



**REASONING IN CHARACTER:
VIRTUE, LEGAL ARGUMENTATION, AND JUDICIAL ETHICS**

Amalia Amaya Navarro

This is an unpublished conference paper for the 11th Annual Jubilee Centre for Character and Virtues conference at Oriel College, Oxford University, Thursday 5th – Saturday 7th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

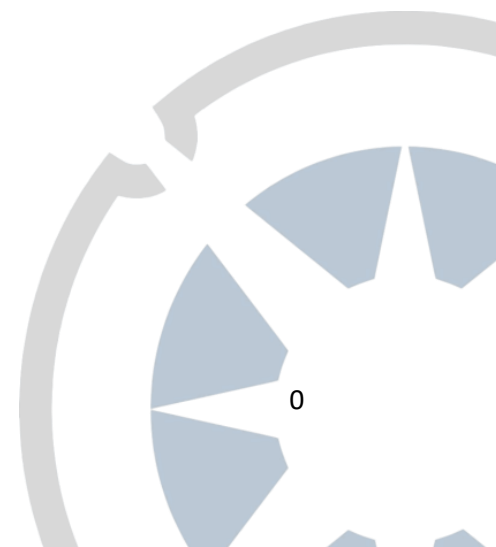
These papers are works in progress and should not be cited without author's prior permission.

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



**REASONING IN CHARACTER:
VIRTUE, LEGAL ARGUMENTATION, AND JUDICIAL ETHICS**

Amalia Amaya

Abstract. This paper develops a virtue-account of legal reasoning which significantly differs from standard, principle-based, theories. A virtue approach to legal reasoning highlights the relevance of the particulars to sound legal decision-making, brings to light the perceptual and affective dimensions of legal judgment, and vindicates the relevance of description and specification to good legal reasoning. After examining the central features of⁹ the theory, the paper proposes a taxonomy of the main character traits that legal decision-makers need to possess to successfully engage in legal reasoning. The paper concludes by discussing an array of strategies in legal education, institutional design, and legal culture that can be put in place to work virtue in legal decision-making.

Keywords: virtue jurisprudence, legal reasoning, judicial virtue, legal education, design jurisprudence, legal culture.

I. INTRODUCTION

In the last decades, virtue jurisprudence, which places the notion of virtue at the center of legal analysis, has gained prominence in legal scholarship.¹ A variety of topics in legal theory has been

¹ For an overview on virtue jurisprudence see C. Cimino, "Virtue Jurisprudence", in N. Snow, *The Oxford Handbook of Virtue*. Oxford: Oxford University Press, 2018; L. Solum, 'Law and Virtue,' *The Routledge Companion to Virtue Ethics*, L. Besser and M. Slote (eds.), Routledge, 2015; and A. Amaya, 'Law and Virtue Theory,' *Encyclopedia of the Philosophy of Law and Social Philosophy*, M. Sellers and S. Kirste (eds.), Springer, Dordrecht, 2019. Some collections on virtue jurisprudence are LL. Solum and C. Farrelly (eds.), *Virtue Jurisprudence*, Palgrave MacMillan, New York, 2008; A. Amaya and H.L. Ho (eds.), *Law, Virtue and Justice*, Hart Publishing, Oxford, 2012; A. Amaya and C. Michelon (eds.), *The Faces of Virtue in Law*, Routledge, 2020; and A. Amaya and M. Del Mar (eds.), *Virtue, Emotion and Imagination in Law and Legal Reasoning*, Hart Publishing, Oxford, 2020.

examined through the lenses of virtue theory, such as questions pertaining to the theory of legislation, e.g., the connection between virtue and the ends of law, the theory of legal justification, with a special focus on the justification of judicial decisions, and the theory of justice, e.g., the relations between law, justice and law-abidance.² Virtue theory has also been applied to several areas of substantive law, notably, criminal law, constitutional law, contract law, property law, torts, evidence law, international law, intellectual property law, corporate law, medical law, and legal ethics.³ In this paper, I aim to explore the relevance of virtue for a theory of legal reasoning.⁴ More specifically, I aim to show that a virtue perspective yields a distinct conception of legal reasoning, which is broader in scope than standard theories of legal reasoning. Critically, a virtue approach to legal reasoning brings to light the important connections that there are between theories of legal reasoning and the ethics of the legal professions. Given this connection, the study of virtuous character traits for legal professionals and the examination of their modes of acquisition turn out to be a central component of a theory of legal reasoning.

This paper has three parts. In the first part, I examine some elements in legal reasoning that a virtue approach to the subject brings into focus. A virtue perspective, I will argue, enables us to apprehend the relevance of particularity to sound legal judgment, the importance of the perceptual and emotional dimensions of legal argument, and the centrality of description and specification in legal reasoning. Thus, a virtue analysis of legal reasoning, as I will show, yields a much more complex view of what legal reasoning involves than traditional, i.e., deontological and consequentialist, approaches to the subject. In the second part, I give an account of the main traits of character that legal decision-makers -more specifically, judges- should possess and exercise to succeed at the

² On virtue and legislation, see R. P. George, *Making Men Moral*, Clarendon Press, Oxford, 1993; P. Koller 'Law, Morality and Virtue' in R. Walker and P. Ivanhoe (eds.), *Working Virtue: Virtue Ethics and Contemporary Moral Problems*, Oxford University Press, Oxford, 2007; K. Brownlee, 'What's Virtuous about the Law?' *Legal Theory*, 21, 2015; L. Solum "An Aretaic Theory of Legislation", *Jurisprudence*, vol. 9, 2018. On virtue and adjudication, see L. Solum, "Virtue Jurisprudence: A Virtue-Centred Theory of Judging" in M. Brady and D. Pritchard (eds.), *Moral and Epistemic Virtues*, Blackwell, Malden, 2003; A. Amaya, 'The Role of Virtue in Legal Justification,' and M. Slote, 'Law, Empathy and Justice,' both in A. Amaya and H. Hock Lai (eds.), *Virtue, Law and Justice*, Hart Publishing, Oxford, 2012. On virtue and the theory of justice, see L. Solum, "Natural Justice," *American Journal of Jurisprudence*, vol. 65, 2006; A. Sinha, 'Virtuous Law Breaking,' *Washington University Jurisprudence Review*, 2020; and A. Amaya, 'Virtue and the Normativity of Law,' *Dialogoi*, forthcoming.

³ See, n. 1 for references.

⁴ Special attention has been given to the role that practical wisdom plays in judicial reasoning, see C. Michelon, 'Practical Wisdom in Legal Decision-Making,' A. Amaya and H. Hock Lai (eds.), *Law, Virtue and Justice*, Hart Publishing, Oxford, 2012 and C. Michelon, 'Legal Reasoning (Virtues)', *Encyclopedia of the Philosophy of Law and Social Philosophy*, M. Sellers and S. Kirste (eds), Springer, Dordrecht, 2019.

complex reasoning task that legal decision-making requires. The proposed taxonomy includes the traditional moral virtues, but also epistemic, argumentative, communicative, institutional, and group-deliberative virtues. On the virtue account, the study of these qualities of character is the proper subject of the theory of legal reasoning, which is thereby shown to be intimately connected with professional legal ethics. The third part of the article discusses a diversity of strategies for nurturing virtue in law. Specifically, I shall suggest some ways in which legal education, institutional design, and, more broadly, legal culture can be shaped with a view to cultivating virtue in the legal professions.

