# The Way We Live Now: Rhetorical Persuasion and Democratic Conversation

### by Eugene Garver\*

Never was there, perhaps, more hollowness at heart than at present . . . in the United States. Genuine belief seems to have left us.

Walt Whitman<sup>1</sup>

#### I. WHAT'S NEW?

It would be ungrateful for me to argue with the questions I have been invited to explore. But that is where I have to start. I have been asked to address the following:

What are the virtues required for our common life as citizens in a democracy and for civil democratic conversation? How and why have these virtues been eroded in our Republic as we enter the second decade of the twenty-first century? What resources exist within political thought and our American political tradition for confronting this erosion?<sup>2</sup>

I want to quarrel with four presuppositions of my assignment. First, I have no idea whether it is right or wrong to consider the United States in isolation. Maybe our problems are global ones, and maybe they are

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<sup>1.</sup> WALT WHITMAN, DEMOCRATIC VISTAS 11 (Ed Folsom ed., Univ. Of Iowa Press 2010).

<sup>2.</sup> See Purpose Statement, Mercer Law Review Symposium 2011, Citizenship and Civility in a Divided Democracy: Political, Religious, and Legal Concerns, MERCER LAW (Oct. 7, 2011), http://www.law.mercer.edu/content/law-review-symposium-2011 [hereinafter Mercer Law Review Symposium Purpose Statement].

uniquely American. I wonder how a Nigerian, an Israeli, or a Jamaican would respond to those questions.<sup>3</sup>

Second, there is the claim that the necessary virtues have been eroded. It is hard to evaluate such claims and hard to know whether they are meant to be evaluated. Nothing of practical value can come of judgments that our current situation is worse than some past era or historical norm. Yes, many Republicans today deny the legitimacy of President Obama, and President Clinton before him, but many Democrats once denied the legitimacy of President Lincoln, with somewhat bloodier consequences. Whether virtues have eroded or not is really beside the point. The point is that things are bad enough, and it would be good to think they could be improved.<sup>4</sup>

Third, even if the virtues have been eroded, it does not follow that restoration is the solution. The circumstances to which virtue should be responsive have changed, and so should the virtues. Our problems are our problems, not problems that people in the past have already solved for us. Instead of asking how to recover lost virtue, we should ask about the virtues we need now.

The fourth and final point will be my subject. It is the word "and" in the first sentence. Are the virtues required for our common life as citizens in a democracy the same as the virtues we need for civil

American politics has often been an arena for angry minds. In recent years we have seen angry minds at work mainly among extreme right-wingers, who have now demonstrated in the Goldwater movement how much political leverage can be got out of the animosities and passions of a small minority. But behind this I believe there is a style of mind that is far from new and that is not necessarily right-wing. I call it the paranoid style simply because no other word adequately evokes the sense of heated exaggeration, suspiciousness, and conspiratorial fantasy that I have in mind.

Richard Hofstadter, *The Paranoid Style in American Politics*, HARPER'S MAG., Nov. 1964, at 77, *available at* http://harpers.org/archive/1964/11/0014706. It is hard to reread Hofstadter's essay and not ask, "What's new?" One plausible answer is: now they are winning.

<sup>3.</sup> Because I have no idea whether the problems we are talking about are specific to the United States, I will not consider all the possible institutional factors that might structure our problems in particular ways. Aristotle himself says that he has to include considerations of style and delivery in the art of rhetoric because of the depravity of the constitution. See ARISTOTLE, ON RHETORIC bk. III, at 215-82 (George A. Kennedy trans., Oxford Univ. Press 1991). For details, see, inter alia, SANFORD LEVINSON, OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT) (2006). Steven Smith in discussion suggested that the turn to the Supreme Court in the 1950s led to a turn to rights, which in turn has led to more uncompromising rhetoric.

<sup>4.</sup> It has been more than forty years since Richard Hofstadter described current American political discourse:

democratic conversation? Many past worries about similar concerns were framed as questions about the relation between virtue and eloquence, between the virtues of practice, action, and character, and the virtues or skills of fluent and persuasive speech. I will draw on those traditions.

In one of the most permanently stimulating and least influential lines of response, Plato's *Dialogues*<sup>5</sup> draw extensive connections between the courage, temperance, justice, and wisdom of a good conversationalist and of a good person. Socrates insists that if one cannot truly talk about a virtue, then one does not really possess the virtue—you can not be a lover except through being able to talk about love, <sup>6</sup> and you can not be a good politician without being able to give an account of what one is doing. From knowing the good, good action will follow immediately and so will truthful and trustworthy speaking.

A more popular line of thought has Cicero as its champion. Drawing on a tradition that extends back at least to Socrates and forward into the civic humanism of the Renaissance, Cicero talks about the union of wisdom and eloquence. This line of thought sees the great crisis of philosophy and common life as the separation of the eloquence from wisdom, which Cicero blames on Socrates for making wisdom so difficult that people had to specialize in one or the other. Cicero's diagnosis continues in more modern variants in the idea that the deterioration of the political conversation . . . is exacerbated by the corruption of the political conversation through its effective displacement by the administration of economics. We face the same problem as Cicero: how to come to practical decisions through the use of practical intelligence against the looming background of an expertise that can always make civic discourse look naïve, misinformed, out of date, and immature.

A third tradition denies any connection between practical wisdom and eloquence, and even sees them as contrary powers. So much of the success of modernity has come from denying the place of rhetorical excellence and from seeing democracy and eloquence as opponents, that it is surprising to see this conference placing the corruption of conversa-

<sup>5.</sup> PLATO, THE COLLECTED DIALOGUES OF PLATO (Edith Hamilton & Huntington Cairns eds., Princeton Univ. Press 11th prtg. 1982).

<sup>6.</sup> See 3 Plato, Lysis, in Lysis, Symposium, Gorgias (W.R.M. Lamb trans., Harvard Univ. Press 2001); 3 Plato, Symposium, in Lysis, Symposium, Gorgias (W.R.M. Lamb trans., Harvard Univ. Press 2001).

<sup>7.</sup> See Plato, The Apology, in The Last Days of Socrates 43 (Hugh Tredennick trans., Penguin Books 1984).

<sup>8.</sup> See generally CICERO, DE ORATORE (H. Rackham trans., Harvard Univ. Press 1960).

<sup>9.</sup> Id. at 153-57.

<sup>10.</sup> Mercer Law Review Symposium Purpose Statement, supra note 2.

tion at the center of more general political degradation.<sup>11</sup> When Machiavelli, for example, says that states are secure because of good laws and good arms, but good laws are impossible without good arms, he shifts the focus of attention from eloquence to the cunning uses of force as the effective truth.<sup>12</sup> The frontispiece to *Leviathan*<sup>13</sup> illustrates the artificial chains between the lips of the sovereign and the ears of the people, so that they can only hear what the sovereign says on their behalf; peace requires silence, not eloquence.<sup>14</sup> Machiavelli and Hobbes were not proponents of democracy, but many advocates of democracy have followed their lead.

The assumption that the conditions of political conversation and of politics are related, or maybe even the same, is the source of the idea that "the deterioration of the political conversation [is] a central problem faced by our Republic today." If one thought that the quality of discourse had no correlation with, and did not causally contribute to, the quality of the way we treat each other (our practical virtues) then we would not take that deterioration of the political conversation so seriously. There are all sorts of incivility, and not all of them need be politically troublesome. I used to teach in a coat and tie and call my students by their last names. I regret the loss of formality, and with it a form of courtesy, but this decline does not necessarily have any political significance. Cell phones have caused a great deal of incivility, but that is because we have not yet settled on rules of decorum.

In fact, I think that the deterioration, or at least the poor quality, of our political conversation comes from its *lack* of connection to action. Our political conversation is literally irresponsible, detached from actual problems. It represents a flight from a reality too hard to think about. The less that is actually at stake in our disagreements, the more uncivil they become, because they are about nothing but the pride—and nothing less than the identity—of the participants. That is, they are about nothing and yet everything is at stake. Oppositions are non-negotiable

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<sup>11.</sup> See generally Bryan Garsten, Saving Persuasion: A Defense of Rhetoric and Judgment (2006).

