OF CHARLIE AND KARL: NOTES ON PERSUASIVE LEGAL WRITING

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How can we distinguish good from mediocre in doctrinal legal research? There may be as many answers to this question as there are lawyers. This essay nevertheless attempts to stake out three elements that are indispensable to quality legal scholarship: law, empirics, and normativity. It draws inspiration from Karl Llewellyn's approach to legal realism and explains how his insights can be applied today. It then turns to Charles Mingus for an approximation of virtuosity in legal writing.

Keywords: Legal method; doctrinal legal research; Karl Llewellyn; persuasion in law

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I INTRODUCTION

> This kind of critic music man teaches people how to listen to music in new schools and he gets paid to play records to brainwash innocent little people

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> who don't know that if you're going to like something that's beautiful no one can tell you how if it don't just happen.[1]

In 1963, the indomitable Charles Mingus released The Black Saint and the Sinner Lady, a musical achievement that can only be described as monumental. It is a wild, chaotic, bold, and extremely beautiful record. It makes you want to dance and rouses you in anger at the same time. The melody is hard to decipher but flows so smoothly in your ear. Most importantly for my purposes, it symbolizes what legal research might aspire to. Readers unfamiliar with the record are warmly encouraged to pause reading this essay and listen to this masterpiece.

Parallels exist between legal writing and jazz music.[2] Here is one: just like Mingus' jazz, the law has many voices and develops through improvisation. There are no rules or strict methodological standards for the evaluation of legal arguments. As a doctrinal legal scholar, it is therefore hard to answer the central question of this special issue on legal epistemologies. But – and here is another similarity to music – just because a creative process cannot be captured in rules does not mean that it resists meaningful evaluation.[3] Put differently, some legal arguments are better than others and, in this essay, I am interested in exploring what makes the difference. As outlined in the first section of this contribution, my view is that the quality of a legal argument is principally measured by the extent to which it persuades. Think of the controversial 2022 decision by the United States Supreme Court in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*.[4] Regardless of one's views on abortion and constitutionalism, it is hard to

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[1] Charles Mingus, liner notes to The Black Saint and the Sinner Lady (13 March 1963).

[2] This article is not the first to point that out. See esp. W Buzbee, 'Jazz Improvisation and the Law: Constrained Choice, Sequence, and Strategic Movement Within Rules' (2023) University of Illinois Law Review 151.

[3] P Kahn, 'Freedom and Method' in: R Van Gestel et al (eds), *Rethinking Legal Scholarship* (CUP 2018) 508.

[4] Dobbs v. Jackson Women's Health Organization 597 US 215 (2022); Roe v. Wade410 US 113 (1973).

conclude that one decision is right and the other wrong from a strictly legal point of view.[5] We can nevertheless debate whether the decisions persuade us, that is to what extent we consider them an accurate reflection of what the law ought to be. As the second section of this article unpacks, I identify three dimensions that arguments in such debates are likely to have: whether the applicable legal framework is correctly and coherently interpreted, what the underlying real-world problem is, and whether the decision adequately addresses that problem. These three dimensions – legal, empirical, normative – are, I argue, indispensable to any persuasive legal argument.

Thus, a legal argument's legal, empirical, and normative dimensions act like formal constraints do in music. It is unfortunately outside the scope of this short contribution to provide an extensive analysis of the formal rules that musicians must – or in any event, tend to – observe and how they relate to creativity. Suffice it to say that jazz, a genre particularly known for improvisation and a seeming absence of musical boundaries, is not devoid of constraints.[6] The need for legal argument to engage with a problem's legal, empirical, and normative dimensions likewise sets constraints on the legal scholar's freedom that is otherwise remarkably broad. What counts, first and foremost, is how the scholar uses their freedom within those constraints. Again, as in jazz music, exceptional scholars distinguish themselves by utilizing that freedom with attention to and congruence with formal constraints to create something novel and exciting.[7]

[5] It is of course possible to discuss the merits of the decisions from other perspectives, such as their consequences for public health: S Compton and S Greer, 'What overturning *Roe v Wade* means for the United States' (2022) British Medical Journal 377:o1255.

[6] Buzbee (n 2) 175 ('Pervasive choosing and change does not mean lacking in rules and constraints').

[7] Ibid 222.