II. A VIRTUE THEORY OF LEGAL REASONING

The concept of virtue is the keystone to an aretaic theory of legal reasoning, in contrast to standard theories of legal reasoning, which are either rule-based or outcome oriented. Critically, a virtue theory of legal reasoning suggests a shift of focus: from arguments and the decisions they support, which are the main target of standard theories of legal reasoning, to the legal decision-maker and her traits of character. In a strong version, right decisions are those that a virtuous legal decision-maker would take. In a weak version, the virtuous legal decision-maker has a privileged standpoint to access the relevant reasons, thereby providing the best criterion to determine which decisions are right - where their rightness is a function of virtue-independent reasons.⁵ Thus, on a virtue approach to legal reasoning, reasons are agent dependent – either constitutively or epistemically. In both the constitutive and the epistemic version, the virtuous legal decision-maker is at the very center of the theory.⁶

It is a main claim of a virtue theory of legal reasoning that arguments and character are intimately intertwined in contexts of legal decision-making. On the classical account of virtue, which the theory endorses, the agent's practical reasoning is 'essential to the way in which a virtue is build

⁵ See L. Zagzebski, *Virtues of the Mind*, Cambridge University Press, Cambridge, 1996, p. 17 (distinguishing between weak and pure virtue theories).

⁶ See A. Amaya, 'The Role of Virtue in Legal Justification,' A. Amaya and H. Hock Lai (eds.), *Law, Virtue and Justice*, Hart Publishing, Oxford, 2012, for a fuller discussion of the epistemic and constitutive versions of virtue jurisprudence.

up and exercised.⁷ In this view, the acquisition of virtue involves primarily the development of one's capacity to reason, which is further refined in its turn as character is perfected. On the one hand, a virtuous character is built in the course of practical reasoning and, on the other hand, the virtue (or its lack thereof) enhances (or erodes) the quality of the person's reasoning. Hence, legal reasoning (as a special case of practical reasoning) and character are interdependent: legal decision-makers reason in character and their character is also shaped by the decisions they take.

Consequently, the virtuous legal decision-maker reasons in a distinctive way. Five main characteristics distinguish the virtuous agent's legal reasoning: a) the virtuous legal decision maker focuses on the particulars; b) virtuous legal reasoning actively engages a refined perceptual capacity; c) it is affectively infused; d) the virtuous legal decision-maker's reasoning involves a conscientious description of the situation of choice; e) virtuous legal reasoning is also of ends.⁸ This picture, as explained below, markedly differs from the normative ideal advanced by standard theories of legal reasoning.

a. A focus on the particulars, rather than on rule application

General rules play a central role in legal reasoning. However, legal reasoning cannot be understood primarily in terms in rule-application. There are, as is well known, hard cases, in which either the interpretation of the law or the facts is problematic, or the solution provided by the application of a clear rule to the determined facts is absurd or unjust. The specific features of the case may render inappropriate to treat it as a 'rule-case' and suggest the need to go beyond rule-based reasoning.⁹ Fittingness to the particulars of the case is thus central to sound legal judgment. In contrast to standard, rule-centered, approaches to legal reasoning, a virtue theory of legal reasoning has the resources to adequately attend the claims of particularity. Virtue endows its possessor with a capacity to see the relevant reasons that obtain in the specific case, including those that might make

⁷ See J. Annas, 'Virtue Ethics and Social Psychology,' *A Priori* 2, 2003 and J. Adler and I. Vasiliou, 'Inferring Character from Reasoning: The Example of Euthyphro,' *American Philosophical Quarterly*, vol. 45, 2008, p. 44.

⁸ For a preliminary discussion of these features, see A. Amaya, 'Virtue and Reason in Law,' M. Del Mar (ed.), *New Waves in the Philosophy of Law*, Palgrave Macmillan, New York, 2011.

⁹ The term is Detmold's. See M. J. Detmold, *The Unity of Law and Morality*, Routledge and Kegan Paul, London, 1984.

problematic the straightforward application of a rule or even defeat its application. The knowledge of exceptions that virtue consists of resists, as some virtue ethicists have persuasively argued, codification: that is to say, what distinguishes the virtuous person from those who are less than virtuous is not that they possess knowledge of a body of principles.¹⁰ The distinguishing feature of the virtuous person is that she has a 'high order of situational appreciation' -which is needed to take decisions that adequately respond to the specific features of the particular case.¹¹ Thus, the virtuous legal decision-maker is well-positioned to determine whether a rule-based approach is adequate to solve the case or whether the case is such that a more substantive approach is required. It is important to notice that a virtue theory of legal reasoning does not, however, collapse into particularism, as rules play important roles within the theory, e.g., rules often govern the legal decision, as loyalty to law is a central virtue in legal decision-makers, and they are also critical aids to perception.¹²

b. The exercise of a perceptual capacity, in addition to deliberative skills

The apprehension of the particular features of the case on which good legal judgment rests is the outcome of a perceptual capacity. Perception thus plays an important role in legal argument, which is obliterated by standard views on legal reasoning, which focus on reflection and deliberation. A virtue perspective on reasoning is well placed to give an account of the perceptual dimensions of legal argument, as a refined perceptual capacity is a chief mark of the virtuous person. The virtuous legal decision-maker correctly perceives the reasons that obtain in the particular case in a way that misses nothing of relevance and in which some reasons are viewed as salient, and requiring action in a certain way, and opposing reasons are silenced.¹³ This perceptual capacity is not, however, a mysterious ability to see into the right, but it is rather the kind of refined capacity of perception that is characteristic of expertise.¹⁴ The analogy between virtue and practical expertise also allows us to

¹⁰ See J. McDowell, 'Virtue and Reason,' *The Monist*, vol 62, 1979. For an enlightening discussion of the thesis, see B. Clarke, 'Virtue as Sensitivity,' N. Snow (ed.), *The Oxford Handbook of Virtue*, Oxford University Press, Oxford, 2018.

¹¹ See D. Wiggins, 'Deliberation and Practical Reason,' E. Millgram (ed.), *Varieties of Practical Inference*, MIT, Cambridge, 2001, p. 291.

¹² On loyalty, see section III below. On rules as aids to perception, see M. Nussbaum, 'Why Practice Needs Ethical Theory: Particularism, Principle and Bad Behavior,' S. Burton (ed.), *The Path of Law and its Influence: The Legacy of Oliver Wendell Holmes, Jr*, Cambridge University Press, Cambridge, 2000, p. 64. See also M. Nussbaum, *Love's Knowledge*, Oxford University Press, Oxford, 1999, p. 73.

¹³ See J. McDowell, 'Virtue and Reason,' *The Monist*, vol 62, 1979.

¹⁴ On the analogy between virtue and expertise, see J. Annas, *Intelligent Virtue*, Oxford University Press, Oxford, 2011.

see that virtuous judgment, even though it involves, in an important sense, perceptual capacities, does not preclude conscious deliberation. For what distinguishes the expert from the novice is not that reasoning is otiose for the expert, but that the expert has the capacity to deal with ease with cases that would be hard for the novice as well as the capacity to deal with hard cases that would be irresolvable for the novice. Virtue does not preclude, rather enables, discursive justification and allows those who possess it to successfully engage in the difficult reasoning tasks that hard (and tragic) cases sometimes require.¹⁵ Thus, virtue (as expertise) results from a balanced combination of both perceptual and reflective abilities.

c. An emotional involvement, which blends cognition with affectivity

Virtuous legal reasoning is emotionally engaged. Virtue is a matter of both action and emotion, for the virtuous person is not only the person who has a disposition to act in a certain way but one who also has a fitting emotional response.¹⁶ The motivational outlook that is characteristic of the virtuous legal decision-maker plays an important epistemic role in that feeling certain emotions helps detect the reasons that obtain in the particular case and correctly register their importance and resonance. For instance, the indignation felt in the face of injustice may reveal to a legal decision-maker aspects of the situation that would be overlooked by a legal decision-maker that is indifferent to the parties' plight, and it might point towards ways in which the law may help put a remedy to it. Critically, the incorporation of virtues into a theory of legal reasoning does not amount to opening the door to emotions in a disorderly way. Emotions have been shown to importantly contribute to reasoning and decision-making – a finding that mainstream theories of legal reasoning, which are uncompromisingly cognitive, ignore at their peril. Emotions, however, as is well known, can also distort judgment. A virtue approach to legal reasoning insofar as it allows in the regulated emotions of the virtuous person is well-positioned to benefit from the positive contribution that emotions may make to legal judgment in a way that avoids their potential distorting effects.¹⁷

¹⁵ For the claim that the virtuous person has the ability to provide a justification for her decisions. See Annas, *Ibid.*, and J. Wallace, *Normativity and the Will*, Oxford University Press, New York, 2006, p. 253. Cf. M. Stichter, *The Skillfulness of Virtue*, Cambridge University Press, Cambridge, 2018, pp. 56-57.