<sup>12.</sup> See generally NICCOLO MACHIAVELLI, THE PRINCE (Harvey C. Mansfield trans., Univ. of Chicago Press 2d ed. 1998).

<sup>13.</sup> THOMAS HOBBES, LEVIATHAN (Michael Oakeshotte ed., Oxford 1957).

<sup>14.</sup> See generally id. As Jeff Walker reminds me, this point is perhaps first made by Tacitus in his A Dialogue on Oratory. TACITUS, A Dialogue on Oratory, in THE COMPLETE WORKS OF TACITUS 735 (Alfred Moses Hadas ed., John Church & William Jackson Brodribb trans., Random House 1942).

<sup>15.</sup> Mercer Law Review Symposium Purpose Statement, supra note 2.

but at the same time too high and too low not only for practical compromise but for continuing conversation.<sup>16</sup>

There are issues that divide us on which all parties feel that a lot is at stake. But there is a large set of issues that contain an asymmetry invisible when we talk about "the fact of pluralism" or about deep disagreements, or when speakers demonstrate their objectivity and fairness through the appearance of balance. I do not feel the need to pray five times a day, but I certainly do not have a need not to pray five times a day. To some, recycling is an obligation or a virtue; no one thinks that they have a duty to create as much waste as possible, except as a way of showing contempt for those who do practice it. While Pat Robertson has alerted people that we might be eating Halal meat without knowing it, I will not be polluted by such meat and cannot see why anyone would object apart from the fact that the wrong people would win that way. One side sees everything at stake, and the other cannot see what the fuss is about. Sometimes one sort of identity politics is met by a contrary identity, but more often by puzzlement about what is so important here: what do women-or blacks, or francophones in Quebec, or Zulus in South Africa-really want? We need new virtues beyond the toleration that relies on indifference. What one person regards as central to her identity, another sees as a trivial irrigation. Christians do not have any obligations to dress in a certain way; how important can it be to Jews to wear yarmulkes? Surely not as important as military uniformity.<sup>17</sup>

#### 16. Hume stated that:

Nothing is more usual than to see parties, which have begun upon a real difference, continue even after that difference is lost. When men are once inlisted on opposite sides, they contract an affection to the persons with whom they are united, and an animosity against their antagonists: And these passions they often transmit to their posterity.

DAVID HUME, *Of Parties in General, in ESSAYS*, MORAL, POLITICAL AND LITERARY 3, 56-57 (Cosimo 2006). Part of the continuation of Hume's essay is worth quoting here:

The civil wars which arose some few years ago in Morocco between the *Blacks* and *Whites*, merely on account of their complexion, are founded on a pleasant difference. We laugh at them; but, I believe, were things rightly examined, we afford much more occasion of ridicule to the Moors. For, what are all the wars of religion, which have prevailed in this polite and knowing part of the world? They are certainly more absurd than the Moorish civil wars. The difference of complexion is a sensible and a real difference; but the controversy about an article of faith, which is utterly absurd and unintelligible, is not a difference in sentiment, but in a few phrases and expressions, which one party accepts of, without understanding them, and the other refuses in the same manner.

*Id.* at 57.

17. For a legal example, consider Goldman v. Weinberger, 475 U.S. 503 (1986).

One person who did notice this asymmetry was Richard Rorty, who notoriously thought that the response most suited to democracy was for us to get you to see how unimportant those beliefs are. Rorty's plan was that we treat others as though they were as thick-skinned as we think ourselves to be. 18 At least Rorty knew that he was being offensive. That is more attractive to me than the Rawlsian idea that since I am able to put my deepest convictions aside, it is only fair that you do the same. 19 It takes new forms of moral imagination to see something as crucial to one person yet vanishingly unimportant to another. Rorty's proposal puts each individual in the position formerly reserved for the sovereign, to tolerate error through a virtue not of indifference but of condescension. The challenge is to do better.

Today we need virtues of equality in new ways. One hundred and fifty years ago, Mill prophetically formulated our new need for virtue in *The Subjection of Women*:<sup>20</sup>

In the less advanced states of society, people hardly recognize any relation with their equals. To be an equal is to be an enemy . . . . [w]herever he does not command he must obey. Existing moralities, accordingly, are mainly fitted to a relation of command and obedience. Yet command and obedience are but unfortunate necessities of human life: society in equality is its normal state.<sup>21</sup>

Mill's remark not only points to the need for a new form of virtue, but it does quite a lot to explain the relation between the need for new

<sup>18.</sup> Richard Rorty, *The Priority of Democracy to Philosophy*, *in* The Virginia Statute for Religious Freedom 257, 272 (Merrill D. Peterson & Robert C. Vaughn eds., 1988) ("Moral commitment, after all, does not require taking seriously all the matters that are, for moral reasons, taken seriously by one's fellow citizens. It may require just the opposite. It may require trying to josh them out of the habit of taking those topics so seriously. There may be serious reasons for so joshing them. More generally, we should not assume that the aesthetic is always the enemy of the moral. I should argue that in the recent history of liberal societies, the willingness to view matters aesthetically—to be content to indulge in what Schiller called 'play' and to discard what Nietzsche called 'the spirit of seriousness'—has been an important vehicle of moral progress."). *Contra* Anthony T. Kronman, The Lost Lawyer: Failing Ideals of the Legal Profession 72 (1993) ("[T]he sort of imaginative sympathy that deliberation requires combines two opposite-seeming dispositions, that of compassion, on the one hand, and that of detachment, on the other . . . . It is difficult to be compassionate, and often just as difficult to be detached, but what is most difficult of all is to be both at once.").

<sup>19.</sup> JOHN RAWLS, POLITICAL LIBERALISM (Columbia Univ. Press 1993).

<sup>20.</sup> John Stuart Mill, *The Subjection of Women*, in Three Essays 427 (Oxford Univ. Press 1975).

<sup>21.</sup> *Id.* at 477; *see* THOMAS HOBBES, THE CITIZEN 106 (Sterling P. Lamprecht ed., Appleton-Century-Crofts, Inc. 1949) ("[E]ach man is an enemy to that other whom he neither obeys nor commands.").

virtues and the sad quality of contemporary political discourse, or the relation between wisdom and eloquence. I think that a lot of contemporary anxiety consists of the difficulties of making the adjustment to a "more advanced state of society" in which people recognize each other as equals. Incivility is often a response to others treating you as an equal when you regard yourself as superior, in experience, knowledge, status, or authority. Equal behavior towards others is often regarded as uncivil behavior, failure to show proper deference. People insecure about their station in life take any disagreement as insult. It is only polite to agree. As Mill observes in *On Liberty*, <sup>22</sup> what is taken to be incivility is often a strategy of the weak to gain a hearing. <sup>23</sup>

If political conversation unrestrained by reality and by the need for agreement comes in part from this lack of the virtue of equality, it makes sense that political discourse would be most outrageous when so little is at stake. Over the years, there has been a strong negative correlation between accusations of "class-warfare" and the height of the top marginal tax rate. In other words, the less the wealthy pay in taxes, and the more economic inequality there is, the more any discussion of these injustices stimulates cries of class-warfare. The less that is at stake, the shriller the rhetoric. People who come so close to total victory resent any irritant that prevents them from enjoying their triumph by seeing others acknowledge that they deserve it.<sup>24</sup>

Rorty's solution is to invite fundamentalists to hold their beliefs without the emotional commitments that prevent him from conversing with them. The opposite strategy, that we hold our beliefs as absolute commitments and fight for them, seems to be what caused the wars of religion whose memory still affects our thinking on the nature of political conversation, especially because many do not regard the wars of religion as merely a memory. If that is the only alternative, then sign me up for Rorty's team. I think the real virtue here is to treat with respect people whose attitude one finds overwrought, to treat seriously opinions one knows to be false. Toleration used to be a gracious act of the powerful against their inferiors. Whether the attitude I am talking about should be seen as tolerance or not, it does not rely on a permanent

<sup>22.</sup> JOHN STUART MILL, On Liberty, in THREE ESSAYS 5 (Oxford Univ. Press 1975).

