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LAW AS A LIBERAL ART

Francis J. Mootz III*

Law is a liberal art. Unfortunately, this fact is often forgotten by legal educators, legal practitioners, and citizens. This collective amnesia does not just pose a problem of proper academic categorization. Our inattention to law's character as a liberal art of law has a profound effect on the full realization of the rule of law in contemporary constitutional democracies. Reclaiming law as a liberal art is critically important, and this effort should be at the center of our approach to legal education.

In this short essay, I begin by providing a brief overview of what I mean by saying that law is a liberal art. Then, I contrast my position with competing views of law that currently hold sway in the academy. Next, I offer a cautionary tale about the risk of overly intellectualizing one's commitment to treat law as a liberal art. Finally, I conclude by urging the importance of recognizing law as a liberal art to gird our pedagogical approaches to teaching our students.

I. Why Law is Properly Regarded as a Liberal Art

What does it mean to claim that law is a liberal art? The seven liberal arts of the medieval system were composed of the quadrivium (math, geometry, astronomy, and music) and the trivium (grammar, logic—or dialectic—and rhetoric). From the time of the ancient Greek city-states, the trivium was the core of education

* Professor of Law, McGeorge School of Law, University of the Pacific. I would like to thank Dean Michael Hunter Schwartz for nominating me for the Faculty Research Lecturer Award and for encouraging me to publish these remarks. I am inspired by his commitment to legal education. This essay is a slightly revised and expanded version of an address I delivered to the University of the Pacific on April 30, 2022, upon receiving the University of the Pacific 2021 Faculty Research Lecturer Award. I have retained the conversational style of the original talk. For those interested in the ideas in this talk, much of my scholarly work during the past thirty-five years has been dedicated to these themes. I felt it best to leave the notes relatively unburdened by citations and didactic explanations.

and rhetoric was its most potent element. Law is a liberal art because lawyers use particular words that have a historical and contextual valence, they apply rigorous analysis to these words in applying them to a problem, and they employ effective methods of communication to persuade others of the best solution to the problem. I think many would agree that practicing law involves grammar, logic, and rhetoric.

The first year of law school is best understood as an introduction to the legal trivium, with students engaging in Socratic dialogue with the professor to demonstrate their proper use of legal terms, to provide a correct analysis of the issue at hand, and to frame effective arguments to defend their analysis. Contemporary legal education carries forward what Giambattista Vico termed an “ingenious method” by teaching students how to argue both sides of a problem that has more than one plausible resolution. Vico pushes this further, arguing that by its nature law is an exemplary instance of the liberal arts.¹

Why are the arts of the trivium deemed “liberal”? It is certainly not a reference to a political ideology. Instead, the classical “liberal arts” are those modes of knowing and understanding that liberate us by molding us as persons able to rise above our natural ignorance. One schooled in the liberal arts cannot forget one’s education in the way that an economist might forget how to perform a regression analysis. The liberal arts liberate us by changing us as people. We become something new and understand the world in a way that cannot be cast aside. The liberal arts do not provide a static account of definitive truths in the manner of mathematics and formal logic, but they do provide experiences that are constitutive of our humanity. I will unpack this claim by returning to the elements of the trivium.

I begin with grammar. Legal grammar has a veneer of specialized terms with precise contours, but in fact legal analysis often hinges on ordinary terms such as “good faith” and “reasonableness” to reach decisions. The apparent imprecision of legal language and its inability to generate singular answers through formal logic are not regrettable failures that we should bemoan and seek to eradicate. Instead, this is the very essence of legal thinking at work. Legal discourse relies on metaphors to temporarily fill some of the gaps caused by the imprecision of ordinary language, permitting resolution of a question that is

¹ GIAMBATTISTA VICO, *ON THE STUDY METHODS OF OUR TIME* 41 (Elio Gianturco & Donald Phillip Verene trans., Cornell Univ. Press 1990) (1709).

capable of multiple responses that all meet the minimal test of logic. If you encounter a lawyer who promises a clear answer to every complex legal problem handled, you had best turn and run. If you encounter a student who wants to develop univocal answers to complex legal problems, you had best tender an invitation to office hours for a long conversation. Law is a liberal art, not a natural science.