¹⁶ See N. Sherman, *Making Necessity a Virtue: Aristotle and Kant on Virtue*, Cambridge University Press Cambridge, 1997, ch 2 and R. Hursthouse, *On Virtue Ethics*, Oxford University Press, Oxford, 1999, ch 5.

¹⁷ On virtuous emotions, see K. Kristjánsson, *Virtuous Emotions*, Oxford University Press, Oxford, 2018 and G. Screenivasan, *Emotion and Virtue*, Princeton University Press, Princeton, 2020.

d. A focus on description, instead of choice

Standard theories of legal reasoning focus on the moment of choice and the justification of the decision that has been taken. In contrast, a virtue approach to legal reasoning emphasizes the importance of the description of the situation of choice.¹⁸ The theory enters earlier in the process of legal reasoning as it is mostly concerned with the stage, prior to decision choice, in which the set of alternative decisions, and the arguments and evidence supporting them, are identified and fleshed out.¹⁹ Virtuous legal judgment involves, first and foremost, an accurate and detailed description of the situation of choice, which requires that the legal decision-maker pay adequate attention to the different features of the situation that may provide reasons for action in the specific case.²⁰ This is not to say that legal decision-making may be reduced to a kind of empirical investigation – that is to say, that it is factual all the way down, for a good description also involves a reflection about the values involved. For example, a judge may need to deepen his views about gender equality to see that asymmetry of power at the workplace is an essential part of the correct description of cases of sexual harassment.²¹ Thus, a virtue approach to legal reasoning highlights the relevance of the reasoning processes (about both facts and values) that lead to a good description of the case, which provides the basis upon which the case would be ultimately decided.

¹⁸ Relatedly, theories of legal reasoning focus on justification, rather than discovery, and on reasoning about questions of law, rather than fact. Interestingly, problems of classification, which pertain to the factual premise of the judicial syllogism, are often redescribed as problems of interpretation (of the normative premise), so that the justification of the selection and interpretation of the relevant legal rule remains the main focus of attention of the theory.

¹⁹ Choice is, however, pervasive in the description as any act of description involves a choice of the facts, aspects of the situation, values, features, reasons and perspectives, etc. that are relevant to the situation of choice. See A. Sen, 'Description as Choice,' *Economic Papers*, vol. 32, 1980.

²⁰ That description (and classification) is a vital part of the work of virtue is argued by Sherman. See N. Sherman, *The Fabric of Character*, Clarendon, Oxford, 1989, p. 29. On the relevance of description to practical reasoning, see I. Murdoch, 'The Idea of Perfection,' I. Murdoch, *Iris, The Sovereignty of Good*, Routledge, New York, 2001.

²¹ See M. Nussbaum "Why Practice Needs Ethical Theory: Particularism, Principle, and Bad Behavior," in S. Burton (ed.), *The Path of Law and its Influence: The Legacy of Oliver Wendell Holmes, Jr*, Cambridge University Press, Cambridge, 2000, p. 78.

e. The specification of ends, beyond instrumentalist reasoning

Legal reasoning involves reasoning about ends and not merely instrumentalist reasoning (that is, reasoning that aims to bring about some previously fix value) as standard approaches to legal reasoning commonly assume. Indeed, a commitment to value commensurability, and the associated view according to which legal reasoning aims at maximizing value, is shared among both deontological and consequentialist approaches to legal reasoning.²² In contrast, a virtue approach to legal reasoning is committed to the view that there is a plurality of distinct, irreducible, and incommensurable values which the law aims to protect. Thus, a virtue approach to legal reasoning rejects the view according to which value conflict in law may be addressed by a balancing operation or the reduction of the conflicting values to a single scale. Instead, it puts forward a conception about how to reason in cases in cases in which plural and heterogenous values come into conflict that embraces (rather than simplifies) its complexity. More specifically, the virtuous legal decision-maker reasons about the conflicting values by searching for their best specification.²³ This requires inquiring into how these values should be further specified and how they relate to each other in light of a general conception of the ends of the law (which is also subject to further revision and specification).

Thus, from a virtue perspective, the legal decision-maker and her qualities occupy a central stage within the theory of legal reasoning. Good legal reasoning necessitates an agent who has the skills to reason about a case in a way that is responsive to the particulars, possesses refined perceptual capacities and virtuous affective orientations, engages responsibly in the description of the situation of choice, and is capable of addressing the normative conflict that oftentimes is involved in legal decision-making in ways that avoid simplifying strategies that assume monism about value. In contrast

²² See R. Alexy, "On Balancing and Subsumption: A Structural Comparison," *Ratio Juris*, vol. 16, 2003 (for an explicit defense of commensurability as a requisite for rational choice and an approach to legal reasoning that aims at value maximization by means of a 'weight formula').

²³ On specification, see D. Wiggins, 'Deliberation and Practical Reason,' E. Millgram (ed.), *Varieties of Practical Inference*, MIT, Cambridge, 2001, p. 287. Wiggins' specificationist proposal has been further developed by H. Richardson, *Practical Reasoning about Final Ends*, Cambridge University Press, Cambridge, 1994. See also J. McDowell, *Mind, Value, and Reality*, Cambridge, Harvard University Press, 1998, essay 2. On specificationism in the context of rights adjudication, see, among others, J. J. Moreso, 'Ways of solving conflicts of constitutional rights: proportionalism vs specificationism,' *Ratio Juris* 2, vol. 10, 2012. For discussion, see G. Bongiovanni and C. Valentini, 'Balancing, Proportionality and Constitutional Rights,' in G. Bongiovanni et al. (eds), *Handbook of Legal Reasoning and Argumentation*, Springer, Dordrecht, 2018, pp. 608-609.

to standard, principle-based, theories of legal reasoning, which focus on rule-application, deliberative capacities, cold cognitive processes, justificatory tasks, and means-ends inferences, a virtue theory depicts a conception of legal reasoning that highlights the role that particulars, emotions, and perceptions play in legal argumentation and that takes description and specification to be central to legal reasoning.

III. A TAXONOMY OF JURIDICAL VIRTUE

The agent-based conception of legal reasoning outlined above has an important implication: it calls into question the view (implicitly assumed in current work on legal reasoning) according to which legal reasoning and legal ethics are mutually independent. As argued, it is a main claim of the theory that correct decisions are either epistemically or constitutively dependent on virtuous legal decision-makers. A correct legal decision is a decision that a virtuous legal decision maker would take – where the correctness of the decision depends either on virtue-independent reasons, which the virtuous person is best placed to identify, or on virtue reasons, with the virtuous person playing consequently a constitutive, rather than an epistemic, role. Given this agent-dependency of reasons in the legal realm, the study of the virtuous traits of character of legal professionals cannot be viewed as the exclusive concern of legal ethics, but it is rather a part of a theory of legal reasoning proper. Thus, a virtue theory of legal reasoning vindicates the important connections that there are between a theory of legal reasoning and professional legal ethics.

Now, which are these virtuous traits of character that enable those who possess them to excel at legal reasoning? These traits of character, I would argue, are not exclusive to the legal professional roles, but they are rather general virtues. There is, I would argue, a continuity between general morality and the morality of the legal professions.²⁴ This prevents, for example, that a character trait that is generally regarded as a vice, e.g., dishonesty, may turn out to be a virtue in the context of a legal professional role, e.g., a lawyer. Character traits do not change valence from non-professional contexts to professional ones. If a vicious character trait is apparently a virtue for a given professional,

²⁴ Cf. J. Oakley and D. Cocking, *Virtue Ethics and Professional Roles*, Cambridge University Press, Cambridge, 2011.

then this suggests the need to question the conventional understandings of the profession that would make it so. For example, if dishonesty seems to be a virtue in lawyers, then this indicates the need to revise the received conception of what a good lawyer is and what the proper ends of lawyering are, instead of vindicating the status of 'dishonesty' as a lawyerly virtue. In the extreme case, that a vitious trait of character is apparently a virtue in a profession should lead not to assert its status as a virtue in the context of the specific professional role, but rather to question the very desirability of the existence of the profession (let us think, for example, of 'cruelty' as a supposed virtue for the role of a torturer in a security force).

