2012

Rhetoric and Dialectic in Legal Argumentation: Realizing Alessandro Giuliani's Aristotelian Theory

Francis J. Mootz III
University of the Pacific, jmootz@pacific.edu

THE 13th INTERNATIONAL CONFERENCE OF

ISSEI

International Society for the Study of European Ideas

in cooperation with the University of Cyprus

Rhetoric and Dialectic in Legal Argumentation:

Realizing Alessandro Giuliani's Aristotelian Theory

By Francis J. Mootz III

Presented at the Annual Meeting of the
Institute for the Study of European Ideas
Nicosia, Cyprus 2012

Introduction

The ISSEI conference theme focuses on the necessity of drawing from scientific, philosophical and aesthetic realms to understand our human condition. Legal language exemplifies this situation because it seeks to achieve certainty, justice and equity. Such a complex undertaking must employ multidisciplinary inquiry. I find my inspiration for this talk in the work of the Italian philosopher and legal theorist, Alessandro Giuliani. Giuliani recognizes that by articulating truth under conditions of uncertainty, legal language cannot be approached solely as a scientific or technical endeavor.[1]

Giuliani insists that the dialectical logic of argumentation has profound implications for civic life, particularly as it is revealed in legal language. To develop this thesis, he recuperates Aristotle's conception of a dialogic community and also draws from the substantial contribution to Aristotle's legacy by the seventeenth-century rhetoric scholar, Giambattista Vico. I emphasize Giuliani's inventive use of these sources to articulate an argumentatively-based community that is capable of bearing the social and civil demands of modernity. My goal is to make his account more robust and broad-based by delineating its understated rhetorical themes.

I begin by providing an overview of Giuliani's participation in a line of thought that stretches from Aristotle, through Vico, and to Giuliani's contemporary, Chaïm Perelman. Giuliani regards legal discourse as exemplary for this theory of argumentation, and he grounds legal discourse in Aristotelian dialectics. Then, I seek to clarify the relationship between Giuliani's celebration of dialectics and the rhetorical approach favored by Vico and Perelman. The connection, of course, is rooted in Aristotle, who famously concluded that rhetoric and dialectic are *antistrophos*.[2] I extend Giuliani's thesis by exploring the connections between dialectics and rhetoric in legal language. My goal is to fully realize Giuliani's Aristotelian theory.

A. **Giuliani's Recuperation of Dialectical Argumentation**

Formal logic earned its prestige by identifying necessary results, but this prestige was premised on an assumption that definitive certitudes regarding "clear" concepts and "certain" definitions are preferable to "confused" or multivalent notions. Unfortunately, in modernity this bias has spread to fields of inquiry into human interaction, such as law. Legal scholars in the past did not strive for such precision, recognizing that certainties are unattainable because the human life that law regulates is always in flux. Modernity construed the failure of law and other

social sciences to meet the high standards of formal logic as proof that they are inferior to the "exact" sciences. Rejecting the classical understanding of law, modern theorists have devalued the special reasoning skills required in these areas.

In the *Topics*, Aristotle describes dialectics as the method of argumentation that brings different points of view together and generates knowledge of matters that cannot be demonstrated conclusively to be either true or false. Dialectics is premised on the "logic" of persuasion rather than on the compelling force of a deductive demonstration. Dialectics identifies "true" opinions, then, but only in the sense that the "true" opinion is convincing to those engaged in a particular discussion. An opinion that is "true" in this sense must be subjected to ongoing review, because it is always possible that a different truth will emerge when the opinion is re-examined under a different light, in different circumstances of time and place, and using different arguments that are invented and offered by new participants to the dialogue. Despite the impermanence of dialectical truth, Giuliani insists that dialectics yields a full-fledged form of knowledge, even if it is different from the type of knowledge generated by mathematics or empirical science.[3]