<sup>23.</sup> See id. Martin Luther King's Letter from the Birmingham Jail is a classic exposition of the value of incivility. See Martin Luther King, Jr., The Negro Is Your Brother, The Atlantic, Aug. 1963, at 78. The anonymity of the Internet is often a device for presuming equality. "Who are you to speak to or about me like that, and get away with it?"

<sup>24.</sup> David Lyons's comments at the symposium expand this point nicely. See David Lyons, Violence and Political Incivility, 63 MERCER L. REV. 835 (2012).

<sup>25.</sup> See Rorty, supra note 18.

inequality, but on local asymmetries between how each regards her own opinions and how she treats others. We want our own opinions to be true, while we do not apply that standard to others. Hence the temptation to condescension.

Contrary to what Socrates suggests in the *Euthyphro*,<sup>26</sup> there is no set of issues disagreement on which produces enmity and hatred. Socrates distinguished such questions from matters where we can simply calculate a solution.<sup>27</sup> But being subject to calculation does not stop an issue—the age of the earth, whether abstinence only policies reduce teen pregnancy—from heated and unending controversy.<sup>28</sup> Multilinguism can be simply a fact of life in some countries, and cause of civil war or partition in others. If it is the case that American political conversation is heated and ill-mannered as never before, it certainly is not because our politicians are more distant from each other on the issues than ever before. Freud's definition of nationalism as narcissism over minor differences rings true as an account of current American politics.<sup>29</sup>

Political discourse, I have been claiming, is inconsequential (without a connection to action) and, therefore, irresponsible without any commitment by speakers to what they say. Because of the irresponsibility that comes from the lack of connection between discourse and action, our political conversation is purely strategic and designed for effect. Hobbes describes the emotional correlative this way: "VAIN-GLORY: which name is properly given; because a well grounded *confidence* begetteth attempt; whereas the supposing of power does not, and is therefore rightly called *Vain*." People speak the way they do because they know that they cannot be called on to act out their opinions.

<sup>26.</sup> PLATO, EUTHYPHRO, in THE LAST DAYS OF SOCRATES 17 (Hugh Tredennick trans., Penguin Books 1984).

<sup>27.</sup> See generally id.

<sup>28.</sup> See HOBBES, supra note 21, at 76. "There is scarce any principle, neither in the worship of God, nor human sciences, from whence there may not spring dissensions, discords, reproaches, and by degrees war itself. Neither doth this happen by reason of the falsehood of the principle, but of the disposition of men, who, seeming wise to themselves, will needs appear such to all others." *Id*.

<sup>29.</sup> See Sigmund Freud, On Narcissism: An Introduction, in ESSENTIAL PAPERS ON NARCISSISM 17 (Andrew P. Morrison ed., 1986).

<sup>30.</sup> Controversies over posting copies of the Ten Commandments in public places is, for me, a paradigm. See Eugene Garver, The Ten Commandments: Powerful Symbols and Symbols of Power, 3 Law, Culture & the Humanities 205 (2007); Religious Symbolism and Moral Distinctiveness, in Monotheism & Ethics (Y. Tzvi Langermann, ed. 2011). For the strategic uses of language and their pathologies, see J.B. White, When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community (1984).

<sup>31.</sup> See Hobbes, supra note 13, at 36.

Our political conversation is perfectly diagnosed by R. G. Collingwood in *The New Leviathan*, <sup>32</sup> except that he thinks he is describing academic discourse. What might once have been a more restricted pathology is now epidemic:

One chief pursuit of the immature animal, human or other, is to prepare itself for the dangers of real life, while its elders are protecting it from them, by making believe to face them; and this is the greater part of education; so that the office of universities in a commonwealth is to provide an unfailing flow of insignificant speech . . . . For speech is man's weapon against the dangers of his own world, and insignificant speech is what he teaches his cubs as his fellow creatures teach theirs to bat without clawing and nip without biting.<sup>33</sup>

Partisans interpreting the statements of opponents as threats of violence, as noted in the Symposium's Statement of Purpose,<sup>34</sup> exemplify Collingwood's claim. What he calls immaturity is more precisely an expression of impotence. Our political conversation is not about anything real because reality lies beyond our political conversation.<sup>35</sup> Our world is changing, and we do not know how to handle new problems, so let us argue about abortion, gay marriage, or creationism instead. It is not enough to blame dealers in fantasy from Phyllis Schaffley through Grover Nordquist, the swift boat people, death panelists, the birthers, global warming deniers, people lying about the Ground Zero Mosque, and those who will defend America by forbidding the use of Sharia law, for poisoning American political conversation. The question is why magical thinking should find such a responsive audience.

As in ancient Athenian democracy, political argument is conducted by elites who nominate themselves to speak for the people. They succeed

 $<sup>32.\;</sup>$  R. G. Collingwood, The New Leviathan, or Man, Society, Civilization, and Barbarism (1947).

<sup>33.</sup> *Id.* ¶¶ 2.52-2.53, at 12. Here, Collingwood is reenacting what Vico called the barbarism of reflection: "[S]uch peoples [in the barbarism], like so many beasts, have fallen into the custom of each man thinking only of his own private interests and have reached the extreme delicacy, or better of pride, in which like wild animals they bristle and lash out at the slightest displeasure." GIAMBATTISTA VICO, THE NEW SCIENCE OF GIAMBATTISTA VICO ¶ 1106, at 423-24 (Thomas Goddard Bergin & Max Harold Fisch trans., Cornell Univ. Press 1968).

<sup>34.</sup> Mercer Law Review Symposium Purpose Statement, supra note 2.

<sup>35.</sup> Hobbes offers a different, but plausible, interpretation: "[I]rrational creatures cannot distinguish betweene *injury*, and *damage*; and therefore as long as they be at ease, they are not offended with their fellows: whereas man is then most troublesome, when he is most at ease . . . ." HOBBES, *supra* note 13 at 111. That is, it is a luxury to be able to engage in empty rhetoric.

when the people imitate elite speech and take it as authentically their own. How else can we explain why normal American citizens will talk about "political correctness" or "socialized medicine" and use what Hotspur called "many holiday and lady terms"?<sup>36</sup> It is an oddity of contemporary political debate that the most demagogic language is also the most elite.

I doubt that this is the first time in history that people have felt too lost to be able to deliberate and to think that they can use reason practically. Machiavelli wrote *The Prince*<sup>37</sup> to respond to just such a situation of instability where the virtues have been eroded, and where "the deterioration of the political conversation . . . is exacerbated by the corruption of the political conversation through its effective displacement by" the use of mercenaries who destroyed the opportunities for patriotic virtue.<sup>38</sup> Machiavelli did not have to worry about the invasion of foreign law, religion, and culture; he had to be concerned with the invasion of foreign soldiers and princes.

To articulate what I think is going on, I want to look in some detail at classical rhetoric for a better understanding of the relations between eloquence and practical wisdom. Classical rhetoric not only has the advantage over other treatments that it makes the relation between "political conversation" and political action central, but it also has the traditional advantage over philosophy that rhetoric is by design superficial and does not require epistemological or metaphysical arguments. It is discourse that aims at a judgment. After exploring some features of Aristotle's *On Rhetoric*, U will turn to a slightly more detailed look at *The Prince*, which will give an example of a great mind responding to a challenge similar to the one we face today.

<sup>36.</sup> WILLIAM SHAKESPEARE, THE FIRST PART OF KING HENRY THE FOURTH, act 1, sc. 3, line 46. The Mercer Law Review Symposium included a discussion of a situation modeled on that of Mozert v. Hawkins Cnty. Bd. of Educ., 827 F.2d 1058 (6th Cir. 1987). One of the striking things about Vicky Frost in that case was her need to use the language of elites in order to name the manifestations of the devil, such as secular humanism, individualism, and scientism. See id. at 1061-62.

<sup>37.</sup> MACHIAVELLI, supra note 12.

<sup>38.</sup> Mercer Law Review Symposium Purpose Statement, supra note 2.

