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# Exemplary Arguers (for Example, in Law)

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## Abstract

This paper explores the relevance of exemplarity to virtue argumentation theory. It does so by using the law as both an illustrative and a normative example. The paper proceeds as follows. First, it argues that exemplars make a virtue theory of argumentation more robust in that (a) they are central to virtue education; (b) they help flesh out a richer account of the argumentative virtues; (c) they provide the theory with a normative standard that has some distinctive and attractive features; and (d) they make the theory less vulnerable to the objection from action guidance. Next, it develops an account of argumentative exemplars that encompass a diversity of character traits besides argumentative virtues. Third, it argues that the law provides exemplars of argumentative virtue that are central for further developing a virtue theory of argumentation and shaping the argumentative public culture. It concludes with some suggestions for further research in virtue exemplarism about argumentation.

**Keywords** Argumentative exemplar · Action-guidance · Argumentative virtue · Legal argumentation

## 1 Introduction

Virtue argumentation theory has established itself as an exciting and fertile research program within argumentation studies (Aberdein 2007, 2010, 2014); (Cohen 2007, 2013a). The turn to virtue is hardly distinctive of current work in argumentation theory. Indeed, it is a transdisciplinary trend: virtue argumentation theory joins efforts to retrieve the idea of virtue as an important concept for ethics, epistemology, education, politics, and law (Snow 2018). Recently, contemporary virtue theory in different domains has vindicated the relevance of exempla. Surprisingly, however, the idea of exemplarity does not figure in the main prominent virtue-based approaches to argumentation theory.<sup>1</sup> In this paper, I aim to explore the relevance of exemplarity to virtue argumentation theory. I will do so by using the virtue theory of legal argumentation theory as an example. Legal argumentation theory will thus be employed to illustrate the way in which the incorporation of exemplars within a theory of argumentation is beneficial to the theory. Nonetheless, the relevance of law for the development of an exemplarist

virtue argumentation theory goes beyond this illustrative function. The law itself, I will argue, provides an example (in a normative, injunctive, sense, rather than merely an illustrative one) of virtue exemplarism in the domain of argumentation. The law –and the jurists- are exemplary models of argumentative virtue that play a particularly relevant role in the theory and praxis of argumentation.

The paper proceeds as follows. First, I will argue that exemplars are central elements in a virtue theory of argumentation. Exemplars make a virtue theory of argumentation more robust in that (a) they are central to virtue education, which is an important part of the theory; (b) they contribute to fleshing out a more sophisticated and richer account of the argumentative virtues; (c) they provide the theory with a normative standard that has some distinctive and attractive features; and (d) they make the theory less vulnerable to some damaging objections, most importantly, the objection from action guidance. Second, I shall examine the ideal of the exemplary arguer and show how, given the relevance of character to argument, the virtues characteristic of the exemplary arguer can hardly be restricted to the well-known set of argumentative virtues, but encompass a diversity of character traits. I will also distinguish between different kinds of argumentative exemplars, using examples drawn from legal argumentative settings. Third, I will argue that the law (in a

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<sup>1</sup> An exception to this is the discussion of anti-exemplar sceptics by Cohen (2013b).

number of ways and, critically, through its personification in legal officials) provide exemplars of argumentative virtue that are central for further developing a virtue theory of argumentation and shaping the argumentative public culture. I shall conclude with some suggestions for further research in virtue exemplarism about argumentation.

