



Centre Perelman
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The Year the Enlightenment Ended :
The Uses of Argument and
La Nouvelle Rhétorique
1958-2008

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Série des Working Papers du
Centre Perelman de philosophie du droit
n° 2009/3

Comment citer cette étude ?

R.MOHR, *The Year the Enlightenment Ended: The Uses of Argument and La Nouvelle Rhétorique* (1958-2008), Working Papers du Centre Perelman de philosophie du droit, n° 2009/3, <http://www.philodroit.be>

The Year the Enlightenment Ended: *The Uses of Argument* and *La Nouvelle Rhétorique* 1958 - 2008

Paper given at the 7th International Roundtable for the Semiotics of Law, Boulogne-sur-mer, 1-4 July 2008*

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Abstract

The fiftieth anniversary of the publication of *The Uses of Argument* and *La Nouvelle Rhétorique* provides an opportunity to consider their place at the intellectual watershed of the twentieth century. Both called on methods from law and jurisprudence to rediscover forms of discourse and decision making that had been eclipsed since the Enlightenment.

In *The Uses of Argument* the philosopher Stephen Toulmin set out to overcome the grip of analytic logic on English philosophy, seeking instead a model of argument that would be useful in real life situations of probable warrants for uncertain claims. He went so far as to call logic itself ‘generalised jurisprudence’. The Belgians Chaïm Perelman and Lucie Olbrechts-Tyteca sought to renew the tradition of rhetoric as a foundation for argument in *La Nouvelle Rhétorique*. Both these works looked to unfashionable traditions to guide decision-making in situations of conflict and uncertainty.

Methods of the interpretation of meaning are central to these two approaches to argument. The contributions these two works have made to legal semiotics will be explored in the context of other intellectual developments in the fifty years since their publication. My thesis is that the Enlightenment ended in 1958, with the publication of these two books.

Ending the Enlightenment

This year is the fiftieth anniversary of the publication of two books that marked a watershed in western thought on the relations between logic, argument and public affairs. The books were published in different languages—French and English—and with no connections between their authors. Yet between them they put an end to the long tradition known as ‘the Enlightenment’. The English book was *The Uses of Argument* by the philosopher Stephen Toulmin. The one in French was translated as *The New Rhetoric*, written in Belgium by Chaïm Perelman and Lucie Olbrechts-Tyteca, two philosophers with particular interests in law and economics.

The Enlightenment was an intellectual, primarily philosophical, movement with political and social implications that flourished from the 17th century in Europe. I will take Descartes, and specifically the publication of his *Discourse on Method* in 1637, as the starting date of this movement. I have proposed, by my title, an end date of 1958. I will try to establish my reasons for proposing such a ‘long Enlightenment’ by identifying the main features of the movement, and then showing why I believe its main tenets persisted until the publication of the two books under discussion that signalled the end of that era. I will then say what it was about those books that ended the

* This version has been revised following comments from Jan Broekman at the Roundtable, with sincere thanks for his insight and encouragement.

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Enlightenment, and discuss the fortunes of these competing worldviews in the intervening fifty years.

The main features of the Enlightenment as I conceive it are as follows.

- The quest for certainty. A determination to separate ‘the false from the true’, and in so doing to only pay attention to those unshakeable truths that could be derived from ‘long chains of simple and easy reasonings’ on the model of geometrical or mathematical proofs.¹
- Deriving from such proofs an analytical deductive method that privileged and isolated internal mental processes from sensory experience and from social and linguistic practices. The thinking subject became the ‘model of man’, with consequent emphasis on individual thought and a radical distinction between ‘mind’ and ‘matter’.
- A conviction that this rational philosophical approach encompassed the major part of human intellectual aspiration, with a consequent suspicion of any other methods. This had the effect of imposing a sort of monoculture of approved methods of thinking across all disciplines, from physics to biology and from politics to ethics.

Now of course many of these other disciplines proved resistant to colonisation by the deductive method. The most effective of these were biology and geology, which persisted with induction and classification, and increasingly inclined to a historical method, developing the major narrative of evolution.² There was a flowering of historical methods and their prestige in the nineteenth century, so that evolutionary geology and, later, biology developed in step with historicism, and the ‘Romanticism’ that is often thought to have ended the Enlightenment.