If the analogy to jazz music drawn in this essay has some modest claim to novelty, the underlying point is an old one.[8] It is that doctrinal legal research remains worthwhile, but that it cannot shun engagement with extra-legal dimensions, and that it can be done poorly or well.[9] The primary intended audience of this essay, therefore, are young lawyers in the course of writing their master's or PhD theses. In writing it I drew on my years of experience supervising such theses and on my own wanderings among the vast literature on legal methodologies in search of guidance on how to do 'a good job'. I hope that readers will be inspired to initiate such wanderings of their own, armed with the observations here made as an arrow on the map.

II On Persuasion as the Primary Purpose of Legal Writing

What are we trying to achieve when engaging in legal writing? A traditional view, still prevalent in some European jurisdictions, is that legal writing should bring 'systematisation' to the law.[10] Under a more open-ended definition, it serves to 'help legal actors make decisions in the course of their professional duties'.[11] Still more generally, Jan Smits has argued that 'the ultimate question of legal science is what the law *ought* to be'.[12] Other suggestions on the purpose of legal writing are conceivable, and it will be clear that no single purpose has an objective claim to superiority over the others. Implicit or explicit in each of these goals of legal writing, however,

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[8] N Jansen, 'Making Doctrine for European Law' in: R Van Gestel et al (eds), *Rethinking Legal Scholarship* (CUP 2018) 232 *et seq*.

[9] See also R Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) 25 Journal of Law and Society 171, 182.

[10] M Van Hoecke and F Ost, 'Legal doctrine in crisis: towards a European legal science' (1998) 18 Legal Studies 197, 208 (defining this task as 'recreating a coherent whole instead of [offering] haphazard solutions for concrete cases').

[11] M Osbeck, 'What is 'Good Legal Writing' and Why Does It Matter?' (2012) 4 Drexel Law Review 417, 426.

[12] J Smits, *The Mind and Method of the Legal Academic* (Cheltenham: Edward Elgar 2012) 41.

is an element of persuasion. Whether we are trying to bring coherence to the legal system, resolve a legal controversy, or make statements on how the law should develop, the success of the endeavour turns in large part on its capacity to persuade the reader. Thus, while conceding that there may be other purposes to legal writing and other elements to evaluate its quality, in practice I believe that persuasion is the legal author's most important goal.[13] I would add that this is particularly true for the young legal author. Law is a discipline not only replete with scholarly output, but also heavily reliant on (technically fallacious) arguments of authority.[14] We accept as final decisions from courts that are not subject to further appellate review even if we disagree with their reasoning, and such deference often extends to any statement on the law made by judges or esteemed professors. By contrast, it is hard enough for a young legal scholar to reach an audience, let alone convince readers of the adequacy of their analysis. Especially for them, a reflection on how their work might be most persuasive is critical.

To understand why persuasion is the central aim of legal writing we should recall the challenge to law's determinacy often ascribed to the legal realist movement in the U.S. (but with clear counterparts and antecedents in European legal history).[15] The key insight is that the answer to a legal question is not dictated by positive law alone but substantially influenced by

[13] Osbeck (n 11) 423-4 considers legal writing that persuades *effective*, though not necessarily well-written. In my view, this conflates persuasion with the goals of advocacy. If law is understood as an interpretive exercise, persuasion sets ethical demands on authors that set it apart from merely 'doing what it takes' to win an argument: Kahn (n 3) 517 ('An interpretation is better – objectively better – as it satisfies these ethical demands of honesty, respect, and sympathy').

[14] N MacCormick, 'Argumentation and Interpretation in Law' (1993) 6 Ratio Juris 16, 18-19.

[15] For instance, the German *Freirechtsschule*, about which see A Foulkes, 'On the German Free law School' (1969) 55 *Archives for Philosophy of Law and Social Philosophy* 367, 384; and so-called Scandinavian legal realism, esp. A Ross, *On Law and Justice* (orig. 1953, reprint 2018 OUP) §28. See generally Jansen (n 8) 234.

other factors as well, at least when the question arises in a legal dispute and is decided by a court.[16] This observation has given rise to a vast literature on what really decides case outcomes, often using methodologies closer to psychology or sociology than what students are taught in continental European law schools, which is the subject of several other contributions to this special issue.[17] Thus, some believe courts decide cases based on political preferences, or strategic considerations related to their own prospects within the judiciary, or simply wholly subjective factors. On any of these views, it may seem pointless to engage in analysis of the law when considering how a question will be decided. In my view, that is too extreme a conclusion and most legal realists acknowledged that law constrains judicial decision making (just not in a single, predictable way).[18] At the same time, the indeterminacy thesis suggests that to offer a persuasive account of what the law is or ought to be, the argument should reach beyond positive law and account for the normative and empirical questions legal problems almost invariably implicate. That lesson is most powerfully illustrated by one of the intellectual leaders of American legal realism: Karl Llewellyn.