## 2 Exemplarity and the Virtue Theory of Argumentation

Virtue argumentation theory -which places the idea of virtue at the center of the theory of argumentation- is rapidly evolving in interesting directions as new topics in argumentation theory are being examined by using the tools of virtue theory. Thus far, however, and in contrast to virtue theories in other domains, virtue argumentation theory has not availed itself of the resources of exemplarism. Exemplarism, i.e., the idea that exemplars are central to normative theorizing, was a central Roman contribution to ancient virtue ethics (Langlands 2018, Roller 2018). The Roman discourse of exemplarity played a critical role in virtue education, and it remained as pivotal in moral theorizing (despite the so-called Renaissance crisis of Exemplarity) until virtue ethics was eventually displaced by utilitarian and Kantian approaches.<sup>2</sup> The retrieval of virtue ethics, however, did not bring with it the recovery of exemplarity. Virtue ethics was, to a large extent, reinstated in a mutilated form, in a rather abstract fashion that was more in tune with the general approach to ethics which, notwithstanding differences, deontology and utilitarianism share. Virtue ethics suffered, as it were, a ‘procrustean’ adjustment to make it fit (and compete with) more easily with the dominant, principle-based, approach to ethics. The relevance of exemplarity to moral thought was ‘rediscovered’ much later and is associated with the pioneering work of Linda Zagzebski (2010, 2017)—just as the recovery of virtue ethics is kicked off by Elisabeth Anscombe’s work (1958).

Curious enough, and despite the fact that Zagzebski’s work is a major contribution to virtue epistemology, Zagzebski revives exemplarism in a way that is independent from a virtue framework. Furthermore, she conceives exemplarism as a competitor to virtue ethics (and deontology and utilitarianism, all three of which are then viewed as theories that rest on a conceptual foundation) (Zagzebski 2017). In Zagzebski’s influential version of exemplarism, exemplarism stands

out as an independent moral theory that is grounded on a non-conceptual foundation, namely, the emotion of admiration. In this view, exemplars are identified by the emotion of admiration: they are people, actions or deeds that give rise to admiration (Zagzebski 2017, p. 15).<sup>3</sup> Virtue is (like duty) relegated as a derivative notion of exemplarity: virtuous people are, in this approach, those who are admirable, and thus, exemplary (Zagzebski 2017, p. 21). This separation of elements, i.e., virtue and exemplarity, that once belonged to one and the same tradition has been problematic for both exemplarism and virtue theory. The problems of making admiration the foundational notion in an exemplarist theory are well-known (and have been amply discussed in the literature) (Ortiz: 2019). In light of these problems, the classical view that exemplars are those who possess virtuous traits of character to an exceptional degree has been reestablished as an important way to think about exemplarity (Ortiz: 2019). Virtue theory has also been re-connected to exemplarity, with exemplars playing an important role in virtue theory in different fields, such as law (Amaya 2020), business (de Swaan 2020), education theory (Croce and Vacarezza 2017), ethics (Vacarezza 2023), and epistemology (Croce and Pritchard 2022). It would be beneficial, I submit, for virtue argumentation theory to similarly incorporate exemplars as key elements within the theory.

The insertion of exemplars within a virtue theory of argumentation would significantly enhance the plausibility of the theory. First, on a virtue approach, education is part of the theory: we learn what virtue is by learning how to acquire it.<sup>4</sup> Exemplars are extremely useful educational devices and thus central in a virtue theory. We learn how to be virtuous by imitating others who display a singular degree of virtue (Croce and Vacarezza 2017). By emulating exemplary arguers, we may thus come to acquire the traits of character that enable them to excel at argumentation.<sup>5</sup> For example, in law, a clerk may come to develop the situational perceptiveness that is characteristic of a virtuous judge, by imitating the way in which his ways of arguing, thinking, and reasoning are responsive and attuned to the particulars of the case, or a junior associate attorney may acquire a willingness to

<sup>2</sup> The book of historical exempla, structured according to the virtues they meant to illustrate, were central pedagogical means until the late eighteenth century, which speaks to the fact of both the importance of virtue in the history of moral thinking as well as its connection with exemplarity. See Eriksen (2017). On the Renaissance crisis of exemplarity, see Jeanneret (1998) and Rigolot (1998).

<sup>3</sup> Zagzebski distinguishes between different exemplarist theories, depending on the object of admiration, namely, exemplarist ethical theories, exemplarist act-based theories, and exemplarist outcome-based theories. See Zagzebski (2004: 48).

<sup>4</sup> See Annas (unpublished ms).