<sup>39.</sup> As will become apparent, I think that the treatment of these issues that comes closest to my own is the work of Paul Kahn. But where Kahn sees the opposition between reason and will as generating our political problems, I prefer to stay with kinds of discourse, and more specifically kinds of persuasion, with different relations between speaker and audience.

<sup>40.</sup> ARISTOTLE, ON RHETORIC (George A. Kennedy trans., Oxford Univ. Press 1991).

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#### II. ARISTOTLE'S RHETORIC AND CONTEMPORARY POLITICAL ARGUMENT

What is "persuasive is [what is] persuasive to someone." That might sound too obvious to be worth saying, but persuasive speaking differs from other forms of thought and expression on exactly this point. Rhetoric is the art of converting reasons into reasons for some particular audience. 42 The new virtues demanded by contemporary condition are virtues of understanding someone else's reasons without those considerations becoming reasons for me. Someone else's reasons remain notional, not real, possibilities, to use the distinction Bernard Williams took from John Henry Newman.<sup>43</sup> One of the tasks for practical reason is to see how reasons move back and forth between being personal and being impersonal, as well as between real and notional.<sup>44</sup> recognize something as a reason without acknowledging it as a reason for me to act. To recall that what is "persuasive is persuasive to someone"45 forces a certain humility on speakers and hearers as they recognize that something can be a good reason for some without being a good reason for all. The more we think that a good reason has to be a reason for anyone, the less we will be able to practice the virtues of practical possibility and necessity.46

I have gestured towards three strands of argument about the relation between practical wisdom and eloquence: (1) the Platonic identification of virtue with knowledge, and knowledge with the ability to engage in certain kinds of speech; (2) the rhetorical tradition in which education in eloquence is training for citizenship; and (3) the anti-rhetorical tradition of the beginning of liberalism and democracy, which tried to

<sup>41.</sup> Id. bk. I, at 41.

<sup>42.</sup> Therefore, it is reasonable to say that "[d]emocracy and rhetoric share a trust in argument." Jack L. Sammons, *A Rhetorician's View of Religious Speech in Civic Argument*, 32 SEATTLE U. L. REV. 367, 367 (2009). On the other hand, Aristotle sees no particular connection between democracy and deliberation, against the recent popularity of "deliberative democracy."

<sup>43.</sup> See Bernard Williams, The Truth in Relativism, 75 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 215, 215-28 (1974-1975); JOHN HENRY NEWMAN, AN ESSAY IN AID OF A GRAMMAR OF ASSENT (Ian Ker ed., 1985).

<sup>44.</sup> Williams talks about real and notional possibilities, not real and notional reasons. See Williams, supra note 43. Newman speaks about real and notional assent. See Newman, supra note 43.

<sup>45.</sup> ARISTOTLE, supra note 3, bk. I, at 41.

<sup>46.</sup> For example, part of Hobbes's rhetorical strategy in *Leviathan* is to change the horizons of the possible and the necessary, so that fear of death dominates each person's mind without thoughts about the afterlife. *See* HOBBES, *supra* note 13.

marginalize eloquence to build community. Aristotle's *Ethics*, <sup>47</sup> *Politics*, <sup>48</sup> and *Rhetoric* offers a fourth.

Aristotle asserts that there are three kinds of rhetoric-deliberative, forensic or judicial, and epideictic or demonstrative-aiming respectively at future advantages, at justice or injustice, guilt or innocence for past acts, or at a celebration of present and timeless values. 49 Each of the three kinds of rhetoric has become distorted in current political discourse. None is an art in the sense that Aristotle meant because they are not part of a single art. When that happens, phronesis, virtue of practical wisdom or prudence, becomes cleverness: means-ends reasoning might become the reasoning of experts, with ends appearing only as data or side-constraints, but the celebration of ends in epideixis becomes strategic. Phronêsis makes decisions about means within the person who also possesses the virtues of character. When the art of rhetoric is dissolved into its genres, character is no longer available to hold it together. Then the deliberative consideration of means becomes distinct from the epideictic exposition of ends. From being kinds of rhetoric, deliberation, judicial arguments about injustice and guilt, and demonstrative appeals have each become comprehensive styles of political thought and modes of political imagination.<sup>50</sup>

Aristotle could offer a simple diagnosis of the condition of our political conversation. We are speakers and listeners of epideictic rhetoric when deliberative rhetoric is what we think we need. The asymmetries of our political conversation make sense in terms of the kinds of rhetoric. Deliberation is the activity of means-ends calculation. Its calculations work best when nothing is sacred, so that the agent can look for the easiest and best means. Deliberation then employs the low emotional temperature of the plain style. Epideictic rhetoric, by contrast, finds the act of declaring one's ends, and demonstrating one's fidelity to them, a self-sufficient act. Here we see at its maximum faith in the power of language. Therefore, this form of rhetoric will be seen as sacred, as beyond empirical confirmation or refutation, not to be sullied by compromise, a variety of acts that deliberative rhetoric would treat only instrumentally. The Constitution, for example, is either a device for

<sup>47.</sup> ARISTOTLE, NICOMACHEAN ETHICS (Roger Crisp ed., Cambridge Univ. Press 2000).

<sup>48.</sup> ARISTOTLE, POLITICS (H. Rackham trans., Harvard Univ. Press 1959).

<sup>49.</sup> ARISTOTLE, supra note 3, bk. I, at 48.

<sup>50.</sup> I was immensely pleased to be able to present this paper at an institution that has a Phronesis Project.

<sup>51.</sup> See Karl Marx & Frederick Engels, Manifesto of the Communist Party 35 (Samuel Moore trans., Foreign Language Press 4th prtg. 1972). "All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses, his real conditions of life, and his relations with his kind." *Id.* 

allowing people to affect their purposes in a context of stability and prosperity, or it is an object of veneration and worship. It is hard for it to be both. The pragmatic deliberator will seem comparatively weak, unprincipled, and eager to compromise, while the practitioner of epideictic rhetoric will insist on maintaining the purity of her vision. In the exchange of epithets, the politics of deliberation will accuse the epideictic partisan of irrationality and unreality; the epideictic politics will return the favor by seeing the open-minded deliberator as cosmopolitan and, thus, un-American.<sup>52</sup>

#### A. Deliberation

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The failures of deliberation account for the disproportionate power of display rhetoric today. We do deliberate as a society and come to collective decisions, but frequently are unable to imagine solving our problems through reasoning. There are good reasons—I will list four—for such a failure of imagination. In the first place, the scope of deliberation, and so of practical reasoning, has become ambiguous. When Aristotle discusses deliberation in the *Ethics*, he says that we deliberate about things that can change through our efforts, as opposed to things that always happen the same way, and those that happen by chance like "the finding of treasure." There is no deliberation about what is necessary and known through science. Part of our problem today is that it is hard to find things that fall in between chance and necessity. There are no more natural disasters; Amartya Sen argues that famine is always a product of failed political decisions, not an act of nature.

<sup>52.</sup> Professor Sammons claims that to exclude certain opinions "is something rhetoric would never permit on any terms other than its own." Sammons, *supra* note 42, at 371. One function of judicial rhetoric is to place certain opinions, and certain modes of reasoning, out of bounds.

<sup>53.</sup> ARISTOTLE, supra note 47, bk. III, at 42.

<sup>54.</sup> *Id.* at 43 ("There is no deliberation about precise and self-sufficient sciences..."); ARISTOTLE, *supra* note 3, bk. I, at 41 ("[Rhetoric] is concerned with the sort of things . . . for which we do not have [other] arts.") (alteration in original).

<sup>55.</sup> See Amartya Sen, Poverty and Famines: An Essay on Entitlement and Deprivation (1997); Bernard Williams, Shame and Necessity 128 (1993).

