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Recommended Citation

Mootz, Francis J. III, "Vico's "Ingenious Method" and Legal Education" (2008). *Scholarly Works*. 38.
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VICO'S "INGENIOUS METHOD" AND LEGAL EDUCATION

FRANCIS J. MOOTZ III*

> In conclusion: whosoever intends to devote his efforts, not to physics or mechanics, but to a political career, whether as a civil servant or as a member of the legal profession or of the judiciary, a political speaker or a pulpit orator, should not waste too much time, in his adolescence, on those subjects which are taught by abstract geometry. Let him, instead, cultivate his mind with an ingenious method; let him study topics, and defend both sides of a controversy, be it on nature, man, or politics, in a freer and brighter style of expression. Let him not spurn reasons that wear a semblance of probability and verisimilitude. Let our efforts not be directed towards achieving superiority over the Ancients merely in the field of science, while they surpass us in wisdom; let us not be merely more exact and more true than the Ancients, while allowing them to be more eloquent than we are; let us equal the Ancients in the fields of wisdom and eloquence as we excel them in the domain of science.
>
> —Giambattista Vico[1]

A new genre has arisen that chronicles the degradation of legal professionalism and charts the resulting trauma for both lawyers and American society. Beginning with Anthony Kronman's *The Lost Lawyer: Failing Ideals of the Legal Profession*, and quickly joined by Mary Ann Glendon's *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* and Sol Linowitz's *The Betrayed Profession: Lawyering at the End of the Twentieth Century*, the critique of law and

* William S. Boyd Professor of Law, William S. Boyd School of Law, University of Nevada Las Vegas. The author may be contacted at Jay.Mootz@unlv.edu An earlier version of this paper was presented at the International Conference on the Future of Legal Education at Georgia State University School of Law on February 20–23, 2008. I would like to thank Clark Cunningham for organizing that conference and selecting me to present this paper. Some of the ideas in this paper were discussed as part of a "Roundtable on Vico and Justice" at the Annual Meeting of the Association for the Study of Law, Culture and the Humanities at Berkeley, California on March 28–29, 2008. I would like to thank Lief Carter, Marianne Constable, and Willem Witteveen for participating in this roundtable and sharing the ideas contained in their contributions to this symposium. Most important, I would like to thank Giambattista Vico for his lifelong efforts to awaken his contemporaries to his stimulating ideas. He was not appreciated in his day, and so was fated to be—in Nietzsche's famous phrase—a posthumous philosopher. His dedication to the scholarly enterprise deserves our admiration; it has most certainly earned mine.

1. GIAMBATTISTA VICO, ON THE STUDY METHODS OF OUR TIME 41 (Elio Gianturco trans., Cornell Univ. Press 1990) (1709) [hereinafter STUDY METHODS].

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lawyers has been damning.[2] We live in an age in which the word "profession" has come to be synonymous with "job," and lawyering is regarded as a set of related tasks that one undertakes primarily to make a living. Many law firms today are sprawling commercial enterprises with a global presence, making it virtually impossible for their members to draw from a community *ethos* even if they wished to do so. Just as the neighborhood dry goods store has been replaced by Wal-Mart, the "lawyer in town" has been replaced by a vast legal bureaucracy. Many lawyers practice alone or in small firms,[3] just as many businesses are small closely-held companies,[4] but there can be no doubt that the emergence of large, far-flung enterprises has indelibly stamped both the business of lawyering and the business of selling goods. This gives rise to the question that these authors find most troubling: Is the profession of law following this course because there really is no difference between practicing law and selling goods? To put the question more pointedly: Is upholding the ideal of the "lawyer-statesman" no more intelligible than celebrating the "capitalist-statesman"?

These books approach this question in a variety of ways, developing a number of related topics that include the economics of modern law practice, the lawyer's loss of independence from her client's (often venal) objectives, the loss of public-mindedness in law practice, and the loss of collegiality among lawyers. In this essay I address a single issue raised by these critiques by posing two questions that are designed to open a much broader inquiry. The issue that I discuss is the nature of legal professionalism. The questions raised by this issue are: (1) What skills and virtues are necessary for one to embody legal professionalism, and (2) Can these skills and virtues be taught? I bring focus to this impossibly broad agenda by attending to the occasion giving rise to this Symposium. I contend that Vico's famous oration, *On the Study Methods of Our Time*, is a productive

2. See ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993), MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994), and SOL M. LINOWITZ WITH MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994). Recent additions to this literature include DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000) and JEAN STEFANCIC & RICHARD DELGADO, HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS (2005).

3. In 2004, approximately 9.5% of all lawyers practiced in firms of six or fewer lawyers and 45% of all lawyers practiced in firms of thirty-three lawyers or fewer, but 27% of all lawyers practiced in firms of 225 or more lawyers. George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1659 fig.3 (2006).

4. According to the most recent census data relating to 2004, 77% of all firms in the United States are "nonemployer" firms (i.e., sole proprietorships), and an additional 18% of all firms have fewer than twenty employees. Only 3,534 firms (0.014%) have 2,500 or more employees. *See* U.S. Census Bureau, Statistics about Business Size, http://www.census.gov/epcd/www/smallbus.html#Emp Size (last visited Apr. 27, 2008).

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lens through which we may view contemporary legal practice, assess the charge that legal professionalism is waning, and think creatively about what might be done.

Looking to Vico in this context makes sense for a number of reasons. His address was delivered to university students, many of them studying law, and his purpose was to urge them to pursue their studies in a manner that would foster the intellectual virtues and practical skills necessary for them to contribute to society. It is not entirely fanciful, therefore, to explore his address from the perspective of modern legal education. Moreover, Vico studied and wrote about law, and law and legal practice were of special interest to him. Most important, Vico displayed an incredible scope of thought that ranged from the Ancient Greeks to the emerging modern science of his day, and his *New Science* was a bold and creative attempt to chronicle the emergence of humanity from the natural world and to chart its development through the ages. More than almost any other thinker, Vico's incredibly ambitious work lends itself to elaboration within new and varied contexts.

At the same time, it is important to recognize the inherent limitations of looking for answers to a contemporary question in an address delivered 300 years ago. One runs the risk of stripping Vico from his intellectual, cultural, and social milieu by crudely employing a caricature of his thought to make points in contemporary debates about law and legal education. Vico envisioned his work in the broadest terms, and he is widely acknowledged as embodying the culmination of Italian Humanism; it would be doing him an injustice to bend his thinking wholly to today's relatively fleeting concerns. Consequently, it is necessary to acknowledge the breadth and depth of Vico's audacious vision if we are to find points of reference for today's questions without compromising the integrity of Vico's project.

My thesis is that Vico's oration is as pertinent to the "study methods" of our time as it was to the methods of his time. Vico challenged the emerging Cartesian critical method and defended the ancient wisdom of rhetoric in a manner that rings true today. His spirited defense of rhetoric against abstract intellectualism and methodologism is particularly insightful in an age when law is viewed instrumentally, as something to be strategically manipulated to achieve desired ends. Because legal practice inherently is oriented toward the development of rhetorical knowledge, we have become increasingly unable to understand the legal system as the fate of rhetoric has worsened since Vico's oration was delivered. The contemporary belief that rhetoric refers only to non-epistemic ornamentation which

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threatens to distract us from the truth of the matter makes it difficult, but all the more important, to understand the cause for Vico's lament.

I have organized this essay in three parts. First, I develop one strand of the contemporary literature that alleges that legal professionalism has waned. Using Kronman's famous call for a reinvigoration of the "lawyer-statesman" ideal as an introductory framing device, I discuss two specific critiques of legal education: Karl Llewellyn's short essay on the topic from the 1930s and the 2007 Report of the Carnegie Foundation's "Preparation for the Professions" series. My purpose in this brief discussion is to elaborate on a particular critique of legal professionalism rather than to provide a comprehensive review of the literature. At its core, this critique charges that lawyers have lost the capacity to exercise certain forms of reasoning and judgment that are required if they are to be more than legal mechanics and thereby serve their social roles as lawyers.

Second, I describe in detail how Vico's oration is responsive to the contemporary critique of legal professionalism. Although I am concerned principally with his oration, I situate it within the broader context of his work in order to appreciate the full scope of his insight. Vico's call for the recuperation of rhetoric provides a persuasive response to the critics of legal practice and connects that response to the obligations of legal education. Although it is not possible to develop ingenuity, wisdom, and prudence through application of an educational methodology, Vico's reflections provide signposts for a theoretically-grounded and practically-effective approach to educating lawyers.

I conclude the essay by arguing that Vico's lament has been ignored for far too long, and that contemporary legal scholars ought to heed his counsel. Legal educators should ensure that lawyers are capable of generating and disseminating rhetorical knowledge, and legal institutions and practices should be designed to maximize the development of rhetorical knowledge. This requires that we cultivate elements of our intellectual tradition that have been suppressed and elided over the centuries, for, as Vico insistently reminds us, "even if you know more than the Ancients in some fields, you should not accept knowing less in others."[5]

5. STUDY METHODS, *supra* note 1, at 5.

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I. THE DEMISE OF LEGAL PROFESSIONALISM: THEORY AND PRACTICE

A. *Kronman's* Cri de Coeur

Anthony Kronman provocatively charges that the American legal profession is in a state of "crisis" and "in danger of losing its soul."[6] He argues that the older model of the "lawyer-statesman" who embodies practical wisdom and character in addition to technical skill has disappeared, threatening "catastrophe" for lawyers and society at large.[7] Kronman characterizes the lawyer-statesman as a civic-minded professional who exercises practical wisdom in the service of social goals as an intrinsic part of ordinary lawyering.[8] In other words, the lawyer-statesman does not fulfill his professional duties while also keeping in mind the public good; rather, it is the manner in which he practices law that is a public good.

Because the capabilities of the lawyer-statesman rest on the development of character over years, they cannot be fully developed *ab initio* during a three-year legal education. Nevertheless, Kronman contends that the deficiencies in contemporary legal education have played a large role in the disintegration of the ideal. Specifically, he argues that disparate intellectual trends in the academy have undermined the development of professional excellence by taking an overly cynical view (as with critical legal studies) or an overly technical and abstract view (as with law and economics).[9] The classic approach to university legal education, developed at the end of the nineteenth century, involves a Socratic dialogue between professor and student regarding notable judicial opinions. Although depicted in movies as a form of intimidation and bullying, Kronman insists that the case method trains students that a court's judgment cannot be accepted on its face, but rather can be probed, questioned, and revised as students take up each

6. KRONMAN, *supra* note 2, at 1.

7. *Id.* at 3.

8. Kronman writes:

> The ideal of the lawyer-statesman stands for the value of public service and the virtue of civic-mindedness associated with it. And it stands, too, for the virtue of prudence, or practical wisdom. But this ideal implies more than that prudence and public-spiritedness are traits of a generally admirable kind. In addition it suggests that they are qualities of special importance to lawyers. It suggests that the experience of lawyers promotes these traits, and their professional duties require them, in some regular and important way. The lawyer-statesman ideal points to a connection between the virtue of statesmanship, on the one hand, and the ordinary circumstances of law practice, on the other, and implies that this basic human excellence has special meaning for lawyers as a group. In that sense the figure of the lawyer-statesman may be said to embody not merely a generalized conception of political virtue but a distinctive professional ideal, as the hyphenated term *lawyer*-statesman suggests.

Id. at 109.

9. *Id.* at 225–40 (law and economics) and 240–64 (critical legal studies).

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side's argument in a Socratic dialogue with the professor.[10] Traditional justifications for the case method of teaching neglect what Kronman takes to be its central feature: the "way in which it functions as an instrument for the development of moral imagination."[11]

The student develops moral imagination by being required to adopt one side of the dispute, then the other, and then to critique the manner in which the judge adjudicated the competing claims.