Critics who believe that all spheres of experience can and should be known through formal logic and explained in accordance with the principle of non-contradiction assert that dialectics yields only an unstable (and, therefore, untrustworthy) form of argument that is wielded by a speaker to secure mere agreement rather than to obtain knowledge. Along these lines, many commentators on Aristotle's work have long considered dialectics a "lesser logic" in comparison to his privileging of hard, inferential logic that approaches problems of knowledge analytically, deductively, and systematically. However, Giuliani remains true to one of Aristotle's most penetrating insights: that it is equally inappropriate to expect a mathematician to

be persuasive as it is to expect the rhetorician to offer definitive proofs.[4] Aristotle admonishes his students not to abuse reason in the field of opinion by treating that which is by nature arguable, uncertain, and unprovable as if it could be established with certainty; to do so is to commit an error that obscures the contextual nature of practical reasoning. Aristotle recognizes that arguable issues can and must be resolved through dialectical reasoning -- the form of knowledge appropriate to such questions.

Dialectics is a form of knowledge that relies on ordinary language as it is used to express opinions about uncertain matters. Giuliani emphasizes that dialectics and juridical experience are closely linked because legal reasoning also involves the proffering and testing of opinions in ordinary language.[5] Ordinary language is capable of revealing truth because it conveys common sense knowledge and understanding, but at the same time it is inevitably imprecise. Legal discourse has a veneer of specialized terms and detailed logic, but it always rests on common terms such as "good faith" and "reasonableness" to reach decisions. The apparent imprecision of legal language is not a regrettable failing that we should bemoan and seek to eradicate; rather, it is the central, productive feature of legal language. Legal discourse relies on metaphors to temporarily fill some of the gaps caused by the imprecision of ordinary language by making analogical connections and illustrating similarities that bring common sense (in the classical meaning of *sensus communis*) to bear on the circumstance of reality or to the case being considered, the person using it, the context in which it is used, and the moment when it is used. Giuliani insists that it is especially important for the jurist never to lose sight of being immersed in ordinary language, arguing that "when there is no awareness of the metaphorical nature [of language], the road to the most dangerous abuses of language is opened."[6] We lose this awareness when we attempt to force the ordinary language of law to embody formal precision

and objectivity. This error sacrifices the depth and multi-valence conveyed by the metaphoric structure of ordinary language, which connects with the concrete experience of both individuals and society as a whole.

Given how dialectics works to generate knowledge, Giuliani insists that cooperation between the dialogue partners is necessary to some degree. In other words, the parties join in dialectical dialogue to seek the truth.[7] Unlike the monologue of logical demonstration, dialectic is always a dialogue that seeks to choose between multiple potential resolutions of the question. The parties to a juridical dispute are engaged -- perhaps unwittingly in adversarial systems -- in just such a cooperative dialogue. This is not to say that legal argumentation always proceeds in a wholly cooperative manner. Indeed, it is by recognizing the requirement of cooperation that illuminates how dialectical argumentation might fail and degenerate into sophism. Dialogue, no less than language generally, is subject to abuses. Giuliani outlines the prerequisites of dialectic to prevent such abuses.

First, dialogue participants should concentrate on eliminating some opinions from consideration by progressively casting light upon the reasons why certain arguments are immaterial to the specific dispute in question, based on the circumstances under discussion. This posture requires one to grapple with the proffered opinion in its own right, rather than reflexively attacking it from the perspective of one's own opinion purely for strategic reasons. The guiding norm of dialogue is "identifying contradictions between conflicting opinions" rather than selecting one's preferred opinion and defending it at all costs by characterizing the contest as placing the decisionmaker on the "horns of a dilemma."

Additionally, dialectical argumentation should take inspiration from the logic of relevance and pertinence: the arguments that are introduced must be connected with the issue

being investigated. To make this possible, the participants must reach some topical agreements connected with the content and the characteristics of the dispute, so as to permit development of a common basis from which the participants may reason. This brings to the fore the need to limit the field of investigation, so as to protect against the possibility of error and abuse by focusing on the concrete nature of the case being considered rather than on the superficial eristic battle.