<sup>5</sup> See Thorson (2016: 365) (arguing for that one develops argumentative virtue by emulating admirable arguers in one’s epistemic community). See also Kidd (2016, p. 399) (arguing for the relevance of positive and negative exemplary arguers in the development of intellectual humility) and Oliveira de Sousa (2020: 343) (arguing that setting an example in argumentative interactions with others may lead them to developing self-regarding virtues as well as other regarding virtues).

modify one's own position, which is a central argumentative virtue, by witnessing how a virtuous lawyer is ready to change her views in light of the arguments advanced by other lawyers when discussing a case within the team.

Second, exemplars play a pivotal role not only in personal development, but also in theory development. Exemplars are not only illustrations of what previously defined argumentative virtues are, but, as Clark nicely put it, they are the 'vessels through which, we construct those traits.' (Clark 2012, p. 88). Exemplars help us flesh out, revise, and refine one's conception of the virtues (and vices). By witnessing argumentative excellence in others, we develop nuanced views of what open mindedness, wittiness, courage, or charity requires in an argumentative exchange. This makes it vital to have a large repository of exempla, which would enable one to develop rich accounts of the virtues that are relevant to argumentation as well as a fine-grained understanding of their demands. Indeed, the fixation on a few, selected, models of virtue (and vice) (e.g., Cicero or Quintilian for the Renaissance authors, or Trump nowadays -as exemplars and anti-exemplars in public argumentation- but the point equally applies to homely, closer, models of private argumentation) severely limits our understanding of which traits of character are argumentative virtues, yields a stagnant conception of these virtues, and impairs their adaptability.

Third, exemplars are normative ideals that have some distinctive features that importantly enhance their capacity to guide and ameliorate the argumentative practice. Exemplars are embodied and concrete normative ideals that vividly present to us argumentative excellence in action that we can -surely, with effort- achieve. Thus, they contrast with highly idealized normative standards that are detached from human cognitive limitations and resources as well as with overly abstract ideals that are far removed from particular contexts of argumentation. The 'ideal arguer,' which figures in some virtue approaches to argumentation (Cohen 2005, p. 64), is a normative ideal that shares with other normative ideals put forward by non-virtuous theories of argumentation, i.e., Perelman's 'ideal audience,' a high degree of abstractedness and idealization. Whereas the 'ideal arguer,' like the 'the *phronimos*' or the '*spoudaios*,' are important theoretical devices, exemplars of virtue and vice provide the virtue theory (of argumentation and otherwise) with valuable resources for its users to fully apprehend the requirements of virtue and improve their practice.

Exemplars further strengthen the plausibility of a virtue theory of argumentation in that they help the theory meet a main objection facing virtue theories. An important objection against virtue ethics is that it fails to provide action guidance as to how one goes about determining that ought to be done in a particular situation (Louden 1984; Solomon 1988; van Zyl 2019, pp. 124–144). Virtue theory -so the objector claims- does not provide a set of rules or principles

that can be applied to determine what to do, but rather it directs us towards the virtuous person, which is meant to provide the relevant normative standard. This strategy, however, encounters a serious epistemological problem: one should do, according to the theory, what a virtuous person would do, but given that virtue cannot be codified, but rather it enables those who possess it with a sensibility to virtue-reasons, what virtue requires is opaque to the non-virtuous. The person who has the virtue of argumentative courage knows when she should challenge a point or when she should, to the contrary, retreat, but since what 'argumentative courage' requires cannot be laid down in a set of rules that anyone, irrespective of their degree of virtue, could use, it is unclear how the person who lacks courage is supposed to know what is the virtuous thing to do in a particular argumentative context.<sup>6</sup> Think of an argumentative exchange at trial. To tell the non-experienced lawyer that she should do what a virtuous one would characteristically do, when in doubt as to whether she should let a claim stand or whether she should challenge it looks, in the face of it, very poor advice.<sup>7</sup>

