).

Weighing is characteristic of refutation as a distinctive kind of counterargument. While objection and rebuttal look for flaws or faults in arguments, refutation starts from the acceptance of the argument under examination, as the previous analysis of such argumentative connectors as "but" and "although" shows. There is nothing wrong on a refuted argument, except that there is a stronger argument to the contrary.

The distinction of different kinds of counterarguments is important to limit the scope of weighing. Some authors seem to consider weighing as an all pervasive phenomenon in argumentation. Thus Robert Pinto writes: "In short, we can identify ´exceptions' to a qualified generalization only if we are already able to compare the strength of arguments licensed by that generalization to certain other arguments." (2011:117). Although this issue deserves a more detailed discussion, the unbounded spreading of weighing promoted by such argumentation theorist as Pinto is the result of mixing together the degree of acceptability of the premises and the robustness or strength of the link between premises and conclusion. To borrow an example overused in AI, there is no point in comparing (if it is possible at all) the strength of the argument *Tweety is a bird therefore Tweety flies since birds typically fly* with the strength of the rebutting argument *Tweety was watched in Peninsula Valdés, where there are important colonies of penguins, so probably it is a penguin*. In order to asses the later the sensible thing is to compare its strength with that of *Tweety was watched in Punta Loma, so it is more likely a rock shag than a penguin*.

Of course the possibility exists that the force of two arguments with incompatible premises be incomparable. So far as arguments are concerned, force defines in the best case a partial order. My conjecture is that when two such arguments are conjoined the sensible thing is to suspend judgement on the issue at stake. This skeptical position can be contrasted with a credulous one, according to which both conclusions are tenable, and in order to decide which argument is in force in some particular argumentative situation one has to resort to procedural rules. I take the terms "skeptical" and credulous" from related discussions in IA (*Cfr*. Prakken & Vreeswijk 2002, § 4.1).

8. OTHER CLASSIFICATIONS

Blair y Johnson (1987) propose a classification of counterarguments based on the RSA (*Relevance*, *Sufficiency*, *Adequacy*) criteria of good argument: an argument is *cogent* if and only if it has acceptable premises, its premises are relevant to its conclusion, and the premises provide sufficient grounds for the conclusion. Hence it can be argued that an argument is not cogent for one of two reasons: either its premises are unacceptable, or the move from its premises to its conclusion is problematic. In turn, the step from premises to conclusion can be problematic either because the alleged reason is irrelevant (i.e., it is not really a reason at all), or because it is a weak reason. Thus Blair and Johnson make no room for refutation, even if this is a quite common strategy for attacking an argument.

An examination of counter-argumentative procedures in polemic dialogues leads Apothéloz, Brandt y Quiroz to propose a quadripartite classification.

1) Counterarguments concerning the plausibility of the reason: they challenge the plausibility of some of the premises of the argument at issue; these correspond to my objections.

2) Counterarguments concerning the completeness of the reason: they offer a stronger reason for a conclusion incompatible with the conclusion supported by the contested reason; these are what I have called "refutations".
3) Counterarguments concerning the relevance of the reason: they dispute the relevance of the premises to the conclusion; thus these counterarguments amount to plain rebuttals.
4) Counterarguments concerning the argumentative orientation of the reason: they contend that the reason given is really a reason for a different, opposite conclusion; these seem to be a special sort of refutations.

Douglas Walton (2013: 27-62) offers a more complex (though not necessarily more clarifying classification).

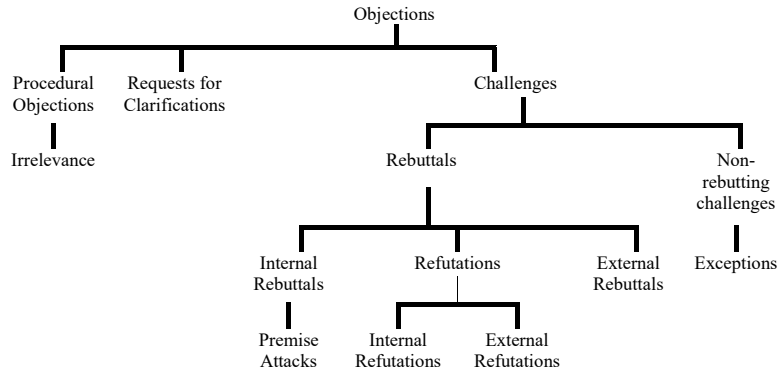

Table 1. Walton classification of counterarguments.

