

LLI's Oath of Justitia

The student competition



Let's design the future. Together.

Runner Up Winner

Dear reader,

this submission won the Runner Up prize of the LLI's Oath of Justitia student competition. It is one of the first ideas towards the creation of an Oath of Justitia.

With a renewed focus on ethics and professionalism within the legal profession, this submission draws on five principles essential to the practice of law in an era governed by rapid technological change. The intention is for the Oath to serve as a 'rite of passage' for lawyers, inviting them to build an enduring personal relationship with the values of their profession.

Any comments and suggestions are welcome.

We wish you a joyful reading,

The Gavel Smashers Team & the Liquid Legal Institute

The Gavel Smashers team members:

Ms. Winona Horton

Mr. Matthew Harper-Gomm

Ms. Angela Stevens

Contacts at the Liquid Legal Institute:

Ms. Antonia Kendrick | Mr. Evgeny Ioffe

oath@liquid-legal-institute.org

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OATH OF JUSTITIA

As a legal practitioner my paramount duty is to the promotion of justice. My duty to the court of which I am admitted will prevail to the extent of an inconsistency with any other duty. I will comply with both the law and my ethical obligations. Beyond the scope of these rules, I will exercise the power and privilege bestowed on me with care and consideration for my position in the broader community.

INVENTIO

I will act in the best interest of my client. I will offer considered advice, act as a competent agent and be an impassioned advocate as required. I will follow all client instructions, to the extent they are lawful and proper. I will avoid any conflicts of interest, either personal or professional, and maintain confidentiality in all dealings.

DISPOSITIO

I will not knowingly or recklessly deceive the court. I will respect the court and not make any false representations. I will avoid overzealous advocacy and vexatious litigation, bringing only relevant claims, submissions, and materials.

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ELOCUTIO

I will deliver information in a clear, complete and appropriate manner. I will perform my undertakings punctually and effectively. I will ensure professionalism in all my interactions, considering personal circumstances of parties alongside broader external factors.

MEMORIA

I will seek to continuously grow my knowledge. I will not be afraid to confess ignorance and seek counsel to best serve my clients and the court. Where possible, I will pass on this knowledge, along with my support and advice, to incoming members of the profession.

PRONUNTIATIO

I will promote access to justice and digital inclusion without frivolously charging any of my clients. Any technologies used to inform my legal advice will adhere to ethical standards and be openly explained to ensure transparency and fairness and maintain my client's trust.

Word count: 300 words

EXPLANATORY ESSAY

INTRODUCTION

Our Oath seeks to address current and future tensions within the legal profession, while paying homage to the roots of the practice. Maintaining a careful balance between ethics, professionalism and rapid technological advancement, the Oath is intended to act as 'rite of passage' for lawyers. By aligning practitioner's personal values with those of the broader professional community, the Oath seeks to bridge the gap between competing duties.

RESPECTING THE PAST

In forming our Oath, we aim to acknowledge and pay respect to the foundations of the legal tradition, rendering it robust enough for continued relevance in an evolving society. The format of our oath relates to the foundation of modern legal practice. Namely, the five sections represent the five canons of rhetoric used by orators in Ancient Greece and Rome: these being invention, arrangement, style, memory, and delivery (Corbett 1990, p. 1; Young et al. 1970, p. 1). Centring the Oath of Justitia on these principles lends it a weight of tradition that is analogous with its medical counterpart. Athenian orators, while not formal legal professionals, performed the same advisory role in their communities as modern practitioners (Bonner 1927). Furthermore, these Ancient societies set the precedent for members of the broader community to have affordable access to legal advocacy while navigating the justice system, which is one of the cornerstones of our modern democratic society.

'Inventio' is the canon of rhetoric that describes the method used to discover arguments (Glenn et al. 2008). It is the first step in the process of putting together a case, and our Oath includes the fundamentals of modern legal practice – acting in the best interest of the client, avoiding conflicts of interest, and maintaining confidentiality. 'Dispositio' relates to the selection and organisation of arguments into effective

discourse, and the Oath in this section relates primarily to duties of the lawyer to the court (Jebb (trans) 1909). 'Elocutio' is the canon that relates to style of discourse, which is in turn to be matched to matter and audience. Quintilian in his *Institutio Oratoria* deemed the plain style suitable for instruction, the middle for moving oration, and the high for charming discourse (Tellegen-Corperus 2003). Today elocution, and rhetoric more broadly, are associated with the last of these styles. However, as in Ancient times, each style serves a distinct purpose when seeking a justice. The imperatives of the Oath in this section reference the four main ingredients to effective oration – correctness, clearness, appropriateness, and ornamentation. 'Memoria' is vested in the need for Ancient orators to memorise their speeches. However, beyond rote memorisation it also required an orator to have a wide knowledge base to allow for improvisation, responding to questions and refuting opposing arguments. This familiarity with a range of topics also played a role in community respect (Cazacu 2011, pp. 85-87). Therefore, the commitments in this section draw from the Hippocratic Oath, specifically the cultivation and sharing of specialist knowledge. 'Pronuntiatio' relates to delivery of one's advocacy and is similar to 'elocutio' in its strong connection to context (Heinrich Lausberg et al. 1998, p. 480). More broadly this section relates to technology of the time and in recognition of the challenges posed by modern technology, we have included the need for accessibility to justice in this section.