Some virtue theorists have responded to the action guidance objection by appealing to virtue rules and vice rules (Hursthouse 1999, pp. 35–36). For example, virtue rules, such as 'Be courageous,' or vice-rules, like 'Do not be timorous,' provide valuable guidance to those who do not yet fully possess the virtue of courage since most people are familiar with the standard virtues and vices. These virtue-rules, to be sure, fall short of a decision-procedure, e.g., they do not exactly tell the junior lawyer whether he should object or refrain from doing so in the specific case, but this is an advantage, rather than a drawback, of the theory. A good normative theory, on a virtue approach, instead of mandating what should be done, should guide our development so that one can acquire the capacities to determine by oneself what is that should be done (Annas 2004). In other words, it is not only that it seems impossible to codify right conduct (e.g., the right way to go about arguing in a specific context) but it would tell against a theory that it purports to provide rules that will allow us to identify the right thing to do across contexts and irrespective of one's virtues (or lack thereof).

Nonetheless, even if action-guidance cannot and should not equal the provision of a decision-procedure, and even if our understanding of the virtues enables us to grasp virtue rules, exemplars further enhance and deepens our understanding of virtue concepts. 'Be courageous' is a rule that

<sup>6</sup> This is referred to as the 'perspective objection,' the idea that the perspective of the virtuous person is, by definition, opaque to the non-virtuous. See Athanassoulis (2022).

<sup>7</sup> In addition to the epistemological worry, there are other problems with the proposal to erect the *phronimos* as an ideal normative standard. For discussion, see van Zyl (2011) and Johnson (2003).

directs our attention to aspects of the situation that demand courage and help us determine how to best respond to them, but ‘be courageous like your daughter’ (who did not let unsupported claims about gender inequality go unchallenged and was ready to face social criticism and reputational damage as a result) provides more detailed valuable guidance as to how bravery in argument may be understood and how to best respond to bravery-reasons when these obtain. Critically, exemplars help make more concrete the ideal of ‘what a virtuous person would do’ in a way that does not amount to replacing the person’s judgement by a decision-procedure, but by contributing to their development so that they may come to act as a virtuous person would. Thus, the junior lawyer may find valuable guidance in exemplars of argumentative courage (which come, as I will explain later, in different shapes and sizes) and, by appropriately imitating them, succeed at developing ‘courage,’ thereby avoiding the extremes of fearfulness and fearlessness when arguing about a case. Thus, an exemplarist version of a virtue argumentation theory helps us elaborate on virtue rules (and vice rules) and provide valuable guidance as to how one should determine what is that should be done, thereby minimizing the import of the objection from action-guidance.<sup>8</sup>

### 3 Exemplary Arguers

Exemplary arguers—on the exemplarist approach advocated above—are a pivotal element of a virtue theory of argumentation. They play central roles within the theory: they furnish important tools for theory development; they are critical to virtue education, which is a central part of the theory, and they provide the theory with a normative standard that has some distinctive advantages. In so doing, they also endow the virtue theory of argumentation with the resources needed to provide valuable action-guidance. The inclusion of the idea of exemplarity within a virtue theory of argumentation prompts a number of important questions: Who are these exemplary arguers with the capacity to perform such central roles? Which kinds of exemplarity are relevant to a virtue theory of argumentation? How do we identify them? I will explore the foregoing issues by using the virtue theory of legal argumentation as an example.

Exemplary arguers are those who possess to a great extent a large share of the argumentative virtues, i.e., those traits of character that are needed to excel at argumentation. Most prominently, these virtues include the ‘willingness to

question the obvious,’ the ‘willingness to modify one’s position,’ the ‘willingness to engage in argumentation,’ and the ‘willingness to listen to others.’ (Aberdein 2010, p. 175). However, this set of traits of character, although important, hardly exhausts the field of argumentative virtue. It is a main claim of virtue theory that virtue and character are intimately linked. There are different ways in which the link may be understood. In a weaker, epistemic, version, the possession of virtue enables the person to perceive virtue-reasons and respond to them, thereby enabling her to advance an argument that is good (for virtue-independent reasons). In a stronger, constitutive, version, an argument is good because it is what a virtuous person would characteristically articulate.<sup>9</sup> In either version, character is not merely interlocked with argument in the sense that it affects the content of the premises of a person’s argument, but also in that it enhances (or perverts) the reasoning itself (Adler and Vasiliou 2008, p. 43). It is central to the classical tradition of virtue ethics (and to some prominent contemporary versions of virtue theory) that virtue education involves a development of one’s ability to reason (Adler and Vasiliou 2008, p. 44); (Annas 2003). One forms one’s character by reasoning—and one’s character will also shape the way in which one reasons.