> The case method of law teaching presents students with a series of concrete disputes and compels them to reenact these disputes by playing the roles of the original contestants or their lawyers. It thus forces them to see things from a range of different points of view and to entertain the claims associated with each, broadening their capacity for sympathy by taxing it in unexpected ways. But it also works in the opposite direction. For the student who has been assigned a partisan position and required to defend it is likely to be asked a moment later for his views regarding the wisdom of the judge's decision in the case. To answer, he must disengage himself from the sympathetic attachments he may have formed as a committed, if imaginary, participant and reexamine the case from a disinterested judicial point of view. The case method thus works simultaneously to strengthen both the student's powers of sympathetic understanding and his ability to suppress all sympathies in favor of a judge's scrupulous neutrality. Most important, it increases his tolerance for the disorientation that movement back and forth between these different attitudes occasions.[12]
>
> [The] case method, when it works as it is meant to, sets students on a middle course, strengthening their moral imagination and encouraging them to take a more cosmopolitan view of the diversity of human goods, while also reinforcing, through its insistence on the priority of the judicial point of view, the habit of civic-mindedness that is the only reliable antidote to the cynicism into which all cosmopolitanism threatens to decline.[13]

Acknowledging that there is a risk the student will lose her "soul" in this disorienting experience and conclude that there are only sophistic arguments and no truths, Kronman insists that if the case method is properly employed the student should develop a healthy critical attitude.[14] He explains that "what the case method really robs them of is their faith in large

10. *Id.* at 110.

11. *Id.* at 113. Kronman's justification for the case-method approach deviates from the Langdellian origins of the casebook as a collection of the "leading" and "best" cases as a means of elucidating the current state of positive law. *See* C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, at ix (2d ed. 1879) (claiming "to select, classify and arrange" all the contracts cases that "had contributed in any important degree to the growth, development, or establishment" of the essential principles of contract doctrine).

12. KRONMAN, *supra* note 2, at 113.

13. *Id.* at 160–61.

14. *Id.* at 115.

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ideas, and what it puts in place of this faith is a form of skepticism," namely, "the tendency to look with suspicion on broad generalizations, to search for the qualifying exception to every abstraction, to insist on the importance of details,"[15] and that these are salutary lessons for the lawyer-statesman that are necessary for the full range of professional representation and not just for oral argument before judges. The lawyer as counselor must be able to "deliberate with the client and on his behalf,"[16] and this often demands a "process of joint deliberation, in which the lawyer imaginatively assumes his client's position and with sympathetic detachment begins to examine the alternatives for himself."[17]

This wistful account of the lawyer-statesman educated through the case study method has led commentators to ask whether the "golden age" of lawyering and legal education has ever existed in the manner described by Kronman,[18] with some even challenging the desirability of his ideal.[19]

15. *Id.* at 159.

16. *Id.* at 132.

17. *Id.* at 133.

18. Anthony V. Alfieri, *Denaturalizing the Lawyer-Statesman*, 93 MICH. L. REV. 1204 (1995) (reviewing KRONMAN, *supra* note 2) (arguing that Kronman provides no empirical support for his thesis and ignores the insensitivity of the case method to (suppressed) matters of race, gender and sexual orientation); James M. Altman, *Modern Litigators and Lawyer-Statesmen*, 103 YALE L.J. 1031 (1994) (reviewing KRONMAN, *supra* note 2) (due to shifts in the nature of litigation and our understanding of the litigator as vigorous advocate, Kronman's ideal has not been plausible for more than a century); Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549 (1996) (arguing that we should address the role of legal practice in today's complex environment rather than hearkening back to a supposed golden age).

Moving in the opposite direction, Carrie Menkel-Meadow has recently suggested "that lawyers may be particularly well suited to the design, management and facilitation of consensus building processes" within civil society in order to improve the functioning of democratic institutions. Carrie Menkel-Meadow, Commentary, *The Lawyer's Role(s) in Deliberative Democracy*, 5 NEV. L.J. 347, 367 (2004–2005). In response, Jeff Stempel argues that the potential for a liberal education that can engender lawyer-statesmen who enhance politics is unlikely. *See* Jeffrey W. Stempel, *Lawyers, Democracy and Dispute Resolution: The Declining Influence of Lawyer-Statesmen Politicians and Lawyerly Values*, 5 NEV. L.J. 479 (2004–2005) [hereinafter Stempel, *Lawyers, Democracy and Dispute Resolution*]. Although he agrees broadly with Kronman about the decline of lawyerly values, he suggests that Kronman's nostalgic account may miss how lawyering has improved with regard to dispute resolution skills in recent years. *Id.* at 481; *see also* Jeffrey W. Stempel, *Embracing Descent: The Bankruptcy of a Business Paradigm for Conceptualizing and Regulating the Legal Profession*, 27 FLA. ST. U. L. REV. 25 (1999). Nevertheless, Stempel cautions against extrapolating from these recent gains in fostering legal professionalism (in the sense of dispute resolution) because lawyers have had a declining influence in politics, lawyers involved in politics tend not to retain their lawyerly values, the increased sophistication in dispute resolution skills has not stemmed the general tide of ebbing professionalism, and the economic forces of modern legal practice continue to undermine the educational gains in legal ethics. Stempel, *Lawyers, Democracy and Dispute Resolution*, *supra*, at 480, 497–99 ("Over time, even the best trained new lawyer is at serious risk of ethical slouching and debased professionalism . . . . [due to the] negative professionalism pressures of the market.").

19. Michael Debow, *The Eclipse of the Lawyer-Statesman Ideal: Costs and Benefits*, 26 CUMB. L. REV. 859, 862 (1995–1996) (arguing that the contemporary model of the lawyer as a "transaction cost engineer" who facilitates economic efficiency is a noble model that should not be rejected out of nostalgia); Stuart M. Speiser, *Sarbanes-Oxley and the Myth of the Lawyer-Statesman*, LITIG., Fall 2005, at

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Nevertheless, there would appear to be broad agreement with his general thesis that legal education should prepare students to act as responsible professionals, and legal professionalism has direct connections to democratic government and civil society. As Kronman notes, his argument is not really about the trends of the last century as much as it opens a new front in a long battle between technical, demonstrable, and certain knowledge and the virtues of civic humanism.[20] I will emphasize that this battle is cast most broadly as one between the philosophical pursuit of truth and the rhetorical elucidation of prudent action under conditions of uncertainty. It is the same battlefield that Vico entered 300 years ago at the University of Naples.

Before turning to Vico, though, I broaden Kronman's account of the crisis in legal professionalism. The core of Kronman's claim is that legal professionalism, properly instilled and practiced, is a public good by its nature. He contends that lawyers conjoin legal practice and social values through the exercise of moral imagination, by means of which the lawyer links the situation of her client to the reigning moral and legal principles of the community. The allegation that Kronman is overly nostalgic follows from this overly intellectualistic account of a Socratic dialogue in the classroom being sufficient to prepare a student for a career as a practicing lawyer. Surely the demands placed on lawyers require broader skills and capabilities than can be developed through classroom discussion. Kronman draws from Karl Llewellyn's pioneering thinking about legal education in making his persuasive argument, but he fails to appreciate some of Llewellyn's most important lessons.

5, 69 (arguing that the "myth" of the public-spirited lawyer-statesman might stymie laws and regulations designed to ensure that lawyers support the public interest).

20. Kronman recognizes that the case method of education is a relatively recent development in legal education, and so it does not bear a necessary relationship to the longstanding values of statesmanship that he champions. Put simply, the case method is not the only means of inculcating the virtues of prudence and public-spiritedness.

> Long before it was invented as a technique for training lawyers—long before the emergence of the modern law school as we know it—prudence and public-spiritedness were extolled as virtues for lawyers and instilled by a blend of apprenticeship and broad humanistic learning. The ideal of the lawyer-statesman is much older than the case method and for a long time drew its vitality from other sources. But in this century those other sources have disappeared.

KRONMAN, *supra* note 2, at 154. One of the primary sources would have been the rhetorical education about which Vico speaks.

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B. *Llewellyn's Realistic Assessment*

Kronman's observations resonate with the observations about legal practice and education that Karl Llewellyn made more than a half-century earlier. Kronman agrees with Llewellyn's celebration of the "grand tradition" in common law reasoning and his worry that inter-bellum legal education was failing to sustain this tradition.[21] He also acknowledges that Llewellyn focuses on the virtue of practical wisdom, but he suggests that Llewellyn fails to theorize how lawyers develop the character traits required for the exercise of prudence.[22] In fact, Llewellyn provides a much broader understanding of the themes that Kronman highlights, particularly through his critique of the fetishism of the case method of instruction. As a legal realist, Llewellyn was skeptical of the near-dogmatic reliance on the case-method system, which in his day was only fifty years old.

In the manner of Vico's oration at the beginning of the academic year, Llewellyn famously addressed the entering Columbia law students in the 1920s with a lecture meant to inspire as much as to orient. Llewellyn urged the students to immerse themselves in law not for the purpose of losing themselves to a technical discipline but so as to recognize that law addresses the entire "drama of society," and to embrace the unity of profession, culture, and society.[23] In a provocative essay published in 1935, Llewellyn issued a call for a dramatic reorganization of legal education in response to the new understanding of law provided by the legal realists.[24] Deriding the Langdellian model because "it blinds, it stumbles, it conveyor-belts, it wastes, it mutilates, and it empties,"[25] Llewellyn argued that legal education must prepare students to lead a full and enriching professional life[26] by educating them about the social context in which law oper-

21. *Id.* at 23–24, 209–25.

22. *Id.* at 24.

23. K.N. LLEWELLYN, BRAMBLE BUSH 141–44, 152–53 (1930) [hereinafter BRAMBLE BUSH].

24. K.N. Llewellyn, *On What is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651 (1935) [hereinafter *On What is Wrong with So-Called Legal Education*].

25. *Id.* at 653. His conclusion is equally harsh: "Law School education, even in the best schools, is, then, so inadequate, wasteful, blind and foul that it will take twenty years of unremitting effort to make it half-way equal to its job." *Id.* at 678.

26. By this Llewellyn meant not only one's activities as a lawyer, but one's life as a whole as marked thoroughly by one's professional character.

> The need is, in some fashion, for an integration of the human and the artistic with the legal. Not an addition merely; an integration.
>
> . . . .
>
> The objective of a full life, though we starve it, is stubborn as a desert plant. We must not let law smother the man in his study of it, nor let it cut him off from what art has to offer for and in its practice. We must recapture, or find a substitute for, the old-time lawyer's Bible and his Shakespeare. But least of all must law cut its students off from living, from rich living, after

ates rather than just teaching abstract rules.[27] Llewellyn regarded lawyering as actively critical and social rather than conceptual and technical; consequently, he emphasized the need for lawyers to have a liberal education.[28] At the end of his career, Llewellyn still was calling for the study of law as a liberal art, grounded in a combination of technical proficiency and broader learning.[29]

Llewellyn's conception of liberal education is broader and deeper than Kronman's focused celebration of the case method, and it is unfortunate that Kronman did not attend to the full scope of Llewellyn's arguments. Kronman's oversight might be explained in part by the misguided claim that Llewellyn and other legal realists are best read as crude forerunners of the modern law and economics movement, which grounds legal doctrine in empirical truths that can be modeled and tested.[30] These charges certainly are not accurate with regard to Llewellyn's work and guiding themes. Llewellyn sought a realistic account of lawyering and a corresponding realistic approach to education, but he was far from a social science reductionist or crude empiricist.

Llewellyn's searing essay about legal education makes clear (in his somewhat bizarre prose) that he does not embrace a scientistic view. He posits that the first goal of educational reform is to learn what lawyers actually do, thereby revealing what skills and capacities they must have to

> they become lawyers. Professors who are sterile dissecting knives, *and are no more*, wreak tragedy. . . .

Id. at 663–64.

27. *Id.* at 668–71.

28. Llewellyn argued that legal rules must be understood in context, or lawyering would amount to nothing more than algebraic manipulations divorced from the real-world effects of the legal system. *Id.* at 669. But it is precisely by understanding rules in context that we recognize their contingency, which yields a critical perspective. "You make critique inevitable, because the human content, once introduced, will never be denied." *Id.*

29. KARL N. LLEWELLYN, *The Study of Law as a Liberal Art*, *in* JURISPRUDENCE: REALISM IN THEORY AND PRACTICE 375–94 (1962) [hereinafter *The Study of Law as a Liberal Art*] (Lecture delivered in 1960). Llewellyn challenged the growing belief that preparing students to practice law was inconsistent with the research ideals of the university:

> The truth, the truth which cries out, is that the good work, the most effective work, of the lawyer in practice roots in and depends on vision, range, depth, balance, and rich humanity—those things which it is the function, and frequently the fortune, of the liberal arts to introduce and indeed to induce. The truth is therefore that the best *practical* training a University can give to any lawyer who is not by choice or unendowment doomed to be hack or shyster—the best *practical* training, along with the best human training, is the study of law, within the professional school itself, as a liberal art.

Id. at 376. Llewellyn also repeated his frequent insistence that law students read broadly and deeply to acquaint themselves with the context in which law operates. *Id.* at 388–89.