The repetition of '*I will*' throughout our Oath is influenced by the Hippocratic Oath (Edelstein 1943). While this repetition is present in the original text, it is most prevalent in the widely cited 1964 modern re-write by Louis Lasagna of Tufts University. Framing these obligations as directives creates in those that take the Oath a binding imperative and elevates the law to a profession that requires ethical obligations, outside of any prescribed statutory duties. Furthermore, this link to the Hippocratic Oath emphasises the role of a professional as a member of the broader community. Specifically, that one's ethics must go beyond simple rules to be complied with, or risk what Sir Brennan describes as "spiritless compliance" which would soon be "replaced with skilful evasion" (Brennan 1992). It is this moral imperative, vested in a rich legal tradition, that the Oath intends to instil in all who swear to uphold it.

ACKNOWLEDGING THE PRESENT

The law is a historically self-regulating profession (Terry et al. 2012), and our Oath recognises centuries of legal refinement that have produced the legal conduct principles which exist today. For this reason, our Oath incorporates several unifying principles which have been gleaned from a comparison of the legal conduct rules of three jurisdictions – Australia, the United States, and Europe. It does not make sense to entirely reinvent the wheel when considering what standards and principles ought to be included in a concise legal oath. Rather, much like the law itself, we have built upon what has come before, adding and tweaking where necessary, while maintaining proven principles and concepts.

The key advantages of a legal Oath are its brevity, clarity, solemnity and universality. Conduct rules and legal regulations can be long and confusing, not having the same solemnity or memorability in their legislative form as an oath has. However, by distilling the fundamental principles, the benefit of their relevance and importance can be maintained in short form in a simple and intuitive way that is accessible to legal professionals at all levels.

Most Australian jurisdictions have adopted uniform rules regarding solicitor conduct under the ‘Legal Professional Uniform Law’. Under this legislation, the Law Council of Australia has developed conduct rules for solicitors outlining their duties and responsibilities. The fundamental ethical duties emphasised in the rules (Australia Solicitors Conduct Rules, r 4) are for a lawyer to act in their clients’ best interests, to be honest and courteous, deliver services promptly and competently, and to avoid compromise to professional integrity. These roughly correspond to the various pillars of the Oath – *Inventio*, *Dispositio*, *Elocutio*, and *Memoria*, respectively. There is also a paramount duty to the administration of justice, which prevails to the extent of any inconsistency with any other duty (Australia Solicitors Conduct Rules, r 3), reflected in the principle of *Pronuntiatio* which promotes access to justice.

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The United States does not have a system of unified rules for lawyers, with each state regulating its own legal practitioners (Zacharias & Green 2009, p. 73), but the American Bar Association has created a set of Model Rules of Professional Conduct which, while not binding, reflect a general consensus on the principles and duties that lawyers should follow. The rules are structured under multiple organising concepts relating to the role of the lawyer, such as the “client-lawyer relationship”, “counsellor”, “advocate”, “transactions with persons other than clients”, “public service”, and “maintaining the integrity of the profession”. These key ideas closely echo the principles highlighted in the Australian Solicitor Conduct Rules, and by comparing the two it becomes clear that there are fundamental unifying conceptions of the role of lawyers in society that transcends jurisdictional boundaries, which have been incorporated into the Oath. For example, the importance of the lawyer-client relationship and the role of the lawyer as an advocate is stressed in both rule sets, and is reflected in the concept of *Inventio*.

We also considered the *Charter of Core Principles of the European Legal Profession*, which calls for loyalty to the client, professional competence in lawyers, respect for the administration of justice, and the self-regulation of the legal profession (Council of Bars and Law Societies of Europe 2013). These again echo the sentiments expressed in the Australian and American rules and are highlighted in the Oath through *Memoria*'s requirement of legal education (competence), *Inventio*'s requirement of acting in a client's interests, and also the general idea of the Oath as a means of encouraging and realising legal self-regulation.