In his most famous work, Llewellyn sampled random decisions from fifteen U.S. state supreme courts to see 'what [was] going on' when they decided cases.[19] Rather than finding, as might have been expected under a naïve view of judicial decision making, that precedent bound courts in a single, predictable manner, Llewellyn observed that in each case there were 'two, three, or ten' ways in which the precedent might be read and applied, as the

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[16] B Leiter, 'Legal Positivism as a Realist Theory of Law' in: T Spaak and P Mindus, *The Cambridge Companion to Legal Positivism* (CUP 2021) 79.

[17] A review is found in R Posner, *How Judges Think* (Harvard University Press 2010) ch1. Some have pushed the indeterminacy claim to extremes never intended by most legal realists. For an amusing (but thought-provoking) example, see R Delgado, 'Groundhog Law' (2021) 21 *The Journal of Law in Society* 1.

[18] Leiter (n 16) 94.

[19] K Llewellyn, *The Common Law Tradition: Deciding Appeals* (orig. 1960, reprint 2015 Quid Pro Quo Books)159.

case required.[20] He found the same to be true when courts applied statutes.[21] According to Llewellyn, for every rule of statutory interpretation – for instance, 'A statute cannot go beyond its text' – there exists an exact opposite, equally valid rule - for instance, 'To effect its purpose a statute may be implemented beyond its text'.[22] Plainly, he concluded, something else than simple rules of interpretation must determine how the law is applied and the resulting outcome. The study is a clear illustration of law's indeterminacy and although it took place in a historical and institutional context quite different from contemporary European jurisdictions, Llewellyn's main findings ring as true today as they did in his time.[23] For Llewellyn, the capacity to steer the decision in one way or another defined the craft of lawyering.[24] He concluded that the desired outcome had to be 'sold' not by a simple appeal to positive law, but by '[t]he good sense of the situation and a simple construction of the available [statutory] language to achieve that sense'.[25]

We would be hard-pressed to find more accurate guidance for what lawyers should strive for in their work than Llewellyn's idea on how it should be 'sold'. Any legal question worth arguing about, whether in the context of court proceedings or scholarly writing, has more than one plausible

[20] K Llewellyn, 'Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to be Constructed' (1950) 3 Vanderbilt Law Review 395, 396.

[21] Ibid 399.

[22] Ibid 401. Llewellyn cites no fewer than 27 other examples.

[23] See, for instance, M Rasmussen, 'How to enforce European law? A new history of the battle over the direct effect of Directives, 1958-1987' (2017) 23 European Law Journal 290 (presenting, on the basis of archival research, an argument on what *really* drove the European Court of Justice's case-law on direct effect of Union law).

[24] K Llewellyn, 'The Crafts of Law Re-Valued' (1942) 28 American Bar Association Journal 801, 802-03.

[25] Llewellyn (n 20) 401.

answer.[26] Llewellyn's conclusion contains three elements that potential answers should satisfy, they should:

(i) Conform to the applicable statutory language or other norms of positive law;

(ii) Be capable of resolving the situation, or real-world problem, at hand; and

(iii) Do so in a manner that displays a 'good sense' of the situation.[27]

In other words, the solution must be legally defensible and reasonable from a societal point of view.[28] A legal argument will persuade to the extent that it succeeds at these goals. It is to them that I turn in the following section.

III The Trinity of Legal Persuasion: Law, Empirics, Normativity

We have just seen, and every lawyer knows, that any legal rule can be interpreted in a variety of ways. The first element of legal reasoning is therefore not so much to offer the 'right' interpretation of the applicable rules – outside of undergraduate exams, no such thing exists – but a compelling interpretation. Hence, to begin with the author must demonstrate that they know which are the applicable legal rules. As pointed out by Llewellyn, knowledge of the applicable law is a threshold requirement to engage in legal reasoning, not its end goal.[29] That is also what I tell my students: we conduct exams to test knowledge of the law, while in thesis writing students

[26] Kahn (n 3) 521.

[27] Arguably, the same three elements appear in the six-step legal reasoning process provided in T Möllers, *Legal Methods* (Munich: C.H. Beck 2020) 522-24. Indeed, they seem to me fairly universal elements of legal reasoning.

[28] Llewellyn (n 24) 803 (on being attentive to 'the need of the *whole* community, to *reason*, tested by horsesense of current fact and life, to justice as measured by that kind of reason').