30. *See, e.g.*, Allan Schwartz, *Karl Llewellyn and the Origins of Contract Theory*, *in* THE JURISPRUDENTIAL FOUNDATIONS OF CORPORATE AND COMMERCIAL LAW 12, 14 (Jody S. Kraus & Steven D. Walt eds., 2000).

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fulfill their professional obligations.[31] Llewellyn is purposefully broad in his proposal, noting that many lawyers play important roles in political and civic life, and asking, "For decent politics, what training do our law schools offer?"[32] Even lawyers who practice law do not mindlessly apply rules, and therefore teaching legal rules should never be the primary objective of a law school.[33] Rather, lawyers must utilize a variety of sophisticated skills that coalesce into practical reasoning.

Because he understood the breadth of skills required of a lawyer who seeks to be a competent professional and civic leader, Llewellyn rejects the exclusive use of the case method throughout the three years of law school. Acknowledging that the professor can model legal reasoning and critical legal thinking in the analysis of the case at hand, Llewellyn notes that the bright students quickly catch on and then get bored while the slow students will never learn simply by repeating the same exercise over and over again.[34] Llewellyn urged that after the first year of Socratic dialogue, subsequent coursework should involve detailed examinations of legal problems in their full complexity, even at the cost of not covering the ever-expanding universe of legal doctrine. Class materials should bring together rich, diverse, and detailed materials for consideration and assessment, guided by Llewellyn's emphatic rule: "*better less, with real understanding, than more of the ununderstood.* . . . The upshot seems to be that, within our [three year] time-limitation, we either integrate the background of social and economic fact and policy, course by course, or fail of our job."[35] Or, put more dramatically and concisely: "I have never heard that Socrates was seriously worried over 'coverage in class.'"[36]

31. *On What is Wrong with So-Called Legal Education*, *supra* note 24, at 653–56.

32. *Id.* at 656.

33. Llewellyn puts the point directly: "*Not rules, but doing, is what we seek to train men for.*" *Id.* at 654.

34. *Id.* at 677. Llewellyn argues that law schools should adopt a more individualized approach to education by separating the slow students who do not catch on quickly to the case-method lesson of legal reasoning so that they do not simply endure three years of the same lesson while the quick students grow bored. The modern approach to academic support would seem to have finally caught up with this insight.

35. *Id.* at 671. At the end of his career, Llewellyn was sounding the same theme:

> To achieve the values of policy discussion in a modern context, the student needs enough information about the particular rule under inquiry so that he can think instead of merely palaver or emote. Off-the-cuff, bald of information, is not policy-discussion, it is vaporing. . . . This inescapably results in cutting, relentless cutting, of the doctrinal material covered. It means highly intensified treatment of a vastly smaller body of rules. Cut down thus on scope of the material, and your class-hours do indeed suffice to do the job of technical training, they suffice also to enrich it with exploration of meaning, they suffice to go on into the arts of policy-evaluation, of imagining curative measures, and of documentary and legislative drafting: all merging in the pursuit of a true liberal art.

The Study of Law as a Liberal Art, *supra* note 29, at 385.

36. *The Study of Law as a Liberal Art*, *supra* note 29, at 387.

Llewellyn well understood that lawyers must have a handle on a tremendous amount of legal doctrine at the time that they graduate, but his solution was to propose reading lists that would guide the students in their self-education of the bare-bones rules.[37] Using the case method to teach doctrine is incredibly inefficient, and using just the case method to teach lawyering skills is incredibly limiting. Kronman might be correct that Llewellyn did not understand the capacity for the case method to develop critical skills and the moral imagination necessary for practical wisdom (in fairness, in Llewellyn's day the case method was a tool for teasing out the "better" rule in accordance with Langdell's scientific method), but Llewellyn did understand that abstract qualities of moral imagination are not enough to equip the lawyer for the challenges that she will face in practice and civic life. Moral imagination is impotent without an understanding of the context in which the *phronimos* must operate, and this context is suffused with human values as well as empirical realities. Llewellyn's castigation of the elite law schools for their slavish adherence to the theoretical dogmatism of the case method was grounded in his belief that we must develop a broader theoretical appreciation of law that remains connected, but not subservient,to practice. He emphasized that the craft of law "cries out for the development and teaching of its theory, as it does also for study by *doing* in the light of that theory."[38] He named the needed theory "Spokesmanship," and he derived it from the theories first developed in ancient Greece as "Rhetoric—in essence: the effective techniques of persuasion."[39] Too often, Llewellyn argued, Spokesmanship has been cast too narrowly in terms of "legal argument" and "advocacy."

37. Llewellyn makes this point most vividly in the context of arguing that legal education should be regarded as a liberal art rather than as the indoctrination of doctrine, arguing that students should read doctrine on their own and receive instruction in legal reasoning in the classroom.

> [L]et me urge with passion that if one-tenth of the energy and skill which in the past ten years has gone into the production of case-books had gone instead into the production of reading lists and critical syllabi to guide, we should already have available a machinery for moving legal education, all over the country, into its rightful status as the study of a liberal art: truly *in*tensive work *in* class, *ex*tensive work outside. What we need is not more time for professional law study, but better employment of the time we have; not more courses, but fewer, with much more time open for outside reading and writing; not wider class-coverage but class-coverage narrower and deeper, varying from three or four times narrower and deeper in the first year up into five to twenty times narrower and deeper in the upper years.

Id. at 389.

38. BRAMBLE BUSH, *supra* note 23, at 185.

39. *Id.* Llewellyn explains:

> There is a theory of advocacy, or spokesmanship, or rhetoric (which aspect lends the name is immaterial)—a theory which has formed the basis of a liberal art since classic times; a theory, moreover, which is empty and vain save as it builds on and with deep understanding of the psychological and ethical nature of cause or of client, of tribunal or other addressee, of society and of the law-governmental phase thereof.

The Study of Law as a Liberal Art, *supra* note 29, at 382.

> But "Spokesmanship" has come to be for me a more significant focus than any of the above, including and profiting from the essence of each of them while also reaching out to cover such matters as the values of having buffers between contending principals or the differences between the rival goals of victory and reconciliation or the problems and *obligations* of leadership both in the small and in the large. In a word, Spokesmanship with special attention to work on the legal side seems to me to offer the wherewithal of a full-fledged theoretical-practical discipline with cultural value equal to its professional value . . . .[40]

Spokesmanship is a rhetorical practice with both theoretical and practical dimensions that can equip lawyers for the challenges of their profession. Counseling clients is an important feature of Spokesmanship no less than arguing a case, and this art cannot be reduced to simple rules of communicating doctrine.[41]

It is not too difficult to consolidate Llewellyn's legal realism with Kronman's celebration of the virtues of the lawyer-statesman. The lawyer-statesman requires a liberal education that provides the imaginative resources to deal with challenges, but this education cannot exist only in the ethereal realm of school-room musings. Lawyers must have a grasp of the depth and complexity of the world, and it is in the law school setting that professors can provide students with the materials to permit them to understand that legal reasoning is neither just an algebraic manipulation of principles nor just a determination of moral philosophy. If Kronman accurately describes the central core of lawyering professionalism, Llewellyn provides essential details for situating this expertise within the world of practice.

40. BRAMBLE BUSH, *supra* note 23, at 186. Llewellyn's suggestive reflections in 1951 were presaged in his essay, "On Philosophy in American Law." In his star note, before proceeding to take the reader on a dizzying ride through the tides of American jurisprudence, Llewellyn delivered the following tease in his customary florid prose:

> I still feel my wattles grow red as I recall the shock with which, as a dyed-in-the-wool commercial lawyer, I met property phases of mortgage law which left me gasping. "One system of precedent" we may have, but it works in forty different ways. Some day, someone will help the second year student orient himself. Nor does anyone bother to present to him the difference between logic and persuasion, nor what a man facing old courts is to do with a new vocabulary; in a word, the game, in framing an argument, of diagnosing the peculiar presuppositions of the hearers. I think the second year student is entitled to feel himself aggrieved. Meanwhile, while we wait upon the treading of the Angel, there is rushing in that calls for doing. Here is a start.

Karl N. Llewellyn, *On Philosophy in American Law*, 82 U. PA. L. REV. 205, 205 n.* (1934). This was Llewellyn's call for a theory of the practice of Spokesmanship, but the essay that follows answers this call only obliquely and in an unsatisfying manner.

41. As Llewellyn recounts, legal education should attend to the aesthetics of argumentation by focusing on the "rhetoric" of lawyering. *The Study of Law as a Liberal Art*, *supra* note 29, at 389.

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C. *Professionalism and Educational Best Practices: The Carnegie Report*

Last year, the Carnegie Foundation for the Advancement of Teaching issued an important report about legal education as part of its "Preparation for the Profession" series.[42] This report, usually called "the Carnegie Report," is an ambitious attempt to re-focus the extensive literature about legal education into a pragmatic call for action which has theoretical depth. The centerpiece of the Carnegie Report's approach is to reject the false dichotomy between practical training and research that has arisen over the past century as law schools have become just another department of the modern research university, arguing that law schools should foster rich and interdisciplinary research into professional training and performance.[43] With respect to positivist accounts that separate research objectives from underlying practice, the Report wryly notes: "Whatever the merits of 'value-free' knowledge, they do not transfer well to the idea of 'value-free' professionals."[44]

Committed to the idea that the virtues and skills required of legal professionals are developed "through modeling, habituation, experiment, and reflection" as part of a tradition arising within a community of practitioners, but also drawing on the "insight from the social sciences and the humanistic disciplines,"[45] the Carnegie Report concludes that the central challenge facing contemporary legal education is

> how to draw on the genius of academic life, with its urge toward intellectual elaboration, without drifting away from the specific profession's defining focus. In the case of law schools, this focus is provided by engagement with the complexities of the law and its functions in the society in which lawyers must practice. The challenge is to align the practices of teaching and learning within the professional school so that they introduce students to the full range of the domain of professional practice

42. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter THE CARNEGIE REPORT] (published as part of The Preparation for the Professions Series of The Carnegie Foundation for the Advancement of Teaching).

43. *Id.* at 1–20. The Carnegie Report summarizes this trend:

> Over the course of the twentieth century, legal scholarship would move further away from the concerns of judges and practitioners and closer to those of other academic fields. . . . In its quest for academic respectability, legal education would come to emphasize legal knowledge and reasoning at the expense of attention to practice skills, while the relations of legal activity to morality and public responsibility received even less direct attention in the curriculum.

Id. at 7.

44. *Id.*

45. *Id.* at 14.

> while also forming habits of mind and character that support the students' lifelong growth into mature knowledge and skill.[46]

The Carnegie Report is premised on the belief that the scholarship of teaching and learning, brought to bear through appropriate pedagogical techniques, will permit law schools to fulfill this important function.

The Carnegie Report emphasizes that there are no methodological rules—nor can there ever be such rules—for teaching professionalism, because lawyers rely on judgment rather than calculation. Judgment is learned by receiving feedback while approximating the modeling done by an expert,[47] which is aptly termed an "apprenticeship of professional identity."[48] This education is more than simply aping techniques: "Much more than 'rules of thumb' or the lore passed on in practice situations, today's best teaching of practice encourages students to develop an analytically sophisticated approach to practice situations."[49] In a manner that is reminiscent of Llewellyn's work, the Carnegie Report contends that judgment requires a liberal education in "ethics"—in the broadest sense of the term as used by the ancient Greeks to mean an acculturation to a normative life-world[50]—and that legal education's "signature pedagogy" of the Socratic case method cannot accomplish this goal alone.

This perspective is brought to bear by offering specific recommendations to improve legal education. First, the Carnegie Report urges a reduction in the use of the case method of instruction. Because the Socratic case method is used in a very narrow manner to teach abstract legal doctrine, the Carnegie Report charges that it obscures the ethical dimensions of legal

46. *Id.* at 45.
47. *Id.* at 26.
48. *Id.* at 129.
49. *Id.* at 11.
50. *Id.* at 28–31. This is elaborated as follows:

> Professional education is, then, inherently ethical education in the deep and broad sense. The distillation of the abilities and values that define a way of life is the original meaning of the term *ethics*. It comes from the Greek *ethos*, meaning "custom," which is the same meaning of the Latin *mos*, *mores*, which is the root of "morals." Both words refer to the daily habits and behaviors through which the spirit of a particular community is expressed and lived out. In this broad sense, professional education is "ethical" through and through. Even to disparage any ethical intent is to declare one: the purely instrumental view of education as the acquisition of a set of tools by means of which to enhance one's competitive advantage in life. Ethics in a professional curriculum ought to provide a context in which students and faculty alike can grasp and discuss, as well as practice, the core commitments that define the profession. It can also be a place where the alternative, instrumental view just described can be squarely reckoned with. For lawyers, just as for other professionals, the practices they learn give them extraordinary powers. But the meaning of the practices—and therefore the object to which the powers are directed—is never morally neutral. Ethics rightly includes not just understanding and practicing a chosen identity and behavior but, very importantly, a grasp of the social contexts and cultural expectations that shape practice and careers in the law.