Enlightenment principles survived, however, and even strengthened with the rise of positivism in the social sciences (Comte) and law (Bentham, Austin). Despite the increasing influence of divergent traditions in the late nineteenth and early twentieth centuries³, there was a virulent rearguard action in philosophy, with the predominance of analytical philosophy in Britain and of logical positivism emanating from Vienna. At the same time that positivism was dominating law and the social sciences, the methods of argument were overwhelmed by the narrowest of Enlightenment traditions, modelled on mathematics and rejecting the possibility of reaching any rigorous conclusions on matters of values or judgment.⁴ Even worse than the efforts of the high Enlightenment, which still, misguidedly perhaps, sought rigorously analytical intellectual proofs of moral dilemmas, this last dismal science eschewed even the possibility of meaningful talk of difficult moral or social issues. By the mid twentieth century, the Enlightenment ideals of certainty and reflective analysis combined with the distrust of sensual experience and of alternative methods or intellectual traditions to kill off, in many branches of philosophy, law or the social sciences,

¹ R. Descartes, *A Discourse on Method*, 1965 16

² Gould, S. J. (1988) *Mighty Manchester*, in *New York Review of Books*, Vol. 35, 27 October 1988 32-34.

³ There were strong countervailing philosophical traditions in the USA (pragmatism), France (Bergson), Italy (Croce) and even England (Collingwood). In the social sciences, Freud and some of a more ‘humanistic’ bent (Durkheim, Weber) started to break the mould. Yet fierce reaction suppressed these developments in the core disciplines of philosophy.

⁴ Respectively, Russell and Whitehead, and Carnap and the Vienna circle. H. Putnam, *The Collapse of the Fact/Value Dichotomy and Other Essays*, 2004; S. Toulmin, *Cosmopolis: The Hidden Agenda of Modernity*, 1990. The Scot John Anderson, professor of philosophy at Sydney University, held to this strict division of the subjectivity of morals from the conclusiveness of logic and was hugely influential in the intellectual milieu that I entered in the 1960s.

particularly in England, the serious intellectual pursuit of policy, ethical or social inquiry. These fields were seen to be 'subjective', and abandoned to the theologians and the Marxists.

Two books first published in 1958, one in French, the other in English, came from very different traditions and chose their primary targets accordingly. *The New Rhetoric*⁵ takes aim at Descartes: in the very first sentence, in italics, the authors refer to their project as '*une rupture avec une conception de la raison et du raisonnement, issue de Descartes*'.⁶ Chaim Perelman and Lucie Olbrechts-Tyteca criticise later philosophers, from Kant to Bergson, for their continuation of the Cartesian split between mind and matter, the heart and the head, and 'the limitation they impose on the concept of reason' (NR I).

The Uses of Argument, by the English philosopher Stephen Toulmin, attacked the logical positivism of the Vienna Circle, and more subtly the British tradition of analytical philosophy that had only recently begun to be loosened by the later work of Wittgenstein and by J. L. Austin.⁷ Toulmin too criticises Descartes directly, not in the first sentence but towards the end of the book, where he emphasises that not all arguments are analytical, and in a more typically English move refers to the importance of induction. Toulmin expanded on this attack in a much later book, which explicitly defined the Enlightenment as that reaction, of which Descartes was the principal exponent, against the tolerant engagement of the Renaissance in a variety of modes of thought and methods. In *Cosmopolis* (1990), Toulmin sees the subsequent three centuries as a halting and frequently interrupted return to diversity in thinking and conceptions of epistemology that was not to be achieved until a generation after the Second World War. If Toulmin sets a clear date on the end of the Enlightenment, it is 1968. In this I think he underestimates the role that both he and the authors of *The New Rhetoric* played in its demise, which is the theme of this paper.