[29] Llewellyn (n 24) 802 ('And knowledge of the law we do have, and we do need, but such knowledge is but the precondition of our work').

should stive to demonstrate something more. What they must do is offer a compelling interpretation of the applicable legal framework. In this exercise, they may utilize a variety of interpretative methods known to law students everywhere: textual, contextual, teleological…[30] Ideally, the interpretation advanced should be compelling under each method. In other words, it should be in line with a natural reading of the statutory language, it should make sense within the statute's broader context, it should advance the statute's purpose, and it should be consistent with the overarching values and principles in the legal system.[31] We might borrow from Neil MacCormick the concept of 'coherence' to refer to any interpretation's capacity to score on these indicators.[32] However, there are two caveats which must be considered. The first is that coherence is not an exact science: there may well be competing interpretations each with a legitimate claim to coherence and it may be difficult to assess which is the 'most' coherent. The second follows from the first and is simply that coherence cannot be evaluated in isolation, for as MacCormick points out, it necessarily presupposes coherence with values pursued by the legal system as a whole and therefore requires at least some normative engagement.[33] That underscores how interrelated the elements of a persuasive legal argument are.

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[30] For an illustrative overview of interpretative methods used by the European Court of Justice, see K Lenaerts and J Guttierrez-Fons, 'To Say What the Law of the EU is: Methods of Interpretation and the European Court of Justice' (2014) 20 Columbia Journal of European Law 3. A very elaborate continental (primarily German) perspective is offered in Möllers (n 27) pt2.

[31] Cf. Buzbee (n 2) 178.

[32] N MacCormick, *Rhetoric and the Rule of Law* (OUP 2010) 203 ('Unless, by the coherence test, some ruling or decision is at least 'weakly derivable' from existing law, it is not permissible for judges in their judicial capacity to make such a ruling or decision, however desirable on other grounds it may be').

[33] Ibid 193 ('Thus the coherence of norms (considered as some kind of set) is a matter of their 'making sense' by being rationally related as a set, instrumentally or intrinsically, to the realization of some common value or values').

The second element of legal reasoning concerns the real-world problem the author seeks to address. At the end of the day law exists to achieve social ordering and the vast majority of legal arguments, certainly in the context of court proceedings, concern the application of law to some real-world problem. As per an amusing suggestion by Pierre Schlag, without this connection it is 'as if we were all working really hard on an imaginary bus schedule'.[34] Thus, legal writing should reflect, first, on the problem it seeks to address and, second, on whether that is a problem the law is capable of solving.[35] This requires the employment of empirical methods or at least engagement with sources that employ such methods. It may be the case that the existence of a problem is more or less self-evident, for instance when writing about the law of armed conflict; though even there, it helps to articulate what issue specifically the author is addressing. In some fields, such as environmental law, grasping the problem to be solved requires at least a basic understanding of the science underlying it.[36] And sometimes, as was the case for my PhD research, a significant part of the work consists in determining whether there is a problem in the first place.

The third element to a legal reasoning is its normative dimension. We saw above that law is indeterminate and therefore, by itself, does not dictate how most legal questions are to be resolved.[37] If there are various alternatives available, how do we know which one to choose? Apart from the proposed solution's coherence within the legal system **(first element)** and its fit with

[34] P Schlag, 'Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening' (2009) 97 Georgetown Law Journal 803, 832.

[35] R Van Gestel and H-W Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20 *European Law Journal* 292, 301; cf also E Fisher, 'Back to Basics: Thinking About the Craft of Environmental Law Scholarship', in: OW Pedersen (ed), *Perspectives on Environmental Law Scholarship* (CUP 2018) 35 ('By understanding more about the problems that law governs, we gain a deeper understanding of law and its operation').

[36] Fisher (n 35) 36.

[37] Smits (n 12) 61.

the problem the author seeks to address **(second element)**, the answer will depend on which value the author seeks to maximize. There are various values that the law might plausibly pursue and in deciding cases, judges are intuitively guided by their sense of the values at stake in the dispute.[38] The same is likely true of any member of a legal writer's intended audience. Thus, they may advocate one plausible interpretation of the law over another because it would result in the greatest overall welfare, or be the most just, or be best administrable by courts, or most advance any other number of values. Any of these normative frameworks can very well result in high-quality, persuasive legal research. But it is essential that the chosen framework is expressly identified in the research, for it functions as the yardstick by which the adequacy of the legal argument is evaluated. That explanation is often lost in what Smits calls a 'normative haze', forcing readers to fill in for themselves what the justification is for the author's suggestion.[39] As Liz Fisher reminds us, researchers should also be mindful that the adoption of any given normative framework requires at least a working familiarity with its methods.[40] Thus, performing a compelling law-and-economics analysis will require sufficient knowledge of economics, while a justice-oriented argument generally demands reflection on the justifications of the applicable legal framework.