The truth that can be reached in dialectical exchange is a partial and relative one, subject to future revisions precisely because of the cooperative procedure of the dialogue. The goal is a "probable" truth, but this does not mean "probable" in the modern sense of an objective or statistical regularity of occurrences confirming or disproving a certain point of view. Instead, probability must be appreciated qualitatively: the discussion always takes place with reference to a single event and must be sensitive to the surrounding elements that influence the configuration of that event, but also must be anchored topically to broader issues and historical developments. Truth is inevitably *kairotic* – which is to say, sensitive to the time in which the event is produced, because as times change, so do such qualitative elements as the provisional judgments, common sense, and ways of thinking that configure it.

Probable truth requires the participants to comply with rules of fair debate and to eschew sophistic manipulations. This means that dialectical truth can be achieved only if the participants display an ethical commitment to each other. The ethical commitment is not to collaborate with the aim of establishing a single definitive truth, but rather to remain open to everyone expressing their opinions in an honest and forthright manner with the expectation that they will be taken seriously by the others in the dialogue. The truth that is attained in the dialectical exchange, Giuliani stresses, has a procedural character but it also has an ethical dimension. This is the fundamental distinction between dialectical dialogue and sophistic: dialectics is ethically

oriented by the mutual recognition of each participant for the other, acknowledging their ability to contribute to seeking the truth, and thus their equality as dialogue partners.

B. **Dialectical Knowledge and Rhetoric**

Giuliani's impressive recuperation of the dialectical tradition is powerful, and it provides substantial guidance to contemporary legal theorists. He repeatedly emphasizes that he is not reading the dialectical tradition in a narrow, scientistic manner, but I believe that this aspect of his theory must be clarified and strengthened, especially for the sake of American readers. In common academic usage in the United States, "dialectics" is regarded as a more rule-bound and definitive practice of reasoning together with someone toward a conclusion, whereas "rhetoric" has a more open-ended connotation of persuading an audience through artful presentations. This division is reflected today in the contrast between the Dutch pragma-dialectical school on one hand, and American rhetorical theory on the other. These schools define the outer boundaries of the inquiry into reasonable dialogue that exists between the poles of rationalism and logical deduction on one hand, and skepticism and sophistic on the other.

I do not mean to suggest that Giuliani ignores rhetoric. He refers to the rhetorical tradition and particularly to the effort of modern theorists to revive Vico's wisdom.[8] He recognizes that law, politics and ethics are enmeshed in both dialectic and rhetoric,[9] given that both arts reason toward solutions that are indeterminate because they rest on opinion and probabilities. Giuliani laments that dialectics was hijacked in the Middle Ages and made to appear more logical as part of the effort to discredit the rhetorical tradition,[10] and so to some degree he is combating the historical attack on rhetoric. His goal is to reclaim dialectic as a counterpart to rhetoric, with neither collapsible to the other but with both occupying the realm between science and sophistry.[11]

Giuliani also relates the rhetorical tradition to legal argumentation, as exhibited by his praise of the rhetorical dialectics of the common law method that persisted in parts of the world, unlike the European context in which the logical pretense of civil lawyers appeared to sever the connection.[12] He advocates an approach to legal education that imbues students with the classical lessons of both rhetoric and dialectics.[13] In conclusion, it is clear that Giuliani accepts the rhetorical dimensions of his theory of argumentation.

