UNIVERSITY OF BIRMINGHAM | THE JUBILEE CENTRE FOR CHARACTER & VIRTUES

Ethos and the Virtues of the Legal Professions

Michele Mangini

This is an unpublished conference paper for the 11th Annual Jubilee Centre for Character and Virtues conference at Oriel College, Oxford University, Thursday 5th – Saturday 7th January 2023.

Jubilee Centre for Character and Virtues

University of Birmingham, Edgbaston, Birmingham, B15 2TT United Kingdom

T: +44 (0) 121 414 3602 F: +44 (0) 121 414 4875

E: jubileecentre@contacts.bham.ac.uk W: www.jubileecentre.ac.uk

Ethos and the Virtues of the Legal Professions

Michele Mangini, Dept. of Law, University of Bari

ABSTRACT

According to the 'thesis of continuity' political stability in a liberal democratic society requires a sound ethos to work well. A legal ethos has special importance because of its public role in institutions. In a constructive mode I argue for the best model to inspire legal professionals' conduct. I start by considering the shortcomings of professionals as they appear from deontological codes and sociological analysis but also as nourished by 'formal-legal rationality', theorized by Max Weber. This leaves political institutions without an ethos and prey of capitalistic greed and 'amorality'. As antidotes I propose to examine at least two models proposed by Dworkin (Hercules), Kronman (the lawyer-statesman) and, finally, the model of 'the reasonable judge' who combines three qualities that central to any legal professional: craft, practical wisdom and rhetoric. Legal ethos can be revived if models of this kind become part of the legal educational curriculum.

1. *Introduction.*

Contemporary societies in liberal democracies often lament a lack of political stability and it is instructive to see that John Rawls's *Theory of Justice* was conceived, among other things, as endowed with the virtue of stability.[1] Both in TJ and in PL at places Rawls refers to 'stability' as a psychological attitude generated by a conception of justice that generates its own social support. (TJ, 125) In my view Rawls was right in searching for stability but he did not insist on the necessary 'continuity between ethics and politics' that the idea of stability seems to gesture toward. This is why correctly, in my view, Dworkin charged him with presenting a discontinuous thesis between ethics and politics which did not offer reasons for citizens to take care of their political institutions. (Dworkin 1991) I believe that we should see through the present populist challenges to liberal democracies as a challenge to the stability of liberal democracy and take aboard anew the 'thesis of continuity', giving it a bent toward the Aristotelian-Hegelian concept of 'ethos'.

How should we interpret the idea of 'ethos'? The word *ethos* is derived from ancient Greek through the mediation of the Latin language. Its meaning, according to the online Merriam-Webster dictionary, drawing on Aristotle's *Rhetoric,* is "the distinguishing character, sentiment, moral nature

[1] Rawls's two landmarking books in political philosophy are: *A Theory of Justice*, 1971 and *Political Liberalism*, 1993. They will be indicated in the text that follows as TJ and PL.

or guiding beliefs of a person, group or institution." Given the common etymology with 'ethics', it is quite clear how ethos encompasses those concepts of right and wrong, good and bad, that orient all our ethical choices. In my view, ethos has been largely neglected by political philosophers, especially those of liberal inclination, leaving their theories quite weak with respect to the juncture between ethics and politics. I assume that without a cohesive and ethically aware ethos no theory of justice nor the legal principles by which this is applied can produce satisfactory results. By way of example, the judicial intervention into politics in the early '90s in Italy, so called 'Mani Pulite' (*clean hands*), received large ethical support from the population: political corruption had gone too far and some strong change was felt necessary. From the ashes of the so called 'first republic' the 'second republic' was born, not bereft of corruption but initially, at least, showing a tension toward more ethics in politics.[2]

The idea of ethos is still a largely unexplored terrain which deserves more reflection both at the normative level, by political philosophers and ethicists, and at the descriptive level where at least sociologists and political scientists can help us to understand how ethos is structured in our liberal democracies and to what extent it may represent a resource for the latter. I believe that the big challenges of contemporary liberal democracies – e.g. the environmental and the populist challenge – can be tackled effectively not only by one or the other theory of political philosophy but also by relying on those layers of ethos which understand and worry about the issues raised by those challenges. Ethos can be the key to effectively tackling those challenges: a result which political theories run short of.

Certain layers of ethos have more weight in our society than others because of their social role and the power they wield. Their impact on society and political institutions is as such that it requires all our attention. It is commonly perceived that the *legal profession* represents one of these layers of ethos both because of its institutional role in the functioning of the judiciary power and because of their political exercise of power, being among the most numerous groups of elected MP or, generally, of people managing political offices. The ethos of the legal professions is, therefore, very important in the well-functioning of a liberal democracy. In what follows I want to inquire on the legal ethos through a few steps. First, I shall confront the 'dark side of the legal profession': its more recurring vices and faults, both from a theoretical and from an empirical perspective, addressing some sociological materials. Second, I shall look at a traditionally dominating view of the legal profession and its role through Max Weber's concept of 'formal-legal rationality'. This has

[2] Present state of politics and corruption in Italy is quite discouraging with regard to the results of that ethical uprise but this does not eliminate the value of what happened earlier: an 'healthy' ethos, represented by the judiciary and its popular support, reacted as antibodies against the virus of corruption.

characterized the development of contemporary liberal democracy but has also left a number of questions unanswered. Then, my third step will be the search for a suitable ideal of legal professionals (including both judges and lawyers) who can both perform their institutional tasks, according to the best criteria of the profession, and give their contribution to the well-functioning of political institutions, when necessary. Under this guise I shall consider Kronman's ideal of the 'lawyer-statesman', Dworkin's proposal of 'Hercules' as the ideal judge and, finally, my own proposal of 'the reasonable judge' who can exercise correctly his/her virtues in the three main domains of craft, rhetoric and practical wisdom.