Modern liberal thought rejects all necessary social identities, but it is not this element in its outlook that distinguishes its attitude to slavery from that of most ancient Greeks. With regard to slavery, as opposed to their attitudes towards women, two concepts particularly governed their thoughts: economic or cultural necessity and individual back luck. Obviously we do not apply those concepts, as the Greeks did, in such a way that we accept slavery. But we do apply those concepts very extensively to our social experience, and they are still hard at work in the modern world. The real difference in these respects between modern liberal ideas and the outlook of most Greeks lies rather in this, that liberalism

Given the complexities of modern bureaucratic and technological reality, we cannot deliberate because we cannot see a connection between what we want to happen and what is in our power to do. Dewey makes the point perfectly:

The conditions that generate insecurity for the many no longer spring from nature. They are found in institutions and arrangements that are within deliberate human control. Surely this change marks one of the greatest revolutions that has taken place in all human history. Because of it, insecurity is not now the motive to work and sacrifice but to despair.<sup>56</sup>

Cheap and irresponsible political talk is a way of hiding from the fact that we often have no idea what to do. Name an economic problem and cutting taxes is the solution; name a security problem and the Strategic Defense Initiative is the solution. Machiavelli notes in Chapter 25 of *The Prince* that there are situations where fortune seems to control our lives. His advice is as follows: If you have no idea what to do, boldness and aggression is a better strategy than caution—this is the famous advice to treat fortune like a woman.<sup>57</sup> Today, it is the following: When in doubt, cut taxes, especially on the deserving rich.

There is a second way in which we cannot mark off the scope of deliberation. "We do not deliberate even about all human affairs; no Spartan, for example, would deliberate about the best form of government for the Scythians. The reason is that we could not bring about any of these things." As every parent learns, one simply cannot deliberate for someone else. We are constantly discovering that what we thought was Spartan turned out to be Scythian. Think of the American redesign of the Iraqi flag. We do not know whether we can deliberate about Libya or Sudan. Earlier I wondered whether the problems cited in my charge were uniquely American. This is perhaps one dimension which is.

Third, sometimes we do in fact know what to do. And then political discourse has the opposite problem. Economic calculation and the administrative state give us a body of expert knowledge that removes the need for deliberation. Why deliberate when there is actual knowledge to be had? Expertise makes ethical virtue unnecessary, just as modern science displaces religion. Who needs the virtue of courage

demands—more realistically speaking, it hopes—that those concepts, necessity and luck, should not *take the place of* considerations of justice.

Id.

<sup>56.</sup> JOHN DEWEY, LIBERALISM AND SOCIAL ACTION 60 (1935).

<sup>57.</sup> See MACHIAVELLI, supra note 12, at 98-99.

<sup>58.</sup> ARISTOTLE, supra note 47, at 42.

when we have B-52s and unmanned drones that can destroy the enemy without risk to our own soldiers? Who needs courage when we can plant IEDs at the roadside and disappear before the enemy approaches? Who needs Aristotle's virtue of wittiness when we have political consultants who can tell us how to display a winning sense of humor, or a virtue of justice when we can specify rules and hire disinterested bureaucrats to enforce them? In the first book of the *Politics*, Aristotle speculates that if each tool and machine could accomplish its own work without a hand to guide it, then slavery would be unnecessary—if we have techniques for accomplishing our purposes, then virtues are unnecessary. More precisely, the virtues we have traditionally relied on are unnecessary.

This growth in expertise makes deliberation problematic in a final way. Aristotle models practical deliberation on solving a geometry problem. We cannot model practical deliberation on scientific reasoning today because science is too complex to be a model for means-ends reasoning. Many others have claimed that Aristotle's practical reasoning and virtue must be transformed today because we do not live in his teleological cosmos with its "metaphysical biology." I am not persuaded of that, but practical wisdom and virtue must be different once this easy connection between scientific reasoning and means-ends calculation is severed. We do not know what to deliberate about, or when to deliberate, and we do not know how.

#### B. Epideictic Rhetoric

Without deliberation, it makes sense that our political rhetoric has become epideictic or demonstrative. If our political speech cannot change the world, maybe it can change us.<sup>61</sup> Deliberation posits an end

<sup>59.</sup> See ARISTOLE, supra note 48, bk. I, at 12-21. ("[F]or if every tool could perform its own work when ordered, or by seeing what to do in advance, like the statues of Daedalus in the story, or the tripods of Hephaestus which the poet says 'enter self-moved the company divine,'—if thus shuttles wove and quills played harps of themselves, mastercraftsmen would have no need of assistants and masters no need of slaves.").

<sup>60</sup>. Dewey seems over-optimistic here, and it is not surprising that this is a side of Dewey that Rorty puts off to the side.

The very heart of political democracy is adjudication of social differences by discussion and exchange of views. This method provides a rough approximation to the method of effecting change by means of experimental inquiry and test: the scientific method. The very foundation of the democratic procedure is dependence upon experimental production of social change; an experimentation directed by working principles that are tested and developed in the very process of being tried out in action.

JOHN DEWEY, PROBLEMS OF MEN 157 (1946).

<sup>61.</sup> I claim that in current circumstances, the difficulties or failures of deliberation make epideictic rhetoric into a fall-back position. I am not implying that more generally

and searches for means that will bring it about; epideictic rhetoric celebrates the ends, and can sometimes let discourse serve as a substitute for action rather than a preparation for it. Epideictic rhetoric states who the speaker is and what she stands for, and asks that the audience stand with her. The identity of a community, the subject of epideictic rhetoric, consists in those practical possibilities and necessities the community sees as real, the reasons we take as reasons for us. <sup>62</sup> We can understand a community from the outside as we take those possibilities and necessities as notional. We improve our political conversation when we present our identity and when we understand someone else's identity, in terms of notional possibilities and necessities instead of taking what is different and distinctive about a community as unintelligible and irrational.

What were for Aristotle two species of the art of rhetoric have become two distinct forms of the political imagination, each comprehensive and so without room for the other. We can conceive of politics as collective problem solving or as the expression of meaning. The trouble with pragmatic politics is that it narrowly focuses on what is true, regardless of what harm it does to other values. The corresponding danger of symbolic politics is that it refuses to separate truth from what it is

deliberation is harder than praise and blame. And one can find the opposite movement as well: the celebration of symbols that makes them into objects of utility. Consider justifications the United States Supreme Court has made for public nativity scenes on the grounds that they stimulate holiday shopping.

THAT THE SOUL EXPENDS ITS PASSIONS UPON FALSE OBJECTS, WHERE THE TRUE ARE WANTING . . . . [T]he soul, being transported and discomposed, turns its violence upon itself, if not supplied with something to oppose it, and therefore always requires an object at which to aim, and whereon to act. Plutarch says of those who are delighted with little dogs and monkeys, that the amorous part that is in us, for want of a legitimate object, rather than lie idle, does after that manner forge and create one false and frivolous. And we see that the soul, in its passions, inclines rather to deceive itself, by creating a false and fantastical a subject, even contrary to its own belief, than not to have something to work upon.

MICHEL DE MONTAIGNE, THE ESSAYS OF MONTAIGNE vol. 2 (William Carew Hazilitt ed., Charles Cotton trans., 2006), available at http://www.gutenberg.org/dirs/3/5/8/3582/3582.txt. [T]hese are but a small part of the incongruities they are forced to, from their disputing philosophically, instead of admiring, and adoring of the divine and incomprehensible nature; whose attributes cannot signify what he is, but ought to signify our desire to honour him, with the best appellations we can think on. Hobbes, supra note 13, at 444.