Despite this continuity, the professional virtues do not boil down to general virtues. There are some features that make it necessary to engage in an investigation of the professional virtues. First, professional virtues are only a subset of the general virtues: not all general virtues are equally needed across the professions, and it is useful to examine which traits of character are most valuable for certain professionals to have. For example, while courage is a moral virtue across the board, it is much more needed for a soldier than it is for a judge. One way in which one may delimit the range of relevant virtues is by reflecting upon the ends of the profession: professional legal virtues would be, accordingly, these traits of character that help achieve the ends of the legal professions, i.e., the advancement of justice.²⁵ Secondly, virtue requirements are differently specified depending on context, and this includes the context of a professional practice. What courage requires of a soldier is not the same as what it typically requires, when it does, of a judge. Or what honesty requires of a judge is not identical as what it requires of a lawyer. Thus, we could distinguish, following Swanton, between 'prototype' virtues and 'role' virtues, where the latter specify the requirements of the former.²⁶

A virtue approach to professional legal ethics would then seek to identify the set of character traits that are needed to achieve the ends of the legal professions (and thereby to engage in the professional practice in a way that is socially valuable) and give an account of how they should be conceived. To be sure, different virtues would be needed in different legal professional roles. In what follows, I shall focus exclusively on the judicial virtues- in this, I am, not without regret, following the judge-centric trend in contemporary theories of law and legal reasoning. Despite the unquestionably

²⁵ See *Ibid.*

²⁶ C. Swanton, 'Virtue Ethics, Role Ethics, and Business Ethics,' in R. L. Walker and P. J. Ivanhoe (eds.), *Working Virtue: Virtue Ethics and Contemporary Moral Problems*, Oxford University Press, Oxford, 2007.

central place that judges play within the legal system, there is a need to give a more complete account of legal phenomena, beyond the judicial context. I hope, however, that the analysis of the judicial virtues advanced below may be also useful for thinking about the different traits of character that are needed to excel at legal practice in the capacity of other professional legal roles.²⁷

What are then the personality traits that enable the distinctive outlook that is characteristic of a virtuous judge?²⁸ First, virtuous judges should possess and exercise a set of moral virtues, such as temperance, courage, impartiality, magnanimity, and humility. Most discussions of judicial virtue focus on moral character, and although these are hardly the only traits of character that are needed in the context of the judicial role, they remain nonetheless critically important.

Second, good judges should also possess a fair share of intellectual or epistemic virtues, such as open-mindedness to different arguments and points of view about the case, perseverance in following a line of reasoning, intellectual autonomy, to form independent views about the case, rather than being unduly subjected to the influence of lawyers or other judges, intellectual sobriety, not to jump prematurely to conclusions, intellectual humility, to acknowledge their own limitations and fallibility, intellectual patience, not to put an end to the decision-making process too early, and intellectual vitality, to engage indefatigably in a careful analysis of the available evidence and relevant arguments.²⁹

²⁷ For some work on the lawyer's virtues, see R. Araujo, 'The Virtuous Lawyer: Paradigm and Possibility,' *SMU Law Review*, vol. 50, 1997; D. Thunder, 'Can a Good Person be a Lawyer?' *Notre Dame Journal of Law, Ethics and Public Policy*, vo. 20, 2006; A. Woolley and W. Bradley Wendel, 'Legal Ethics and Moral Character,' *Georgetown Journal of Legal Ethics*, vol. 23, 2010; M. Milde, 'Legal Ethics: Why Aristotle Might be Helpful,' *Journal of Social Philosophy*, vol. 33, 2002; and P. J. Saguil, 'A Virtuous Profession: Re-Conceptualizing Legal Ethics from a Virtue-Based Moral Philosophy,' *Windsor Review of Legal and Social Issues*, vol. 22, 2006; On prosecutors' virtues, see R. M. Cassidy, 'Character and Context: What Virtue Theory can Teach us about a Prosecutor's Ethical Theory of Seek Justice,' *University of Notre Dame Law Review*, vo. 82, 2006.

²⁸ For a discussion of this topic, see C. Farrelly and L. B. Solum, 'An Introduction to Aretaic Theories of Law,' C. Farrelly and L. B. Solum (eds.), *Virtue Jurisprudence*, Palgrave MacMillan, New York, 2008; L. Solum, 'Virtue Jurisprudence: A Virtue-Centred Theory of Judging', M. Brady and D. Pritchard (eds.), *Moral and Epistemic Virtues*, Blackwell, Malden, 2003; I. Van Domselaar, 'Moral Quality in Adjudication: On Judicial Virtues and Civic Friendship,' *Netherlands Journal of Legal Philosophy*, vol. 44, 2015; and M. Mangini, 'Ethics of Virtue and the Education of the Reasonable Judge,' *International Journal of Ethics Education*, vol. 2, 2017.

²⁹ There is an extensive literature on epistemic virtue. Some useful discussion and classification of key epistemic virtues may be found in N. Cooper, 'The Intellectual Virtues,' *Philosophy*, vol. 69, 1994; L. Zagzebski, *Virtues of the Mind: An Inquiry into the Nature of Virtue and the Moral Foundations of Knowledge*, Cambridge University Press, Cambridge, 1996; Robert C. Roberts and W. J. Wood, *Intellectual Virtues: An Essay in Regulative Epistemology*, Oxford University Press, Oxford, 2007; J. A. Montmarquet,

Third, legal practice is argumentative to the bone, and this makes it necessary for judges to possess and exercise a number of argumentative virtues as well, like a willingness to question the obvious, which may lead to problematize the apparently clear interpretation of the facts, their proper classification, and the seemingly straightforward identification and interpretation of the applicable law; to listen to other people's views, including the arguments advanced by both parties as well as other members of the court; a disposition to engage in argumentation, be it self-argumentation or inter-personal argumentation, rather than leaving unquestioned one's pre-deliberative views about the facts or the law; and the willingness to modify one's position in light of other people's arguments, in a way that avoids both floppiness and fleetingness, on the one hand, and rigidity and stubbornness, on the other.³⁰

Fourth, communicative virtues are also pivotal in the context of the judicial role, and much needed to adequately relate to other actors at trial as well as to properly write and communicate the judgment to the parties, the victims, and society at large.³¹ Sincerity and candor in presenting one's arguments and judgment; simplicity and clarity in the course of laying out the relevant questions of fact and law; accuracy and precision when reasoning about the evidence as well as articulating and applying legal concepts; receptivity and attentiveness to genuinely engage in dialogue with the relevant actors; and tactfulness, respect, and compassion in the course of addressing the different actors at trial and delivering the verdict are core components of juridical virtue.

'Epistemic Virtue,' *Mind*, vol. 96 (1997); J. Baehr, *The Inquiring Mind: On Intellectual Virtues and Virtue Epistemology*, Oxford University Press, Oxford, 2011; and H. Battaly, *The Routledge Handbook of Virtue Epistemology*, Routledge, New York, 2019.

³⁰ On argumentative virtues, see A. Aberdein, 'Virtue argumentation,' in F. H. van Eemeren et al. (ed.), *Proceedings of the Sixth conference of the international society for the study of argumentation*, SicSat, Amsterdam, 2007; A. Aberdein, 'Virtue in Argument,' *Argumentation*, vol. 24, 2010; D. Cohen, 'Virtue Epistemology and Argumentation Theory,' H.V. Hansen (ed.), *Dissensus and the Search for Common Ground*, OSSA, Windsor, 2007.; D. H. Cohen, 'Virtue, in Context,' *Informal Logic*, 33 (4), 2013; D. Cohen, 'Keeping an Open Mind and Having a Sense of Proportion as Virtues in Argumentation,' *Cogency*, vol. 1, 2009.