Comparison

Both books set out to analyse the structure of arguments. Perelman and Olbrechts-Tyteca begin from the need to 'secure adherence'; hence their focus is on the audience, in the rhetorical tradition. Their thrust is to elaborate an approach to argumentation that draws on this tradition, while relating it to contemporary issues. They foreground the notion of the audience, which is scrutinised from a sociological, more than a classical point of view, appreciating the diversity of audiences in modern societies, summed up in their phrase 'the universal audience'. The rhetorical tradition is also updated through the use of examples from contemporary sources (from the popular press to de Beauvoir's *Second Sex*) and points of view deriving from a wide range of writings in philosophy,

⁵ I use the subtitle, by which the book goes in English, since it is both shorter and more resonant than the original title *Traité de l'argumentation: La nouvelle rhétorique*. What is lost in this translation, apart from the emphasis on 'argumentation', is a possible allusion to Piaget's *Traité de logique*, published nine years earlier, to which Perelman and Olbrechts-Tyteca refer. If I am right that this was an intentional allusion, it highlights another parallel between the two books, i.e. that both were embarking on a sideways critique of logic.

⁶ C. Perelman et al, *Traité de l'argumentation: La nouvelle rhétorique*, 1970 I, p 1. Translated as 'a break with a concept of reason and reasoning due to Descartes' C. Perelman et al, *The New Rhetoric. A Treatise on Argumentation*, 1969. Henceforth, NR. Following Haarscher I will refer to paragraph numbers rather than page numbers, to enable cross referencing to any edition. Paragraph numbers in the introduction are in Roman numerals, in the body, in Arabic, preceded by §). Quotes in French are from the 1970 (3rd) edition, in English, from Wilkinson and Weaver's 1969 translation.

⁷ Carnap is Toulmin's most commonly named target. S. Toulmin, *The Uses of Argument*, 1964 Henceforth, UA, with page references to that edition.

politics, jurisprudence and sociology. The book is characterised by its broad and eclectic interdisciplinarity, which pervades its structure as much as its sources.

Toulmin's approach to the structure of arguments is, at first glance, more obviously philosophical, in an analytical tradition. He analyses the structure of arguments into their components, leading from data to conclusions. It is in the detail of that structure that we find the radical implications of warrants, backing and qualifiers that allow arguments to reach conclusions even without certainty in each of their premisses. Toulmin addresses himself to the field of everyday disputations that have practical conclusions: decisions must be reached even without certainty.

Each of these books is fundamentally concerned to work in areas where absolute certainty is not possible.

'The very nature of deliberation and argumentation is opposed to necessity and self-evidence, since no one deliberates where the solution is necessary or argues against what is self-evident. The domain of argumentation is that of the credible, the plausible, the probable, to the degree that the latter eludes the certainty of calculations.' (NR I)

Toulmin, too, pays particular attention to probability, devoting the second chapter (or 'essay') in the book to the topic. While Toulmin sees the connections between calculated probability and unquantified probability, his focus on the relevance of the field of argument is illustrated in the observation that bookmakers, actuaries and theoretical physicists may need to quantify probabilities, but that this is generally irrelevant in other fields of argument. (UA, 91-93).

Toulmin makes his starting point the elements that various types of argument have in common, while identifying the different standards to be applied in different fields.

Sources and traditions

Both *The Uses of Argument* and *The New Rhetoric* self consciously revive older intellectual traditions, having at least two important sources in common: Aristotle and jurisprudence. While Perelman and Olbrechts-Tyteca drew on a galaxy of influences, Aristotle's *Rhetoric* is clearly first among them. Yet they are critical of Aristotle, and many subsequent writers who join him in drawing a distinction between 'the theoretical discussion of theses' (the subject of the *Topics*) and the focus of the *Rhetoric* on arguments taking 'the particularities of audiences into account'. Perelman and Olbrechts-Tyteca are determined to overcome this 'traditional distinction between action on the mind and action on the will', which they maintain is based on 'the error ... of conceiving man as made up of a set of completely independent faculties'. This leads, they say, to the divorce of rationality from choice, 'thus making the exercise of human freedom absurd'. (NR §10) *The New Rhetoric* is directed at discovering a new rationality, which is constantly in dialogue with an audience (even if that is only in the imagination of the thinking/acting subject), a rationality capable of directing human action.

Now whether this split can really be blamed on Aristotle, both the Belgian and the English authors see him as the foundation of an approach to reasoning that overcomes the constraints of the Enlightenment. Toulmin introduces his 1958 work with a quote from Aristotle that reminds us of the tradition that did apply science (επιστημη) to proof or the 'justification—in an everyday sense—of claims and conclusions of the kind that anyone might have occasion to make'. (UA 2) That is to say, rational thought about facts, ends and means in the everyday world of imperfect knowledge and the need to decide, to judge. Useful arguments are just those arguments that we need to come to conclusions in daily life.