2. *The Dark Side of the Law.*

Most reflections on the ethics of the legal profession are generated from the frequent misconduct of many of its members. To a minor extent reflections may be of an 'aspirational' kind and depend on a desire for excellence not uncommon in the professions. Drawing a sharp difference with bureaucracy and following Talcott Parsons, Jeff Mitchell describes the educational path of professionals. They are encouraged to develop virtues of integrity such as loyalty and intellectual virtues conducive to the best exercise of their judgement in complex situations (just think about the continuous pressure that law-suits produce over judges and lawyers). The professional has to tackle calculated problem solving and decision making. In her case, differently from bureaucrats, personal insight and judgement is central. (Mitchell 2019, 246) We shall find traces of such an aspirational ethos in Kronman's and Glendon's views. (See sect. 4)

With respect to the first cause of ethical reflection, misconduct, we can speak of a 'dark side' of the legal profession, exemplified by violations of deontological rules and 'vices' that characterize the roles of lawyers and judges. I want to distinguish these cases identifying the most frequent categories of both violations of rules and vices in order to describe a taxonomy which can serve as grounds for ethical considerations toward excellence in the legal profession. I shall proceed with a quick survey of some sources from which to detect common violations. First, with regard to lawyers, we can check the 'Code of conduct for European lawyers' from which we can gather the appeal to respect certain duties such as: independence, trust and personal integrity and confidentiality. Setting aside other duties, the ones just named make us think that: (a) often lawyers are not free from influences depending on their own or others' interests or external pressures; (b) they fall short of those qualities of honour, honesty and integrity which should characterize legal professionals; (c) lack of trustworthiness seems to be the main cause behind the duty of confidentiality. Being the recipient of special and reserved information, the lawyer may be often tempted to reveal it to obtain

an advantage. We could summarize these few hints from the European code by saying that 'greed and lack of personal integrity' are among the outstanding faults of character that worry the European Bars.

I want to compare the European code with the Deontological Code of Italian lawyers whose provisions are more detailed, referring to a larger number of duties, distinguishing among 'general principles, duties to clients and colleagues, duties within the lawsuit'. At art. 9 the Code names duties of loyalty, probity, dignity, diligence, correctness, urging the lawyer to these standards of conduct within and without the profession. Duties of secrecy and loyalty toward colleagues also emerge from the rich list of the Code. The first seems to go hand in hand with the duty of confidentiality of the European Code. The main hints we can derive from these duties go in the direction of a stronger injunction to personal integrity and 'uprightness', covering most of the common ethical faults of all categories of citizens – not just professionals. In short the suggestion of the Italian Code is that lawyers can go wrong in many ethical fields and duties are aimed mainly at keeping at bay 'greed', the most powerful incentive to violate duties of conduct. The larger appeals to honour, integrity and so on can be interpreted to cover all those faults that diminish the social standing of the legal professionals.

The second source I want to consider is sociological inquiry on the legal profession, especially on the evolution of the social role of lawyers. From a recent empirical survey (Cominelli 2014) we can gather the following considerations that range from the civil law to the common law. In the first place there is a general tendency to a 'modernization' which takes the guise of economic rationality, leading to more efficiency of lawyers in the offer of their services. Especially in the commercial context of common law lawyers are increasingly considered as a 'commodity' to be bought on the market. Clients search for the least expensive service, neglecting that personal relationship that has constituted for centuries the distinctive mark of the lawyer/client relationship. Economic rationalization and the pure increase of numbers in the class of lawyers (outstanding in countries such as Italy) has determined a loss in the homogeneity and social cohesion of lawyers as a social group. (Ibid., 174)

In the second place the depersonalization of the lawyers' activity seems to go hand in hand with an ethical loss: excess of aggressivity toward the other party (as a 'surrogate angry person' especially in divorce lawsuits), disloyalty to the client's interests, insincerity and expensiveness. (Parker and Evans 2007) In the case of aggressivity divorce law encompasses a number of cases in which lawyers commit many ethical violations to debase the position of the other party in the lawsuit. Rather than acting as counsellors for the best interests of the family – and eventually of

their children – lawyers often increase the level of conflict. Practices of 'collaborative law' seem still marginal even in divorce law. (MacFarlane 2008, 89 f.) Sociological research confirms that especially young lawyers seem 'socialized' to practices of deception and exploitation of their clients, in order to maximize their profits. (Chambliss 2012, 49) At this point we are the furthest away from those ideals of the legal profession which seem to emerge from deontological codes and to which we shall refer more explicitly in what follows.

In the third place the dark side of the law can be identified by looking at some of the most common vices in the activity of the legal professions. This time we shall quickly consider what Lawrence Solum describes as the judicial vices that can affect negatively decisions. As preliminary observations, we should first notice that Solum is one of the pioneers in transporting the ethics of virtues (EV) into legal ethics, though limiting his considerations to the judicial class. (Solum 2003) Second, the EV approach takes us to focus our attention on the person and his qualities of character rather than on principles of action and duties. The EV relies on a long-standing tradition in which the model of the virtuous agent is shaped also by all those vices that virtues keep at bay. Applying that body of thought in the judicial profession, Solum distinguishes a few central vices that we could separate into character vices and reason vices. Pride of place is reserved for 'corruption' according to which a judge modifies her judgment in order to receive undeserved benefits. Her decision is distorted from external factors and the all community will in the end be impacted by this violation of the rule of law: which among other requirements also consists of 'impartiality'. It is quite evident that under corruption one of the most common human vices is hidden: 'greed'. We have already hinted at greed with regard to lawyers and it comes back also with respect to the judicial role in which its potential damages can be more wide-ranging. Although in so called 'hard cases' a judge does have a measure of discretion, he should be always deciding according to the rules or the merits of the case. Corrupted decisions would undermine people's trust in justice and in the stability of society. (Solum 2003, 186)

A second character vice that deserves our attention is that of 'civic cowardice': it is based not only on fear of physical harm but also on fear of the powerful and the public. Judges may be worried for the effects that some decisions may have on their career and social reputation. The case of physical harm may be less common in certain legal systems and countries but in others – and the example of Italy of past decades is outstanding – Mafia organizations may feel so strong to threaten

the life of judges.[3] Courage, of course, is the quality of character to appeal to against such a weakness. (Ibid., 186-7)

We should now consider two faults in reasoning. The first depends on not having or using the special competence connected to the role: it might be named as 'incompetence'. Not defects in the judges' affective states such as emotions and desires, as with the previous vices, but defects in reasoning connected to the specific knowledge and understanding that the law requires. The incompetent judge is unable to understand the subtleties and complexities of the law, especially in hard cases, so that his judgment cannot be trusted. (ibid., 187-8) The social impact of incompetent decisions may be disruptive of the people's trust in the rule of law.

Finally, Solum introduces what he calls 'foolishness' or lack of practical wisdom. This is a crucial intellectual virtue without which no character virtue can work properly because it allows us to read the context and details of each situation in which the agent must decide. A judge who lacks it is unable to decide about what is practicable and unpracticable or among the ends at stake in a certain decision. He would give unreasonable decisions, undermining the trust of the parties and the community. (ibid.)