WORKING TOWARDS THE FUTURE

Access to justice is a public good and an integral component of social and economic order. Despite an influx of law graduates and extensive demand for legal services, justice systems worldwide have struggled against burgeoning legal costs and increasing institutional complexity (Tito 2017). As technology advances, the *Pronuntiatio* component of our Oath recognises that “digital inclusion and algorithmic justice”

(Dart et. al 2019, p. 133) remain the two most significant challenges inhibiting access to justice.

Artificial intelligence (AI) has gained prominence as a more accurate and efficient substitute for routine tasks, and has nudged the lawyer-client relationship towards an “unbundled service model” (p. 134). Here, the client can seek general strategic advice and then use document generators such as LawHelp to complete procedural tasks like drafting documents (Larsson 2020, p. 2; Creese 2020, p. 203). A plethora of low-cost and accessible online legal advice has narrowed the knowledge gap between legal experts and their clients (Bell 2019, p. 104). Websites such as Pro Bono Net or LawHelp can extend depleted aid budgets, while apps like Penda from the Queensland Women’s Legal Service can provide legal advice and referrals for domestic violence and sexual assault victims (Dart et. al 2019, p. 141). Yet the Law Council of Australia laments that unequal access to legal technologies will culminate in a “digital divide” (p. 134) between elite and vulnerable communities with acute legal needs, such as the elderly, Indigenous people or CALD individuals. These groups disproportionately suffer from financial strain and adverse health conditions which preclude access to justice, and “digital exclusion” (p. 135) in the form of language and information literacy barriers. The Inventio component of our Oath therefore avers that legal experts must consciously guide marginalised groups towards adequate legal advice as digital access improves.

Amidst consistent productivity gains from AI, the quest for ‘algorithmic justice’ remains elusive. Indeed, full automation remains unlikely given AI’s inability to grapple with complex legal concepts. Wu (2019, p. 2002) draws a similar distinction between AI’s success in “easy cases” governed by settled rules, and “hard cases” without clear precedents, cautioning against the “dangerous or absurd” (p. 2003) results autonomously produced by AI systems when simply required to ‘follow’ pre-existing rules. Yet another obstacle that prevents AI from usurping the role of human legal experts is its lack of certainty and reliability. One recent battleground for AI-assisted justice is its poor algorithmic risk assessments in criminal sentencing. Radavoi (2020,

p. 115) contends that these AI assessments demonstrate limited criminal justice expertise. He decries the “bias towards statistics-influenced data” (p. 117) during sentencing, particularly when AI systems draw on data featuring gender and racial biases. Algorithmic bias undermines markers of “procedural fairness” (Wu 2019, p. 2002), such as the right to be treated as an individual under the law. For instance, New South Wales’ algorithm predicting recidivism was condemned as racist after Aboriginals were twenty times more likely to be marked (Dart et. al 2019, p. 150). Furthermore, Australia’s automated “Robodebt” scheme, used to detect overpayments for people receiving social security benefits, was condemned for its overwhelming number of statistical inaccuracies; approximately 20% of robodebt statements were waived throughout its 4 year implementation (Radavoi 2019, p. 115).

The exact process of AI decision-making is unclear to legal experts, an indicator of its lack of transparency and trust in ‘deep-learning’ algorithms (Larrson and Heintz 2020, p. 8). Rogers and Bell (2019, p. 89) note that few legal or regulatory schemes have been introduced to attribute responsibility to AI developers following unintended results, such as algorithmic breakdowns. These shortfalls have prompted calls for AI developers to submit their algorithms to regulatory authorities for approval. In turn, Australia’s Chief Scientist Alan Finkel proposed that a ‘Turing Stamp’ be used to certify that these new technologies adhere to a certain ethical standard (Dart et. al 2019, p. 152). Alternatively, developers could draw on human-centered approaches to best tailor the justice system to the client’s needs (p. 153). One such example is the legal service charity Justice Connect’s (2019) commitment to train a natural language processing model to diagnose legal disputes in an easy-to-digest manner for clients. In doing so, the project will achieve ‘algorithmic justice’ by ensuring “legal language” (Justice Connect 2019) is delivered in a clear and appropriate manner, in tandem with the Elocutio section of our Oath.

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CONCLUSION

Our Oath maintains respect for the deep history of the legal profession, considers existing legal rules, and leaves sufficient scope to adapt to a rapidly changing ethical and legal landscape in the face of new technological advances. The language and organisation of the Oath around the five canons of classical rhetoric reflect the Hippocratic Oath and provide a sense of historical authority, while simultaneously reflecting the core principles at the heart of legal regulations in varied jurisdictions. Our Oath also draws attention to the challenges associated with the ethical and effective use of 'big data' and AI to ensure access to justice. Overall, this Oath of Justitia provides a concise but holistic ethical framework for legal practitioners at all levels to affirm and help navigate their roles as officers of the legal system and public servants of justice.

Word count: 1992 words

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