Id. at 30–31.

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practice by eliding the fact that clients are real people and legal arguments are never value-free.[51] The tremendous growth in analytical skills during the first year of law school through the "cognitive apprenticeship" of the case method is coupled with a disengagement from the full range of legal practice and a narrowing of vision.

> Despite the undeniable value of intellectual rigor, law schools' imbalance toward the cognitive aspects of professional apprenticeship and the associated emphasis on legal analysis serve to color, and can even undermine, the apprenticeship into professionalism and purposes. As we have seen, a concentrated focus on the details of particular legal cases, disconnected from consideration of the larger purposes of the law, begins very early in law school.[52]
>
> . . . .
>
> Inasmuch as professionals require facility in deploying abstract, analytical representations (symbolic analysis), school-like settings are very good environments for learning. At the same time, however, professionals must be able to integrate, or re-integrate, this kind of knowledge within ongoing practical contexts. But in this area, students learn mostly by living transmission, through pedagogies of modeling and coaching. For law schools, as for all professional schools, re-integration of the now-separated parts is the great challenge.[53]

Kronman celebrates the power of the case method to awaken the moral imagination of students, but the Carnegie Report finds it to be an overused tool for teaching black letter doctrine in the first year of law school that actually deadens the necessary imaginative capacities of students and therefore requires a correction in the final two years of law school. "The danger for second- and third-year students is that the analytic blinders they have laboriously developed may never come off when they deal with the law or with clients."[54]

The second proposal is the corollary of the first: that law schools should employ the "complementary pedagogy" of clinical and simulation training to a greater degree.[55] Framed as creating a bridge from the academic skill of thinking like a lawyer to the professional skill of lawyering,[56] the Carnegie Report offers theoretical and practical grounds in support of more and better skills training, at long-last striving to answer the

51. *Id.* at 56–57.

52. *Id.* at 141. The Carnegie Report refers to Llewellyn's argument that the difficulty lies in reconnecting the student's newly-learned analytical skills to her full range of human understanding. *Id.*

53. *Id.* at 79.

54. *Id.* at 142.

55. *Id.* at 23–24.

56. *Id.* at ch. 3 ("Bridges to Practice: From 'Thinking Like a Lawyer' to 'Lawyering.'").

call by Llewellyn and the legal realists.[57] To be effective, this new pedagogy must be grounded theoretically and empirically in an appreciation of how students can learn professional skills through modeling by professors in clinics, simulations, and writing courses.

Although it looks so to the outsider or novice, experts do not simply act intuitively. Expertise is judgment fully realized. This is not a cognitive either-or. Experts reflect and deliberate, especially when confronting difficult or strikingly novel cases and situations. . . .

> The expert's knowledge is well grounded in subtle, analogical reasoning achieved through a long apprenticeship to more expert practitioners. In this process of learning, formal models and rules play an essential role . . . but the formal models are themselves based on practice. Put another way, in the teaching and learning of expertise, practice is often ahead of theory. Formal knowledge is not the source of expert practice. The reverse is true: expert practice is the source of formal knowledge about practice. Once enacted, skilled performance can be turned into a set of rules and procedures for pedagogical use, as in the cognitive apprenticeship. But the opposite is not possible: the progression from competence to expertise cannot be described as simply a step-by-step build-up of the lower functions. In the world of practice, holism is real and prior to analysis. Theory can—and must—learn from practice.[58]

The Carnegie Report suggest that theory, as a reflective assessment of practice, plays a vital role in understanding professionalism and how best to guide students to become professionals. The supposed clash of cultures between university research and legal professionalism is not just false; the effect of this bifurcation renders the former impotent and the latter prone to decay.

D. The Theory and Practice of Professionalism

I have selectively drawn from Kronman's book, Llewellyn's essay, and the Carnegie Report to articulate the nature of the crisis in contemporary law and legal education. Each provides rich detail and presents more themes than I have addressed here, but they reinforce a shared concern about legal professionalism. Kronman's celebration of the case method of instruction for awakening the imagination and providing students with the means to develop a creative and critical perspective on law resonates, even if it is necessary to remind oneself that class discussions all too often involve a "Socratic monologue" that fails to live up to the promise identified

57. The Carnegie Report notes that medical schools have experimented extensively along these lines, and concludes that the "proposals first essayed by legal-realist icons such as Llewellyn and [Jerome] Frank still await their Langdell [to implement them]." *Id.* at 94.

58. *Id.* at 118.

by Kronman. The ability to adopt different perspectives on the same case—first arguing on behalf of one side and then the other—is an important lawyering skill, but Kronman properly emphasizes that this practice reinforces a deeper epistemological perspectivism that can reorient the student's view of the world.

Llewellyn's earlier work, reinforced by the Carnegie Report, adds a vital dimension to the account by remaining skeptical about the power of the case method alone to educate legal professionals. Interestingly, both assume that the primary justification of the case method approach is to tease out the operative legal doctrine. Neither engages with Kronman's focus on moral imagination and developing a more capacious understanding of the world; rather, they regard the case method as a useful tool that quickly outlives its usefulness by the second year of law school. In some respects, both Llewellyn and the Carnegie Report adopt a more realistic assessment of the case method as it is used in modern law school education, but that realism does not negate the aspirational qualities of Kronman's argument. What Llewellyn and the Carnegie Report add to Kronman's approach is an insistence that educating legal professionals requires something *more* than cultivating Aristotelian virtues through in-class Socratic dialogue. As Llewellyn puts the point: "A liberal art can be as liberal as you please, and it should be—*any* liberal art should be, including law. But one thing, I repeat, sits firm: any man who proposes to *practice* a liberal art must be *technically competent*."[59] The wisdom and prudence of the ages will be of no use if the lawyer is unable to construct legal arguments in particular contexts and with an understanding of their real-world effects.

Law students should not be educated only through Socratic dialogue, because the law is not simply a matter of well-honed dialogue. The lawyer must know much more: she must understand the world and how it works; she must appreciate the depth and complexity of the problems facing individuals and entities that is only later summarized in a few pages of the description of the "facts" in an appellate opinion; she must appreciate that one of the important "law-jobs" identified by Llewellyn is counseling one's client, and that this is different from serving as a legal mouthpiece; she must understand the background social mores against which people invoke formal legal doctrine, appreciating the meaning of a handshake or the filing

59. *The Study of Law as a Liberal Art*, *supra* note 29, at 380. He offers another succinct description of the reciprocity of ethical knowledge and technical skill: "Ideals without technique are a mess. But technique without ideals is a menace." *On What is Wrong with So-Called Legal Education*, *supra* note 24, at 662.

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of a lawsuit beyond their legally cognizable meaning; and the list continues. Llewellyn presciently argued for more clinical training and even a post-graduate apprenticeship, but within the walls of the law school he insisted upon the need to develop more realistic teaching materials that deepened the superficial world of the appellate opinion with context and background. In a complementary vein, the Carnegie Report emphasizes the need for students to model experts engaged in the practice of law through structured clinical experiences that permit reflection on the practice and build the student's capacity for bringing together legal knowledge, skillful implementation, and prudent judgment.

> It is worth emphasizing that the development of capacities for legal judgment that can be observed in successful clinical courses is deeply consonant with the larger purposes of legal education. Moreover, the iterative movement among the three apprenticeships that the best clinical instruction provides is isomorphic with the practice of law in virtually all its forms. That is, the threefold movement between law as doctrine and precedent (the focus of the case-dialogue classroom) to attention to performance skills (the aim of the apprenticeship of practice) and then to responsible engagement with solving clients' legal problems—a back-and-forth cycle of action and reflection—also characterizes most legal practice. The separation of these phases into distinct areas of the curriculum, or as separate apprenticeships, is always an artificial "decomposition" of practice. The pedagogical cycle is not completed unless these segregated domains are reconnected.[60]

Premised on the most recent cognitive studies about how students learn from expert practitioners, this call for the reform of legal education might finally achieve the influence denied to Llewellyn, Kronman, and the many others who have called for reform of legal education.

We can add depth and complexity to the contemporary arguments regarding legal education by moving beyond general references to "practical reasoning" and learning through "expert modeling" and examining the broader epistemological and ethical issues at stake. I contend that Vico's oration is an excellent vehicle for this examination. Put in an overly simplistic manner, Vico foresaw the deficiencies of contemporary legal education because these deficiencies follow from the Cartesian critical method that has come to dominate the modern world. Kronman and Llewellyn both suggest that we have degraded legal professionalism, and that legal education and legal practice must recuperate something that has been lost. Because he was witness to the beginning stages of this loss and wrote about it in a philosophical manner, we can turn to Vico for greater clarity about the challenges that legal professionalism now faces.

60. THE CARNEGIE REPORT, *supra* note 42, at 124.

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II. VICO'S INGENIOUS METHOD

Vico delivered *On the Study Methods of Our Time* in October, 1708 at the commencement of the academic year. The scope of this short address is breathtaking: with the Cartesian "critical method" rapidly ascending in intellectual circles, Vico argued on behalf of the humanistic tradition. Vico's defense is neither ill-informed nor atavistic; he fully appreciated the power of the Cartesian method, but he also anticipated that its power would prove to be overbearing. He conceded that we must embrace the new rationalism, but that we should do so only without sacrificing wisdom. As described by Elio Ginaturco, Vico

> sets the seal of a philosophical conclusion upon the Quarrel of the Ancients and the Moderns. Vico draws, so to speak, the final balance-sheet of the great controversy; not only that, but transposes it to a ground where the problem posited can receive a solution. He is a reconciler of the two factions; he lifts their debate to a high philosophical plane, he rises to the concept of a modern culture harmonizing the scientific with the humanistic aspects of education.[61]

Vico's lament is not that we have abandoned a glorious intellectual past, but that we have failed to fulfill the intellectual promise of our future.

A. On the Study Methods of Our Time

Vico begins his oration with a reminder that all human knowledge is partial and fallible, and therefore that we should always be ready to assess our beliefs and correct them.[62] However, he exhorts his audience to recognize that Cartesian radical doubt undermines not only false beliefs that should be discarded but also beliefs grounded in the probable, without which we could not live.[63] The critical method undermines the cultivation of common sense, which subtends both practical judgment and eloquence, thereby restricting knowledge to an arid and abstract intellectualism.[64] This is particularly harmful because the art of making arguments through an inventive use of commonplaces "is by nature prior to the judgment of their validity," and so the art of rhetoric should be granted priority rather than being suppressed.[65] It is important to stress that Vico does not seek to abandon the Cartesian method and return to ancient rhetoric. He counsels a

61. Elio Ginaturco, *Translator's Introduction to* STUDY METHODS, *supra* note 1, at xxiii–xxiv.

62. Vico acknowledges that the modern Cartesian method has proven to be superior in many respects, but it too must be assessed to determine its limits. STUDY METHODS, *supra* note 1, at 9–12.

63. Indeed, if a person were to try to live life by utilizing only Cartesian reasoning she would be incapable of action and most likely would be regarded as having a serious mental disturbance.

64. STUDY METHODS, *supra* note 1, at 13.

65. *Id.* at 14.

prudent understanding of the role that each can play: "[A] severely intellectualistic criticism enables us to achieve truth, while *ars topica* makes us eloquent. . . . Each procedure, then has its defects. The specialists in topics fall in with falsehood; the philosophical critics disdain any traffic with probability."[66]

Vico's argument at this juncture merits a close reading. He summarizes the value of the rhetorical arts in a brief yet rich passage.

> Nature and life are full of incertitude; the foremost, indeed, the only aim of our "arts" is to assure us that we have acted rightly. . . . Those who know all the *loci*, i.e., 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!"[67]

Rhetoric is necessary just because life is uncertain. The Cartesian philosopher vainly seeks to determine the truth of the matter and therefore is impotent in the face of a pragmatic question of choosing between two proposed courses of action. In contrast, one who is capable of determining the relevant arguments "for and against" the proposed action on the basis of the probabilities of the given circumstances and is then able to persuade others as to the best approach exhibits a wisdom that is superior for this task than the more limited scope of definitive truth.