3. *Weber's 'Formal-Legal Rationality'.*

The 'dark side' of the legal profession on which we have dwelled so far takes us to wonder on the real ethos of lawyers and judges. Can they be trusted as a source of ethical stability for contemporary liberal-democratic societies? Or, rather, are they a source of corruption and fragmentation because of all the vices we have shown? In order to check the potentiality of the legal ethos for liberal democracies we should be careful to contrast what emerges from 'the dark side' of the professional practice with those principles, duties and virtues which codes and declarations present as a 'lighthouse' to orient lawyers' and judges' conduct. An assumption from which it is worth-moving is that a partial responsibility for the dark side depends on the dominating understanding of legal thinking in Western societies, as conceptualized by Max Weber as 'formal-legal rationality'. I assume that his positivistic and formalistic view of law and legal order explains and has influenced much of legal practice in the past century up to date. Formal-legal rationality is one of the achievements of the Western civilization but it has also generated a reductive view of

[3] The number of judges (and police officers) killed by the Mafia and terrorist organization 'Red Brigades' (Brigate Rosse) in the '80s in Italy is impressive. The Sicilian magistrates Giovanni Falcone and Paolo Borsellino are among the most well-known cases.

personal relations and practice within the law and elsewhere. The analysis of this form of legal order may clarify to some extent ethical strengths and weaknesses of legal professionals.

It is plausible to hold that, to a certain extent, the legal ethos of Western societies is affected by that form of legal thinking that Weber called 'formal-legal rationality'. This has contributed to the unprecedented development of market capitalism, a mode of economic organization that has been initially unique to the West. In turn, capitalism has brought about attitudes of economic egoism and 'self-aggrandizement' and the diffusion of greed as never before. This means that many of the vices of greed, corruption, etc., we have examined earlier have their origin in the development of capitalism, as directed by 'formal-legal rationality. To our purposes we can summarize its main features in the following way. In the first place, we can follow Kronman in distinguishing four senses of rationality: (a) 'rational' means governed by rules and principles with some degree of generality; (b) in a second sense 'rational' designates the systematic character of a legal order. All analytically derived legal propositions represent a logically coherent and gapless legal order. Under it all fact situations can be logically subsumed. (c) In a third sense Weber takes 'rational' to indicate an abstract method of logical interpretation which remains at a distance from all substantive – e.g. ethical, religious – questions. It is a method of legal analysis necessary for the systematization of the legal order. (d) Finally, in a fourth sense 'rational' stands for 'controlled by the intellect', in opposition to primitive law systems in which large use of formalities went in parallel with irrational or magical means of decision-making. (Kronman 1983, 78-80)

In the second place, while we do not need to follow Kronman in his discussion of the confusion between senses of formality and senses of rationality in Weber's discourse, for our purposes it is useful to notice that 'formality' is used in the sense of 'self-contained nature of a legal system', meaning that there is no recourse to substantive legal thinking, connected to ethical or religious or else considerations. The formality of a legal system, according to Weber, does not need to be supported by substantive ethical or religious postulates. On the one hand, this strengthens a political liberalism based on the principle of neutrality that eschews conceptions of the good from government's action but, on the other, risks to undermine the shared values of a legal and political ethos. As already pointed out at the beginning of this discussion, an ethos thrives on shared values but legal professionals, according to 'formal-legal rationality', seem to share only thin values about the logics and functioning of a legal system.

In the third place, the previous point can be taken as a premise for the conclusion that the general attitude of legal professionals educated in a system dominated by formal-legal rationality can only be unconcerned with justice and with the way citizens live their lives. Citizens' values are of

no concern from the point of view of the legal system – as they are to some extent in a neutral liberal society. Shared values, as already pointed out, become thinner and the ethos weakens, unable to support social stability. In exchange for the thinness of values formal-legal rationality gives certainty to the law and especially commercial relations benefit at the expense of an ethos – both legal and social – that remains deprived of much of its substance.

4. *Kronman's 'Lawyer-Statesman'.*

The previous picture of the legal ethos that derives from formal-legal rationality seems to miss almost entirely the point of view of justice because the activity of lawyers and judges are taken to hinge on values quite foreign to justice. According to common sense knowledge, justice has always been a lighthouse for people operating in the law, whatever the shape it assumes: justice by rules, in the Kantian way, or justice by virtues, in the Aristotelian way. It is not just a traditional philosophical issue but also an issue felt by operators of the legal system and dealt with in various ways. A moment of crisis in the legal ethos was the Watergate scandal and its cover-up in the first 1970s. The American public was convinced that lawyers would do immoral things for the sake of their clients. Justice as an overarching goal of the legal system was particularly weak in that period in the perception of people. A weak grasp of justice and ethics in general on the conscience of lawyers and the public opinion entailed that a weak ethos was at work in that period. This situation determined a reaction that started in time from the academy.

We assist at a revival of the reasons of justice about 20 years later, at the beginning of the 1990s, with the publication of books which commend a return to the ethics of virtues and character as the only possible antidote to redress the legal ethos.[4] Mary Ann Glendon and Anthony Kronman make explicit ethical proposals for redressing lawyers' conduct in which the ethics of character and virtues is central. A few years earlier, in the mid-1980s, Ronald Dworkin had proposed an ideal figure of judge, baptised as 'Hercules', with mainly interpretative tasks but also with an ethical standing that I shall address later on. For now I want to concentrate on Kronman's proposal of the 'lawyer-statesman', while keeping Glendon's views on the background because similar under many respects, though offering points of confrontation. I will concentrate my analysis on some of Kronman's main issues: (1) the opposition to a scientific view of the law; (2) the analysis of practical wisdom as the central virtue of lawyers, its main features and peculiarity within virtue ethics (EV); (3) the kind of

[4] As already noted, in the same period we also assist at an upheaval of justice in Italy too, with the judicial action 'Mani pulite'.

legal reasoning that is implied by practical wisdom; (4) finally, how such an ideal may develop against the main rule-based legal ethics.