Although grammar is obviously central to our legal practices grounded in texts and argumentation, formal logic plays a negligible role in most legal analysis. The Italian legal theorist Alessandro Giuliani emphasizes that the logical element of legal reasoning is best characterized in terms of Aristotle's concept of dialectic.² Dialectic is a form of knowledge that relies on ordinary language used to express opinions about matters whose resolution is uncertain but as to which the parties can reach reasonable agreement by finding common ground and working reasonably to a shared conclusion. Giuliani emphasizes that dialectic and juridical experience are closely linked because legal reasoning involves the proffering and testing of opinions in ordinary language rather than a purely deductive exercise.

Giuliani acknowledges that the testing of opinions in dialogue requires some cooperation—perhaps unwittingly in adversarial systems—between the parties to a juridical dispute. Indeed, it is only by acknowledging these cooperative features that we can recognize how dialectical argumentation might fail and degenerate into sophism. The parties need not be aligned substantively, but they must operate within what can only be described as an ethical relationship. This characterization may sound strange to modern ears, but the ethical commitment of the parties is shaped by institutional features of modern law that constrain the scope of acceptable argumentation, such as the Code of Civil Procedure, the Rules of Evidence, and the Rules of Professional Conduct. These forces compel collaboration to a degree—enough collaboration, at least, to make it possible to answer the question up for debate in a reasonable manner. This is the fundamental distinction between dialectic and sophistic: Dialectic is ethically oriented by the mutual recognition of each participant for the other—and thus the equality of each as dialogue partners—acknowledging their ability to contribute to seeking the contextual truth about the question at hand. Sophistic would be an unconstrained mosh pit of scurrilous argumentation,

² Alessandro Giuliani, *The Aristotelian Theory of the Dialectical Definition*, 5 *PHIL. & RHETORIC* 129, 129–30 (1972).

because sophism is focused only on victory, not on the experience of reasoning well. Perhaps the single most challenging task for a law professor is to explain how we can reason together with integrity even if there is no singular answer and despite the always-present threat that one participant in the dialogue will act purely strategically with disregard for the reason of the situation.

The model of dialectic is a powerful inspiration for reasonable argumentation, but I part ways with Giuliani because I believe that most legal analysis is determined primarily by rhetoric rather than dialectical logic. This is not to suggest that there is a sharp distinction between the two forms of persuasion. Aristotle famously begins *The Rhetoric* by characterizing dialectic and rhetoric as *antistrophos*.³ Law exemplifies how these “counterparts” work in a coordinated fashion, much like the performances of the *strophe* and *antistrophe* sung by the chorus in a Greek ode. Giuliani acknowledges the role of rhetoric as championed by Vico, but he subsumes too much under the mantle of a dialectical method. We can best understand law’s logic by using greater precision in our terminology. We can regard dialectic as a means of testing a hypothesis through reasonable discourse; in contrast, rhetoric is a means of securing the agreement of an audience. For example, one might engage in rhetoric to secure the agreement of another party that bodily integrity is a fundamental human right and then engage in dialectic to convince the other party that reproductive freedom entails this recognition of a fundamental right. Rhetoric and dialectic are closely intertwined in legal discourse, even if they are not identical. I agree with Hans Hohmann, who concludes that “legal argumentation, perhaps more clearly than other forms of reasoning highlights the need to link dialectical soundness and rhetorical acceptability in the analysis and design of good arguments.”⁴

It is important to view the deployment of legal grammar through the theoretical lenses of rhetoric and dialectic. Legal argumentation proceeds in a cooperative dialectic that is made possible only through the rhetorical establishment of shared

³ ARISTOTLE, ON RHETORIC: A THEORY OF CIVIC DISCOURSE 28 [1354a] (George A. Kennedy trans., Oxford Univ. Press 1991). In an ancient Greek ode, the strophos and antistrophos were alternating movements by the persons on stage. In modern terminology we might say that dialectics and rhetoric are flip sides of the same coin.