³¹ See N. Miczo, 'Reflective Conversation as a Foundation for Communicative Virtue,' T. Socha and M. J. Pitts (eds.), *The Positive Side of Interpersonal Communication*, Peter Lang, New York, 2012; J. C. Mirivel, 'Communication Excellence: Embodying Virtues in Interpersonal Communication,' *ibidem.*; J. M. Harden Fritz, 'Communication Ethics and Virtue,' N. Snow (ed.), *The Oxford Handbook of Virtue*, Oxford University Press, Oxford, 2018.

Fifth, the judicial virtues importantly include the institutional ones – the so-called ‘cooperative virtues,’ or, in Hume’s terminology, the ‘artificial virtues’ – most prominently, the virtue of justice and the virtue of loyalty.³² To be sure, the virtue of justice is paramount in judicial legal decision-making. This virtue does not have an easy place within a theory of virtue: unlike other virtues, it cannot be smoothly explained as a mean between two vices, neither can it be associated with a characteristic motive.³³ Despite these difficulties, the good judge can hardly be described without appealing to the virtue of justice: this virtue is, as Hart says, the more juridical of the virtues and a virtue that is especially appropriate to law.³⁴ Singularly important is also the virtue of loyalty, which, in the institutional legal context, requires that judges endorse the ‘internal point of view’ and, accordingly, structure their inquiry and deliberation in a way that gives proper weight to authoritative reasons.³⁵ Loyalty to law is further formalized by the judicial oath –which thus has a natural place in a virtue-approach to adjudication.³⁶

Last, given the collegiate nature of constitutional and appellate courts, judges also need to exhibit several group-deliberative virtues, i.e., the traits of character that are conducive to good collective decision-making.³⁷ Group deliberative virtues are not different from those that have been included in the previous virtue-groups, but some of these virtues may be singled out as particularly important for properly performing the judicial function in multi-member courts. Indeed, some character-traits, such as, humility to regard and relate to one’s peers within the Court as equals, cooperativeness in the collective deliberation, open-mindedness to the ideas of other court members,

³² Artificial virtues depend on motives that we can have only in the context of voluntary conventions. See G. Sayre-McCord, ‘Hume on the Artificial Virtues,’ P. Russell (ed.), *The Oxford Handbook of Hume*, Oxford University Press, Oxford, 2016. On ‘cooperative virtues,’ see R. Geuss, *Outside Ethics*, Princeton University Press, Princeton, 2005.

³³ See Bernard Williams, *The Sense of the Past*, Princeton University Press, Princeton, 2006, pp. 205-217. But see Gardner’s analysis of justice as a mean between two vices, ‘The Virtue of Justice and the Character of the Law,’ *Current Legal Problems*, vol. 53, 2000, p. 170.

³⁴ See H. L. A. Hart, *The Concept of Law*, Oxford University Press, Oxford, 1997, p. 7.

³⁵ I thank Benjamin Zipursky for helping me see the way in which a disposition to give to authoritative reasons their due in adjudication is a particular instantiation (formalized by the judicial oath) of the general virtue of loyalty, rather than a virtue specific to the role of the judge.

³⁶ For a different account of the role that the judicial oath may play within a theory of the judicial virtue, see Horowitz, P., ‘Judicial Character (and does it Matter),’ *Constitutional Commentary*, vol. 26, 2009, pp. 71-74.

³⁷ On group deliberative virtues, see S. F. Aikin and J. C. Clanton, ‘Developing Group Deliberative Virtues,’ *Journal of Applied Philosophy*, vol. 27, 2010. For group-deliberative virtues in the context of legal reasoning, see A. Amaya, *Group-Deliberative Virtues and Legal Epistemology*, J. Ferrer and C. Vázquez (eds.), *Evidential Legal Reasoning: Crossing Civil Law and Common Law Traditions*, Cambridge University Press, 2022.

kindness, politeness, and civility towards one's colleagues, and courage in defending a minority position within the Court, are critical to enabling a genuine and productive collective deliberation.³⁸

Finally, the virtue of practical wisdom, or *phronesis*, stands out as a particularly important virtue for successful judicial decision-making.³⁹ This meta-virtue is necessary to arbitrate between the demands imposed by the specific virtues, in cases in which these demands overlap or come into conflict, to determine the right mean in which virtue consists, and to specify what virtue requires in the particular case.⁴⁰ In short, practical wisdom orchestrates the work of the different kinds of virtues into a single line of action.

Thus, being virtuous in the context of the judicial role is a demanding standard, which requires the integration of different aspects of one's personality. Just as a virtue approach to legal reasoning reveals complexities that were sidestepped by standard approaches to legal reasoning, it also brings to light the diversity of subjective qualities that are needed to engage properly in legal reasoning. In so doing, it stands in sharp contrast to theories of legal reasoning that dispense with the subject altogether and aim at delivering a decision-procedure that yields good results irrespective of any features of the subject. It also diverges from views that appeal to a thin subject, which equate the good judge with the judge who has technical mastery of the law and its methods, as well as from views that endorse a simplified conception of judicial virtue, which reduce it to obedience to the law and its application with 'pedantic impartiality.'⁴¹ Virtue in the context of the judicial role requires the possession and exercise of a rich variety of dispositions of character, as could not be otherwise, given the complex nature, and the social relevance, of the decision-task that judges are entrusted with.

³⁸ The issue of which virtues are conducive to well working institutional bodies is different from the question of whether institutions, as opposed to individuals, may possess virtues. On the latter question, see, among others, R. Lahroodi, 'Collective Epistemic Virtues,' *Social Epistemology*, vo. 21, 2007 and M. Fricker, 'Can There Be Institutional Virtues?' in T. S. Gendler and J. Hawthorne (eds.), *Oxford Studies in Epistemology*, vol. 3, Oxford University Press, Oxford, 2010.

³⁹ On the virtue of practical reason in the context of legal decision-making, see C. Michelon, 'Practical Wisdom in Legal Decision-Making,' in Amaya and Ho, *op. cit.*, pp. 29-51.

⁴⁰ See Linda Zagzebski, *Virtues of the Mind: An Inquiry into the Nature of Virtue and the Ethical Foundations of Knowledge*, Cambridge University Press, Cambridge, 1996, pp. 211-231.

⁴¹ H.L.A. Hart, 'Positivism and the Separation of Law and Morals,' *Harvard Law Review*, vol. 71, 1958, p. 624.

IV. WORKING VIRTUE IN LAW

A desideratum (and a condition of adequacy) for any theory of legal reasoning is that it be able to improve upon legal practice. It is a great advantage of a virtue theory of legal reasoning that, in contrast to highly idealized theories of legal reasoning, it puts forward a normative ideal (i.e., the virtuous judge, which exemplary judges embody) that all legal decision-makers can approximate. Rather than abstracting away from human limitations and resources (Dworkin's Judge Hercules is to the point here), the normative standard advanced by a virtue theory of legal reasoning does not assume capacities that judges cannot develop or conditions (e.g., limitless time) that cannot obtain.⁴² Even if it may be debatable whether all legal officials may be able to become exemplary, certainly all can become more virtuous than they are.⁴³ In addition, the virtue theory of legal reasoning, with its reliance on emotion and intuition on the one hand, and reflection and deliberation, on the other, builds on our natural forms of reasoning (as the best available theory of human cognition i.e., the dual system theory, portrays them). As a result, the theory is well positioned to benefit from all our cognitive resources to guide and ameliorate practice, in contrast to standard theories of reasoning, which focus almost exclusively on reflective and deliberative capacities (i.e., system 2 processes, to the exclusion of system 1 processes).⁴⁴ In short, the psychological plausibility of the theory importantly enhances its normative relevance.

⁴² As in Hercules' case. See R. Dworkin, *Law's Empire*, Fontana Press, London, 1986.