(1) One of Kronman's (and Glendon's) main goals can be described as a revenge of the common law reasons against scientific views of the law that date back at least to Hobbes and, in the American legal tradition, to Langdell's 'scientific method'. Langdell wanted to construct a "rational scheme for the
arrangement of legal doctrine by analytically unfolding the implications of a few foundational ideas". (Kronman 1993, 182) Heirs to the scientific method in the law are contemporary legal schools such as the economic analysis of law (EAL) and critical legal studies (CLS). While the former judges the law by the standard of efficiency, the latter judges the law "by how well it destabilizes unjust social hierarchies". (Cochran 1995,710) Both suggest that the common law is a chaotic mass of arguments that lawyers and judges use to justify particular arguments and that we must look beneath the confused and formless arguments to find the hidden structure of the law. The crucial point is not that these schools fail to provide insight into the law but that, according to Kronman's Aristotelian approach, they are 'reductionist', they neglect the richness of human goods that the law attempts to preserve. Kronman (and Glendon) defend the common law as a method of decision-making that provides space for change while maintaining a continuity with the established wisdom of the past.[5]

(2) Having set this background, we can now see how Kronman's proposal of the 'lawyer-statesman' unfolds. This definition wants to remind contemporary lawyers of the great figures of lawyers of the 19th century whose work was characterized by attention for the public good and the practice of the civic virtues. Whatever the historical truth of Kronman's reconstruction, we should inquire in his proposal as one valid lighthouse to revive the public spirit of lawyers. The 'lawyer-statesman' is an ideal "possessed of great practical wisdom and exceptional persuasive powers, devoted to the public good but keenly aware of the limitations of human beings and their political arrangements." (Kronman 1993, 12) Although more appropriate for judges, the ideal in Kronman's view can be extended to lawyers too, emphasizing those qualities of prudence (practical wisdom) and public spiritedness which have characterized great lawyers of the past such as Daniel Webster and Rufus Choate (well-known American litigators of the 19th century).

Moving some steps away from the Aristotelian tradition, Kronman describes practical wisdom not as an intellectual skill but as a character trait that depends upon acts of the imagination

[5] Traditional law professors taught a method, 'thinking like a lawyer', without strong theoretical foundations. They did not have the theoretical resources to tackle the challenges of EAL and CLS. Kronman's contribution is meant to offer a theoretical foundation to counter those challenges through Aristotelian notions such as 'practical wisdom' and 'political fraternity'.

and habits of feeling.[6] I believe that the importance of imagination is connected to Kronman's view that, differently from Aristotle, assumes the irreducible plurality and incommensurability of political ends. When we ask questions such as 'should I sacrifice my professional career and remain home with my children?' we evaluate incommensurable goods. Only through an effort of the imagination we can evaluate future alternatives from our present standpoint. Imagination in Kronman's reconstruction of practical wisdom relies mainly on two attitudes: *sympathy* and *detachment*. The former entails imagining the feelings, values and experiences of an imagined future self from the inside of that self. (Ibid., 70) By contrast, detachment entails the capacity to keep one's feelings of sympathetic identification at arm's length, so that one can "withdraw to the standpoint of decision". (Ibid., 72) The capacity of generating sympathetic feelings depends on compassion, an affective power that must be limited by detachment to reach the space of deliberation.[7]

What needs to be emphasized in Kronman's characterization of practical wisdom is that the development of these 'habits of feelings' in students of law and practitioners would lead their deliberation to a channel that may be parallel to the Aristotelian one but is not the same. *Gnomè* or the capacity for sensibility belongs to the Aristotelian *phronesis* but does not take such a crucial position as it happens in Kronman's view. Typically, practical wisdom is taken to consist mainly in intellectual deliberation, though the component of feelings keeps some weight.[8]

(3) In opposition to any scientific and deductive method of argumentation Glendon and Kronman converge on a kind of dialectical reasoning of which the common law method is an example. "Dialectical reasoning is... an integrated set of related mental operations. It builds on practical reason, but subjects common sense to a process of critical examination and evaluation in which logic has its appropriate but auxiliary role.... [D]ialectical reasoning begins with premises that are doubtful or in dispute. It ends, not with certainty, but with determining which of opposing positions is supported by stronger evidence and more convincing reasons." (Glendon 1994, 237-8)

Such a method seems appropriate also for the lawyer who wants to deliberate with his client about his ends rather than just devising the means for reaching prima facie goals of a client who would be willing to change his mind upon reflection. The lawyer's purpose must be double,

[6] Practical wisdom or *phronesis* is a complex virtue of the intellect (and not character) in Aristotle and includes everal qualities See *Nicomachean Ethics,* 1143 a 11-6.
[7] Differently from Kronman Glendon makes a more extensive call on judicial virtues, looking at the work of great exemplars such as Benjamin Cardozo, Oliver Wendell Holmes and Learned Hand. She proposes 'impartiality, prudence, practical reason, mastery of craft, persuasiveness, a sense of the legal system as a whole, principled continuity and self-restraint'. Cf. Glendon 1994, 112.
[8] The role of feelings is so central for Kronman in practical wisdom also because he takes it as a virtue of character rather than intellect, as in the original Aristotelian conception.

according to the Kronman-Glendon's understanding: first, stimulating reflection over incommensurable ends through the use of practical wisdom[9]; second, inducing second-thoughts in clients who often have not made up their minds clearly about their goals before asking for the lawyer's advice. By contrast, Kronman disputes the opposed view according to which lawyers are only 'hired guns' for their clients preformulated private interests and goals. The lawyer-statesman ideal entails that the lawyer, while advising his client, should also take a quasi-judicial point of view, deliberating on the client's case within the law's broader goals.

(4) If the weight of practical wisdom and dialectical reasoning in legal ethics is clear, how should we tackle deontological rules? They could either prevent the development of virtues and character or supplement their development and exercise. The European and Italian deontological codes have already been presented as relying mainly on rules of conduct. In the US the American Bar Association issued through the XX century three sets of rules for the legal profession of growing volume and complexity in 1908, 1969, 1983. The content of the codes has moved from being merely guidance for conduct to being mandatory rules. For example, with regard to the case in which lawyers can reveal confidential information to prevent a client from committing a serious criminal act, the different codes have increasingly reduced the lawyer's discretion.[10] This entails that virtues and character, based on voluntary conduct, have less room to develop because of mandatory rules.