My argument is that Giuliani's theory will be greatly enhanced by an even more purposeful and detailed incorporation of rhetoric. Unfortunately, Giuliani generally refers to his method as "dialectical," and so it is necessary to elaborate the uniquely rhetorical features of his approach. Scholars recently have made headway in this regard, returning to the original Aristotelian conception of dialectics and rhetoric as *antistrophos*. Noting that "it must be acknowledged that neither the dialectical perspective nor the rhetorical perspective is so clearly and univocally defined that we know exactly what we are talking about," two editors of a recent volume of important essays conclude that there are distinctions between dialectic and rhetoric, even these differences vary over time. [14] Francesco Cerrone makes the distinction succinctly and skillfully: "Dialectic thus corresponds to the moment of judgment as rhetoric does to that of invention, understood as a part of discourse dedicated to choosing and selecting arguments."[15] The important point is that these distinctions are illuminating, but not fundamental. We can say that dialectic is a means of testing a hypothesis through reasonable discourse, whereas rhetoric is a means of securing the agreement of an audience, but it should be apparent that these activities are closely entwined in most sophisticated dialogues.[16] This is especially true of legal reasoning and argumentation.

> It is surely no accident that the faith in the critical workings of this argumentative interplay [of dialectic and rhetoric] also lies at the root of our confidence,

> however circumscribed, in the proper working of the legal adversarial system, and that legal argumentation perhaps more clearly than other forms of reasoning highlights the need to link dialectical soundness and rhetorical acceptability in the analysis and design of good arguments.[17]

By exploring this rich notion of argumentation we may flesh out Giuliani's dialectical theory of argumentation.

An important reference for conjoining dialectic and rhetoric is Vico's famous oration at the dawn of the eighteenth century, *On the Methods of Study in Our Time*. Vico stood as the last great defender of the ancient reverence of rhetoric and dialectics at the time that the modern era of rationalism was gaining ascendance over the classical worldview. Giuliani drew extensively from Vico's bold stand against the bias of modernity, and also from Perelman's effort in the last century to revive rhetoric and dialectics as forms of knowledge. It does no violence to Giuliani's theory to incorporate their detailed rhetorical insights to his work, although it may necessitate altering Giuliani's assumption that dialectic is superior to rhetoric.[18] By joining rhetoric and dialectic as *antistrophos*, we can best capture the full dimensions of legal argumentation.

I conclude by offering suggestions for how we can expand the scope of Giuliani's theory of legal argumentation by incorporating rhetoric. Giuliani's focus on the cooperative nature of dialectical argumentation rings somewhat hollow in the ears of those whose legal system is adversarial because the practice of law seems inevitably to be at odds with this cooperation. We might agree that certain aspects of legal argumentation follow the dialectical model when the parties reason from shared assumptions, but many legal arguments are a contest to define the primary assumptions that should ground the effort of dialectical reasoning to reach a conclusion. Giuliani is correct that there is a cooperative dialectic in legal argumentation, but it is made possible only through the rhetorical establishment of shared opinions from which the cooperative argumentation may begin. Aristotle distinguishes "demonstration" from "dialectic" by linking

the former to premises which are necessarily true ("primary") and the latter to "premises that are generally accepted."[19] Rhetoric is necessary because we don't always begin our reasoning with clearly delineated opinions that are accepted by both sides. Aristotle defines rhetoric as the art of seeing, in a given case, the available means of persuasion. There are multiple opinions that might be accepted by those in the dialogue, and identifying the shared opinions that probably will lead, through dialectical reasoning, to the desired result is part of the rhetorical art that subtends legal argumentation.

Aristotle recognizes that the framing of the question by the dialectician is not the same as the framing of a philosophical question, because "how to go on to arrange his points and frame the question" necessarily involves "a reference to another party."[20] Aristotle acknowledges the significance of the audience in dialogue, but then he proceeds to describe how one may strategically present the premises from which the argument will proceed. At this point, one might criticize Aristotle for making a sham of dialectical reasoning by reducing it to sophistic, but by construing this initial stage in the argumentation as a rhetorical engagement we can appreciate the ethical integrity that should guide the persuader. Rhetorical theory differentiates one who gains agreement through sophistry, and one who persuades through *logos, ethos* and *pathos*. Indeed, the motivating purpose of *The Rhetoric* is to demonstrate that rhetoric has integrity as a form of reasoning that generates knowledge between the speaker and audience about desirable and acceptable courses of action, even if rhetoric does not generate logical truths *or even dialectical truths*. In dialectic, the ethic is a cooperative effort to follow from accepted premises to uncertain conclusion. In rhetoric, the ethic is a persuasive encounter in which one seeks the other's agreement with integrity. As Gene Garver summarized with the title of one of his books, rhetoric is "an art of character."[21]