Vico provocatively compares the ability to "grasp extemporaneously" the lines of argument to "reading the printed characters on a page." We speak colloquially about "reading a situation," but Vico is suggesting that we take this metaphor to a deeper level. The abstract characters that form a written language are capable of generating an infinite number of expressions as speakers combine them in new and inventive ways over time. Reading social situations is not an unmediated perceptual facility; rather, it is an art that develops over time as one develops familiarity with the commonplaces that can be deployed in creative ways. An education in eloquence is an education in arraying lines of argument inventively to respond to the situation, and this art rests on ingenuity in "seeing" which arguments best match the situation. The sage understands that this capacity is distinct from philosophical criticism, and is not so foolish as to "apply to the pru-

66. *Id.* at 17, 19.
67. *Id.* at 15.

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dent conduct of life the abstract criterion of reasoning that obtains in the domain of science."[68]

Rhetoric has temporal priority over philosophy because one must first locate the means of persuasion within a given situation before it is even possible to test the reasoning with philosophical criticism—but this is not to suggest that all prudential decisions can or should be subjected to second-guessing by the philosopher. Many of life's issues simply are not amenable to philosophical analysis in the Cartesian tradition; instead, they call for mature judgment that Vico identifies with the ancient rhetorical tradition. The ingenuity of finding similarities among seemingly different factors, the imaginative capacity to create a new understanding of reality, and the prudence to choose appropriately when the matter is not subject to calculation: these are the humanistic capabilities that Vico championed despite the vigorous Cartesian criticism that their uncertain bases introduce the possibility of error. The sage must be committed to truth, but also ready to act when the frailties of the human condition preclude an analysis that demonstrates the truth of the matter. The sage,

> through all the obliquities and uncertainties of human actions and events, keeps his eye steadily focused on eternal truth, manages to follow a roundabout way whenever he cannot travel in a straight line, and makes decisions, in the field of action, which, in the course of time, prove to be as profitable as the nature of things permit.[69]

These considerations lead directly to Vico's recommendations for organizing education. Building on the oration he delivered in the previous year,[70] Vico insists that students must first develop their rhetorical skills before being introduced to philosophical criticism. Vico fears that the student might lose forever her capacity for ingenuity, imagination, and eloquence if she is exposed to the abstract intellectualism of the Cartesian method without first cultivating the humanistic arts. Consider the ongoing debate in contemporary higher education: the role of business schools in America. Students traditionally pursued an undergraduate education in the liberal arts, entered the business world, and only then returned to a university for M.B.A. studies in the science of business, learning subjects such as finance, accounting, marketing, and management. Today, business schools have colonized the undergraduate level of instruction to the point that a serious question arises whether the M.B.A. degree continues to serve any

68. *Id.* at 35.

69. *Id.*

70. GIAMBATTISTA VICO, *On the Proper Order of Studies*, *in* ON HUMANISTIC EDUCATION 125 (SIX INAUGURAL ORATIONS, 1699–1707) (Giorgio A. Pinton & Arthur W. Shippee trans., Cornell Univ. Press 1993).

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purpose. A Vichian might argue that students who plunge into the technical world of business concepts as eighteen-year-olds might stultify their capacity for leadership and ethical decision-making, which not only renders a technical education at the graduate level duplicative but also thwarts the wise use of this knowledge. Graduate business schools have been criticized for not keeping pace with the rapidly changing demands of the modern economy, leading liberal arts colleges to argue that while the "science" of business may change with the times, the qualities of good judgment in context is enduring and the humanism of a liberal arts education provides more educational staying power for a career in business.

The contemporary issues surrounding business education are the result of the fragmentation of knowledge that Vico predicted in his address. Although the expansion of knowledge and the encounter with different cultures has led to the creation of many different university departments in order to develop specialized knowledge, "this advantage is offset by a drawback. Arts and sciences, all of which in the past were embraced by philosophy and animated by it with a unitary spirit, are, in our day, unnaturally separated and disjointed."[71] The systematization of knowledge has undermined the kind of unified philosophy that permitted the achievements of ancient Greece and Rome. Vico closes his address by welcoming his audience to criticize his hubris because even in his time he recognized that it might be "presumptuous" to claim that one has a mastery of the various disciplines sufficient to permit a general discussion of education.[72] There is a wonderful irony in this coy humility, of course. A critic could argue that Vico improperly oversteps doctrinal boundaries of knowledge, but by doing so the critic would enter the rhetorical realm that Vico describes. Perhaps this is why Vico indicates that any such effort to criticize his thesis will engender his "gratitude."[73]

In a detailed discussion of law and legal education Vico brings his thesis to bear in very concrete ways. Beginning with the presumption that it is counter-productive to organize a practice that depends on common sense into a system of precepts, Vico recounts the emergence of law as a distinct discipline. The Greeks did not regard law as a distinct discipline; instead, law was a matter of conjoining philosophy and oratorical skills.[74] Similarly, the Romans maintained written laws strictly, but utilized legal fic-

71. STUDY METHODS, *supra* note 1, at 76.
72. *Id.* at 80.
73. *Id.* at 81.
74. *Id.* at 49.

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tions that were generated by the orator to avoid injustice.[75] In modern times, the law has expanded beyond the stark written text and enveloped within itself the moderating force of equity as a matter of interpretation rather than eloquence.[76] The law itself became justice, which was both a positive development and a loss: the law has become directly equitable, but we have also lost the connection between law and eloquence, commonly understood as wisdom speaking appropriately to the given situation. Vico regards it as a clear advantage that "the professions of legal expert and orator are, in our age, joined in the same person,"[77] but as justice became internal to law it was too easy for private parties to manipulate the levers of legal authority for their own gain. It was the decay of eloquence in favor of the pursuit of self-interest, Vico emphasizes, that sealed Rome's fate.[78] The problem facing eighteenth-century European society, he believes, is the need to bring legal doctrine into contact with eloquence and practical wisdom.[79]

It should be apparent that Vico's concerns are very similar to the concerns raised by a number of contemporary authors, including Kronman, Llewellyn, and the Carnegie Report. A technocratic approach to law and legal education suppresses the imagination and intellect necessary to practice law in a manner that genuinely unites eloquence—which Vico defines as "wisdom, ornately and copiously delivered in words appropriate to the common opinion of mankind"[80]—with the manipulation of legal doctrine. Legal hermeneutics has supplanted rhetoric, but it remains ignorant of its rhetorical core and devolves into a deductive-empirical exercise of identifying the "original meaning" intended by the drafters or the "plain meaning" of the legal text before the court. The law is now justice, but a methodological hermeneutics that seeks certainty in the application of the law undercuts this dimension of contemporary legal practice, resulting in a voiceless wisdom that is equipped only to manipulate legal formulae.

B. Vico's Oration as a Reflection of His Humanist Philosophy

Although delivered relatively early in his career, Vico's oration sounded themes that echoed throughout his body of work. Reading the oration without appreciating the philosophical themes of Vico's subsequent

75. *Id.* at 50–52.
76. *Id.* at 59.
77. *Id.* at 62.
78. *Id.* at 69.
79. *Id.* at 69–70.
80. *Id.* at 78.

work might lead one to conclude mistakenly that Vico simply offers a hortatory defense of a dying art that is quaint and nostalgic, but of no moment for modern thinkers. This assumption is wrong. Vico provides guidance because he grounds his plea on behalf of rhetoric on a fundamentally different philosophical perspective that speaks to our contemporary predicament.

Perhaps the most important issue is to determine whether Vico is an enemy of modernity or the herald of a post-Cartesian world. Mark Lilla has argued that Vico criticized modernity on "theological and political grounds,"[81] castigating the hubris of the rationalists that led them to seek knowledge reserved only for God and ignoring the need for certainty and order in human affairs grounded in tradition.[82] This is evidenced by Vico's celebration of Rome and wary suspicion of Greece, although he acknowledged that both eventually collapsed by pursuing the "barbarism" of reflection.[83] Lilla questions the recent attention to Vico's thought by picturing him as a resolute anti-modernist. Vico, he charges, had an

> intuitive sense that a science of man as a subrational creature could be an effective tool for silencing what little reason man has. Vico saw that the liberation of reason in philosophy implied the liberation of man *tout court*, which he rejected. What still deserves explanation is how Vico's scientific conquest of reason could, in the centuries that followed, be construed as a victory for human freedom.[84]

This depiction of Vico is certainly one that would come to mind among many legal scholars who adhere to analytic approaches to legal philosophy, a celebration of empirical and rigorously theoretical explanations of law in terms of social science, and a distrust of the vagaries of rhetoric. Can an anti-modern Vico really serve as inspiration for the post-Enlightenment academy?

Giorgio Tagliacozzo contends that Vico properly is seen as a pioneer of the post-modern age rather than an atavistic critic of modernity, founding "a new and more comprehensive way of philosophizing . . . no less

81. MARK LILLA, G.B. VICO: THE MAKING OF AN ANTI-MODERN 11 (1993).

82. Lilla argues against the thesis that Vico employed his religious terminology as a exoteric mask to protect his political and cultural writings from the inquisition. *Id.* at 145.

83. Lilla summarizes Vico's perspective:

> Rome was able to resist Greek skepticism by holding firm to the wisdom of its three common senses—religion, marriage, property—which were "guarded," Vico says, with a ferocious and real piety. But once individuals were freed from the demands of civic virtues, then encouraged to question traditional wisdom with reason, Roman history came to resemble Greek history at its worst. The Roman Empire, like ancient Athens, was brought down by the power of ideas.

Id. at 217.

84. *Id.* at 234.

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innovative than Kant's 'Copernican revolution,' as daring and liberating as Einstein's revolution in physics."[85] Along the same lines, Michael Mooney asserts that "Vico spent his whole life, both as pedagogue and as scholar, both in the classroom and in his writings, trying to combine wisdom and eloquence in such a way as to best serve the public good. Endlessly he inveighed against both a 'voiceless wisdom' and an empty rhetoric."[86] Leaving the reconstruction of Vico's motivations to specialists, we can agree that this reading of Vico provides an account of his work that speaks to our time. Certainly no credible scholar wishes to reverse the emergence of rational thinking and the debunking of myths and prejudgments that debilitate social life. Vico's work is pioneering because it charts a way of integrating this modernizing development with the broader understanding that we cannot eliminate entirely the myths and prejudgments that subtend our rational faculties. Vico assists us in seeing, in Gadamer's famous phrase, that the prejudice of the Enlightenment is its prejudice against prejudice, which obscures the fundamental reality that "*the prejudices of the individual, far more than his judgments, constitute the historical reality of his being.*"[87] Vico does not revel in anti-rationalism; instead he cautions us that rationalism cannot overcome our humanity, which must be cultivated over time as a slow process of improving the judgments that we make on the basis of our unavoidably prejudiced forestructure of understanding.

One might also wonder if Vico's reference to law and legal education in the oration is wholly happenstance, such that the musings of this eighteenth-century rhetorician have no intrinsic connection to law. In fact, Vico was educated in law, sought a Chair on the law faculty, wrote one of his early works on law, and rooted his thinking in legal reasoning and eloquence.[88] Donald Kelley's reading of Vico leads him to suggest that the modern "social and cultural sciences seem to be the ghosts of dead jurisprudences"[89] as capaciously understood by Vico, and that it was jurisprudence as a "human system of moral, social, and political thought . . . rather than the tradition of Greek, scholastic, or Cartesian metaphysics that pro-

85. Giorgio Tagliacozzo, *Preface to* VICO: PAST AND PRESENT, at vii, x (Giorgio Tagliacozzo ed., 1981).

86. Michael Mooney, *The Primacy of Language in Vico*, 43 SOC. RES. 581, 586 (1976).

87. HANS-GEORG GADAMER, TRUTH AND METHOD 276–77 (Joel Weinsheimer & Donald G. Marshall trans., Crossroad Publ'g Corp. 2d rev. ed. 1989) (1960).

88. For biographical information on Vico, see generally Stanford Encyclopedia of Philosophy, Giambattista Vico, http://plato.stanford.edu/entries/vico/#1 (last visited Apr. 20, 2008). *See also* GIAMBATTISTA VICO, THE AUTOBIOGRAPHY OF GIAMBATTISTA VICO (Max Harold Fisch & Thomas Goddard Bergin trans., Cornell Univ. Press 1944) (1728 & 1731).