⁴³ On the impossibility of bringing about the psychological structure constitutive of moral excellence, see L. Zagzebski, "Ideal Agents and Ideal Observers in Epistemology", *Epistemology Futures*, S. Hetherington (ed.), Oxford University Press, Oxford, 2006, p. 136 and L. Blum, "Moral Exemplars: Reflections on Schindler, the Trocmes, and Others", *XIII Midwest Studies in Philosophy* (1988), p. 216. Cf. Mencius' claim that 'the sage and ordinary mortals are of a similar kind' in Sor-Hoon Tan, 'Imagining Confucius: Paradigmatic Characters and Virtue Ethics,' *Journal of Chinese Philosophy*, vol. 32, 2005, p. 414.

⁴⁴ Furthermore, a virtue approach to legal reasoning does not only incorporate both system 1 and system 2, but the virtues may also be useful for correcting some biases that result from the operation of system 1 and some mistakes produced by system 2. See B. Brogaard, 'Dual Process Theory and Intellectual Virtue: A Role for Self-Confidence,' H. Battaly (ed.), *The Routledge Handbook of Virtue Epistemology*, Routledge, New York, 2019. On virtue as a de-biasing device, see also E. Anderson, 'Epistemic Justice as a Virtue of Social Institutions,' *Social Epistemology*, vol. 26, 2012; C. F. Rees, 'A Virtue Ethics Response to Implicit Bias,' M. Brownstein and J. Saul (ed.), *Implicit Bias and Philosophy*, Oxford University Press, Oxford, 2016; P. L. Samuelson and I. M. Church, 'When Cognition Turns Vitious: Heuristics and Biases in Light of Virtue Epistemology,' *Philosophical Psychology*, vol. 28, 2015; R. C. Roberts and R. West, 'Natural Epistemic Defect and Corrective Virtues,' *Synthese*, vol. 192, 1995; V. Correia, 'The Ethics of Argumentation,' *Informal Logic*, vol. 32, 2012; B. de Bruin, 'Epistemic Virtues in Business,' *Journal of Business Ethics*, vol. 113, 2013; and H. Alsharif and J. Symons, 'Openmindedness as a Corrective Virtue,' *Philosophy*, vol. 96, 2021.

However, for the theory to be able to guide and improve legal practice, it is not enough that the normative standards it sets forth be psychologically plausible, but it is also necessary that there be some available ways in which one may work towards approximating them. In other words, the ideal should be both achievable in principle but also translatable into practice. One might accept that it is feasible for us to approximate the ideal of the virtuous jurist but be at a loss as to what steps may be taken to realize it. In that case, although feasible, the ideal would be sterile for the purposes of improving legal practice. How well does the virtue theory of legal reasoning fare in this regard? Is there any clear path forward for virtue development in the legal context? I would like to suggest some ‘work packages’ that could be undertaken to bring legal practice closer to the ideal of the virtuous legal decision-maker. Virtue can be worked in law through educational policy, institutional design, and culture change.

a. Legal education

A main route towards establishing a virtuous legal practice is through educational policy, i.e., by endorsing virtue cultivation as an important goal of legal education. Virtue education is a never-ending process: character can always improve, and it can also deteriorate. Thus, it is important that virtue-oriented educational measures be present at all stages of legal education, from the law school to legal professional training. There is a number of different ways in which virtue may be developed through legal education.

First, a main form of virtue acquisition is, since Aristotle, the emulation of exemplars.⁴⁵ It would be necessary to vindicate the relevance of exemplary jurists, which may provide role-models worthy of admiration and imitation, in legal education. A main way to do so is through the recovery of the book of exempla and the use of biographies of judges, lawyers or legal scholars who excelled at the profession, as important pedagogical tools.⁴⁶ Imitation is a risky business: if properly done, it is

⁴⁵ The use of exemplars for virtue development is central in Roman Ethics. See R. Langlands, *Exemplary Ethics in Ancient Rome*, Cambridge University Press, Cambridge, 2018. In contemporary ethical theory, there has been a growing interest on the connections between exemplarity and virtue development, sparkled by Zagzebski’s work. See L. Zagzebski, *Exemplarist Moral Theory*, Oxford University Press, Oxford, 2017.

⁴⁶ The ‘mirror for princess’ genre or the book of exempla are classical examples of these educational tools. See P. Kaak and D. Weeks, ‘Virtuous Leadership: Ethical and Effective,’ S. Van Hooft (ed.), *The Handbook of Virtue Ethics*, Routledge, New York, 2013. Contemporary biographies of exemplary judges could also be profitably put at use for educational purposes. See, among others, M. Andenas and D. Fairgrieve, *Tom*

extremely productive from the point of view of virtue development, but it may also be distorted in several ways. For example, the process of imitation may degenerate into mere copying, in which superficial features of the model are reproduced in a mindless way.⁴⁷ Thus, it is critical to combine exposure with critical discussion, when using these models as educational materials.⁴⁸ In addition to introducing models of excellence in the classroom, it is important to generate spaces for interaction with excellent jurists, through speaker series, internships, and mentorships systems, so that legal students and professionals can become acquainted with and learn from excellent others. Raising self-awareness among legal professionals and law professors of their pedagogical functions as role-models is also central for successfully instilling the virtues through imitation.

Second, explicit instruction on the virtues could be incorporated into the law school curricula and programs for continuing professional education, mostly, but not exclusively, as pedagogical units in the context of courses in jurisprudence, the ethics of the legal profession, and legal reasoning. The discussion of virtue-oriented work in subjects of substantive law, across the curriculum, is also extremely important to fully apprehend the relevance of virtue standards for law and the legal professions. Although one can hardly become virtuous by learning about the virtues, explicit teaching on virtue theory may help law students and legal professionals to reflect upon the traits of character that are most needed in the legal professions and collectively discuss about the best way in which they should be conceived and what demands they impose on legal officials. It may also be useful for communicating the moral dimensions and the social significance of the role they perform, or will perform, and for conveying a more inspirational view of the legal professions, which may prompt them to thrive.

Bingham and the Transformation of the Law, Oxford University Press, Oxford, 2009; H. Ball and P. Cooper, *Of Power and Right: Hugo Black, William O. Douglas and the America's Constitutional Revolution*, Oxford University Press, New York, 1992; H. Ball, *Hugo Black: Cold Steel Warrior*, Oxford University Press, Oxford, 1996; Gerald Gunther, *Learned Hand: The Man and the Judge*, Oxford University Press, Oxford, 2010; E. White, *The American Judicial Tradition: Profiles of Leading American Judges*, 3rd rev. ed., Oxford University Press, New York, 2007; J. R. Vile, *Great American Judges: An Encyclopedia*, ABC-CLIO, Santa Barbara, 2003; T. Yarbrough, *Harry A. Blackmun: The Outsider Justice*, Oxford University Press, Oxford, 2008. See also the series "Exemplary Judges" published by the Mexican Supreme Court at available at <http://www.scjn.gob.mx/libreria/Paginas/catalogo.aspx>.

⁴⁷ I have examined some of the ways in which imitation may fail to result in virtue development, with a focus in law, in A. Amaya, 'Admiration, Exemplarity and Judicial Virtue,' A. Amaya and M. Del Mar (eds.), *Virtue, Emotion and Imagination in Law and Legal Reasoning*, Hart Publishing, Oxford, 2020.

⁴⁸ See W. Sanderese, 'The Meaning of Role Modelling in Moral and Character Education,' *Journal of Moral Education*, vol. 42, 2013.

Third, several interventions to promote virtue have been proposed in the field of positive psychology, which could also be useful for developing virtue among law students and legal professionals. For example, in the context of business organizations, interventions which involved completing a workbook with several multi-modal exercises designed to promote humility and writing assignments that incorporate the 'semantic signature' of humility, i.e. the text features that are characteristic of humility, such as inclusive language as well language that maintains equality and emphasizes connectiveness, have been administered and shown to be effective.⁴⁹ The incorporation of interventions such as these, tailored to the legal context, in law school curricula and legal professional training could be an additional venue for fostering virtue in law.