Needless to say, persuasion depends not only on the author but at least as much on the audience. Just as the musician adapts their tune to the listener, legal authors are well accustomed to adapting the style and content of their work to an intended audience: a brief for submission in a court case will look and read differently than an article, even if they both advance the same substantive arguments. Perhaps, then, adopting persuasion as the purpose of legal writing is vacuous after all, for persuasion may not mean much without an indication of the audience. Attempts to generalize the audience by

[38] Posner (n 17) 111.

[39] Smits (n 12) 43.

[40] Fisher (n 35) 38.

imagining a 'universal audience' of objective, reasonable, and informed readers are a mere reflection of the author's preconceptions.[41] Just so, the assumption that legal writing addresses 'the legal community' or some members thereof does not help matters further, since this community can and does take different forms, holds different views and emphasizes different values, so that the idea of the 'legal community' says more about the author than the community surrounding them.[42]

But the legal community need not remain a figment of the author's imagination. Students have supervisors and fellow students also engaged in writing. Their feedback on whether a piece of writing persuades is a good start to further hone the argument. If their feedback ultimately helps the author persuade themselves, then they have succeeded in persuading at least one member of the legal community. Though I realize this does not answer the formidable challenge that (choice of) audience presents to persuasion as the universal goal of legal research, it is not trivial. Persuading oneself that a novel idea is worth pursuing is not an easy task, certainly not when working under the critical auspices of university supervisors and journal editors.

IV Mingus Returns, or: On Virtuosity and Creativity

So far, the argument has been that legal writing should seek to persuade and that persuasion will depend on how compellingly the author interprets the legal framework, whether they demonstrate that the real-world problem they address is in fact resolved, and whether this resolution is normatively justified. Self-evident though these conclusions may seem, they are often overlooked in doctrinal legal research.[43] In my own PhD thesis, at least, I

[41] C Perelman and L Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (University of Notre Dame Press 1971), 33 ('Each individual, each culture, has thus its own conception of the universal audience').

[42] R Siltala, *Law, Truth, and Reason: A Treatise on Legal Argumentation*' (Springer 2011) 82.

[43] Van Gestel and Micklitz (n 35) 311; Smits (n 12) 43.

endeavoured to present the argument along these three dimensions and so justified the choices I made as to the thesis' focus. When supervising students' theses, I tell them that they can take these elements as a blueprint for their own work. Any thesis that clearly identifies a real-world problem and substantiates its existence, properly outlines the applicable legal framework, and presents an analysis of how that framework ought to resolve the problem will, in my view, satisfy the baseline requirements of good writing at the master's level. But what is needed to move beyond this baseline level to a truly great piece of writing? To answer that question, we return to the master of jazz that we met in the introduction, Charles Mingus.

Mingus' virtuosity as a musician is legendary. As lawyers, our instrument is language instead of the bass, but true mastery may be equally hard to attain. Just as the musician must play the same piece over and over again to achieve perfection, getting better at law requires seemingly endless cycles of writing, editing, and rewriting. It is simply very difficult to express complicated ideas in words, so it is only natural that learning to do it effectively requires a lot of practice. There are many resources available that offer guidance in this respect.[44] Surely the reader can find those on their own, or if need be, with the help of a librarian. Here, I make two additional observations that may not be immediately apparent. The first is that writing well in law is not just window dressing for the underlying ideas. As law is about abstract concepts that can only be expressed through language, the quality of writing directly affects the quality of the ideas: form and substance are very closely entwined. In *The Black Saint and the Sinner Lady* we can see from the liner notes that Mingus intended the record to convey a multitude of concepts. This album is a critical commentary on different genres of music, on time and on creativity, among other themes. Whether the average listener will perceive these layers can be disputed, but it is clear that they cannot be distinguished from the music itself. We could not say, for instance, 'Such interesting ideas,

[44] Osbeck (n 11) addresses in detail how to write clearly, concisely, and engagingly—undeniably three essential ingredients of good writing.

it's just a pity the band conveyed them so poorly in their performance of the songs'. Rather, the music evokes the underlying ideas, and just so the words used evoke the legal argument the author is trying to make. A second, related point is that in law, as in music, mentorship matters tremendously. Mingus would push his band members to their limits, but many went on to form successful jazz ensembles of their own, so much so that Mingus' outfit became known as the 'Harvard University of Jazz'.[45] Doing law well requires skill and good judgment that comes with experience and young lawyers learn by emulating more senior ones. In my view, then, the person who will teach you (and the amount of time and effort they are willing to invest in that process) matter far more when considering vacancies or advanced education than salary or institutional prestige.