62. In Chapter 8 of *For the Sake of Argument*, I show how something can be a reason for each of us without being a reason for us—that is, a public reason. *See* EUGENE GARVER, FOR THE SAKE OF ARGUMENT: PRACTICAL REASONING, CHARACTER, AND THE ETHICS OF BELIEF 175 (2004).

satisfying to believe.<sup>63</sup> Evolutionary biology is true, but at what price? Creationism and "intelligent design" make sense of the world and put human beings at its center. The trouble with science is that it is incompatible with the idea of being God's elect.<sup>64</sup>

Pragmatic and symbolic politics are no longer genres of a single art of rhetoric, but instead see themselves as all-consuming. Posting the Ten Commandments is nonsense to the pragmatist. Empirical evidence that abstinence only programs do not work will not move the citizen engaged in symbolic politics. Liberal democracy tells itself the story of its inevitable triumph over more primitive forms of living together, but the

63. See Ernest Gellner, Conditions of Liberty: Civil Society and Its Rivals 31 (1994).

The reason why society must be based on falsehood is . . . obvious. Truth is independent of the social order and is at no one's service, and if not impeded will end up by undermining respect for any given authority structure. Only ideas preselected or pre-invented and then frozen by ritual and sanctification can be relied upon to sustain a specific organizational set-up. Free inquiry will undermine it. Moreover, theories, as philosophers like to remind us, are under-determined by facts. In other words, reason on its own will not and cannot engender that consensus which underlies social order. The facts of the case, even if unambiguous (which they seldom are), will not engender a shared picture of the situation. let alone shared aims . . . . The world in which men think seriously, and to which serious thought refers, is no longer identical with the world in which one lives one's daily life. The instability, contestability and often incomprehensibility of the serious, respect-worthy kind of cognition, and hence of its objects, make it and them altogether unsuitable to be the foundation of a stable, reliable social order, or to constitute the milieu of life. The mechanisms underlying that cognitive and technological-economic growth on which modern society depends for its legitimacy, require pluralism among cognitive explorers as well as among producers, and it is consequently incompatible with any imposition of a social consensus.

Id. at 31, 95.

64. See Ernest Gellner, Pragmatism and the Importance of Being Earnest, in Pragmatism: Its Sources and Prospects 43, 55-56 (Robert J. Mulvaney & Philip M. Zeltner eds., 1981).

[C]onsider that mysterious entity we call truth . . . . It does *not* satisfy a wide multiplicity of criteria but, on the contrary, a rather narrow range of them, or perhaps even just a single criterion; and it is also conspicuously extrapolative . . . . [W]hat distinguishes the scientific thought style from pre-scientific ones is notably the fact that instead of satisfying *many* criteria—including social cohesion, authority-maintenance, morale, etc.—it sheds all but one aim, i.e., explanatory power and congruence with facts. Moreover, far from adapting to one specific environment—which is the only aim that natural selection can serve—it endeavors to cover as wide a range of environments, of situations, as possible, and so to speak to seek them out actively in the process of testing, rather than waiting till *they* test *it*.

Id. (footnote omitted).

periodic irruptions of symbolic politics should complicate the narrative that constitutes its self-understanding.

We can always find someone to blame and exhibit that finding through epideictic rhetoric. Unfortunately, although Aristotle says that deliberative and epideictic rhetoric differ only by a turn of phrase, we are unable to convert praising and blaming into figuring out what to do. 65 If we can find someone to blame, we are satisfied and do not use that as grounds to decide what to do next. We keep learning again the lesson that the most powerful nation cannot move very smoothly from the epideictic act of condemning human rights violations abroad to deliberation about how to stop them. Rousseau's expression of forcing people to be free is no longer a paradox. 66 It is a maxim that organizes American foreign policy. Earlier in American history, some people were aware of the wrongness of slavery without either freeing their own slaves or trying to abolish the institution. We can feel good about ourselves by expressing the right values; political discourse becomes a substitute for action rather than language that leads to action.

Where Aristotle assumed that we could easily translate back and forth between deliberative and epideictic rhetoric, we need to turn our attention to the conditions under which the smooth connection between deliberation and epideixis can be accomplished; the conditions under which deliberating towards a concrete end; and celebrating ultimate ends are part of a single, continuous, practical, and discursive activity. Instead of that happy harmony we have a condition of what Veblen called "trained incapacities": those who excel at the rhetoric of policy are inept at the rhetoric of symbolism, and vice versa. 68

Part of the problem comes from a transformation in deliberative rhetoric Aristotle could not have imagined: he said that in deliberation, all one has to do is to prove that a given policy is in the interest of the

<sup>65.</sup> See Aristotle, supra note 3, bk. I, at 83-87.

<sup>66.</sup> JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT bk. I, at 27 (G.D.H. Cole trans., Prometheus Books 1988).

<sup>67.</sup> See John Dewey, Logic: The Theory of Inquiry 57-58 (1938). "Approach to human problems in terms of moral blame and moral approbation, of wickedness or righteousness, is probably the greatest single obstacle now existing to development of competent methods in the field of social subject-matter." *Id.* at 495.

<sup>68.</sup> See Thorstein Vebleu, The Instinct of Workmanship and the Industrial Arts 347 (Cosimo 2006); see generally Benedict de Spinoza, Theological-Political Treatise 27 (Jonathan Israel ed., Cambridge Univ. Press 2007) ("Those who are most powerful in imagination are less good at merely understanding things; those who have trained and powerful intellects have a more modest power of imagination and have it under better control, reining it in, so to speak, and not confusing it with understanding.").

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audience.<sup>69</sup> But citizens today frequently are persuaded and behave against their own self-interest, incorporating symbolic values and not simply utilities into their decisions about what to do. Persuasion, as I said, converts some reasons into reasons for someone. Sometimes the successful speaker can take the fact that something is a reason and convince people that it should be a reason for them, even at the cost of "rational self-interest."<sup>70</sup>

Epideictic rhetoric is adapted to the symbolic politics that interrupts and distorts our more pragmatic political discourse. We need all three kinds of rhetoric, but we get into trouble when we practice one but think that we are practicing another. Symbolic politics always comes as a surprise because it is never part of a coherent narrative, but tells its own story by itself. Other kinds of rhetoric allow a distinction between the argument and the facts represented. The other kinds of rhetoric draw attention to the argument and evidence, but epideictic rhetoric is always ambiguously turned both towards the subject of the speech and the speaker's skill and êthos. For example, Lincoln's second inaugural address exhibits the spirit of reconciliation it endorses. Epideictic speeches are the statement of self-evident truths. In the sciences, self-evident truths might go without saying, but practically self-evident truths need to be declared. They establish the conditions for their

The sovereign is, as Lincoln explained, constituted by those who hold these truths to be self-evident. This "holding forth" is not merely belief in their truth. Belief that these are correct moral propositions is not bound by national borders. Liberal states are in general agreement about the fundamental principles of a constitutional order. Such agreement by itself, however, does not constitute a political community . . . .

Self-evidence moves in the dimension of the sacred, not the rational. We may be convinced of the truth of many propositions, but they do not found a political community. Even communities with substantially similar constitutions do not, for that reason, become indistinguishable; they do not necessarily even become

<sup>69.</sup> See ARISTOTLE, supra note 3, bk. I.

<sup>70.</sup> This phenomenon may have first been identified by Hume in *Of Parties in General*: "Real factions may be divided into those from interest, from principle, and from affection. Of all factions, the first are the most reasonable, and the most excusable." See HUME, supra note 16, at 58. For more on this insight, see my article, Eugene Garver, Why Pluralism Now?, 73 THE MONIST, July 1990, at 388 (1990).

<sup>71.</sup> See Paul W. Kahn, Out of Eden: Adam and Eve and the Problem of Evil 170 (2007) ("A world built on symbols is simultaneously the strongest and the weakest of constructions, for it both founds a universe and can disappear in an instant.").

<sup>72.</sup> See Abraham Lincoln, Second Inaugural Address, in INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES: FROM GEORGE WASHINGTON 1789 TO GEORGE BUSH 1989, at 142, 142-43 (1989).

<sup>73.</sup> See Paul W. Kahn, Sacred Violence: Torture, Terror, and Sovereignty 116-17 (2011).

own felicitous performance. An ethically self-evident proposition does its work in the act of speaking it and hearing it.74 In deliberative and judicial rhetoric, the audience will decide for or against a particular proposition-to go to war or not, to find someone guilty or not. But in epideictic rhetoric, we cannot separate the conclusion from the rest of the presentation and cannot separate reasoning from the language it is presented in. Epideictic rhetoric can range beyond the constraints of evidence to which deliberation is subject because it is self-contained like a work of literature. The deliberative speaker has to know what he is talking about, but one can praise or blame fictional beings and praise one's enemy without endorsing his actions. Threats become anodyne, and dangerous books become great books once their authors are safely dead. Epideictic performances cannot neglect style, not because its audiences are weak, but because the distinction between the body-the enthymeme, or rhetorical syllogism, is the body of persuasion-and its clothing cannot be drawn here. 75 As self-contained, the epideictic speech becomes a more organic body with its own internal standards for success.