Now, given the link between character and argument, it seems that the kind of traits of character that are conducive to good argumentation are not only the so-called argumentative virtues, but it may potentially include all virtuous traits. How one argues, depends on who one is, so that, for instance, whether one would detect that generosity-reasons obtain (and appreciate the relevance of an argument thus grounded) will depend on whether one is a generous person. This combined with the idea that a virtuous character has unity—so that one cannot fully possess generosity unless one has other traits of character as well, most importantly, practical wisdom, makes it the case that to truly excel at the practice of argumentation, one needs to possess not only a subset of argumentative virtues, but rather a rounded virtuous character. A good arguer, in sort, cannot be a bad person. A lack of a virtuous character taints argumentation—so that (some) flaws in argument are traceable to flaws in character. Conversely, virtuous traits of character are built and exercised in one’s practical reasonings, and, ultimately, reflected in one’s arguments.

Of course, this is not to say that all traits of character will be relevant in every single instance of argumentation. Neither is it to say that all virtues should be equally important or demanding across all argumentative contexts. A virtuous arguer—like a good argument—shifts with context. A virtuous judge is required to express loyalty to law when arguing

<sup>8</sup> For a discussion of different modes of virtue action guidance based on exemplars, see Daly (2021). Cf. Kotzee, Carter and Siegel (2019) (arguing that exemplars of virtue do not help us solve the problem of action-guidance).

<sup>9</sup> For a related distinction between weak and pure versions of virtue epistemology, see Zagzebski (1996: p. 16).

for a particular decision, in a way in which a social activist is not. And what sincerity demands in a lawyer's argument diverges from what it requires in the argumentative context of a judicial opinion. But the character-dependency of argument does militate against the idea that all that a virtuous arguer would need is a sophisticated set of argumentative skills. This will hardly be a surprise for the ancients, who clearly distinguished between sophistry and good argument. Nonetheless, it is worth emphasizing that the claim -central to virtue argumentation theory- about the connection between character and argument implies that a diversity of virtues -beyond the strictly argumentative ones- are relevant to argumentation.

Now, what are the virtues that are needed to excel at argumentation? First, there is an important set of moral virtues that are particularly relevant, such as kindness, patience, and civility, which help generate a context in which arguments are freely exchanged against a background of mutual respect. Second, epistemic virtues, like open-mindedness, intellectual humility, intellectual autonomy, and intellectual sobriety, are of the utmost relevance to argumentative endeavors. Third, communicative virtues, like sincerity and clarity, are surely critical for argumentation. Additional virtues may be needed in different argumentative contexts. For example, in legal argumentative contexts, one also needs institutional virtues, such as loyalty and justice. Their salience also depends on the argumentative context. For example, whereas the virtue of justice will be critical in a legal or political argumentative context, it may not be so consequential in an argumentative exchange concerning a medical diagnosis. The way in which their demands should be understood also varies with context. For instance, what the virtue of justice requires in an argumentative legal context, in which a number of institutional constraints are in place, is different from what it requires in a political context, which is not similarly constrained. Furthermore, there may be significant differences between different 'sub-contexts', for example, what justice requires is not identical across different legal argumentative settings, i.e., legislative, judicial, and administrative.<sup>10</sup> Finally, the virtuous arguer requires practical wisdom to arbitrate between the demands imposed by the specific virtues, in cases in which these demands overlap or come into conflict, to determine the right mean in which virtue consists, and to orchestrate the work of the different kinds of virtues into a single line of action (Zagzebski 1996, pp. 211–231).