I wish to make some final comments on creativity in law. As I have suggested here, solid legal writing is mindful of the legal, empirical, and normative dimensions of legal questions. Great legal writing additionally displays a high degree of creativity. First and foremost, as to the substance of the argument, it has been suggested that it should offer 'something new'.[46] In previous work, I have referred to this as the 'inventive contribution' in legal writing.[47] The degree to which originality is desired differs across types of legal texts: a court brief may call leave less space for original interpretations than a scholarly article.[48] But creativity is as important an asset in practice as in academia because both disciplines are ultimately about finding solutions

[45] Christopher Carroll, 'Mingus: The Chaos and the Magic' *The New York Review of Books* (New York, 12 February 2013) <https://www.nybooks.com/online/2013/02/12/mingus-chaos-magic/> accessed 28 February 2023.

[46] M Siems, 'Legal Originality' (2008) 28 Oxford Journal of Legal Studies 147, 149.

[47] L Dijkman 'Of novelty, inventiveness, and sufficiency: how to write a good paper or thesis' (*The IPKat*, 22 January 2021) <https://ipkitten.blogspot.com/2021/01/of-novelty-inventiveness-and.html>

[48] Cf Delgado (n 17) 14 (speculating that 'law seem[s] to be the only discipline where saying something that someone else had said before is considered good, not bad').

to problems and, as Llewellyn realized, 'vision' and 'skills in finding ways' are what 'mark our best' as lawyers.[49] What is more, creativity can also seep through in the writing itself, when it is elegant and imaginative. In the quote from Mingus' liner notes that opens this essay, he maligns a critic for failing to see that appreciation of beauty in music cannot be taught.[50] I will not make the same mistake by attempting to define elegant writing in law. But if Mingus has one last thing to teach us, it is that it is worthwhile trying to write with exuberance, as though we were jamming on stage at the Village Vanguard. The study of law has a reputation for being dry, dull, and not particularly intellectually challenging.[51] Legal reasoning may not require the raw intelligence needed for, say, theoretical physics, but it asks something different of us – what Llewellyn called the 'good sense' of the situation – that in my view is far more interesting.[52] Cultivating that good sense requires being open to views we do not initially share, familiarizing ourselves with foreign methodologies, and simply living in society with other subjects of the law.[53] Like the Spanish guitar that seemingly appears out of nowhere towards the end of the first half of *The Black Saint and the Sinner Lady*, only to become a part of the motif on the record's b-side, we lawyers can work with anything that grabs our attention. Such openness to improvisation is rare among professional and academic disciplines, and it is fun. Embracing

[49] Llewellyn (n 24) 844.

[50] Cf. Osbeck (n 11) 461 ('There is something about the cadence of the sentences, the juxtaposition of the words, and the vividness of the descriptions that, while difficult to analyze, appeals to our aesthetic sensibilities').

[51] The reputation apparently exists even among tenured faculty: Schlag (n 34) 809 ('… it's just not the sort of thing that requires or permits the display of great intellectual prowess').

[52] Llewellyn (n 20) 401.

[53] The diversity of research directions that law can take is well illustrated in Siems (n 46) who lists a large number of ways in which legal research can contribute to our understanding of law or society.

the creativity the openness allows, in my view, not only makes the output more interesting to read but it also makes it more interesting to write.

V Conclusion

There is perhaps a very real sense in which Karl met Charlie, as the title of this essay suggests: as part of his magnum opus, Llewellyn included a 'Come-All-Ye for Lawyers', a musical ode to the wisdom of the common law, complete with sheet music.[54] Strange though it may sound, there is something irresistible to the analogy of legal thinking and music. Kahn writes that a creative process not subject to formal rules – like music, like law – can nevertheless be done poorly, or done well.[55] Taking a cue from the musical genius that inspired me as I came of age in legal writing, I hope that this essay elucidates for somehow this unruly process may result in useful, elegant and above all persuasive legal argumentation.

[54] Llewellyn (n 19) 250-51.
[55] Kahn (n 3) 508.