89. Donald R. Kelley, *In Vico Veritas: The True Philosophy and the New Science*, 43 SOC. RES. 601, 611 (1976).

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vided Vico with his principal model and central ideas."[90] In a similar assessment, Michael Mooney emphasizes that Vico's conception of "rhetoric" was "not a literary but judicial rhetoric—rhetoric as argumentation, a process of reasoning," and that his *New Science* was premised on the belief that the principles of argumentative discourse provide access to the origin of humanity and undermine the intellectualist fantasy expressed by the Cartesian critical method.[91] Finally, in this Symposium Donald Verene presents an elegant argument along the same lines, arguing that jurisprudence as civic wisdom lies at the root of ethics.[92] Law is not just an example of one practice among many for Vico—law is the practice in which our civic life is born and renewed, and it is of central importance to Vico's philosophy.

Vico does not reject modernity wholesale, and his attention to law is fundamental to his project. Initial concerns about looking to Vico should be put to rest by the foregoing context, but the primary question remains: does Vico add substantial philosophical depth to the assessment of law and legal education, or is he just suggesting an alternative pedagogy? The ambitious scope of Vico's thought makes clear that he regarded the issues raised in his oration to be linked intimately to fundamental philosophical questions. This is perhaps best revealed by returning to Vico's metaphor of the educated student being able to "see" the best line of argument in a given situation. A rationalist would misinterpret Vico's prescription as suggesting that one first list the possible lines of argument, "view" them, and then deduce the correct answer for the situation. In the legal setting, this misinterpretation is enacted by students who enter the final exam with an outline of the legal doctrine that they have studied and then proceed to recite the rules. The mechanistic application of a list of solidified doctrines is not a genuine "seeing" of the situation in Vico's sense, but rather a "cognizing" or "calculation" of the situation.

Vico's celebration of the *sensus communis* does not refer to the "common sense" of the populace, in the sense of shared but untested and unreflective beliefs. Rather, Vico's "common sense" refers to the manner in which the individual senses are united in the making of a pre-reflective

90. Donald R. Kelley, *Vico's Road: From Philology to Jurisprudence and Back*, *in* GIAMBATTISTA VICO'S SCIENCE OF HUMANITY 15, 27 (Giorgio Tagliacozzo & Donald Phillip Verene eds., 1976). Kelley concludes that the "debts owed by Vico to jurisprudence are incalculable and in some cases almost indemonstrable . . . for they involve matters not only of content but of form and method, not only *exempla* but, much more significantly, also *principia* of human behavior." *Id.* at 19.

91. MICHAEL MOONEY, VICO IN THE TRADITION OF RHETORIC, at xiii, 82–83 (1985).

92. Donald Phillip Verene, *Vichian Moral Philosophy: Prudence as Jurisprudence*, 83 CHI.-KENT L. REV. 1107 (2008).

world on which later intellectual efforts rest. Ernesto Grassi develops this dimension of Vico's thought in his description of the two fundamental forms of human expression: the rational and the rhetorical. Grassi's discussion merits an extended quotation to clarify the contemporary philosophical importance of Vico's rhetorical philosophy.

> Language is divided into two fundamentally different forms of expression. One is purely rational, which serves to prove and provide the reasons for something. It is considered to be the measure of science, since it vouches for the objectivity of its statements with reasons, and these are not allowed to be clouded by subjective opinions. In ancient times this language was called "apodictic" insofar as it showed something [*deiknumi*: I show] upon [*apo*] the basis of reasons. It cannot be bound to times, places, or personalities; it is *unrhetorical.*
>
> We said that proofs in this rational language must, in the traditional view, be free of metaphors because when words assume many meanings (and this is the presupposition of metaphorical speech) they prove to be imprecise. The final consequence of rational speech is the demand for a mathematical symbolic language in which consequences can be drawn from the premises that we assume. Because its "scientific" nature consists in its strictly deductive character, its essence is such that it can possess *no "inventive" character.* Such a language must restrict itself to finding what already is contained in the premises but not yet explicit or obvious.
>
> The second form of language is the one that determines the premises themselves which, since they cannot be proven, are the *archai*, the principles. Now on the basis of what we have said about the metaphor and its characteristics by references to Aristotle and Cicero, we see that it and the language that is appropriate to metaphors have the characteristics of an "archaic" language. It is able only to make manifest and not to demonstrate. By virtue of its immediate structure this language "shows" us something, lets us see [*phainesthai*], and hence is "imagistic." Since it must rely upon images [*eide*] it has a "theoretical" [*theorein*: see or look at] character that we have discussed. A meaning is conveyed [*metapherein*] to the "image" that is shown. By virtue of this fact it acts to give meaning.
>
> The metaphor, and hence the language which it draws upon, has an "archaic" character, "possesses principles," and is what we call "rhetorical." But this certainly is no longer understood as a mere technique for the "superficial" use of persuasion. Rather, on the basis of its archaic character, it is what outlines the basis or framework of rational argument; it comes "before" and provides that which deduction can never discover.[93]

93. ERNESTO GRASSI, RHETORIC AS PHILOSOPHY 96–97 (1980) (alterations in original). Grassi elaborates:

> This "ingenious" metaphorical and fantastic activity is not realized in the framework of rational logic but in "common sense" [*sensus communis*] through which we continually transform reality in the human context by means of "fantastic" concepts. In such a language we

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The distinct realm of the rhetorical—characterized as an ingenious grasp of commonalities through metaphoric "sight"—is fundamental. Rationality gains no traction without the pre-existing world that arises out of human imagination, which is intended to be taken in its literal sense as the formation of "images" by which one "sees" the world.

Vico's "ingenious method"—studying topics and learning how to persuade others in a situation of uncertainty—is a recommendation to use one's common sense to imagine new solutions to problems, to "see" a new path of persuasion by drawing connections that are not already recognized. A well-chosen metaphor does just this, carrying meaning from one situation to a new situation, seemingly instantaneously, as if we suddenly see something that previously had been hidden from view.[94]

> The ingenious faculty assumes the important function of supplying arguments which the rational process itself is not capable of "finding" . . . But it is exclusively on the basis of revealing common elements that a transfer can be made, and that is why Vico defines the ingenious faculty as a requisite for metaphorical thought. . . . Based on the ingenious faculty, which establishes relationships or common factors, imagination, according to Vico, confers meanings on sense perceptions. Through its transfers, imagination is the original faculty of "letting see" (*phainestai*), so that Vico calls it "the eye of the ingenium."[95]

Exercising the imagination through topical argumentation is necessary because there is no substitute for the accumulation of experience. One cannot become prudent by deducing answers to practical problems; one be-

> never meet with abstract human beings but rather with those who, like ourselves, find themselves through work, in temporal and spatial relationships. The concepts through which we come to understand and "grasp" each situation come from our ingenuous, metaphorical, fantastic capacities that convey meanings in the concrete situations with which we are confronted.
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> . . . .
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> Fantastic universals have a primacy over abstract rational ones because concrete reality is revealed through them. For instance in Cicero's previously mentioned example the expression "happy sowing" is not rational and so not "scientific" in the traditional sense, but rather expresses the meaning which sowing has for human beings, a relationship (happy) which the supposedly "true" rational expression never would reveal. The same holds for the other example from Cicero, "when the shot escapes the hand." It aims at showing and revealing that which is really experienced and hence the concrete time in which human beings find things to receive a new meaning through work.
>
> The conformity of reality to human needs comes about through human work, and this occurs through the conveyance of meaning in which fundamental metaphors reveal concrete reality, *not* in the frame of universal, abstract, rational language.

Id. at 100 (alterations in original).

94. Grassi notes that the original meaning of "metaphor" was to physically carry an item from one place to another, but that gradually it came to be used "metaphorically" as a transfer of meaning that Aristotle recognized as being foundational to education because it generated knowledge not through a chain of deductions that might fail but rather through immediate insight. *Id.* at 94–95.

95. Ernesto Grassi, *The Priority of Common Sense and Imagination: Vico's Philosophical Relevance Today*, 43 SOC. RES. 553, 562 (1976).

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comes prudent through the exercise of judgment based on "insight," which is really a "new sight" or "broadened sight." To express this metaphorically, it might be possible to improve one's eyesight by using one's eye in a certain manner, as happens by the use of a patch to force the other eye to focus properly, but we can be sure that reading about the biological structure of our optical sensations will not improve this capacity. It is a question of one's capacity and experience, rather than one's cognitive achievements, that is at stake; Vico stresses that we can improve this capacity through proper education.[96]

Vico's oration relates to law directly, but not superficially. Seen within the context of his life's work, the oration is premised on a view of knowledge and human understanding that confronts the Cartesian critical approach at the deepest philosophical levels rather than just suggesting that different educational methodologies that might be employed. Much of the contemporary discussion about reforming legal education has tended to collapse into discussions of methodology without considering the philosophical presuppositions of those methodologies. Kronman, Llewellyn, and the Carnegie Report all point to a broader understanding of human understanding, and Vico's pathbreaking work lends depth and sophistication to these efforts.

III. CULTIVATING RHETORICAL KNOWLEDGE

On the Study Methods of Our Time operates as a distant mirror of the crisis in the methods of study in our time. It would be foolish to equate Vico's situation—writing humanistic scholarship in the shadow of the In-

96. Michael Mooney makes this point vividly:

> Ingenuity, Vico says repeatedly, is the "faculty of bringing together things that are disparate and widely separated." It lays no claim to thoroughness or method, but is a capacity, as Petrarch had said of it, which is quick and decisive, penetrating and acute, ready and adaptive. One does not need to call on ingenuity; one either has it or does not, see connections or misses them utterly. Vico was a child of acute ingenuity, he claimed, and so, too, are children generally, if only we will recognize it and train them accordingly. For ingenuity depends on the images of fantasy, a faculty most vivid and robust in youth, and on the power of memory, fantasy's twin, and they in turn take their start in sensations, the images of sense. But the point is more subtle than it seems, for sense and memory are not to be thought of as mere passive capacities, receiving and retaining impressions that imagination and ingenuity subsequently work through; sense, memory, imagination, and ingenuity are four virtually indistinguishable aspects of the single, prediscursive action of the mind.
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> . . . .
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> Ingenious perception is truly an invention, an assembling and arranging of images that produces a genuinely novel vision. . . . [In] oratory and law, it is a vision of how things should be, a course of action that will set things right or avoid their deterioration, a vision that joins past to future through current expectations, thus achieving plausibility, but one that does so through images that are familiar and foreign alike, thus opening to us new ways. Such images are those of metaphor, language that is sententious and acute.

MOONEY, *supra* note 86, at 151, 153 (citations omitted).

quisition at the dawn of the modern intellectual era—with contemporary concerns about knowledge in the post-Enlightenment era, but it would be equally foolish not to heed the lessons that can be drawn. Vico argues that rhetoric plays a necessary and core role in human history; he does not seek to undermine traditional philosophy as much as to unseat it from the place of pride that it has held since the Cartesian critical method swept Europe. The lessons that we can draw from Vico's work center on the multi-faceted idea of "rhetorical knowledge," which stands as a challenge to the analytic and rationalistic accounts of knowledge proposed by the philosophers.[97]

A. Rhetorical Knowledge

There are at least three senses of the term "rhetorical knowledge" relevant to this article. First, one pursues knowledge of the art of rhetoric so as to improve one's ability to identify the productive lines of argumentation in a given situation and then to persuade one's audience of the appropriate course of action. Traditional rhetorical education concentrated on the art of inventing lines of argumentation, arranging them for delivery, selecting the appropriate language for delivery, and then memorizing and delivering the argument. This tradition of rhetorical education is not only germane to legal studies, it continues to constitute the core of the legal writing curriculum even if the roots of this knowledge have largely been forgotten.[98] Rhetorical knowledge in this sense is a body of knowledge about how one can be an effective *rhetor* that has been developed and disseminated in schools beginning with the efforts of Aristotle and Isocrates in ancient Greece. Since the time of Vico's address the place of rhetoric in legal education has suffered considerably, although the tradition received a major infusion of energy with the work by Chaïm Perelman in the latter half of the twentieth century.

One goal of this article has been to explain why the inculcation of rhetorical knowledge in this sense cannot be reduced to a method of making arguments, or techniques of arguing. Vico's enduring contribution is to regard the knowledge of rhetoric as a cultivated disposition rather than

97. I have discussed the importance of the concept of rhetorical knowledge for law in greater depth in FRANCIS J. MOOTZ III, RHETORICAL KNOWLEDGE IN LEGAL PRACTICE AND CRITICAL LEGAL THEORY (2006).