<sup>10</sup> Even though there is a limit to contextual variation (e.g., dishonesty cannot be a virtue in any kind of professional role, and if it appears to be, then this is not an indication that honesty is not a virtue across the board, but rather it suggests that there is something wrong with a conception of the professional role that makes dishonesty instrumental to achieving the ends of the profession).

Exemplary arguers—who possess to a significant degree the foregoing virtues- come in different shapes. To begin with, the 'role of an arguer' is always discharged in a specific argumentative context and is consequently associated to different social and professional roles. Exemplars are found across the board, but they also diverge across contexts. We may find, for example, in law, argumentative exemplars among 'advocates,' 'administrators,' 'prosecutors,' 'lawyers,' 'judges,' 'regulators,' 'police officers,' or 'public servants.' However, what it takes for a judge to be an exemplary arguer, and the kind of virtuous traits of character she possesses and exercises when arguing about a case, will not be the same as those exhibited by a defense lawyer -not to mention the virtues that are characteristic of an exemplary arguer in non-legal argumentative contexts. Thus, it is important to keep in mind that, as mentioned before, standards of argumentative excellence are context sensitive, and consequently, there is a plurality of models of exemplarity.

Exemplars can also be negative, or anti-exemplars, exemplars of how one should not go about in argumentative exchanges. Models of negative traits of character also have -as some studies have shown- an important pedagogical value (Haack 1972); (P. Lockwood et al. 2005); (Gibson 2003, p. 591); (Sullivan and Alfano 2019). There are, to be sure, 'paragons of bad arguers,' 'argumentative trolls,' as Cohen has boldly, but quite descriptively, called them, who personify in many ways what argumentation should not look like (Cohen 2017). The 'clever lawyer,' who is ready to use what it takes to trick the court; the 'heartless judge,' who hides behind formalisms and avoids substantive argument, the 'ferocious' prosecutor,' who overlooks evidence and arguments that tell against his case, are some well-known 'figures' that populate literature, film and the popular imaginary of the law (as well as, certainly, the real life of the law). However, next to these wholesale negative models, there are also 'mix exemplars,' arguers that embody a mixture of good and bad character traits, of argumentative virtues and vices, who also play an important role in virtue development. Indeed, mix exemplars have been shown to be particularly useful for pedagogical purposes in that -in contrast to paragons of virtue- they are perceived as feasible models that one may hope to approximate (Athanasoulis 2022).

Argumentative vices, like argumentative virtues, are the result of habituation. Whereas they may be deep seated features of one's character that virtue education has not being able to uproot, they may also result from the degeneration of a character that was once virtuous. Virtue cannot be taken for granted—it can enhance as much as it can deteriorate. Thus, mix exemplars of argumentative virtue may be found among those who are still in their way to virtue, and have a less than a fully developed virtuous character, but also among those who have lost argumentative virtue along the way. Professional routines may erode the love for truth and

justice, which the now sloppy judge once had; dismissiveness of other's people's views can grow in who was back in time an open-minded law professor, and an aggressive arrogance can become the mark of the argumentative style of a formerly respectful and kind advocate. Although sad for those who loose virtue, these unfortunate developments are useful for others who witness it and, as a result, become aware of the fragile nature of argumentative virtue and alert of the different ways in which it can deteriorate.

In addition to the diversity of exemplars that the context-dependency of standards of argumentative excellence brings about and the existence of complete, mix or partial, and negative models of virtue, it is also important to highlight that in addition to flesh and blood exemplars, exemplary arguers may also be drawn from the realm of fiction. Thus, the models from which one may learn argumentative virtue are, happily, much broader than those we may have first experience of and includes imaginary people as well as real people from the past, about whom we learn from historical, rather than fictional (to the extent that they may be distinguished) narratives. To continue with the example of law: Judge Stephen Breyer or former Advocate General Eleanor Sharpson are exemplary arguers, but so is Benjamin Cardozo or Lord Denning, and Portia in Shakespeare's *The Merchant of Venice* or Jake Brigance in *A Time to Kill*.<sup>11</sup> Indeed, there is no shortage of fictional examples of argumentative virtue in law—which may be explained by the fact that there is an important association between law and argumentative excellence, to which I turn now.