It was already Tocqueville in the XIX century to emphasize that in maintaining a democratic republic, law is secondary in importance to the mores and practices of a people. He was addressing the central issue of 'ethos' as the nerve of the ethical tissue of a people. Rules do not work well in the many situations in which the variability of factors is so large that rules can never provide an answer to all cases. Rather there are cases where rules are unable to provide satisfactory answers at all: should a lawyer disclose confidential information? This would be in violation of current professional rules but if we consider a case in which a client has beaten up a young girl and left her in a coma with high danger of death or a case in which a corporation is causing pollution that can determine thousands of deaths many years in the future, shouldn't the virtue of justice justify the

[9] It is worth-noticing that, notwithstanding his declared view of incommensurability among ends, Kronman has an ideal to appeal to also in the most conflictual cases, that of 'political fraternity', **an analogous condition of political wholeness in which "the members of a community are joined by bonds of sympathy despite the differences of opinion that set them apart on questions concerning the ends, and hence the identity, of their community." Kronman 1993, 93. This ideal with a clear communitarian flavour is the last threshold to solve conflicts, differently from Aristotle who refers to a shared concept of justice. The priority of political fraternity over justice marks the conservative approach of Kronman, according to some commentators. See Altman, 1994, note 30, 1039.**

[10] See, for example, 'Model Rules of Professional Conduct', Rule 1.6(b) (1) (1983).

disclosure of the confidential information? The exercise of the virtue of justice, as directed by practical wisdom, is the best way to take into consideration all the nuisances of such cases and offer to the decision-maker acceptable answers.

The last considerations that are in order with regard to the relation between rules and virtues concern the development of the latter. When codes or examinations for lawyers encourage them or law students to focus only on rules the opportunities to develop the virtues decrease. The latter develop through exercise, but mandatory rules prevent lawyers in many situations from the exercise of virtues. Some change in the educational methods of the law schools might help to improve the learning of virtues. Truthfulness, justice or mercy, just to quote a few, are virtues which cover a number of conducts that no set of rules could cope with, and their teaching might also run in the same direction than what most children learn at school, in their families and churches. It is worth mentioning that the rule of law is nourished by a 'rights ethos' that is obviously increased in the law schools but if the legal ethos could also benefit of the exercise of the virtues of the legal profession, the rule of law couldn't help being strengthened. Finally, if virtues are learnt through habit, so it is for vices. Lawyers are well-known for using deception in many moments of their activity, especially within a lawsuit, toward the jury, the adversary lawyer or even their client. Untruthfulness may easily become a habit for many lawyers in parallel to greed – as we saw in sect. 2 – through common practices of advocacy. Habits of this sort rather than remaining confined to the work-environment would easily extend to other areas of the lawyer's conduct, touching on family, friends and partners. We already know that the dark side of the law is quite frequented and codes are set of rules implemented to prevent certain conduct. Their efficacy remains uncertain and the recourse to habits of virtue seems to many the only possible antidote.

5. *Dworkin's Hercules.*

If so far the focus of our attention on ethics and the legal profession was centred on lawyers, following Kronman and Glendon, we should now consider another proposal which was a landmark of legal theory in the past decades: Ronald Dworkin's theory of interpretation. There are two aspects that differentiate Dworkin's from the previous approaches. First, he was not addressing the ethos of the legal profession but arguing in favour of a certain theory of interpretation, thus entering a technical domain that does not need to concern us here. The part of his theory which is relevant for our purposes is the introduction of an ideal judge, 'Hercules', who is called on 'to show the way' to a solution even for the hardest cases. Second, the other difference is that we now confront a model of ideal judge rather than ideal lawyer, as in Kronman's case. Notwithstanding the obvious differences

of roles, judges and lawyers represent the two main faces of the legal profession, the core of its ethos. Our leading question now is that of verifying whether Dworkin's proposal can usefully contribute to improve the legal ethos.

I can anticipate from now that Dworkin locates quite far from Kronman's and Glendon's republican proposal because he presents a principled theory in which character and personal virtues have no place. Every time he uses the word 'virtue' – especially in Law's Empire (LE) – he refers to virtues of political institutions. The general thrust of his contribution can be clarified through three points. First, it seems that Hercules is presented as a judge of great legal competence and intellectual capacities: "a lawyer of superhuman skill, learning, patience and acumen". (TRS, 138) Hercules puts his extraordinary capacities of understanding and reasoning at work in the interpretation of hard cases and achieves results that no human, ordinary judge can achieve: he is the model to whom ordinary judges have to appeal. What seems to be missing, however, is any recourse to qualities of character, as the ones called on by Solum (sect. 2). Even the main virtue to which both Solum and Kronman appeal, *phronesis* or practical wisdom is foreign to an 'intellectualist' judge such as Hercules. He substitutes the experience and intuition of ordinary judges with the use of his rational – theoretical – capacities. (LE, 245, 265)

Second, Dworkin's theory has been noticeable because it has brought morality back to the legal field that was mainly dominated by a positivist approach in the previous decades. He advocates a political morality, grounded in the moral principles of the constitution, as last threshold to interpret even the most difficult cases. This is no place to tackle Dworkin's theory of interpretation and its details but it is the place where we can ponder the weight of his principles of political morality in orienting judges' decisions and, to a certain extent, the moral tissue of a society. In his ideal society there is also an ethos of the legal profession, though it does not involve the character of people but only their 'minds'. Dworkin wants to orient judges – and citizens – in his just society toward a number of principles among which the most relevant are justice, fairness and procedural due process. They are all principles concerning the proper functioning of political institutions. Fairness attains to the distribution of political power; "procedural due process is a matter of the right procedures for judging whether some citizen has violated laws laid down by the political procedures" (LE, 165); finally, justice attains to the distribution of material resources and the protection of civil liberties. The last one is certainly the most relevant in Dworkin's conception and he spells it out in terms of a certain interpretation of equality that belongs with the American constitution: 'treating people as equals' or, as he translates it, with 'equal concern and respect'. Notwithstanding his definition of the three named principles as 'political virtues', he elaborates on them as principles that have no feature of the classical, Aristotelian definition: a 'virtue, then, is (a) a

state that decides, (b) consisting in a mean, (c) mean relative to us, (d) which is defined by reference to reason, i.e. to the reason by reference to which the intelligent person would define it'. (NE 1107 a 1-4) There is evident the contrast between a virtue in the Aristotelian vein, which is a practical state to choose and act in real situations of life, and Dworkin's virtue-principle whose characterization is only intellectual. In his view there is no connection between the moral principles one applies and the kind of person one is.