Fourth, it would be necessary to rethink legal education with a view to developing in law students and legal professionals the capacities and skills that are necessary to engage in virtuous reasoning in law. Thus, legal education should be designed to enhance the imagination, affective orientations and perceptual capacities that are characteristic of the virtuous person. Literature and film, as is well known, are important tools for developing these capacities, and this makes them a particularly important element in a legal education thus conceived. In addition, literature and film provide a rich repertoire of models of virtue (and vice), beyond those law students and legal officials may have first experience of, or access through historical narrative, and this is another reason why they should be included in legal educational programs that aim at fostering virtue.

Fifth, as argued above, there are some important structural analogies between virtue and practical skills. The point also holds for their modes of acquisition: virtues, like practical skills, are learned by doing. It has been shown that expertise in several practical domains results not merely from accumulating experience: mere repetition does not lead to skill acquisition, but expertise requires the right kind of experience. 'Deliberative practice,' which provides opportunities for feedback and reflective self-correction, is central to developing expertise.⁵⁰ This kind of practice is arguably also needed for developing virtue: monitoring and feedback are central to the acquisition of

⁴⁹ C. Lavelock et al., 'The Quiet Virtue Speaks: An Intervention to Promote Humility,' *Journal of Psychology and Theology*, vol. 42, 2014 and J. Wright et al., 'The Psychological Significance of Humility,' *Journal of Personality and Social Psychology*, vol. 114, 2018.

⁵⁰ See W. R. Boot and K. Anders Ericson, 'Expertise,' J. D. Lee and A. Kirlik (eds.), *The Oxford Handbook of Cognitive Engineering*, Oxford University Press, Oxford, 2013.

virtue. Thus, the generation of opportunities for deliberative practice in legal education is a further way in which virtue may be nurtured in law. Deliberative practice may be prompted in the classroom by engaging students and legal practitioners in training into practices such as dialectical exchange, receiving criticism, responding to feedback, revising their own views, and listening to alternative viewpoints.⁵¹ In addition, deliberative practice could be fostered in the legal professions by structured case discussions, which provide valuable feedback -beyond the formal one that is enabled by the system of appeals (more on this below).⁵²

Last, and more broadly, legal education could promote the virtues by endorsing a ‘teaching style’ at the law school as well as in continuing professional development that far from giving a simplified (and formalistic) account of legal reasoning, as mere rule-application, conveys the complex nature of legal reasoning and legal decision-making, the momentous moral and political implications of legal decisions, and the urgency of developing a diversity of capacities and skills, beyond the acquisition of technical knowledge, to be able to properly think like a jurist.

b. Institutional design

Virtue may also be fostered through institutional design.⁵³ Design may thus function as a ‘nudge,’ which triggers virtuous behavior.⁵⁴ To begin with, spatial design may facilitate (or its lack thereof) in the legal professions.⁵⁵ For instance, building design may promote epistemic generosity in

⁵¹ These have been argued by Kidd to be instrumental to the development, specifically, of intellectual humility. See I. J. Kidd, ‘Educating for Intellectual Humility,’ J. Baehr (ed.), *Intellectual Virtues and Education*, Routledge, New York, 2017. On the relevance of dialogue and self-reflection for virtue development, see also M. Lamb, J. Brant, and E. Brooks, ‘Seven Strategies for Cultivating Virtue in the University,’ J. Brant, M. Lamb, and E. Brooks (eds.), *Cultivating Virtue in the University*, Oxford University Press, Oxford, 2022.

⁵² As, for example, the clinical case discussions in medicine. See, J. Launer, ‘Clinical Case Discussion: Using a Reflecting Team,’ *Postgraduate Medicine Journal*, vol. 92, 2016.

⁵³ On structural ways to develop virtue, see E. Anderson, ‘Epistemic Justice as a Virtue of Social Institutions,’ *Social Epistemology*, vol. 26, 2012, p. 168.

⁵⁴ See R. H. Thaler and C. R. Sunstein, *Nudge: Improving decision about health, wealth, and happiness*, Penguin, Oxford, 2008.

⁵⁵ Thus, architecture may not only be an expression of virtue, but also contribute to virtue development - even if the process whereby this is done is little understood and not without risks, as some experiments from the past make painfully clear. See P. Dickens, Review of R. Evans, *The Fabrication of Virtue: English Prison Literature, 1750-1840*, Cambridge University Press, Cambridge, 1982 in *Planning and Design*, vol. 11, 1984. On architecture as an illustrative device of virtue, see R. V. Morris, ‘Examples of Public and Private Architecture Illustrating Civic Virtue: Examining Local Architecture from 1800 to 1850,’ *The Social Studies*,

law firms by creating spaces for social interaction and knowledge sharing.⁵⁶ Similarly, the architectural features of a courtroom may promote (or deter) virtue. For example, magnificence in architectural style may nurture judicial magnanimity, and space planning may reinforce social hierarchies and be inimical to displays of judicial humility or it may harden antagonism between the parties and be conducive to a less conciliatory argumentative style on the part of the lawyers.⁵⁷ Interior design is also relevant to fostering a virtuous practice. For example, the interior design of a jury room, such as the use of a round (vs rectangular) table, may prompt (or hinder) a more inclusive deliberation in which all voices are heard and inform the jury verdict.

Normative frameworks, i.e., the design of rules and procedures, can also impede or foster virtuous behavior. Some core legal rules and procedures promote virtuous behavior, for instance, the adversarial procedure, insofar as it gives fact-finders the opportunity to hear the best possible case for each party, is a valuable means of furthering impartiality. Other rules, however, are suspect from the perspective of fostering virtue, for example, intrinsic rules of exclusion insofar as they prevent jurors from hearing an important subset of the relevant evidence are an obstacle to the exercise of the virtue of thoroughness and compromise the exercise of other key epistemic virtues such as the virtue of intellectual autonomy.⁵⁸ Thus, virtue development provides an important perspective from which to evaluate and revise current normative arrangements. In so doing, it is important to bear in mind that the explicit appeal to virtue in a legal rule may not be the most useful way to trigger virtuous behavior. For example, there is evidence showing that an instruction asking jurors to seriously consider alternative views is more efficacious in bringing about impartiality than a direct instruction asking jurors to be impartial.⁵⁹

vol. 95 (3), 2004; and Li Shiquiao, *Power and Virtue: Architecture and Intellectual Change in England 1660-1730*, Routledge, New York, 2007.

⁵⁶ On the promotion of epistemic generosity through endowing employees with a physical space for face-to-face meetings in business organizations, see, De Bruin, *op. cit.*, p. 125.

⁵⁷ On the power of architecture to both reflect and shape our social relations, see P. Lewis et al., (eds.), *Architecture and Collective Life*, Routledge, New York, 2022.

⁵⁸ On the inconsistency between exclusionary rules and the epistemic desideratum of completeness, see Susan Haack, "Epistemology Legalized: Or Truth, Justice, and the American Way," *American Journal of Jurisprudence*, vol. 49, 2004.

⁵⁹ See D. Simon, 'A Third View of the Black Box: Cognitive Coherence in Legal Decision-Making,' *The University of Chicago Law Review*, vol 71, 2004.

In addition, organizational structures can also be consequential for fostering virtue in the context of legal decision-making.⁶⁰ For instance, the separation between investigatory and adjudicative functions fosters impartiality, or the existence of a system of appeals may promote humility and awareness of one's fallibility. The way in which access to different roles within the organization is designed is also relevant for the purposes of generating or obfuscating a virtuous environment – with selection procedures being particularly important in this regard.⁶¹ As mentioned above, different juridical roles call for different virtues, and thus it is highly consequential from the perspective of promoting virtue that the diverse functions in the legal organizations be matched by virtues.⁶²

Thus, spatial, normative, and organizational structures in legal institutional settings may be designed with a view to fostering virtue. Importantly, these structural solutions do not rely on incentives, sanctioning or coercing. Rather, the objective of nudging strategies is to shape the institutional environment in ways that facilitate virtuous behavior. Thus, they differ from (rather controversial) proposals to incite virtuous behavior through moral audits, promotions, and performance management systems.⁶³ In contrast, nudges are indirect measures that enable virtuous behavior, rather than directly associating virtue or its lack thereof with specific normative or financial outcomes. These direct systems for virtue promotion may not only be inefficacious for fostering virtue in the legal context, but also harmful, in that they may engender motivations that are contrary to virtue and generate fake patterns of virtuous behavior that can be detrimental in the long run.