It is here, on the need to reach judgments in disputed or uncertain circumstances, that both the books under consideration emphasise the affinity of their inquiries with the methods of the law. In his introduction to *The Uses of Argument*, Toulmin indicates his preference for the jurisprudential analogy that runs through the book.

'Logic is concerned with the soundness of the claims we make—with the solidity of the grounds we produce to support them, the firmness of the backing we provide for them—or, to change the metaphor, with the sort of case we present in defence of our claims. The legal analogy implied in this last way of putting the point can for once be a real help. So let us forget about psychology, sociology, technology and mathematics, ignore the echoes of structural engineering and *collage* in the words "grounds" and "backing", and take as our model the discipline of jurisprudence. Logic (we may say) is generalised jurisprudence.'
(UA 7)

In this passage Toulmin begins by calling jurisprudence a 'metaphor', in the same way that 'grounds' for an argument draw on structural engineering, but then gives it a greater weight by redefining logic itself in these terms. Further into the book, the analogy is put to use as a means of defining the elements of an argument. These are derived from the structure of legal case, where a claim is stated, supporting evidence is given, and a verdict is reached. So, in arguing, we adduce data in support of a claim, which holds good provided we can back it with warrants and qualify it in the light of possible rebuttals. (UA 97-107)



The legal analogy has been a major source of Toulmin's thinking, and it provides a useful model of a structure of argument that serves his purpose of being applicable, *mutatis mutandis*, across a range of fields, from evaluating of works of art to judging the validity of generalisations.

While Toulmin relates this type of argument to jurisprudence, he does not draw on the legal tradition, or on notions of justice and judgment, to the extent that we find in the *New Rhetoric* or other writings by Perelman. Perelman used law less as a starting point (in the manner of Toulmin) and more as a source continually propelling his inquiries into such fundamental issues as justice and decision-making, publishing many books and essays on themes of justice and legal reasoning after the *New Rhetoric*. Underlying that work, however, is the legal principle compelling the judge to decide, even in the absence of a definitive direction from the law. Just as Toulmin noted the need to make everyday decisions no matter how uncertain or qualified some of our premisses may be, so Perelman and Olbrechts-Tyteca recognised that in life as in law, decisions must be reached.

A final common source should be mentioned before noting a couple of divergences of the traditions behind these two works. The tradition of analytical philosophy and mathematical logic stimulated both Toulmin and Perelman. I have already mentioned Toulmin's background in the British analytical tradition, and his reaction against its more positivist relations, including the mathematical reductivism revived by Frege and picked up by Russell and Whitehead. Perelman's philosophy

thesis had been on Frege, who does not rate a single mention in the *New Rhetoric*. There is, however, a telling comment in a 1971 paper by Perelman in which he compares Frege's renewal of modern logic through mathematical reasoning with his own renewal based on *legal* reasoning.⁸ The analytical tradition nurtured both Toulmin and Perelman, yet it influenced them as an irritant; the grain of sand that stimulates the oyster to produce the pearl.

Each of these authors has referred back to pre-Enlightenment Renaissance humanism, though in different ways and contexts. While he is silent on this early influence in the 1958 work, Toulmin harks back to it in the later *Cosmopolis*. He sees in that period the great flowering not just of the Aristotelian tradition, but of a wide range of useful and practical methods. It is a little surprising that he does not mention Vico, the early eighteenth century author who kept this tradition alive into the high Enlightenment, and who continued to argue against Descartes a hundred years after his influence was assured. Vico's extraordinary innovation, hand in hand with his anachronicity, continued to inspire post-Enlightenment thinkers through the Romantic period up to Perelman and Olbrechts-Tyteca, who acknowledge their debt to Vico in many places.

American pragmatism, specifically that of Dewey, is an explicit influence on Toulmin that we do not find in the *New Rhetoric*.

Impact

The two books published in 1958 revived traditions of contextual argument and means to reach interim or working decisions from uncertain grounds. Each of them served to reattach philosophy to practical affairs, to sense experience and to action. They both showed a way out of the impasse of positivism, overcoming the tyranny of certainty as well, in the case of the *New Rhetoric*, as the split between the objective and the subjective, mind and body, heart and head.