There are many ways in which the rhetorical tradition will add concrete and practical dimensions to the study of legal language. For example, Vico's famous description of the "ingenious method" of rhetorical education -- teaching students to argue both sides of a matter so as to learn the art of inventing arguments -- points to the development of a key capacity that is not captured solely by the logic of dialectical argument. This "ingenious method" is supposed to form the core of modern legal education, but students easily are bewitched by the "dialectical moves" in the cases they read. As a result, they misunderstand the critical role of rhetorical framing for the argument that follows.[22]

The relevance of rhetorical theory extends beyond insights into how we might reform legal pedagogy. Chaïm Perelman famously argued that some rhetorical appeals are made to a "universal audience," as is the case in philosophical argumentation. The "universal audience" is not an empirical reality, but rather is a construction that the speaker uses to frame the argument.[23] Although his concept is heavily debated and rejected by many of his adherents, I believe that the idea of making an appeal to the "universal audience" is critical to understanding how lawyers frame their arguments about the accepted opinions from which they will argue. In legal argumentation these appeals take the form of a natural law argument, although the speaker often disguises the basis of the argument.[24]

As a lawyer and law professor, I have no doubt that natural law arguments (even if not expressly characterized as such) are ubiquitous and perhaps unavoidable in legal practice. If we agree with Perelman that there is no abiding structure of reality that grounds these arguments ontologically, we must seek to understand these arguments by exploring the character of the audience that the legal orator seeks to construct, and the manner by which the orator seeks to motivate an actual audience to act in response to these arguments. This task is possible only by

employing a conception of the universal audience, and therefore Perelman's philosophical clarification of legal argumentation is a substantial addition to Giuliani's analysis of legal dialectics. I have argued that regarding natural law claims as rhetorical commonplaces that resonate with an audience inspired to reconstitute itself as the universal audience resides at the center of Perelman's theory of argumentation and should be accepted as a major contribution rather than an obscure detail in Perelman scholarship.[25]

A natural law argument is directed to a universal audience for whom the actual audience – whether a jury, judge or appellate panel – serves as a stand-in. But this is not to say that the audience is hypothesized to be generically "rational" or "philosophical." Claims in this setting are peculiarly legal in nature, and are best paraphrased in the manner of the Sophists in ancient Greece: "no reasonable person seeking to implement the values of our legal system could conclude that slavery is legitimate, notwithstanding our custom and written laws to the contrary."[26] Arguments traditionally couched in natural law terms are not arguments to a timeless and decontextualized rational being; instead they are arguments designed to provoke the actual audience to rise above their parochial interests and to conceive of themselves as empowered to articulate truth, justice and other confused notions in a manner that all persons should find persuasive.[27]

Conclusion

Giuliani's dialectical theory of argumentation represents an important fulfillment of Aristotle's work. In this talk I have argued that supplementing his work with a more detailed consideration of rhetorical theory, also rooted in Aristotle, would enhance the effort to overcome the stifling positivism and anti-intellectualism that too often define our approach to law.

Francis J. Mootz III

Dean and Professor of Law
University of the Pacific McGeorge School of Law
3200 5th Ave.
Sacramento, CA 95817
United States
Email: jmootz@pacific.edu

[1] This talk draws heavily from a paper that I am currently co-authoring with several Italian colleagues, and I am indebted to them for introducing me to Giuliani's pathbreaking work. The thesis of this talk arose during our discussions about how best to understand Giuliani's dialectical approach in light of my focus on the rhetorical tradition. For our extended discussion of Giuliani's work, see Francis J. Mootz III, Francesco Cerrone, Silvia Niccolai, Giorgio Repetto and Gianluca Bascherini, "Law and Community: Alessandro Giuliani's Aristotelian Vision," (draft on file with author).