To be sure, these structural mechanisms indirectly get legal officials to behave in accordance with virtue, but they do not instill in them virtue *stricto sensu*, i.e., a reliable disposition to behave in the right way for the right reasons. However, by behaving as a virtuous person would, legal officials may come to acquire virtuous motivations and, eventually, achieve genuine virtue.⁶⁴ In other words, by behaving according to virtue, they may end up behaving out of virtue. For example, a judge by

⁶⁰ For an analysis of some organizational conditions for facilitating epistemic virtues in corporations, see B. de Bruin, *Ethics and the Global Financial Crisis*, Cambridge University Press, Cambridge, 2015.

⁶¹ For a virtue approach to judicial selection, see L. Solum, 'Judicial Selection: Ideology vs Character,' *Cardozo Law Review*, vol. 26, 2005.

⁶² On matching virtues to functions in corporations, see de Bruin, *op. cit.*, pp. 116-122.

⁶³ G. R. Weaver, L. K. Treviño and B. Agle, 'Somebody I Look Up To: Ethical Role Models in Organizations,' *Organizational Dynamics*, vol. 34, 2005, pp. 327-8 and M. E. Brown and L. K. Treviño, 'Ethical Leadership: A Review and Future Directions,' *The Leadership Quarterly*, vol. 17, 2006, p. 610.

⁶⁴ I thank Santiago Echevarri for highlighting this point.

becoming habituated to hear to both sides before taking any decision, may acquire the motivations that are characteristic of the virtuous person, and not only behave as an impartial person would, but also become an impartial judge, who has a disposition to act reliably with impartiality as the result of thinking, deciding, and feeling in an impartial way.⁶⁵ Thus, these structural measures by prompting virtuous behavior may provide a path toward the development of genuine virtue.

c. Culture change

A virtuous legal practice requires, ultimately, a change in legal culture. A number of strategies for highlighting virtue may be useful for steering cultural change in the direction of virtue. First, the virtues could be fostered by explicitly recognizing their value in the codes of professional legal conduct. Although limited as tools for virtue development, these codes play an important role in conveying the values that the legal profession takes to be relevant, providing standards for assessing professional conduct as well as enabling criticism and discussion of core professional values.⁶⁶ Second, the virtues could be promoted by explicitly recognizing their value in the strategies of law schools, law firms, and public legal institutions.⁶⁷ The inclusion of the language of virtue in these instruments is important to publicly state the extent to which a commitment to virtue is central to the normative identity of these institutions and their willingness to proactively nurture it. Last, virtuous legal practice could be praised in different ways, many of which are well known in business organizations, and, more generally, widely used in public culture, such as honorary titles, naming buildings and events policies, recognition programs and awards, or commemorative art. It is important to highlight excellence across the board: from peers, who may provide an invaluable source of inspiration and learning; to legal officials who occupy leadership roles, as their way of relating to others and engaging professionally permeates through different organizational levels; and outstanding jurists -from the present and the past- who have made long-lasting contributions to the profession. Thus, different media can be used to signal virtue and instill in law students and professionals a motivation to cultivate it. Together with educational policy and institutional design, signaling virtue is instrumental to inducing a gradual shift towards a virtuous legal culture.

⁶⁵ J. Annas, 'Nietzsche and the Ethics of Virtue,' unpublished manuscript, p. 2.

⁶⁶ On the benefits and limits of codes, see V. Johnson, "The Virtues and Vices of Legal Ethics," *Notre Dame Journal of Legal Ethics and Public Policy*, vol. 14, 2000.

⁶⁷ See D. Vera and A. Rodríguez-Lope, 'Humility as a Source of Competitive Advantage,' *Organizational Dynamics*, vol. 33, 2004 (for an argument in support of including humility as an element in a firm's strategy and culture).

V. CONCLUSIONS

Virtue theory has importantly influenced different areas of legal scholarship. In this paper, I have examined the relevance of virtue to a theory of legal reasoning. A virtue perspective on legal reasoning brings to light important dimensions of legal argument that are at best marginal in standard, principle-based, approaches to the subject, such as the relevance of the particulars, perceptions, and emotions to sound legal reasoning and the importance of description and specification. By highlighting the relevance of elements that have been considered at best peripheral in standard theories of legal reasoning, a virtue perspective on legal reasoning broadens the subject matter of the theory beyond its traditional boundaries. It also expands the scope of theories of legal reasoning insofar as it vindicates the study of subjective qualities of character, which have been traditionally conceived as the proper subject of legal ethics, as part of the theory. I have suggested a taxonomy of traits of character that are virtuous in the context of the judicial role, more specifically, moral virtues, epistemic virtues, argumentative virtues, communicative virtues, institutional virtues, group-deliberative virtues, and the meta-virtue of practical wisdom. Given the important connections that there are between virtuous character and good legal argument, it is critical that these traits of character be cultivated in the context of the legal professions. I have concluded by suggesting a number of educational, institutional, and cultural measures that could be taken with a view to promoting virtue in the judiciary, and, more broadly, in the context of the legal professions.

Indeed, there are a number of objections that could be raised against a virtue approach to legal reasoning. Some of these problems are well-known in virtue theory, e.g., the objection that virtue theory is elitist, self-defeating, or that it cannot provide action-guidance. Other lines of criticism are specifically raised against a virtue approach to law and legal reasoning, such as that it is at odds with publicity or impartiality in legal judgments, inimical to the rule of law, or in tension with some core commitments of liberal legal systems. Indeed, these (and other) objections would need to be seriously discussed and counteracted to establish the plausibility of a virtue approach to legal reasoning. More positively, however, I would like to conclude by suggesting some paths forward in a virtue-based research agenda in legal reasoning. First, it would be necessary to examine the collective sides of juristic virtue. In light of current work in social (legal) epistemology, it would be convenient to examine

the potential ascription of virtue to collective legal agents (such as the jury and collegiate courts) and the way in which collective virtue relates to individual virtue in legal contexts. Second, virtue jurisprudence should meet design jurisprudence, to envision innovative ways of promoting virtue. A great deal of institutional imagination, informed by solid empirical work, is needed to imagine how changes -even minimal ones - in spatial, normative, and organizational legal structures may facilitate virtuous behavior. Last, experimental jurisprudence can provide extremely valuable insights into how to best understand and promote virtue in law. Thus, virtue jurisprudence intersects in important ways with what are some of the most exciting developments in contemporary legal scholarship.

Finally, a virtue account of legal reasoning has important political implications in that it puts forward a different societal ideal and an alternative conception of the role of law within it. At the end of the day, it leads to questioning nothing less than the feasibility of the modern idea of the law and the state, as a depersonalized institutional machinery that can order social life without relying on any personal qualities that subjects -citizens and legal officials- may come to have or fail to possess. The persistence of the ideal is unrelenting and continues to entice, as current enthusiasm towards the applicability of AI technologies to law conveys. However, the quest for institutions, rules and procedures that can make subjectivity dispensable is a chimerical endeavor. Law without subjects is, furthermore, not only impossible, but a flattened ideal. Ultimately, the turn to virtue is a trend towards subjectivizing law, thereby vindicating the relevance that the character of citizens and legal officials has for the proper working of our legal systems. Good rules and institutions necessitate personal virtue – just as personal virtue is also engendered by good rules and institutions. Personality and polity, ‘soulcraft and statecraft,’ as it was clear to the Ancient, are inextricably linked.⁶⁸ This insight, which is at the core of the project of virtue jurisprudence, carries with it a major shift in the current legal (and political) landscape, the exploration of which has barely begun.

⁶⁸ See J. Hankins, *Virtue Politics: Soulcraft and Statecraft in the Renaissance Italy*, Harvard University Press, Cambridge, 2019.