Perelman, Olbrechts-Tyteca and Toulmin obviously did not end the Enlightenment on their own. Other influential traditions clearly contributed to this belated end of the Enlightenment. The linguistic turn, a convergence of forces as diverse as semiotics (deriving from Peirce or Saussure) and Wittgenstein, certainly contributed to its demise. I mentioned above Dewey's influence on Toulmin, another contribution of the American pragmatist tradition, which continued through Rorty and Putnam⁹ to act against the strictures of the positivism of the late Enlightenment.

The most curious finding of the present study is the contradictory position of legal and jurisprudential traditions. I noted at the outset that positivism was embraced by law and sociology even as it seemed to be loosening its grip on other disciplines, such as biology or certain human studies (to recall Dilthey's *Geisteswissenschaften*). While there were signs of a rapprochement between these two strands in early twentieth century sociology, jurisprudence lagged sadly behind. Even after 1958, legal theory (at least in the anglophone world) continued to be dominated by positivism, even as these two books drew on jurisprudential traditions to purge its influence on broader fields of philosophy, logic and argument. The methods of the older traditions—rhetorical argument, making a case using the best evidence available, and reaching a decision even in uncertainty—persisted in the practice of the lawyers even as they were denigrated in the theories of their teachers.

⁸ 'The Justification of Norms', first published in 1971 in French; English in C. Perelman, *Justice, Law, and Argument. Essays on Moral and Legal Reasoning*, 1980 108.

⁹ H. Putnam, *The Collapse of the Fact/Value Dichotomy and Other Essays*, 2004; R. Rorty, *Philosophy and Social Hope*, 1999

There has been an increasing interest in law and semiotics and in cultural studies of law over the past fifty years, and it may not be over-optimistic to suggest that these sub-disciplines have begun to have some impact on legal theory more generally. The *New Rhetoric* and the *Uses of Argument* laid the groundwork for some of these developments, but their appearance at a crucial moment has not been fully appreciated, nor has their potential as a source of connections between jurisprudence, philosophy and practical concerns.

If these two works stood at the beginning of a new appreciation of the cultural and philosophical implications of law, what can we say of the subsequent history of their approach to the Enlightenment? I have argued that the Enlightenment, with its quest for certainty and determinacy, and its separations of objectivity from subjectivity, facts from values, was laid to rest in 1958. What have been the subsequent fortunes of these ideas, and of the alternatives supplied by Perelman, Olbrechts-Tyteca and Toulmin?

In a recent review Brooke has noted that ‘the incidence of the phrase “Enlightenment values” in ... the British broadsheet press has roughly quadrupled in the wake of the terrorist attacks of September 2001’. Brooke goes on to attribute much of this usage, ‘with its connotations of sturdy opposition to religious fanaticism’ to ‘the more muscular liberals’ and other foreign policy ‘hawks’.¹⁰ I have had occasion elsewhere to draw attention to the use of the same terminology in a passage critical of the Bush administration,¹¹ used in that instance by a ‘muscular liberal’ opposed to some of the excesses of that regime. Championed by liberals coming from both left and right, it would seem that ‘the Enlightenment’ is back in vogue.

In *Cosmopolis*, Toulmin proposes that the Enlightenment was a reaction to the horrors of the religious thirty years wars in seventeenth century Europe. The relatively peaceful atmosphere of the Renaissance had allowed a flourishing of ideas, including some that had a divisive social and political impact. In seeking a way out of the conflict and bloodshed of the wars between Catholics and Protestants, the philosophers searched for certainty, for incontrovertible beliefs that everyone could (indeed must) agree upon. Toulmin extends this argument into the late nineteenth and early twentieth century, suggesting that the early signs of methodological pluralism of the fin de siècle of one hundred years ago had been suppressed by the new horrors of the two world wars. The absence of overt conflict in the postwar years opened the way, in Toulmin’s view, for the relaxed multiplicity of philosophical styles to flourish again. This, at least, was his optimistic view in 1990, in that cheerful moment (was it really a whole decade?) between the fall of the Berlin wall and that of the World Trade Center.