[2] As with much of The Rhetoric, Aristotle's claim that dialectic and rhetoric are "counterparts" is ambiguous. My argument in this talk is that we should view them as coordinated features of a unitary performance, as in the alternating strophe and antitstrophe sung by the chorus in a Greek Ode.

[3] For an extended argument along these lines that draws from the rhetorical tradition that followed Aristotle, see Francis J. Mootz III, Rhetorical Knowledge in Legal Practice and Critical Legal Theory (Tuscaloosa, AL: University of Alabama, 2006). Francesco Cerrone links Giuliani's resolute rejection of rationalism to his early work with the Austrian School (most prominently, Hayek) and to the Scottish Enlightenment (most prominently, Smith). Francesco Cerrone, "Alessandro Giuliani: Logical and Ethical Premises of a Civic Community and its Juridical Order," (unpublished manuscript, forthcoming), 2-8.

[4] Aristotle, *Nicomachean Ethics*, I, 1094b.

[5] Cerrone, "Alessandro Giuliani," 8-9.

[6] Alessandro Giuliani, "La definizione aristotelica della guistizia," at 13 n. 22.

[7] Aristotle makes this point in Book VIII, chapter 11 of the Topics.

[8] Alessandro Giuliani, "Vico's Rhetorical Philosophy and the New Rhetoric," in *Giambattista Vico's Science of Humanities* 31-46 (Giorgio Tagliacozzo and Donald Phillip Verene, Eds.; Salvator Rotella, Trans.) (Baltimore, MD: The Johns Hopkins University Press, 1976), 33.

[9] Alessandro Giuliani, "The Aristotelian Theory of the Dialectical Definition," *Phil. & Rhetoric* 5:3 (Summer, 1972): 129-42, 129.

[10] Giuliani, "The Aristotelian Theory," 135. See also, Alessandro Giuliani, "The Influence of Rhetoric on the Law of Evidence and Pleading," *Juridical Review* 62:216-51 (1962): 229.

[11] Giuliani, "The Aristotelian Theory," 132-33.

[12] Giuliani, "The Influence of Rhetoric," 244-51.

[13] Alessandro Giuliani, "Dialectical Mind Versus Bureaucratic Mind," in *IV. L'Educazione Giuridica: Il Pubblico Funzionario: Medlli Storici E Comparativia*, 515-22. In particular, he argues against the formalism and rationalism of the natural law tradition by arguing that legal education must recognize that man's nature is rhetorical and dialectical, that we are subject to a natural law of argumentation. Giuliani, "The Aristotelian Theory," 133-34. It is precisely the rhetorical dimensions of legal education that preserved the anti-formalist tradition during the rise of modernity. Alessandro Giuliani, "Observations on Legal Education in Antiformalistic Trends," *L'Educazione Giuridica I. Modelli di Universita e Progetti de Riforma*, 79-98.

[14] Frans H. Van Eemeren and Peter Houtlosser, "And Always the Twain Shall Meet," in Dialectic and Rhetoric: The Warp and Woof of Argumentative Analysis 3-11 (Frans H. Van Eemeren and Peter Houtlosser Eds.) (Dordrecht: Kluwer Academic Publishers, 2002), 3.

[15] Cerrone, "Alessandro Giuliani," 10.

[16] In the words of one commentator,

> I think that the remaining vestiges of a thinking that tries to demarcate rhetorical and dialectical considerations in terms of territorial claims could be eliminated even more decisively by treating dialectical and rhetorical aspects of argumentation analysis as complementary, rather than asserting primacy of one over the other.