98. *See* MICHAEL H. FROST, INTRODUCTION TO CLASSICAL LEGAL RHETORIC: A LOST HERITAGE (2005). Frost argues that the "classical rhetorical principles are as applicable today as they were 2500 years ago. Moreover, the classical authors provide what modern lawyers frequently lack: a clear, experience-based, theoretical framework for analyzing and creating legal arguments." *Id.* at vii. Rather than create a new critical vocabulary to deal with the over-rationalistic approach to modern legal argument, Frost recommends that we attend to the "insights provided by Greco-Roman rhetoricians." *Id.* at 103.

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strict adherence to a set of definitive precepts. Memorizing definitions of rhetorical tropes cannot provide the student with the sense of how to deploy them in a particular situation, nor is there ever a unique and definitive approach that must be employed. The expansion of the student's imagination permits the student to "see" the lines of argument that cannot be deduced from the tradition, precisely because this "seeing" requires the student to perceive similarities between ostensibly different concepts. The common law is replete with examples of just this capacity, and it is for this reason that the case method should remain an enduring element of legal education: the student can see an expert (judge) use the common law tradition to find a new constellation of arguments that resolve the case before the court, and then the student and expert (professor) can assess this result from the vantage of the present day, calling upon their own imaginative recollection and development of the common law.[99]

Rhetorical knowledge in this sense implies a significant revision of our pedagogical goals. Henry Perkinson provides a succinct and persuasive account of a Vichian critique of educational practices, beginning with the insight that Vico hearkens back to the critique of Plato's academy by Isocrates.[100] Vico's philosophical premises seat knowledge in man's creative adaptation of what is given by existing knowledge and institutions, and so

99. Consider one example that virtually every contracts student in America will encounter. In his famous "subcontractor bidding" opinion, Justice Robert Traynor utilized principles of promissory estoppel that had developed in the wholly distinct doctrinal area of unilateral contracts in order to fashion a rule to deal with reliance in the case where construction contractors rely on the offer by subcontrators to perform part of the work; at the same time he shrewdly used the "cf." signal to deflect the authority of the equally-famous views of Judge Learned Hand in the *James Baird* case. *See* Drennan v. Star Paving Co., 333 P.2d 757, 759–60 (Cal. 1958) (analogizing to RESTATEMENT (SECOND) OF CONTRACTS § 45 and distinguishing *James Baird Co. v. Gimbel Bros.*, 64 F.2d 344 (2d Cir. 1933) (Hand, J.)).

100. Perkinson writes:

> Back then, Isocrates—also a professor of rhetoric—had insisted that the philosopher's quest for so-called certain knowledge was simply inappropriate for the education of leaders. More appropriate, he claimed, was an education in what he called "right opinion." Right opinion rested on the probable or likely truths—what Vico later called *versimilia*.

Henry J. Perkinson, *Vico and the Methods of Study of* Our *Time*, 43 SOC. RES. 753, 754 (1976). Isocrates founded an academy and was not one of the itinerant sophists peddling arguments for money that drew the ire of Plato. Isocrates sought to delineate a full-bodied rhetoric as a mode of practical reasoning and a habituation to reasoned participation in civic affairs. "Isocrates situated practical wisdom inside and not apart from the process of deliberation, thereby placing prudence and political oratory in interactions with and reciprocal influence of one another." Takis Poulakos, *Isocrates' Civic Education and the Question of* Doxa, *in* ISOCRATES AND CIVIC EDUCATION 44, 57 (Takis Poulakos & David Depew eds., 2004). Isocrates did not consider rhetoric to be a self-enclosed technical mode of argumentation to be employed in response to a pre-given audience; rather, he regarded rhetoric as the art of civic discourse in which the rhetor "hails the audience into existence" and is an active agent in the creation of social norms and goals. EKATERINA V. HASKINS, LOGOS AND POWER IN ISOCRATES AND ARISTOTLE 8, 87 (2004). This effort to build a pan-Hellenic community of reason certainly marks Isocrates as an important precursor to Vico.

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Perkinson concludes that educational methods designed to socialize the student to given knowledge is seriously misguided. Both traditionalists (who seek to impart knowledge to students) and pragmatists (who promote the active participation of students in the learning process) fail for the same reason: they ignore the vital role of critique in knowledge formation.[101]

> If we apply Vico's theory to the teaching process, the content of the curriculum is not lost, nor is it imposed on the student either (as it was in the old receptor classrooms). The teacher merely presents the curriculum content as something to be criticized and improved. Through these continual critical encounters the student is initiated into the process by which knowledge, human knowledge, advances. The main task of the teacher is the Socratic one of helping students discover the contradictions within their own thought and between their thoughts and the thoughts of others. As a result of the teacher's critical probings, the students are encouraged to modify or refine their theories in order to overcome the contradictions. In this way students advance knowledge.
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> . . . .
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> The teacher must understand (and, in time, help students to understand) that certain beliefs, customs, institutions, and the like are human creations intended to restrain people from behaving in ways that adversely affect others. Since these are human creations, they are not perfect but are improvable. Yet they are the best we've got; they have developed, over time, and have undergone modifications in the light of human experience.[102]

Although Perkinson's analysis concerned moral education, it applies equally to legal education. Rhetorical knowledge is not just the memorization of certain techniques; rather, it is a recognition of the non-methodological means of knowledge creation within law and an apprenticeship to learn how to participate in this knowledge creation.

There is another sense of "rhetorical knowledge" pertinent to law. When lawyers argue and judges reason about matters that require deliberation rather than demonstration, the *result* of these activities is properly termed "rhetorical knowledge." The common law tradition—developed over centuries by a casuistic practice premised on analogic reasoning by means of metaphor and other rhetorical tropes—is properly considered a body of knowledge, even though it cannot generate uniquely correct results in given cases by means of deduction. Rhetorical knowledge in this sense is a practical accomplishment over time that neither achieves apodictic certitude nor collapses into a relativistic irrationalism. Rhetorical knowledge is capable of sustaining legal practice as a reasonable—even if not thoroughly

101. Perkinson, *supra* note 100, at 757.
102. *Id.* at 763, 765.

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rationalized—social activity. Although rhetorical knowledge is a social achievement rather than a univocal demonstration, it is properly characterized as knowledge. We can know the requirements of justice in a given case, and we can know the solution to a particular math problem; it is just the case that our knowledge of justice is rhetorical rather than logical.

This is not to discount the vital importance of logical-empirical knowledge, but rather to preserve the validity of those situations in which we must operate on the basis of rhetorical knowledge. Robert Scott has put this point well in one of his pathbreaking articles on the epistemic dimension of rhetoric.

> Seeing in a situation possibilities that are possibilities for us and deciding to act upon some of these possibilities but not others must be an important constituent of what we mean by human knowledge. The plural pronoun in the foregoing sentence is vital. As social beings, our possibilities and choices must often, perhaps almost always, be joint.
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> . . . .
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> The opacity of living is what bids forth rhetoric. A remark in passing by Hans-Georg Gadamer seems to me to be an important insight: the "concept of clarity belongs to the tradition of rhetoric." But few terms are more relative than that one nor call forth more strongly a human element. Nothing is clear in and of itself but in some context for some persons.
>
> Rhetoric may be clarifying in these senses: understanding that one's traditions are one's own, that is, are co-substantial with one's own being and that these traditions are formative in one's own living; understanding that these traditions are malleable and that one . . . may act decisively [with others] in ways that continue, extend, or truncate the values inherent in one's culture; and understanding that in acting decisively . . . one participates in fixing forces that will continue after the purposes for which they have been immediately instrumental and will, to some extent, bind others who will inherit the modified traditions. Such understanding is genuinely knowing and is knowing that becomes filled out in some particulars by participating rhetorically.[103]

103. Robert L. Scott, *On Viewing Rhetoric as Epistemic: Ten Years Later*, 27 CENT. STATES SPEECH J. 258, 261 (1976). Isaiah Berlin recognized this dimension of Vico's achievement, but he registered caution in describing rhetorical achievements as "knowledge."

> The identification of this sense of "knowing," which is neither deductive nor inductive (nor hypothetico-deductive), neither founded on the direct perception of the external world nor a fantasy which lays no claim to truth or coherence, is Vico's achievement. His program for the "new" approach to the human sciences is founded upon it. His claim may be extravagant: to call something knowledge which is so obviously fallible and needs empirical research to justify its findings may be an error. But he did uncover a mode of perception, something entailed in the notion of understanding words, persons, outlooks, cultures, the past.

Isaiah Berlin, *A Note on Vico's Concept of Knowledge*, *in* GIAMBATTISTA VICO: AN INTERNATIONAL SYMPOSIUM 371, 376 (Giorigia Tagliacozzo & Hayden V. White eds., 1969). Berlin's qualifications are understandable, but Scott's subsequent pathbreaking work provides good reason to construe Vico as a pioneer in the effort to delineate "rhetorical knowledge" in this second sense.

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This is the rhetorical knowledge that lawyers use and develop in the course of legal practice.

The first two senses of rhetorical knowledge are explored by Vico and joined together in a manner that can provide guidance to those seeking to understand how we might better educate lawyers to fulfill their social roles. Legal education must provide students with rhetorical knowledge in the sense of a knowledge of rhetoric. Unfortunately, modern legal education tends to push this knowledge to the periphery while treating legal doctrine as a logical system of concepts to be manipulated, even if this is not the conscious goal of the curriculum or individual professors. Too often professors engage in a "Socratic monologue" that leads students to focus on deducing results from doctrinal "rules." Vico explains why it is so difficult to break this prejudice: the education of students has stultified their capacity to see new arguments based on probabilities in situations of uncertainty, leaving them with a rather barren conception of reasoning. It may not be wholly within the power of law schools to alter this situation, but certainly the three years of education can better support the kind of educational growth that Vico described.

There is a third sense of "rhetorical knowledge" implicated by the fact that this article claims to convey knowledge about law and legal education. One might ask, "how can a legal theorist describe the activities of lawyers and judges in terms of 'rhetorical knowledge' with any authority, given that the legal theorist would appear to be no less subject to the constraints of dealing with probabilities?" If lawyers and judges have no recourse to fixed and universal criteria of judgment and must engage in an ongoing rhetorical practice suspended over an illusory syllogistic safety net, it would appear contradictory for me to assert that I have developed a theoretical key for unlocking the logic of this practice. An observer seeking to evaluate or criticize a rhetorical event is no less enmeshed in an interpretive-rhetorical horizon than those whom she is studying. Consequently, "the rhetorical critic's task is at least as difficult as that of the most successful rhetor."[104]

Theoretical reflection is not precluded by recognizing that the practices under study produce only rhetorical knowledge, once we move beyond construing theory in its traditional, narrow sense as the construction of a system of laws that has strong predictive value. If the concept of rhetorical knowledge is viewed "only" as a rhetorical claim put forth in an argumentative dialogue about the best means of representing legal practice, it might appear to disavow any authoritative claim. This supposition repeats

104. Michael J. Hyde & Craig R. Smith, *Hermeneutics and Rhetoric: A Seen but Unobserved Relationship*, 65 Q. J. OF SPEECH 347, 362 (1979).

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the mistake of regarding legal practice either as a rational-deductive exercise or as an irrational (although perhaps ideological) exercise of power under the guise of reason. Just as the better interpretation of a statute can emerge from legal argumentation, the better representation and critique of legal practices can emerge from argumentation in a theoretical dialogue. The recent cross-disciplinary investigation of the "rhetoric of inquiry" represents a sustained effort to describe the rhetorical tools available "not just for deconstructions of objectivist pretentions, but also for much-needed, much sought-after reconstructions of inquiry in the wake of those debunkings."[105] Legal theory can claim no absolute expertise by virtue of being distinct from practice; to the contrary, it is a comportment within legal practice that is no less rhetorical in character.