#### 4 The Law as an Exemplary Arguer

Law is at the core an argumentative practice: it aims first and foremost at resolving conflict through the force of reason. The close bound that there is between law and argument makes it unsurprising that the law should be a fertile soil for exemplary arguers. Argumentation is central to legal education and legal practice, and, as a matter of course, exemplary arguers (for real and in fiction) that stand out as cultural icons of excellence in argument include prominently legal professionals. But the linkage between exemplarity, law and argumentation runs deeper than the fact that there is an important presence of legal figures among the lines of those who excel at argument. First, it is not only the case that legal exemplary arguers are often illustrative examples of excellence at arguing, but they also play an important normative role. Exemplary legal arguers are central to fleshing out commonsense as well as expert understandings of argumentative virtue. Exemplary legal arguers, in other words,

provide a kind of 'ostensive evidence' that plays a particularly relevant role in determining what argumentative virtue is. Judicial impartiality, for instance, is an example, in this normative, rather than merely illustrative sense, of what argumentative impartiality requires. Indeed, some groups of intellectual virtues that are taken to be central for engaging in the inner debate that is required for virtuous inquiry are referred to as the 'forensic' virtues and the 'judicial' virtues (Cooper 1994). Intellectual pertinacity—which ensures that the best possible case is made for any thesis—and judiciousness -i.e., the ability to do justice to conflicting arguments disinterestedly- are, respectively, the virtues of the advocate and the judge, who are thereby viewed as paramount models for these virtues.

Secondly, exemplars -in argumentation and everywhere else- play an important function in constituting both individual and social identity. One defines one's identity not only in terms of who one is but also who one wants to be—and exemplars of virtue are both models which help us develop, by imitation, the traits of character that determine who we are as well as models that embody ideals of who we want to become. For instance, I am a hard worker like my father and want to be an inspiring teacher like my former history teacher. Thus, exemplars (and anti-exemplars!) play a central role in one's personal narrative and self-identity. Similarly, communities are defined by reference to selected exemplars, which play an analogous role in constituting social identity. Erasmus wrote: 'Turn the pages of history and you will always find the morality of an age reflecting the life of its prince.' (1997, p. 21). In our age, a broad array of exemplars, from political leaders to influencers, importantly shape a community's identity—including, as Erasmus rightly saw, its moral identity. Juristic exemplars, I would argue, are particularly relevant models for shaping a community's argumentative culture. As public exemplars, they play a prevalent role in putting forward and embodying ideals of argumentative excellence. They are, to be sure, hardly the only kinds of argumentative models in the public sphere—and there is, unfortunately, an abundance of anti-exemplars in current public culture, as a glimpse at social media makes evident. But legislators, judges or lawyers are, nonetheless, important public models of argumentation, which makes it critical that they be exemplary, so that they may provide models worthy of emulation.<sup>12</sup>

Last, besides providing personal models of argumentative virtue through legal officials, the law itself is also a key model of argumentative excellence (Brownlee 2015). There are different ways in which the law may be an exemplar for

<sup>11</sup> On the relevance of fictional and historical models for virtue acquisition in law, see Amaya (2013).

<sup>12</sup> Imitation is a complex process which may fail, in a number of different ways, to contribute to virtue development. For a discussion of some of the obstacles that may distort the process of learning virtue through imitation in the context of law, see Amaya (2020). These difficulties fully apply to the argumentative virtues. These problems point to the need to be alert to the risks involved in imitation (for example, the ways in which it may degenerate into mere copying, when the imitator only imitates superficial features in the model), but they do not prevent imitation, which is a key mechanism for