Third, we would not understand the real thrust of Dworkin's contribution to the legal field if we did not give pride of place in his picture of law to the 'virtue of integrity'. He proposes 'law as integrity' as an alternative to conventionalism and legal pragmatism. Law as integrity benefits society "by securing a kind of equality among citizens that makes their community more genuine and improves its moral justification for exercising the political power it does." (LE, 96) Law as integrity takes rights and responsibilities as correct and grounded when they follow from (are justified by) principles of personal and political morality. What are they? At least one principle emerges from many passages in Dworkin's work: it is a Kantian conception of political morality according to which government must treat like cases alike (LE, 165-6), that is all citizens must be treated with equal concern and respect. A society that fails on this point is not honouring integrity, is not recognizing the dignity of each citizen.

Hercules' method of interpretation shows how law as integrity aims to have the community speak with one principled voice to its citizens. He tries first to find coherence (fit) with past decisions – as in the case *McLoughlin*, discussed extensively by Hercules – and, when necessary, recurs to his political morality, the principles mentioned above of fairness, justice and procedural due process. Although in no place Dworkin has an explicit discussion of the concept of 'ethos', we may say that he gestures toward it to some extent when referring to 'judges making decisions that give voice to convictions about morality that are widespread through the community'. (LE, 248) The turn to integrity and community takes Dworkin some steps aside of main trend liberalism and gives some hint toward an idea of 'ethos' that is further substantiated by his views about political obligations. These are recognized as 'associative, communal or fraternal' (LE, 196, 199) because arise among citizens as moral obligations arise among family members or friends. Those political obligations characterize the members of a group and set it apart from other groups because its members recognize special obligations that they do not hold toward others. However, if we can identify here some features of an ethos, it remains a weak one insofar as Dworkin does not demand emotional bonds among group members: the only mutual concern that is demanded is "an interpretive property of the group's practices of asserting and acknowledging responsibilities". (LE, 201) Therefore, we may conclude on this point by noticing that Dworkin's gesturing toward a 'community

of principles' remains weak insofar as he conceives of its ethos only in 'intellectualist terms'. A confirmation of a lack of emotional bonds comes from the fact that 'empathy' has no mention in *Law's Empire* as a virtue of political morality. (Brussack 1989, 1167)

I want to conclude on Dworkin by noticing a further element that comes from the very last page of *Law's Empire* and that seems to take us closer to an idea of ethos in his theory. "Law's empire is defined by attitude, not territory or power or process. […] It is a protestant attitude that makes each citizen responsible for imagining what his society's public commitments to principle are, and what these commitments require in new circumstances." Law's attitude is "a fraternal attitude, an expression of how we are united in community though divided in project, interest and conviction." (LE, 413) If the idea of ethos never emerges explicitly, at least we have some hints in its direction.

6. *The Reasonable Judge.*

My last step will be that of advancing a proposal that attempts to overcome Hercules's shortcomings as an ideal model for judges. My forthcoming considerations will be addressed at judges but most of what I will say can be adapted also for lawyers, with due accommodations. Hercules represents a development over other possible models, such as the 'consequentialist judge' and the 'formalist judge', though from the standpoint of practical wisdom (PW) he seems to be missing important qualities, as I shall show.[11] What is missing and will be argued for here amounts to a model of 'the reasonable judge'. I believe we should consider Aristotelian intellectual virtues such as 'craft' and PW as central virtue of the ethics of virtues (EV). *Phronesis* or practical wisdom (PW) represents even better than craft the subjective side of decision-making. Differently from Hercules's application of legal and moral principles, PW is applied also through the exercise of judicial virtues such as courage, temperance, impartiality and justice. (Solum 2003) Our focus here should be especially on those features that make it specifically an intellectual virtue. I assume we already know 'craft' through Hercules. We should now focus on PW and rhetoric as two more necessary qualities of the ideal judge (lawyer).

We should assume that a young judge who starts the profession has already a pre-built disposition of PW: he cannot improvise certain qualities of character with regard to law, if he does not possess them already, at least to some extent. The special configuration of PW as a judicial

[11] In what follows I have drawn from my "Ethics of Virtues and the Education of the Reasonable Judge", *International Journal of Ethics Education*, 2, 2017.

attitude derives from the judge's task of applying rigid rules and arguments of law. These have to be combined with the understanding of what is morally required in a set of given circumstances. Through PW moral virtues enter the scene by contributing to identify the right choice in given circumstances. However, the working of PW is more complex than what I have just hinted at. I believe we can consider at least the following areas of concern: 1) the means-end relation; 2) the ability to perceive and to feel appropriately; 3) the ability to perceive what is relevantly unusual in a context. In turn, these qualities reflect their potentialities in legal reasoning, especially with regard to the relation between universals and particulars.

(1) No judge can limit himself to a 'means' reasoning, considering the end as fixed. Rather he has to consider and ponder different ends that may conflict among themselves, evaluating their different weights and consequences. The identification of means to a certain end and the pondering against alternative means contributes to that process of 'end-specification' that Richardson shows as a plausible interpretation of Aristotelian practical reasoning. (Richardson 1997, chap. 10)

(2) The ability to perceive and feel appropriately is far from being innate in us. An hypothetical person deprived of normal physical, sensorial or emotional stimuli would be seriously at odds in relating to her fellows. We generally acquire our ability of perceiving and feeling through correct processes of socialization that take place in the family and in the school. But, as Martha Nussbaum and others have pointed out, we can also develop those abilities by being exposed to storytelling. Exemplary characters and novels' narrative structure provide each of us – and especially the young learners – with an effective equipment to develop our sense-perception. (Michelon 2013, 42-3).

(3) Finally, developing sense-perception in general is not all that matters to PW. There is also an ability "to single out the odd one": in a given context we should be able to discern what is relevantly unusual, the exercise and improvement of this ability brings about an enlargement of our perceptual framework and understanding. When we are unable to learn and react appropriately to changes in our framework we have examples of intellectual failure such as dogmatism. This can be taken as a "disposition to respond irrationally to the oppositions to the belief held." (Roberts and Wood 2007, 197; Michelon 2013, 44-5).

Practical wisdom and its cognate 'craft' are intellectual virtues. But they need to be applied in contexts of action in which the correct choice comes from a combination of virtues of character and intellectual virtues. I believe we can find a bilateral relation between these two kinds of virtues: perceptual anomalies may affect choice (as in the case of someone who chooses dogmatically, neglecting contrary opinions and objections) but also wrong choices may affect our perceptual framework (someone who chooses unjustly – say, out of corruption – may develop a distorted

perception of the situation and its priorities). Thus, notwithstanding the crucial importance of PW in practical reasoning, we should not forget that an ethically correct choice is always dependent also on the possession of certain character traits.