⁴ Hans Hohmann, *Rhetoric and Dialectic: Some Historical and Legal Perspectives*, in DIALECTIC AND RHETORIC: THE WARP AND WOOF OF ARGUMENTATIVE ANALYSIS 41, 50 (Frans H. van Eemeren & Peter Houtlosser eds., Kluwer Acad. Publishers 2002).

opinions from which the cooperative argumentation may begin. Aristotle defines rhetoric as the art of seeing, in a given case, the available means of persuasion.⁵ There are multiple opinions that might be accepted by those in the dialogue, and identifying which opinions are shared is most likely to permit the parties to reach a reasonable result through dialectical reasoning from those common starting points. The critical rhetorical activity that subtends legal argumentation is to build a shared perspective from which competing claims can be assessed. Put differently, properly framing the question that must be addressed dialectically is an advocate's primary rhetorical achievement.⁶

One motivating purpose of Aristotle's *Rhetoric* is to distinguish rhetorical and dialectical reasoning from sophism. The very legitimacy of legal argumentation rests on this distinction. In dialectic, the ethic is a cooperative effort to follow from premises secured through rhetoric or given through institutional rules to an uncertain conclusion. In rhetoric, the ethic is a persuasive encounter in which one seeks the other's agreement with integrity. Although rhetorical claims are supported by *logos* (reasoning), *pathos* (disposing the audience to hear your argument) and *ethos* (the character of the advocate and her argument), *ethos* is the most important means of persuasion. As Gene Garver argues, rhetoric is, in the end, an "art of character."⁷

The relationship of rhetoric to dialectic is best revealed by examining a troublesome topic in legal argument. Lawyers commonly appeal to the dictates of justice in their arguments. Chaïm Perelman famously argued that some rhetorical appeals, such as philosophical argumentation, are made to a universal audience.⁸ The universal audience is not an empirical reality but

⁵ ARISTOTLE, *supra* note 3, at 35–37 [1355a–1356a].

⁶ FRANCIS J. MOOTZ III, RHETORICAL KNOWLEDGE IN LEGAL PRACTICE AND CRITICAL LEGAL THEORY 107–15 (Univ. of Alabama Press 2006).

⁷ EUGENE GARVER, ARISTOTLE'S RHETORIC: AN ART OF CHARACTER 18 (University of Chicago Press 1995).

⁸ Perelman's development of the ancient attention to audience is one of his signature contributions to rhetorical theory. Noting that the audience envisioned by the speaker "is always a more or less systematized construction," Perelman places emphasis on the speaker's goal of creating her audience in the course of addressing it. CHAÏM PERELMAN & LUCIE OLBRECHTS-TYTECA, THE NEW RHETORIC: A TREATISE ON ARGUMENTATION 30 (John Wilkinson & Purcell Weaver, trans., Univ. of Notre Dame Press 1969). In some circumstances, a speaker will aspire to more than persuading the audience to which her speech is immediately directed and will claim to offer reasons that would be convincing to all

rather a construction that the speaker uses to frame the argument. In legal argumentation these appeals take the form of a natural law argument, or an argument from justice, although the speaker often disguises the basis of the argument.⁹ In the modern secular world, natural law arguments are suspect. If we agree that there is no abiding structure of reality that grounds these arguments ontologically, we can understand them only by exploring the character of the audience that the legal orator seeks to construct and the manner by which the orator seeks to motivate an actual audience to act in response to these arguments. Perelman's development of the notion of a universal audience permits us to better understand how the dialectical exchange gets off the ground through a rhetorical plea.