A cursory reading of Vico's *New Science* might lead one to conclude that he offers a deterministic account of the cycles of history, claiming a privileged position from which to speak. A more sophisticated reading of Vico's philosophy sees it as an example of his rhetorical thesis. Vico is not claiming to provide an objective historical account of human history as it has unfolded and will unfold. Rather, he engages in a genealogy of our human capacities by tapping into the archaic rhetorical speech upon which social life depends. Vico is not claiming to have secured the standpoint from which to determine what ancient man imagined; he is describing the activity of imagination in an imaginative manner.[106] Ernesto Grassi emphasizes that Vico recognizes his place within the ongoing drama of humanity. "For Vico, as we said, the human world does not arise as a derivation from original, hypostatized principles [subject to philosophical demonstration], but rather from the self-realizing, ingenious, imaginative act conceived to satisfy human needs, as a self-realizing act which must prove itself again and again in newly-arising situations."[107] Vico's *New Science* is "new" because he rejects the emerging logical-empirical scientism as the arbiter of knowledge and seeks to recover the experience of that which precedes these "higher order" faculties. It is entirely plausible to read Vico's work consistently with the "rhetoric of inquiry," thereby avoiding the charges of self-contradiction that might appear damning at first glance.

105. Herbert W. Simons, *Preface to* THE RHETORICAL TURN: INVENTION AND PERSUASION IN THE CONDUCT OF INQUIRY, at vii (Herbert W. Simons, ed., 1990).

106. Leon Pompa, *Imagination in Vico*, *in* VICO: PAST AND PRESENT, *supra* note 85, at 162, 169.

107. Ernesto Grassi, *Vico* Versus *Freud: Creativity and the Unconscious*, *in* VICO: PAST AND PRESENT, *supra* note 85, at 144, 149. Grassi strives to connect to rhetoric as "original speech" that is the basis of all rational thought, and which provides us with a social world. GRASSI, *supra* note 93, at 96–97. He recognizes that he can do so only by engaging in this dimension of language and revealing "the nature of man in his concrete, emotive, history-bound evolution, that is, in his historical relevance." *Id.* at 65.

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B. *The Relevance of Rhetorical Knowledge to Contemporary Debates*

Pragmatic-minded lawyers and educational reformers will ask, "where does the attention to Vico lead us in dealing with the pressing problems of legal professionalism?" I offer some tentative suggestions for how a Vichian appreciation of our current dilemma generates a different point of view that effectively reframes the debate. First, by attending to Vico's lament I believe that we are forced to confront the reality of rhetorical knowledge in the third sense: namely, that our theoretical and philosophical efforts to articulate the rhetorical nature of human interaction are themselves secured, defended, challenged, and revised in the realm of rhetorical argumentation. Vico's rhetorical oration on the importance of rhetoric crystallizes this important starting point. Recognizing that we can never achieve timeless knowledge of the truth of the human condition but can only join in the process of collectively shaping that reality is critical for avoiding the rationalistic and scientistic traps into which those who think about the practice of law all too frequently fall.

With this understanding of the significance and depth of rhetorical knowledge in the third sense established, rhetorical knowledge in the first sense becomes the educational methodology that fits with the task of building the legal profession. Vico regards the topics as an "ingenious method" for developing rhetorical knowledge, but of course this is a method that can never be reduced to a methodology. The ingenious "method" is just a structured effort to develop the capacity to "see" a new path of inquiry or argument, the imagination to picture the new world that would result, and the rhetorical skills to bring others to share this image and work together to realize it. Vico's celebration of the "ingenious method" of the topics is a call to adopt pedagogies that foster ingenuity.

The value of the case method has not been realized in legal education, but it provides the potential to serve the salutary purposes identified by Kronman. The narrative dimensions of law are revealed dramatically by assessing the highly stylized narratives of court opinions (both trial and appellate) and imagining how these cases might be re-presented. The "moral imagination" of students is fostered by having them see within the situation of the reported case alternative accounts of the facts and images of the just result. Criticisms of the case method are warranted to the extent that the professor walks students through a laborious process of recitation solely to identify legal doctrine that then serves as a basis for deducing the actions that will be taken by courts in the future. Llewellyn's call for depth rather than breadth is pertinent here: case studies should begin with a reported opinion, but then delve deeper to provide students with the means of

identifying how the case was shaped by the legal process and how that shaping was not logical, deductive, or empirical, but instead was a function of imagination and rhetoric.[108]

Kronman's faith in the case method can be redeemed without suggesting that this is the only means of introducing students to legal professionalism. The expert modeling within problem-based courses, simulation courses, and clinical experiences is a vital part of an education into the ability to identify the lines of argument and to marshal them on behalf of a client. Vico well understood that practical judgment is an activity that must be learned through experience. Judgment is developed through judging and watching others judge, which requires moving beyond the books and confronting experience (either simulated or real). This is the real focus of Vico's lament: he worried that the critical method would disable students from learning how to judge as they awaited receipt of comprehensive information that would provide one "true" answer. Vico knew that it is only by putting oneself at risk in situations of uncertainty which admit only of probabilities that one can begin to learn how to deal with those situations.

The Carnegie Report comes close to providing a Vichian account, although it is more heavily stacked in favor of the modeling of practical behavior than in the expansion of the students' imagination. By borrowing Kronman's conception of the case method, as opposed to its misuse by many faculty members, the imaginative and metaphorical exercises that Vico would find necessary can be secured in the curriculum. If this is the purpose of the case method, though, it might properly be dislodged from the first year of studies when students are learning the legal vocabulary—"black letter law"—with which they must reason as lawyers. Kronman would caution that a pure lecture approach to the material would only exacerbate the intellectual stultification which already occurs, leading students to forget that real clients with real problems lie behind the doctrinal summaries, but the rapid assimilation of legal knowledge through lecture and intensive readings might be paired with an education into the psychology of distress, conflict, and anger that could be supplemented with client counseling exercises. The case method too easily devolves into a means of exploring doctrine, but entirely separate educational activities that focus on the lawyer and client as people engaged in conflict and deliberation would

108. For a classic effort to lend depth and humanity to the seemingly abstract and logical development of the law, see JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW (1976). Scholars recently have attended to the full complexity of famous cases, providing a basis for further development along these lines. A classic in this genre is RICHARD DANZIG & GEOFFREY R. WATSON, THE CAPABILITY PROBLEM IN CONTRACT LAW (2d ed. 2004). Foundation Press has instituted the "Law Stories Series" in this vein. *See, e.g.*, DOUGLAS G. BAIRD, CONTRACT STORIES (2007).

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not suffer that fate. After the basic vocabulary of black letter law and human interaction has been established in the first year, students could then study the kinds of rich case histories advocated by Llewellyn to achieve the goals identified by Kronman, supplemented with a healthy mix of simulation and clinical courses.

This is not to suggest a trade school model, where students are taught how to format briefs according to the rules, how to file paperwork in the county courthouse, and how to draft certain legal documents. To the contrary, a Vichian approach to legal education would require interdisciplinary work to an unprecedented degree. A Llewellyn-esque case study of a commercial law dispute would certainly bring to bear history, sociology, economics, psychology, philosophy, and other factors to provide the students with the materials they need to develop their ingenious capacities through argumentation. As Llewellyn insisted, this method of study would not displace lawyerly craft with amorphous "policy" arguments: the starting point must be the legal vocabulary and tradition, but the goal is to see how these indeterminate "givens" can be deployed inventively in the case at hand.

There clearly are substantial, even if substantively venal, barriers to adopting a Vichian reorientation of legal education, even if the status quo genuflects in the direction of increased clinical experience as a worthy goal. At the most general level, the inertia of most persons and organizations is such that a call to reorient thinking in fundamental ways is almost always doomed to failure. By reading Vico in a rich manner that captures the fundamental character of his challenge to our contemporary notions of knowledge and understanding, we face the prospect of sealing the irrelevance of this reading precisely because of its fundamental character. On the other hand, watering down Vico's insights to permit them to mesh more comfortably with modern sensibilities shaped by Cartesian philosophy also makes the entire exercise pointless. In this situation there is no alternative to the need to issue a challenge that may not be understood fully; after all, this is precisely the task that Vico undertook in his oration.

More specifically, the most substantial barrier to adopting a Vichian approach is the unfortunate fact that many law schools are organized and operated for the benefit of the faculty, with the students expected to learn through an intellectual version of the "trickle down theory." Under the "university research model" of education, professors are hired and retained primarily to generate knowledge for consumption by their peers in often highly-specialized fields of study. Lip service is paid to the importance of teaching, but in fact only minimal teaching competency is expected or demanded if the faculty member is a successful researcher. In contrast, the

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"liberal arts" model (now embraced by many universities in the form of an embedded "honors college") of education is no less focused on professional scholarship, but the school is viewed as a means of bringing students into contact with professors who model the life of the mind in ways that directly translate to the student's life. Many, if not most, law schools have rapidly assimilated the former model as their template. Consequently, it often is simply unrealistic to speak about a law professor modeling professional qualities for his or her students. Professors take a break from their research, which undeniably is the coin of the realm, to lecture students for four or five hours per week. Although the vast majority of students will become practicing lawyers, the research conducted by the professors often is targeted to academic audiences rather than lawyers and judges, and so it remains disconnected from the few hours spent by the professor in the classroom.

Under these conditions, seriously arguing that law professors ought to endorse and adopt a Vichian approach to legal education in their individual and collective efforts would amount to a call for many law professors to change their professional identity in a significant manner. Just as a number of "old school" professors resisted the transition to the "university research model" over the past few decades, we can assume that today's professors will be no less resistant to changes that no longer reward them for their strengths and require them to adopt a new orientation. The transition to the "university research model" was driven by the goals of the university and implemented through the authority of law school deans, but it also is symptomatic of the times in that the research measure of professional achievement is deemed calculable, whereas a school's dedication to educating its students to become professionals is deemed amorphous at best, and an unimportant or subsidiary goal at worst. This suggests that the inertia that confronts a Vichian reorientation of legal education may be far more challenging to unseat.

The Carnegie Report emphasizes what Vico knew well: cultivating professional qualities in an educational setting is not a rejection of research and scholarship; to the contrary, this orientation requires vigorous research and scholarship in a new vein. Law professors must model professional behavior and lawyering skills, but this is not a matter simply of exhibiting their experience in practice (which often is atypical and brief). Instead, the modeling must be informed by rhetorical knowledge in all of its senses, and the scholarship of teaching and learning must play a role in the continual education of professors. Certain specialized forms of research, such as the application of microeconomic theory to legal questions, would continue to

be important, but could no longer be regarded as a kind of "value-free" knowledge that is an end in itself. The idea of "knowledge for its own sake" has no meaning in a professional education, which is not to say that there is any knowledge that is irrelevant to this education.

The second specific obstacle to reform is the other side of the educational equation: students apply to law school without adequate preparation for the study of law in the manner contemplated by Vico. Education generally has become fragmented, specialized, and built on the model of Cartesian truth. The law school does not operate within a unified university dedicated to the cultivation of common sense, prudence, and eloquence as a prerequisite to technical training. All too often, students arrive at law school lacking basic communication skills because they have not been provided a rigorous education in persuasive speaking and writing. Even within the law school, the legal writing curriculum is deemed to be a regrettable concession to the older trade school model of legal education rather than being recognized as the site where the intellectual activity encouraged by Vico has any chance to flourish. The university has banished rhetoric to elementary composition courses taught by itinerant faculty or to marginalized departments of communication studies; the law school has banished rhetoric to a first year writing course that is too often taught by faculty who are regarded as less important than the research faculty. It should come as no surprise that students entering law school and beginning their studies are not prepared for a Vichian education, even if it were being offered to them in a rigorous manner.

With regard to the prospects for legal education, there is a fine line between being a pessimist and being a realist. The Carnegie Report may at long last bring the brewing discontent of the last century into focus and motivate change, but it is easy to lend one's voice to Vico's lament. Vico situates the contemporary critique of legal education in a much broader intellectual current that adds depth to the project and cautions against being satisfied with feel-good slogans and curricular tinkering. Vico identifies a great and honorable calling to the law, one that we should not hesitate to embrace despite the apparent long odds. Too much is at stake. Rejecting the autistic wisdom of the rationalist and empiricist traditions of modernity is a matter of grave import, Vico tells us, not only for the legal system but for civil society. Moreover, "[w]hat Vico experienced in his age as matters of intellectual dispute between the Cartesian position and his own have become life problems in our contemporary age,"[109] making his call for

109. Donald Phillip Verene, *Vico's Science of Imaginative Universals and the Philosophy of Symbolic Forms*, *in* GIAMBATTISTA VICO'S SCIENCE OF HUMANITY, *supra* note 90, at 295, 297.

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change all the more urgent in our day. The time to heed Vico's lament is now. Professors of law unite in rhetoric so that, at long last, you can see that you have nothing to lose but your Cartesian chains!

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