Hanns Hohmann, "Rhetoric and Dialectic: Some Historical and Legal Perspectives," in Dialectic and Rhetoric: The Warp and Woof of Argumentative Analysis 41-51 (Frans H. Van Eemeren and Peter Houtlosser Eds.) (Dordrecht: Kluwer Academic Publishers, 2002), 49. We might summarize this integrative position as one that deals "with the various degrees of rhetoricity in persuasion dialogues and of dialecticity in persuasive speeches and with the shifts between these various types of speech events as well as with their mutual embeddings." Erik C.W. Krabbe, "Meeting in the House of Callias: An Historical Perspective on Rhetoric and Dialectic," in Dialectic and Rhetoric: The Warp and Woof of Argumentative Analysis 29-40 (Frans H. Van Eemeren and Peter Houtlosser Eds.) (Dordrecht: Kluwer Academic Publishers, 2002), 39

[17] Hohmann, "Rhetoric and Dialectic," 50.

[18] In this regard, Francesco Cerrone notes the importance of rhetoric to Giuliani's work, but nevertheless concludes that rhetoric must be subordinated to dialectic, which is a higher instance

of logic. Cerrone, "Alessandro Giuliani," 10. I believe that this makes the same error as those who subordinate dialectic to formal logic. It is not a matter of which is superior, but which is appropriate to the task at hand.

[19] Aristotle, Topics, I.1.

[20] Aristotle, Topics, VIII.1.

[21] Eugene Garver, Aristotle's Rhetoric: An Art of Character (Chicago: University of Chicago Press, 1995).

[22] I have described the implications for legal pedagogy in other articles. See, e.g., Francis J. Mootz III, "Vico, Llewellyn and the Task of Legal Education," 57 *Loyola L. Rev.* 57:135 (2011); and "Vico's 'Ingenious Method' and Legal Education," *Chi-Kent L. Rev.* 83:1261 (2008).

[23] Perelman's development of the ancient attention to audience is one of his signature contributions to rhetorical theory. Noting that the audience envisioned by the speaker "is always a more or less systematized construction," Perelman places emphasis on the speaker's goal of creating her audience in the course of addressing it. Chaïm Perelman and L. Olbrechts-Tyteca, The New Rhetoric: A Treatise on Argumentation (John Wilkinson and Purcell Weaver, trans.) (Notre Dame, IN: Univ. of Notre Dame Press, 1969), 19. In some circumstances, a speaker will aspire to more than persuading the audience to which her speech is immediately directed, and will claim to offer reasons that would be convincing to all reasonable persons. "This refers of course, in this case, not to an experimentally proven fact, but to a universality and unanimity imagined by the speaker, to the agreement of an audience which should be universal, since, for legitimate reasons, we need not take into consideration those [who] are not part of it." *Ibid.* at p. 31. The speaker constructs a universal audience to shape her discourse, but also to entreat the concrete audience before her – which "can never amount to more than floating incarnations of this universal audience" – to imagine themselves as part of such an audience. *Ibid.* As Perelman emphasizes, the actual audience helps to validate the speaker's construction of the universal audience, even as the universal audience serves as a check on the parochial concerns of the actual audience. *Ibid.* at p. 35.

[24] Francis J. Mootz III, "Law in Flux: Philosophical Hermeneutics, Legal Argumentation and the Natural Law Tradition," *Yale J.L. & Human.* 11:311 (1999).

[25] Francis J. Mootz III, "Perelman's Theory of Argumentation and Natural Law," *Phil. & Rhetoric* 43:383 (2010).

[26] Ibid. at 391.

[27] Restated in the terms of rhetorical criticism, we can say that natural law arguments address a particular audience of intended readers with the goal of invoking an audience. See generally Jack Selzer, "More Meanings of Audience," in A Rhetoric of Doing: Essays on Written

Discourse in Honor of James L. Kinneavy (Stephen Witte, Neil Nakadate, Roger Cherry eds.) (Carbondale: SIU Press, 1992), 161-77.