A natural law argument—for example, to claim that it violates fundamental norms of justice to execute a person for a crime committed when the person was a minor—is directed to a universal audience for whom the actual audience, whether a jury, judge, or appellate panel—serves as a stand-in. Arguments traditionally couched in natural law terms are not arguments to a timeless and decontextualized rational being; rather, they are arguments designed to provoke those among the actual audience to rise above their parochial interests and to conceive of themselves as empowered to articulate truth, justice, and other confused notions¹⁰ in a manner that all persons should find persuasive.¹¹ It is only by understanding law as a liberal art that

reasonable persons. “This refers of course, in this case, not to an experimentally proven fact, but to a universality and unanimity imagined by the speaker, to the agreement of an audience which should be universal, since, for legitimate reasons, we need not take into consideration those [who] are not part of it.” *Id.* at 31. The speaker constructs a universal audience to shape her discourse but also to entreat those in the concrete audience before her—who “can never amount to more than floating incarnations of this universal audience”—to imagine themselves as part of such an audience. *Id.* As Perelman emphasizes, the actual audience helps to validate the speaker's construction of the universal audience, even as the universal audience serves as a check on the parochial concerns of the actual audience. *Id.* at 35.

⁹ See Francis J. Mootz III, *Perelman's Theory of Argumentation and Natural Law*, 43 PHIL. & RHETORIC 383, 391 (2010).

¹⁰ PERELMAN & OLBRECHTS-TYTECA, *supra* note 10, at 133–41.

¹¹ Thus, the sophists who argued against slavery might best be characterized as adopting this form: “No reasonable person seeking to implement the values of our legal system could conclude that slavery is legitimate, notwithstanding our custom and written laws to the contrary.”

we can understand how these rhetorical appeals to justice work, despite our ostensible rejection of natural law appeals in modern jurisprudence.

II. Popular Misconceptions of Law as *Techne*

Recast in terms of the trivium, legal practice is a liberal art. Understanding its character as such is necessary if we are to properly train the next generation of lawyers and judges. But there are strong forces that push against this understanding of legal practice. Indeed, most legal discourse is consciously employed as an elaborate rejection of its nature as a liberal art. The principal goal of legal rhetoric, one might say, is to deny its rhetoricity. To stake their claim to legitimacy, legal actors commonly paint a picture of law that deviates substantially from its character as a liberal art comprising rhetoric and dialectic rather than formal deduction. In Aristotelian terms, they portray law as *techne* rather than *praxis*. A *techne* is a skill that works from a model that can be repeated. A carpenter learns how to build a sturdy table by learning certain techniques. There is creativity permitted by the materials at hand, such as a particular artistic flair in the design, but there is a basic technical challenge to be mastered: creating a piece of furniture that serves its purpose as a surface for people enjoying a meal. Legal practice certainly involves using techniques in this manner, but law is not merely *techne*. Law is also *praxis*, which is a theoretically informed activity that has no definitive goal in advance of the reasoning. *Praxis* is less bound than the circumscribed efforts of *techne*, and it is also more integrated with the actor's self. *Praxis* is exhibited, for example, when a person comes to the realization of the best resolution of a moral question in the current circumstances. When we learn to judge a legal dispute, we are not working on a puzzle at arm's length. Rather, we bring ourselves to bear on the question and our practice displays our *ethos*. By collapsing legal practice merely to *techne*, originalists assume that legal grammar is precise, meaning is fixed, and we can deductively subsume questions under these perspicacious rules. Rhetorical flourish is acknowledged, but it is accepted only reluctantly as part of the unavoidably messy adversarial process. Even more, rhetoric is feared because it unmoors law from the false comfort of certainty. This picture sketched by originalists is beyond implausible; it is a dangerous corrosive that eats at the very heart of our democracy.

The theory of “public meaning originalism,” most famously advocated by the late Justice Scalia and now carried forward by an ideological army of scholars and judges, is a prime example of law’s fundamentally misguided self-understanding.¹² This theory contends that the grammar of legal discourse, and therefore the meaning of legal texts, is an unchanging empirical reality. The “original understanding” of legal words is determined by recourse to usages from the period in question, as if the meaning of language were a frozen artifact that can be extracted from history like mining coal from the earth. This facially implausible account is buttressed more recently by linguistic scientists, with originalists pinning their hopes on corpus analysis in an effort to lock textual meaning in an objectively determined past.