Because of the connection between epideictic rhetoric and literary creations, epideixis has the advantage, and disadvantage, of being political and practical discourse that is at the same time a form of entertainment without responsibility to the community. Cleon criticizes Athenian practice for assimilating political to epideictic rhetoric and claims that Athenian citizens are *theatai ton logon*—spectators of speeches. When Thucydides himself comments that words lose their meaning, that loss is a movement from a language proportional to its claims to a language in which there are rewards for being as extreme as possible. To

friends. The sacred is self-evident because there is no test of its truth apart from the character of the experience itself. It is fundamentally incommensurable with propositional claims in the same way that all religious truths are incommensurable with ordinary language. My god is never "like" your god. It is either wholly the same or wholly different. One either falls within the experience of the sacred or one does not. The mutual experience of the self-evidence of the sacred leads to the reciprocal acknowledgement of the pledge.

#### *Id.* (footnote omitted).

- 74. See Eugene Garver, Saying What Goes Without Saying: Bacon's Essays on Speech, Intelligence and Morality, in Rhetoric and Pluralism: Legacies of Wayne Booth 211 (Fred Antezak ed., 1994). Both epideixis and apodeixis can appeal to self-evident truths, unlike the probabilities that occupy most of rhetoric.
  - 75. ARISTOTLE, supra note 3, bk. I, at 28, 30.
  - 76. See W. Robert Connor, Thucydides 82-83 (1984).
- 77. See id. There is another difference between epideictic and both deliberative and judicial rhetoric. Deliberative and judicial rhetoric are Aristotelian species. Epideixis, on

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Because of the ways in which epideixis takes over for an inactive deliberative faculty, it is easy to denigrate as magical thinking the illusion that we are acting when we are only talking about acting. But epideictic rhetoric has powers of its own worth cultivating and respecting even as we impute failures of contemporary political conversation to its dominance. The Emancipation Proclamation freed no slaves. It declared free those it could do nothing about, a perfect example of the right words giving the illusion of action. But the power of the Emancipation Proclamation should not be measured by the number of slaves it freed or even the number it declared free. It proclaimed a new orientation of the political community by definitively offering a new set of values that became the ends towards which we now calculate means in deliberation about conducting the war. Epideictic rhetoric at its best is a powerful force.

## III. DELIBERATION VS. EPIDEICTIC RHETORIC AS COMPREHENSIVE FORMS OF THE IMAGINATION: MACHIAVELLI AS MODEL

So far I have tried to diagnose our current predicament by appealing to the language of Aristotle's *Rhetoric*. But my argument to this point only shows why two modes of practical reasoning fail to come to terms with each other. It does not account for the passions involved. It does not explain why, as Socrates says in the *Euthyphro*, these disagreements cause enmity and hatred. And it certainly does not show what the alternatives could be to such emotional heat.

The relations between practitioners of deliberative and epideictic rhetoric have become poisoned, and it is hard to imagine a way out. The best we can do is to learn from examples of successful negotiation between the two kinds of politics, always aware that any example will be contestable. Machiavelli dramatizes the conflict between these two modes of practical thinking and shows how someone can engage in a comprehensive politics that includes the incommensurable visions of policy and symbolism.<sup>78</sup> *Virtù* means both the power to overcome

the other hand, looks like a bag for dumping all the instances of rhetoric that do not fit into the other two kinds. While there is an important way in which epideictic rhetoric is a kind alongside the other two, there is another way in which this criticism of the *Rhetoric* is justified. Different instances of deliberation can become part of a larger deliberative whole. We gradually make practical progress. Similarly, different instances of judicial rhetoric can be part of a larger whole; that is how common law grows through precedent. But different examples of epideictic rhetoric never add up. Each instance is an interruption of history. Thus, a constant noise about death panels is replaced by a constant noise about deficits. For a more detailed consideration of the kinds of rhetoric, see my article Eugene Garver, *Aristotle on the Kinds of Rhetoric*, 27 RHETORICA 1 (2009).

<sup>78.</sup> See Machiavelli, supra note 12.

practical obstacles and the virtuosity of an entertaining performance. To the policy-maker, *fortuna* is chance, incalculable and unpredictable variations that one can fortify oneself against, using foresight to build dams against floods at times before floods actually threaten. But then Machiavelli changes the metaphor, and *fortuna* becomes personified as a woman who can be dominated and seduced.<sup>79</sup>

The Prince announces itself as teaching its audience how to deliberate through examining the great examples of the past and present. Early on in The Prince, Machiavelli disabuses the reader of any idea that the difference between deliberative and epideictic politics is reducible to the difference between politics and religion, even though religion provides the politicians with the most powerful of symbols. Moses is one of the paradigms of virtù in Chapter 6, but Machiavelli sets aside his religious leadership: "And although one should not reason about Moses, as he was a mere executor of things that had been ordered for him by God, nonetheless he should be admired if only for that grace which made him deserving of speaking with God." Moses acted no different from Cyrus, Romulus, and Theseus. Note the complex interrelation between the uses of force and of symbols, which culminates in the prince being able to force his subjects to believe:

It is however necessary, if one wants to discuss this aspect well, to examine whether these innovators stand by themselves or depend on others; that is, whether to carry out their deed they must beg or indeed can use force. In the first case they always come to ill and never accomplish anything; but when they depend on their own and are able to use force, then it is that they are rarely in peril. From this it arises that all the armed prophets conquered and the unarmed ones were ruined. For, besides the things that have been said, the nature of peoples is variable; and it is easy to persuade them of something, but difficult to keep them in that persuasion. And thus things must be ordered in such a mode that when they no longer believe, one can make them believe by force.<sup>81</sup>

On the one hand, the lesson Machiavelli draws concerning Moses and the others is straightforwardly pragmatic: regardless of the grace of God that chose Moses, arms are the foundation of victory. On the other, the prince is supposed to imitate Moses, who, in addition to founding a state, was chosen by God and hence remembered as quite a bit more than a military leader.

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<sup>79.</sup> Id. at 98-99.

<sup>80.</sup> Id. at 22.

<sup>81.</sup> Id. at 24 (footnote omitted).

Reading *The Prince* offers a method for facing practical problems without the distractions of traditional morality. *The Prince* reminds us that this is not the first time people have worried that the skills needed for someone to achieve political office are in conflict with those needed to govern. The aspiring new prince finds himself in just the sort of predicament that at the beginning I attributed to our condition: circumstances are so constrained that deliberation seems impossible. Any situation unstable enough to open up the possibility that someone could seize power is almost guaranteed to be a situation in which the new prince cannot be secure. In addition, people are constrained by a morality that is practically self-defeating.

Machiavelli seems to find a little room for deliberation as he insists that the new prince should rely on his own resources, meager as they are, instead of becoming dependent on others. As the argument proceeds, the range of deliberation expands until the new prince will be "more secure and steady in his state than if he had grown old in it." Machiavelli creates space for deliberation by making ambiguous all the distinctions that made deliberation impossible—new vs. old principalities, virtù vs. fortuna, virtù vs. villainy, generosity vs. stinginess, constancy vs. betrayal, and, ultimately, principality vs. republic. From being impractical constraints, the standards of traditional morality become an additional resource to be exploited. 83

But the practical success Machiavelli offers is not enough. The prince has to look like a prince, and has to persuade his audience that he is acting like a prince, not a usurper. He needs to turn the eyes of the people towards him, so that his great deeds produce glory, even when they are not, by more pragmatic measures, successful. The two visions of politics—aiming at stability and aiming at glory, tracking deliberative and symbolic politics—are combined in Machiavelli's own dramatic performance and not in any theoretical resolution.

