

Legal Communication & Rhetoric: JALWD

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BOOK REVIEWS

Lillian L. Beeson, *Persuasion: Theory and Applications*

Francis J. Mootz III, reviewer

Persuasion

Theory and Applications

Lillian L. Beeson, Oxford U. Press 2014, 370 pages.

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I. Defending Against Persuasion

Since Isocrates founded his academy in ancient Greece, a vigorous debate has ensued: Can students be trained as rhetors capable of more than sophistic manipulation and what would such an educational program look like? The debate has cooled markedly since the advent of the twentieth century, when rhetoric was displaced as the core of liberal education and relegated to Communication departments to be taught as a forensic skill. The abandonment of rhetoric in contemporary higher education is perhaps reflected by the modest project of Lillian Beeson's new college textbook. Her goal is not to empower students to engage in persuasive exchanges that shape society, but rather to "arm them with the tools to recognize deceitful or fallacious messages"¹ so they can inoculate themselves against surreptitious persuasive techniques deployed in "politics, law, religion, art, advertising, and public relations"² by "strident propagandists who occupy the stage in public life and invade their private mental space."³

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2 *Id.*

3 *Id.* at xiv.

1 Lillian L. Beeson, *Persuasion: Theory and Applications* xii (2014)

The book is intended to serve as a text for an undergraduate course, but this journal's readers will probably be most interested in how it might be used to teach persuasion in a law-school course or seminar or to learn more about persuasive practices in the legal field. Using the book in this way will require reading against the grain of the book's stated purpose and its intended audience, with the recognition that the book can serve as only one source among many. Beeson's emphasis on raising students' rhetorical consciousness may make sense for colleges, which among other things prepare students to enter a world of persuasive discourse aimed at them. But law schools must ready students to participate in elite practices that shape the persuasive character of modern society, in which lawyers and judges play important roles. Nevertheless, the book can serve as a helpful introduction for law students, law professors, and lawyers to some of the broad themes of the rhetorical tradition, and it certainly prompts urgent questions that need better answers in the legal field.

II. Theoretical and Social Scientific Perspectives

One of Beeson's most-significant contributions in this book is to bring together the long tradition of rhetorical theory and the more-recent social-scientific assessment of how persuasion works. Chapter Two provides an excellent overview of theoretical perspectives from the Sophists, through ancient Greece and Rome, up to contemporary narrative theorists. Chapter Four discusses the character of language and its relationship to persuasion, and Chapter Five brings these features together to describe the verbal and nonverbal means by which persuasion succeeds or fails, such as proffering evidence, committing logical fallacies, and drawing on body language and appearance in advocacy. These theoretical groundings for rhetorical study relate closely to the teaching and practice of law as an activity of persuasion. In contrast, Chapter Three focuses on the modern social-scientific approach to assessing audiences for the purpose of motivating them to act. From a lawyer's perspective, this approach to rhetoric most closely connects with the use of jury consultants when trying a case, or the engagement of public relations specialists when defending a high-profile litigant.

All of these chapters are useful for legal readers who want to understand more about different fields that have contributed to rhetoric and to reflect independently on how those approaches relate to law. For example, Beeson's introductory chapters set the stage for dual—and perhaps dueling—conceptions of legal rhetoric. Is the lawyer a sophist who cares only for achieving victory by manipulating his audience to act in

a certain manner, in which case a scientific “objectification” of the audience would be the proper focus of his training? Or, is the lawyer a rhetor in the classical sense, merging eloquence with wisdom to facilitate action in the face of uncertainty and probability? Unfortunately, the book is not detailed enough to facilitate the reader’s consideration of these important questions.

III. Persuasion in Court

Chapter 7 is the only chapter in the book that addresses law and rhetoric specifically, and it devotes a scant 18 pages of text to describe “the marriage of rhetoric and the practice of law.”⁴ The title announces that the chapter will consider only persuasion “in court,” but of course rhetoric pervades the legal system. From interactions with clients, to negotiations with adversaries, to arguing for legal reform, lawyers are enmeshed in a complex rhetorical space. The courtroom trial is a rarified instance of the rhetorical reality of law. It is a shame that the book does not devote more attention to the complex relationship and law and rhetoric, especially given that it may serve as the first introduction to the topic for many college students interested in law school.

The chapter begins by helpfully returning to Aristotle’s delineation of forensic rhetoric, but then proceeds to “fast-forward to the twenty-first century” without amending the scope of inquiry.⁵ Even within the confines of the courtroom, legal rhetoric extends beyond the forensic domain, which focuses on determining what happened in the past. Of course, each case resolves a particular dispute, but it also provides guidance to parties in the future as precedent. Especially on appeal, lawyers must engage in deliberative rhetoric about the appropriate rule for the future. Moreover, the application of a legal rule in a particular context is argumentative no less than the inquiry into what happened, and lawyers routinely engage in epideictic rhetoric to invite the trier to imagine our polity as a just legal community.

The chapter does a good job of describing the narrative structure of the trial, centering on a classic quote from Gerry Spence: “The problem is that we, as lawyers, have forgotten how to speak to ordinary folks.”⁶ Additionally, the chapter emphasizes the centrality of ethos to argumentation by describing how lawyers achieve credibility with a trier of fact,

4 *Id.* at 180.

5 *Id.* at 183.

6 *Id.* at 187.

and makes an important point that plays off of Spence's wisdom: "Surprisingly, as lawyers become more comfortable and confident in their work, they may lose sight of themselves and their effect on others."⁷ In this case, ethos is undermined by inattention to the particular audience. Experienced lawyers thus risk weakening their ethos by arguing generically in accordance with established legal conventions rather than taking a more inventive approach to rhetoric that considers the specific audience before them.

IV. Conclusion

In sum, Beeson's book provides a helpful introduction to the primary elements of rhetorical theory. With six chapters providing specific applications of rhetorical theory—covering politics, law, religion, art and cinema, advertising, and public relations—the reader can gain a broad perspective on rhetoric in contemporary society. But because the chapter on law is so brief and narrowly focused, it provides only a bare introduction to themes that likely will interest this journal's readers. For legal readers, the best use of Beeson's book is as a scaffolding to understand the scope of the rhetorical field. Additional reading will be required to understand the complex relationships of law and rhetoric, and how lawyers can learn to be effective rhetors.

⁷ *Id.* at 194.