For originalists, the logical nature of arguments is deductive: Given the fixed grammar of a particular time frame, the rule applicable to a particular case can be applied to deliver a single determinate result. Rhetoric, then, is at most a stylistic distraction rather than an essential element of legal analysis as part of the legal trivium.

Consider *Heller*,¹³ the Second Amendment case that recognized an individual right to own guns. Justice Scalia’s majority opinion begins with the central originalist belief—that meaning precedes application in a specific case—by spending more than fifty pages analyzing the “meaning of the Second Amendment”¹⁴ before turning “finally to the law at issue here.”¹⁵ This is an outrageous rhetorical device, posing as an exercise in dialectical reasoning. It would be utterly fantastic to assume that Justice Scalia would have written these same fifty pages describing the original meaning of the Second Amendment if he had no idea of the nature of the dispute before the Court! He makes basic assumptions about the proper manner of reading the famously ungrammatical amendment,¹⁶ rejecting the analysis in

¹² Francis J. Mootz III, “Party Like It’s 1989: Justice Scalia’s Rhetoric of Certainty,” in *Justice Scalia: Rhetoric and the Rule of Law* 97-110 (Eds. Brian G. Slocum and Francis J. Mootz III) (Chicago: University of Chicago Press, 2019).

¹³ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

¹⁴ *Id.* at 576.

¹⁵ *Id.* at 628.

¹⁶ The Second Amendment provides, in full: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

amicus briefs filed by professional linguists.¹⁷ After finding the supposed secure and invariable meaning of the constitutional text, he admits that it will have to be subject to various exceptions, none of which he grounds in the original understanding of the words of the amendment.¹⁸ This recalls the old distinction between the “meaning” of legal texts and the “construction” of legal rules that will implement meaning in a specific context.

The problem should be obvious: By pretending to decide cases in a rigorous and definitive manner, originalist judges in fact conceal the *praxis* that is inevitably called upon to render a judgment. They absolve themselves of personal responsibility by “just calling balls and strikes,” and they do not reveal the true bases of their exercise of power. Pretending to be powerless as a simple agent of definitive methodologies is a betrayal of the obligations that judges undertake by participating in the liberal art of law. They recoil from their task by seeking a comforting illusion of unchanging meaning, even as the demands of constructing the applicable legal rules persists as challenge. “Just following [logically deduced] orders,” they claim.

III. A Caution against Excessive Intellectualism

It is not enough to recognize law as a liberal art. In the modern university the humanities have a tendency to present an overly intellectual account that doesn't always accord with lived reality. The “life of the mind” can sometimes obscure real life. We lawyers have clients who face real consequences as a result of our rhetorical representation, but even we may fall victim to overintellectualizing our field of study. Therefore, it is necessary to leaven my celebration of law as a liberal art with a caution against getting lost in self-indulgent humanistic theorizing.

I offer a story by way of illustration. I have regularly attended annual meetings of the Association for the Study of Law, Culture,

¹⁷ *Heller*, 554 U.S. at 586–89.

¹⁸ Justice Scalia acknowledges that the right of gun ownership is not unlimited, and that there will be exceptions to permit restricting ownership by persons who are mentally ill or convicted felons, and possession of handguns in government offices or schools. *Id.* at 626–27. Without any historical basis for these proposed exceptions, Justice Scalia suggests that “there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” *Id.* at 635.

and the Humanities for the past several decades. Each annual meeting is a smorgasbord of intellectual approaches to the law by cutting-edge scholars from a variety of disciplines. It is a scholarly testament to the liberal art nature of law. I have learned a great deal from the dedicated professors I have heard speak at this conference.