I have been proposing that the approach of the two 1958 books was a healthy corrective to the particular ‘Enlightenment values’ of certainty within a very limited range of inquiry, and abstract deductive logic. Before concluding I would like to refer to a related debate, in which Perelman’s approach to argumentation has been invoked in defence of specific values that have been associated with the Enlightenment in recent polemics. This will give an opportunity to reflect on the relationship between substantive or teleological values and procedural or deontological ones.

Haarscher, in a recent working paper, has invoked Vico and Perelman in defence of specific values of freedom of expression.¹² He refers to these as the ‘values of liberal democracy’ (and human rights) rather than ‘Enlightenment values’, and in fact takes a stand, with Vico, against the ‘study methods’ of Descartes, emphasising that audiences accustomed to accepting only arguments from

¹⁰ C. Brooke, ‘Light from the Fens?’ 2007, *New Left Review*, 44 151.

¹¹ R. Mohr, ‘Identity Crisis: Judgment and the Hollow Legal Subject’, 2007, *Law Text Culture*, 11 106.

¹² G. Haarscher, ‘Rhetoric and its Abuses’, 2008, *Working Papers du Centre Perelman de philosophie du droit*, (2008/1)

certainty will be ill-equipped to distinguish good from specious arguments in rhetoric. Haarscher uses the example of arguments against critiques or transgressions of religious taboos on the grounds of freedom of expression. While laws or arguments opposing 'blasphemy' may be effective against such critiques (they are at least honest), it is specious to argue against the right to publish on the grounds that this freedom impinges on the religious person's freedom of expression. In Haarscher's view, this is to use the values of liberal democracy in the service of anti-liberal repression.

Haarscher highlights the distinction between the values that have fashionably been associated with the Enlightenment (but which in fact have been promulgated most effectively through post-war UN declarations and covenants) and the methods that may be used to argue for them. To champion human, social or cultural rights it is not necessary to revert to an imagined 'age of reason'. Those rights should be defended, or criticised, using the best methods of argumentation available, regardless of any spurious association with a grand project like the Enlightenment, that can be wheeled out as a demand for universal allegiance and adopted for various special purposes. Indeed, the combative context of these invocations, and their express association with a particular historical period in a specific geographical location (Europe) suggests that the Enlightenment is serving the purpose of a founding myth, or a flag behind which to rally the troops, or a claim to identity, if not all three.

The value of argument, for Perelman and Olbrechts-Tyteca, was as a means of dialogue among diverse audiences. That they spent such effort on the question of the 'universal audience' highlights the importance of this broadening of a social conception of the ways in which arguments are to be devised, and of the issues they must address. While supporting Haarscher's contention that freedom of expression is not to be used as an argument for suppressing it, I would also draw attention to the conditions necessary to maintain the dialogue between audiences and between cultures. This is not enhanced by those who seek to provoke their opponents, either by purposely offending them in the name of a right to freedom of expression or by declaring a fatwah against the individuals seen to have transgressed. Nor is dialogue enhanced by those who draw on a specific tradition with universalist claims to one true faith or to an intellectual tradition to which a specific culture lays claim.

Now that television and the internet beam images and words (translated or not) into homes across the world, the universal audience is more real than ever before. Barack Obama realised this after speaking intimately to a tolerant audience in San Francisco about the causes of xenophobia and attachment to firearms and religion among unemployed and marginalised voters, which remarks quickly made their way back to those very voters in the south and the rust belts of the eastern United States. Danish editors need to realise this when publishing inflammatory cartoons. They may have the right to publish this material. But whether this is a civilised way to conduct a dialogue with people of different cultures, with different beliefs, that is another question. And I propose that it is the more important question.

The great advances of 1958 were in the area of an expanded logic, of argumentation as a means for decision-making and dialogue. They overcame the stranglehold of a reductivist logic, '*issue de Descartes*', compounded by Carnap. These changes, and the approaches they fostered, have passed into the mainstream of social enquiry, merging with older traditions of semiotics, phenomenology and the *Geisteswissenschaften*. If there is a popular yearning for an imagined 'Enlightenment' past, and an invocation of it in conflicts of the present, there is nonetheless a vibrant counter-tradition, from Vico to Toulmin, Perelman and Olbrechts-Tyteca. This tradition reminds us to be aware of our audience, to address all their faculties (not just reason) and to cooperate in coming to difficult conclusions in atmospheres of uncertainty.