What I have outlined in general with regard to the development of practical wisdom can be specified with regard to legal reasoning. We find here a special twist depending on the connection between universals and particulars that define the boundaries of subjectivity. Practical wisdom is what belongs to the subjectivity of the agent, though connecting with the objective world. This connection takes place not through some mysterious faculty of divination – as some people have objected to *phronesis* but through a "legal peripheral conceptual perception": the idea is that if a legal decision-maker learns the regular case of concept application, he will be helped to perceive the awkward element in a particular case. (Bankowski 2001, 104-8; 135) It is quite clear how the shape of decision-making by practical wisdom escapes any deontological category based on principles such as Dworkin's.

There are basic values for the continuity of society that have to be protected together with moral and political values. The coordination between practical wisdom and craft should ensure of a correct legal reasoning that overcomes the weaknesses of previous models. However, if we focus on the judicial context of a lawsuit, we can see how something else, beside practical wisdom and craft, is missing. The judge – as much as the lawyer in general – has to give the correct answer, according to legal and moral criteria, but he has also to communicate persuasively his arguments. It is, then, to the sphere of 'social acceptability' that we have to address our attention now and especially to *rhetoric*, being the kind of 'art of persuasion' that a good decision-maker should have in his baggage. The good judge should not only hit the target but also communicate persuasively to the parties and the public opinion his decision and the arguments that support it.

In order to understand rhetoric and its role in legal reasoning we need to analyse its components, not only to have a grasp of the gist of rhetoric but also to check whether its development is compatible with the development of virtues of intellect such as practical wisdom and craft. Not having space enough here for a proper treatment, (Mangini 2017, 192 f.) I would only assume here that, out of the three constituents of rhetoric, according to Aristotle, *logos, pathos* and *ethos*, *logos* is the rational element that can be developed in accordance with what is rational – or reasonable – in practical wisdom and craft; the component of *ethos* or character represents a clear connection with the virtues of character that operate through practical wisdom; similarly, *pathos,* the emotional factor, can operate within the rails of the virtues of character that work to keep in check irrational impulses. Of course, this is an optimistic view on the development of rhetorical

capacities that follows Aristotle's proposal of the necessary connection between rhetoric and ethics. However, that development may go astray with regard to each of the three elements and we may find judges who decide irrationally or simply out of emotional impulses or without any connection with the virtues.

Rhetoric can be taken to combine the properties of craft and *phronesis*, as the central qualities of citizenship, if it is taken as a 'civic art of rhetoric' with no specialised object but a general concern for politics and justice. This is true both for the politician who deliberates for the good of his community and for the judge who is asked to make justice in a concrete case. (Garver 1993, 22-3) What follows is a general discussion of rhetoric that can be applied both to lawyers and to judges but my Aristotelian account in terms of a 'civic art' and of the central values of truth and justice applies primarily to judges who have the official role of participating to the public discussion with an aim at the common good. This is the often implicit core of Aristotelian rhetoric.

In order to reach a full understanding of subjective reasonableness we need to complete our picture, including aside of PW and craft also rhetoric as a third component that covers aspects of reasoning and communication left aside by the first two components. The relationship between rhetoric and ethics is controversial since Plato's and Aristotle's times. As Aristotle noted and Garver emphasizes, "arguments persuade us to the extent that they make us believe and trust the speaker." (Garver 1993, 146; Aristotle, *Rhetoric,* 1356 a 5-13) We can trust speakers when they show evidence of *ethos* and *phronesis*, good character and intelligence as connected to the moral virtues.

While the craft-person does not need to have a dialogue with others in order to exercise her capacities, instead rhetoric is characterized by public reason-giving, by a democratic desire to persuade the audience in order to win its consent. All the legal experience and understanding and the careful elaboration of craft are laid on the table, so that in the best case third parties, such as the judge, the jury or the public opinion can discuss and examine critically those reasons. This is the side of rhetoric in which public openness is most evident and useful: by contrast, in the case of the appeal to emotions or to the orator's *ethos* the desire of publicity does not overlap precisely with the desire for a transparent public reason-giving. The orator may have a double level of communication: what is said because it is conducive to what the audience wants to hear and what is not said but is behind the orator's thoughts and encloses his real purposes.

Going back to the best case of persuasion through argumentation, rhetoric comes in to persuade the jury, the parties and the public opinion that all relevant points of justification and explanation for the decision have been carefully assessed by the judge. In short, what has been carefully elaborated in terms of craft and PW in the legal context will be, then, brought to the

attention and check of a jury – and/or judge – by lawyers and to the attention of the general public by the judge, using in all cases rhetorical means of persuasion. Something – e.g. an opinion – may be right but its arguments have to be presented in the correct way – and by a credible speaker – to gain the persuasion of the audience. The Aristotelian conception of rhetoric together with the employment of PW should warrant against manipulative uses of rhetoric. If we can assess that correct rhetorical communication is a real possibility rather than just a vague eventuality, we can obtain a sound argument against the well-known charges of legal realism and legal scepticism that consider rhetoric instrumental to any purpose. While these theories often hold that law is just disguised politics and rhetoric is a useful means to persuade public opinion towards any "truth", by contrast I want to support the claim that rhetoric can usefully contribute to argumentation and justification of a legal decision and, thus, it is an irreplaceable tool for the judge.

Insofar as character relies on self-constructed reputation, however, there is room for deception and the rhetorician can appeal to emotions as disconnected from truth and justice. Rhetoric may have a built-in remedy, according to Aristotle, if it is true that it cannot be disconnected from the ideals of truth and justice, as Plato would hold, because human beings have a natural disposition to aim at truth and justice and in any dialectical and rhetorical argumentation people tend to prefer true and just arguments rather than their opposites.

It can be easily objected that my account so far is one-sided, that I have emphasized only the 'bright sides' of the 'reasonable judge': *phronesis*, craft and rhetoric. But quite often legal practice confronts us also with 'dark sides' which require our attention. The lawyer of craft encompasses, on the one hand, the one-sided attention to legal forms against the contents of one's actions and decisions. He may be a skilful technician who, from his profound competence of the law, can provide the best technically argued opinion. On the other hand, he may be deceitful and cunning because his style is detached from the moral contents of the issue he is discussing. His experience and acquaintance with the law does not provide him with a capacity to perceive the ethically salient features of a legally controversial situation. In turn, the rhetorician wants to persuade his audience at all costs: when he is a lawyer he argues for victory in the legal arena and his reputation as a successful lawyer is established according to the number of trials where he has the upper hand. When rhetoric is detached from ethics, as in Plato's characterization, there is no constraint at work against manipulation. While the political orator can try to persuade his audience towards virtually any end, despite its immorality, the legal orator pursues victory with any means, recurring to emotional appeal when possible. Rhetoric at its worst may be an art of 'flattery', manipulating people to believe whatever the orator wants for his interests.