virtuous argumentation. First, the law can model argumentative virtue through specific laws and policies. For example, the law in precluding, through rules of evidence, the use of evidence that is not relevant to the case under dispute as well as evidence that is unreliable, is an exemplar of the kind of evidence that should not be deployed in a virtuous argumentative exchange. Second, the institutional and organizational legal structure may provide exemplars of argumentative virtue. For example, the law models argumentative impartiality by structuring trials in ways that make it necessary for the judge or jury to hear both sides, or by preventing that one and the same person perform both inquisitive and adjudicative functions; it models tolerance by requiring that dissenting judgments be included in the judicial opinions and made public; it models the awareness of one's fallibility that is central to intellectual humility by setting up a system of appeals; and it models a willingness to engage in argumentation by putting in place institutional mechanisms whereby citizens may challenge law's decisions, such as the judicial revision of an administrative act. More generally, the ideal of the rule of law exemplifies argumentative excellence in demanding that all disputes be solved through giving reasons.<sup>13</sup>

Thus, the law models argumentative virtue in various ways. Nonetheless, the jurists remain central exemplary models for argumentative virtue. In providing concrete, embodied, ideals of argumentative excellence, exemplary legal arguers are particularly useful as pedagogical tools. They make vivid to us what argumentative virtue amounts to and inspire us to thrive in a way that eludes more abstract ideals. In addition, they are models of virtue-in-action that demonstrate the way in which the demands of virtue are context-dependent. This is an additional advantage over other channels through which argumentative virtue may be modeled in law which are necessarily general, i.e., through general rules, procedures, and institutional forms. While it is extremely valuable, for the purposes of learning what open-mindedness requires, to see that legal proceedings allow for the interested parties to be heard, e.g., through *amicus curiae*, it is only by witnessing excellent others—seeing, for example, how, in a concrete argumentative exchange,

someone who is willing to listen avoids the extremes of intellectual close-mindedness and intellectual gullibility, that one is capable of fully acquiring the virtue of open-mindedness. In providing personal models of argumentative virtue, which are, moreover, particularly influential given law's prominence in public life, the law importantly contributes, through imitative chains, to generating a virtuous argumentative culture.

## 5 Conclusions

In this paper I have argued for the centrality of exemplars within a virtue theory of argumentation. Exemplars have an important pedagogical value, they help flesh out a richer conception of the argumentative virtues, and endow the theory with a concrete, embodied, normative standard, thereby minimizing the import of the action-guidance objection. Exemplary arguers, I have sustained, possess and exercise a variety of virtues that go beyond the standard argumentative virtues. I have illustrated the foregoing claims by using the example of legal argumentation. The law, however, is not only helpful for illustrating the advantages of an exemplarist version of a virtue theory of argumentation, but is also a particularly important source for argumentative exemplarity. The law itself and, most importantly, through its personification in legal officials (such as lawyers, judges, or prosecutors) and people occupying important roles within the legal system (like members of a jury, regulators, members of a parliament, or police officers) affords a wealth of argumentative models. Furthermore, law's exemplary arguers have an influence that extends beyond the realm of law. The parliament or the courthouse are sites of public deliberation and as such they play a central role in shaping the general argumentative culture. Given the prominent role that exemplary legal arguers play in society at large, it is critical that they be exemplars of virtue, rather than vice, that civic and legal education be oriented towards developing the traits of character that are needed to excel at argumentation, that legal and political systems be structured so as to foster the exercise of those traits, and that efforts be made, and strategies be put in motion, to make those who excel at the argumentative practice that is involved in the creation and application of the law more visible. In our times, given the unprecedented capacity of traditional and novel role models of argumentation to drive, not always in the direction of argumentative excellence, the wider argumentative culture, this is more needed than ever.

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Footnote 12 (continued)

social learning, from being a central tool for virtue development. Cf. Aberdein (2010, p. 169) (suggesting that given the risks involved in imitating virtuous people, we should rather imitate the virtues themselves).

<sup>13</sup> Kimberley Brownlee writes: 'the law models virtue in showing that disputes should be resolved through discussion, not force. A key thing that the law models (in the Anglo-American tradition) is the giving of reasons.' See Brownlee (2015, p. 10). This requirement of 'reason giving,' is a central component of the rule of law, see Pettit (2001, p. 168).

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