Walton defines an objection as any way of questioning the use of an argument on a given occasion. However, in fact, he only considers dialectical (procedural) and logical objections (challenges), letting aside rhetorical objections referred to audience reception (save perhaps requests for clarifications). A challenge is an expression of critical doubt about whether a reason supports the argument

Challenges are divided into rebuttals and exceptions. A rebuttal is an argument that is directed against other prior argument, in order to show that it is open to doubt or not acceptable. A refutation is a rebuttal that is successful in carrying out its aim. Now rebuttals are divided into external and internal ones.

Internal rebuttals aim at the premises of the argument under scrutiny. There are two kinds of external rebuttals. First, an external rebuttal can be an argument to the effect that the conclusion doesn't follow from the set of premises that were presented as supporting it. Second, an external rebuttal can be an argument that is stronger than the argument that is challenged and that provides a reason for rejecting its conclusion.

Walton defines an exception as a distinctive kind of premise, brought to light by means of critical questions, and classifies Pollock-style undercutter as an exception. Pollock (2007) makes a distinction between rebutting defeaters and undercutting defeaters. A rebutter of an argument gives a reason to show its conclusion is false, whereas an undercutter merely raises doubt whether the inference supporting the conclusion holds.

9. THE ORDER OF COUNTERARGUMENTATION

Argument criticism is developed following a procedure that seeks to get the maximum effectiveness at the lowest cognitive cost. For this reason priority is given to objection over rebuttal, and then to rebuttal over refutation. Refutation can result in a costly process of weighing pros and cons, the outcome of which is uncertain. Leibniz said that the possession of a balance of reasons would be an even more important achievement than the "fabulous science of producing gold".

To understand why rebuttal is a strategy more onerous than refutation, one just has to think about the different functions of premises and warrants. Premises are presented as data or facts while warrants are rules. Accordingly premises are appraised as true or false, acceptable or inacceptable, etc. and warrants as more or less reliable. Toulmin (2003:98) puts it as follow: a general statement like "Philosophers in their intellectual plenitude are unmarried" (according to Pierre Riffard, 70% of philosophers were unmarried when they published his masterpiece) can be used in two different ways:

- as a datum, and then it can be expressed in the form "It has been observed that philosophers were unmarried when they were in their intellectual plenitude";
- as a warrant, and then it can be paraphrased "If a philosopher is in his intellectual plenitude, he may be presumed to be unmarried".

To demonstrate the falsity of a universal statement is easier than to demonstrate that it is not a reliable guide to making inferences, if only because a false statement is false in any circumstance, while a guide to inference can be reliable in some circumstances and unreliable in others.

A pragmatic effect that confirms what has been said is that if someone attempts in the first place to rebut or to refute an argument, this can be taken as a sign of her acceptance of the premises.

10. FINAL PROPOSED CLASSIFICATION.

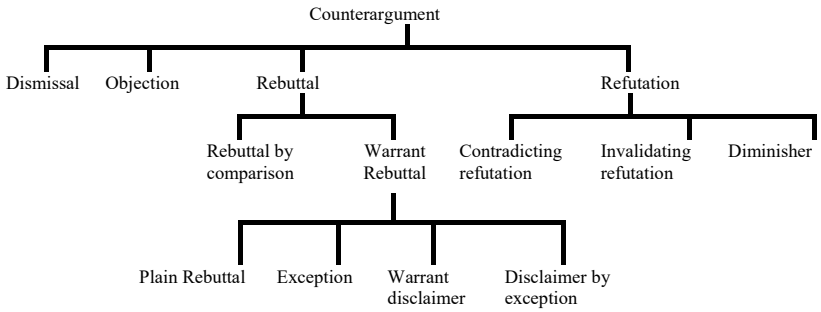

Table 2. Proposed classification of counterarguments.

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