I vividly recall the 1999 annual meeting at Wake Forest University. The speaker at our formal dinner was Maya Angelou, who then was at the height of her popular acclaim after reciting a poem at President Clinton's first inauguration. She entered the room wearing a brightly colored floor-length African gown and a stunning headdress. She gracefully moved to the podium, capturing everyone's attention and commanding a respectful silence with her self-possessed dignity. Angelou began to speak with a powerful voice, reciting from her lyrical 1969 autobiography, "I Know Why the Caged Bird Sings." She described being raped at age 8, confronting brutal racism, and suffering the oppression of poverty, all of which rendered her mute for several years. She celebrated the miracle that her spirit survived intact, allowing her to flower into a renowned poet and university professor. With piercing eyes, she challenged everyone in the room: "Don't be too smart; don't be so smart that you forget to fight for justice in everyday life as well as in your scholarship." I was transfixed, and the message moved me. I resolved to remember her talk for the rest of my career.

Angelou had spoken for quite a long time, and so many of us headed to the bathrooms as soon as the applause had died down and Angelou had left the room. Outside the crowded bathrooms I was shocked to hear a number of my fellow scholars dissecting her talk, immediately subjecting it to Lacanian psychoanalysis, critical race theory and Marxist critique, concluding that she had presented an insufficiently radical analysis of her experience.

I was floored. I mean this literally. I was absolutely floored. My colleagues had listened with their rational faculties but had utterly failed to hear her talk with their capacities of reason and wisdom.¹⁹ How could such smart and dedicated people force a wonderfully challenging and unsettling experience into a narrow

¹⁹ Many might conventionally regard "rationality" and "reason" to be the same quality. The difference between the two is precisely what I am trying to illuminate in this essay. Rationality is employed as a formal means of reaching the singular correct answer to a problem, whereas reason is the capacity to see in a given situation the best course of action when there are equally plausible possibilities.

and academic frame of mind? Simply put, they abandoned the liberal arts of inquiry and exchange in favor of the faux certainty of theoretical constructs.²⁰ This is not liberal arts thinking. Instead, it is a hyperintellectualized, scientific approach that precludes the goal of the liberation of our spirit. Don't get me wrong, I like Marx and critical race theory as much as the next person, but we law professors need to make sure that we do not have our noses buried in a book when reality is trying to smack us in the face. The liberal arts are not about fancy theorizing, with a disdain toward the grubby world of legal practice. Instead, the liberal arts properly identify how our quotidian practices have integrity that requires our constant attention.

IV. The Implications of Law as a Liberal Art

I borrow the title of this essay from Karl Llewellyn, who delivered a speech in 1960 titled “The Study of Law as a Liberal Art.”²¹ In many respects, Llewellyn anticipated our current challenge. Working as a legal academic during the Great Depression and through the growth of the modern administrative state, Llewellyn insisted that legal education must reform itself and prepare students for the real “law jobs” they would encounter. In what almost appears to be an aside, Llewellyn argued that the ancient art of “spokesmanship” —his term for classical “rhetoric” —was the central competency required of lawyers.²² In addition to this allusion to the classical liberal arts tradition, he argued more broadly and colloquially in favor of a broad education in the humanities for those who hope one day to practice law. This was grounded in what he saw as an obvious fact: Legal practice requires judgment rather than deduction, and it requires a creative response to ever-changing circumstances.

Important pedagogical implications follow from recognizing that law is a liberal art. I frame my brief remarks by drawing inspiration from an oration delivered by Giambattista Vico more than 300 years ago to open the school year at the

²⁰ I want to make clear that I find the members of the association to be extremely talented scholars from whom I have learned a great deal and also to admit that I am as guilty of the error of overintellectualizing problems as my colleagues did in this instance.

²¹ See Karl N. Llewellyn, *The Study of Law as a Liberal Art*, in JURISPRUDENCE: REALISM IN THEORY AND PRACTICE 375–94 (Univ. of Chicago Press 1962).

²² *Id.* at 382.