7. *Conclusion.*

All previous considerations were meant to show that political stability in a liberal-democratic society requires not only well-working political institutions but also an ethos of citizens endowed with the appropriate qualities to live and cooperate well together. What I have put forward is a way of spelling out Dworkin's thesis of continuity between ethics and politics centring on legal ethos as a fundamental layer in liberal-democratic ethos. Legal ethos, including both judges and lawyers, has pride of place especially because of (1) having many of its members sitting in Parliaments and directing public offices at all levels and (2) the crucial role exercised by the legal system and its operators in maintaining political and social stability.

I have contended that in order to show what the legal ethos of a liberal democracy amounts to we need both to reflect on the 'dark sides' of the legal profession and to consider models that have been proposed to guide conduct for judges and lawyers. On the one hand, I have considered professional codes and sociological inquiry as useful traces of the vices which are most frequent in the legal profession. Code prescriptions address those vices mainly in terms of duties. Some theorists in the past decades have addressed issues of legal conduct also through a theory of the virtues of the legal profession (e.g. Solum). On the other hand, I have dwelled on Weber's model of 'formal-legal rationality' as a description which makes sense of a certain way of reasoning which abstracts from justice and substantial values, leaving the law formalistic and empty. Formal-legal rationality seems to go hand in hand with the liberal principle of neutrality, confining citizens' substantial values out of the public sphere. Insofar as lawyers and judges perform public roles, that model may have had some influence in their attitudes.

In my view legal ethos may be rescued from its dark sides only looking at some models proposed both for judges and for lawyers as lighthouses able to guide legal professionals' conduct. I have examined three main proposals. First, Kronman's (and Glendon's) model, the 'lawyer-statesman' ideal, is possessed of great practical wisdom – interpreted in a non-Aristotelian fashion – and capable of both sympathy and detachment, endowed with public spirit and practicing dialectical reasoning in which his opponent's opinions are given due consideration. Second, Dworkin's well-known Hercules is more of a legal expert than a lighthouse to affect legal ethos, though it is possible to recognise certain features that hint in the direction of legal ethos. For example, his view of 'law as integrity' and the correlated virtues are signs of a certain sensibility that could be developed further but is prevented by other opposing elements. However, we learn that 'law's empire' is an attitude which expresses at one time a communitarian spirit but also a separation of interests and projects.

Finally, I have introduced a competing model, 'the reasonable judge' – which could be to some extent also applied to lawyers – that combines in a balanced way the main features of practical wisdom (PW), craft and rhetoric. This model is also open to exercise the typical virtues of character, such as justice, courage, etc., but shows its abilities especially through the exercise of PW because it is here that the combination between intellectual and moral qualities is best qualified. Last but not least comes rhetoric as the capacity of arguing to persuade people about the soundness of one's decision or view (for lawyers) because the legal profession is also an art of public communication. It is through this last capacity that, I believe, the legal ethos can give its most fruitful contribution to a liberal democracy.

REFERENCES

Altman, J. (1994). "Modern Litigators and Lawyer-Statesmen", *Yale Law Journal*, 103, n.4: 1031-1071.

Brussack, R. (1989). "The Second Labor of Hercules: A Review of Ronald Dworkin's *Law's* Empire", *Georgia Law Review*, 23, 1129-1170.

Chambliss, E. (2012). "Whose Ethics? The Benchmark Problem in Legal Ethics Research". In Levin, Leslie C., & Lynn Mather, *Lawyers in Practice. Ethical Decision Making in Context*. Chicago: The University of Chicago Press.

Cochran, R. (1995). " Lawyers and Virtues: A Review Essay of may Ann Glendon's A *Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* and Anthony Kronman's *The Lost Lawyer: Failing Ideals of the Legal Profession*". *Notre Dame Law Review*, 71: 707-730.

Cominelli, L. (2014). "Avvocati in trasformazione. Note brevi su organizzazione e deontologia". *Sociologia del diritto*, n.3.

Dworkin, R. (1977). *Taking Rights Seriously*. Cambridge (Mass.): Harvard University Press.

Dworkin, R. (1986). *Law's Empire*. Cambridge (Mass.): Harvard University Press.

Dworkin, R. (1991). *Foundations of Liberal Equality*. in *The Tanner Lectures on Human Values XI*. Salt Lake City: University of Utah Press.

Garver, E. (1993). *Aristotle's Rhetoric. An Art of Character*. Chicago: University of Chicago Press.

Glendon M., (1994). *A Nation under Lawyers: How the Crisis in the Legal Profession is Transforming American Society*. Cambridge (Mass.): Harvard University Press.

Kronman, A. (1983). *Weber*. Stanford: Stanford University Press.

Kronman, A. (1993). *The Lost Lawyer*. Cambridge: Harvard University Press, 1993.

Macfarlane, J. (2008). *The New Lawyer: How Settlement Is Transforming the Practice of Law*. Vancouver -Toronto: UBC Press.

Mangini, M. (2017). "Ethics of Virtues and the Education of the Reasonable Judge", *International Journal of Ethics Education*, 2: 175-202.

Michelon, C. (2013). "Practical Wisdom in Legal Decision-Making". In *Law, Virtue and Justice*, eds. A. Amaya

and H. Hock Lai. Oxford-Portland: Hart Publishing

Mitchell, J. (2019). *On the Decline of Genteel Virtues*. Palgrave MacMillan.

Parker, Ch. & Adrian Evans. (2007). *Inside Lawyers' Ethics*. Cambridge UK: Cambridge University Press.

Rawls, J. (1971). *A Theory of Justice.* Cambridge (Mass.): Harvard University Press.

Rawls, J. (1993). *Political Liberalism*, New York: Columbia University Press.

Richardson, H. (1997). *Practical Reasoning About Final Ends*. Cambridge: Cambridge University Press.

Roberts, R. and Wood, WJ. (2007). *Intellectual Virtues*. Oxford: Clarendon Press.

Solum, L. (2003). "Virtue- Jurisprudence. A Virtue-Centered Theory of Judging". *Metaphilosophy*, 34: 178-213.