University of Naples. His talk is breathtaking in scope. With the Cartesian “critical method” ascendant in intellectual circles, Vico urged his colleagues not to forget the ancient wisdom of the rhetorical tradition. Vico presciently warned at the beginning of the rationalist era that this new orientation would result in lawyers becoming technocrats of legal doctrine rather than problem-solvers acting with wisdom. Cartesian doubt upholds the mathematical standard of knowledge at the expense of beliefs in the merely probable, without which we could not live. Indeed, a person trying to live life only on the basis of Cartesian certitude would be wholly disabled from acting and would likely be deemed to have a serious mental disability. The Cartesian method undermines the cultivation of common sense (*sensus communis*), which subtends practical judgment and its eloquent elaboration by restricting knowledge to an arid and abstract rationalism.

Relentless Cartesian criticism leaves no room for the rhetorical arts. But we can deal with questions that admit of no definitive answer through rhetorical engagement. The law claims to achieve objective certainty, but this goal soon becomes a debilitating straitjacket. As Vico argues, proper legal education eschews the certainty demanded of Cartesian criticism.

Nature and life are full of incertitude; the foremost, indeed, the only aim of our [rhetorical] “arts” is to assure us that we have acted rightly Those who know all the . . . lines of argument to be used, are able (by an operation not unlike reading the printed characters on a page) to grasp extemporaneously the elements of persuasion inherent in any question or case In pressing, urgent affairs, which do not admit of delay or postponement, as most frequently occurs in our law courts . . . it is the orator’s business to give *immediate* assistance Our experts in philosophical criticism, instead, whenever they are confronted with some dubious point, are wont to say: “Give me some time to think it over!”²³

Rhetoric is necessary because life is uncertain. This is true in law more than in other dimensions of social life.

²³ VICO, *supra* note 3, at 15.

Vico draws very specific implications for legal education.²⁴ In particular, he insists that students should cultivate their rhetorical skills before being introduced to rigid logic. If we don't address law as a liberal art, students might lose forever their capacity for ingenuity, imagination, and eloquence. Vico celebrates the "ingenious method"²⁵ of training students in the art of argumentation by requiring them to present both sides of a case. This is not to be conflated with teaching rhetorical tricks that can be mastered and then packed into the lawyer's toolkit for later use. Rather, Vico's educational program was designed to facilitate the students' ability to negotiate the semiotic realm of law through rhetorical engagement with others.

In these deeply troubled times for higher education, we should be proud of the linkage of traditional liberal arts and professional education. We take up a sacred obligation to reject the anti-intellectualism of the sophists, who would urge the university to follow the path of short-term success rather than the path of intellectual integrity. We are here to liberate minds rather than to train workers. We are here to provide a liberalizing education that cultivates *phronesis* rather than drilling students in the elements of a *techne*. In this respect, legal education blends seamlessly with the university's announced mission. We must pay that promissory note to each class of graduates. But we must also be careful not to be too intellectual, not to be too beholden to the fruits of our research rather than to the tree of knowledge itself: the transformation of students through the liberal arts.

We must expand and develop Llewellyn's insights if we are to escape from the originalist fantasy that legal language is wholly determinant. We must embrace the social activity of legal practice as a rhetorical accomplishment using legal grammar to promote dialectical reasoning. By acknowledging the law's place within the trivium as a critically important liberal art, we must join hands with our colleagues across the university to pursue the profound mission of liberal education, heeding the call of history to embrace the challenges of the present in the hopes of helping to shape a better future.

²⁴ See Francis J. Mootz III, *Vico, Llewellyn and the Task of Legal Education*, 57 LOYOLA L. REV. 135, 135–56 (2011); Francis J. Mootz III, *Vico and Imagination: An Ingenious Approach to Educating Lawyers with Semiotic Sensibility*, 22 INT'L J. FOR SEMIOTICS L. 11, 15 (2009).

²⁵ Francis J. Mootz III, *Vico's 'Ingenious Method' and Legal Education*, 83 CHI.-KENT L. REV. 1261, 1261 (2008).