There are moments in *The Prince* where Machiavelli teaches a pure method of deliberation, and others when it is a pure method of display. The two extremes are nicely situated at the turning point of the book—the shift from the first eleven chapters, which are supposed to be about how to act in each particular kind of state, and the rest, which

<sup>82.</sup> Id. at 96

<sup>83.</sup> See Eugene Garver, Paradigms and Princes, 17 PHIL. Soc. Sci. 21, 21-47 (1987); Eugene Garver, Arguing Over Incommensurable Values: The Case of Machiavelli, in The Rhetorical Turn 187 (Herbert W. Simons ed., 1990); Eugene Garver, Machiavelli: Rhetoric, Prudence, in Seeking Real Truths, Multidisciplinary Perspectives on Machiavelli 103, 103-19 (Patricia Vilches et al eds., 2007).

concern general methods.<sup>84</sup> Most notably, the discussion of the prince as a military leader shows how to learn tactical lessons from history and act relying on one's own power alone. The trouble with mercenaries is that using them puts one's destiny outside one's own control. Whether they win or lose, you will lose by employing them, recalling the lines I quoted from Chapter 6. But his discussion of military strategy in Chapters 12-14 only highlights the degree to which the rest of *The Prince* engages in a performative politics that goes far beyond the methodical.

The other extreme comes one chapter earlier in his discussion of the papacy and ecclesiastical states in Chapter 11. A pope practices nothing but symbolic politics. His skill consists in nothing but the arts of appearance without any powerful reality behind it:

[E]cclesiastical principalities . . . are sustained by orders that have grown old with religion, which have been so powerful and of such a kind that they keep their princes in the state however they proceed and live. These alone have states, and do not defend them; they have subjects, and do not govern them; the subjects, though ungoverned, do not care, and they neither think of becoming estranged from such princes nor can they. Thus, only these principalities are secure and happy. But as they subsist by superior causes, to which the human mind does not reach, I will omit speaking of them; for since they are exalted and maintained by God, it would be the office of a presumptuous and foolhardy man to discourse on them.<sup>85</sup>

The prince has to be successful both in reality and in appearance, combining the arts of strategy and performance, as Moses did.

For a new prince is observed much more in his actions than a hereditary one; and when they are recognized as virtuous, they take hold of men much more and obligate them much more than ancient blood. For men are much more taken by the present things than by past ones, and when they find good in the present, they enjoy it and do not seek elsewhere; indeed they will take up every defense on behalf of a new prince if he is not lacking in other things as regards himself. And so he will have the double glory of having made the beginning of

Having discoursed in particular on all the qualities of those principalities which at the beginning I proposed to reason about, having considered in some part the causes of their well-being and ill-being, and having shown the modes in which many have sought to acquire and hold them, it remains for me now to discourse generally on the offense and defense befitting each of those named.

MACHIAVELLI, supra note 12, at 48.

<sup>84.</sup> Chapter 12 begins as follows:

<sup>85.</sup> Id. at 45 (footnote omitted).

a new principality, of having adorned it and consolidated it with good laws, good arms, good friends, and good examples, just as he has a double shame who, having been born prince, has lost it through his lack of prudence.<sup>86</sup>

Someone who tries to live through deliberative reason alone cannot command loyalty, and his rule will therefore be unstable since every act will be judged by its success or failure. It is much better to be judged by character, as people do in epideictic rhetoric.

I offer *The Prince* as an example because it cannot be a model to imitate. We are not going to solve our own problems by doing what Machiavelli did or what he told the prince to do. It is a stimulus to reflection rather than a blueprint for action. It is an appropriate example, more profoundly, because it is ultimately ambiguous. I have said that the oddity of epideictic rhetoric is that it often looks like a substitute for action rather than a preparation. To think of the argument of *The Prince* as an achievement, as I have done, is to locate practical success in the saying rather than in some doing it leads to. *The Prince* could then be an example of the kind of academic discourse Collingwood sneers about.<sup>87</sup> Machiavelli undercuts that interpretation in the final chapter, where he says that if the prince learns the lessons he has presented, he will be able to unify Italy.<sup>88</sup> *The Prince* ends, then, by announcing that it will be successful not if Machiavelli has presented a persuasive argument but if the prince succeeds in deed.

Machiavelli offers another advantage. It would be easy to infer from my argument that we have moved from deliberative to epideictic rhetoric because deliberation is hard, and epideixis is easy. Figuring out what to do is difficult; finding someone to blame is simple. The deliberator actually has to understand economics, albeit not as the professional economist does, while the epideictic speaker trying to establish community rather than solve problems can rely on simple analogies between the finances of the state and of the family and stock-figures such as the family farmer and the job-creating small businessman. But epideixis faces its own challenges. The very lack of constraint by the facts means that the epideictic speaker confronts a situation of persuasion less determinate than the other kinds of rhetoric. Deliberative and judicial rhetoric, for example, call for a decision and action at a particular time. The achievements of epideictic rhetoric are less urgent but more lasting, thus glory is more demanding for the prince than victory. Military victory, formed through strategy, is unstable

<sup>86.</sup> Id. at 96 (footnote omitted).

<sup>87.</sup> See COLLINGWOOD, supra note 32.

<sup>88.</sup> See MACHIAVELLI, supra note 12, at 101.

relative to the construction of a princely appearance through the prince displaying himself as a prince.

Earlier I noted that the open-mindedness of deliberation creates a problem: if nothing is sacred, then there still have to be external limits on our calculations, or else we might find slavery or establishing a national church open to discussion. Here again, I think Machiavelli offers some guidance. He rejects the external constraints imposed on deliberation by traditional morality. He will replace its indifference to consequences with his own effective truth. The traditional virtues and vices are nothing but hindrances to clear-eyed strategic thinking. The man of virtu is completely flexible and will change as circumstances demand. However, Machiavelli eventually finds some categorical restraints within the prince's rhetorical universe. Fear and love are sometimes useful emotions to invoke, and sometimes should be avoided. But being hated, despised, and held in contempt is always a bad thing.

#### IV. CAN WE DO BETTER?

I have claimed that the reason the epideictic rhetoric of identity politics and community solidarity is so popular is that we do not think we are in a position to deliberate. I have made it sound like epideictic is an easier mode of speech, a fall-back position to which we retreat when the contingencies and dangers of a situation become too hard to face. When I was a graduate student, I played handball. During that time, racquetball was invented, and its popularity made handball into an endangered sport. Racquetball was far easier and so had wider appeal. So it is with deliberative and epideictic rhetoric.

But every sport played on a sufficiently high level is fully engaging and demanding. And the same goes for the kinds of rhetoric. There is nothing inherently second-rate about epideictic rhetoric. It may be easier to practice badly than deliberative rhetoric, but just as hard to practice well. The rhetoric of identity politics, so often today practiced on the cheap, can transform a community. Consider the famous lines from Lincoln's first inaugural address: "We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory . . . will yet swell . . . when again touched, as surely they will be, by the better angels of our nature." Deliberative rhetoric could determine

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<sup>89.</sup> Abraham Lincoln, First Inaugural Address, *in* Inaugural Addresses of the President of the United States: From George Washington 1789 to George Bush 1989, at 133 (1989).

<sup>90.</sup> Id. at 141.

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how to win the Civil War, but Lincoln deployed epideixis first to try to prevent the war, and then, in his second inaugural address, to end it with reconciliation. Those are noble and difficult tasks that show some of the potential of epideictic rhetoric. Epideictic rhetoric is not necessarily a fall-back position taken when deliberation is too hard, as I argue it is in current conditions.

In particular, thinking about epideictic rhetoric helps us to understand the asymmetries I noted at the beginning, that many of our disputes involve matters that are crucial to one person's identity yet seem trivial to another-whether wearing a yarmulke will destroy military morale, whether the rest of us should worry that some products we buy in the grocery store have been certified as Halal, and whether burning a flag or nude dancing conveys a message. "[A]mplification is most proper to epideictic [rhetoric] . . . past fact [is most proper] to judicial . . . and possibility and future fact [are most proper] to deliberative speeches."91 Epideictic oratory most of all uses amplification, arguments that make something seem large or small. To make something into a preference is to diminish it; to make something into a matter of principle is to maximize its significance. The times we seem most to be speaking past each other are the times we are making something large or small, crucial or trivial. Seen in this light, epideictic rhetoric is far from an easy fallback when deliberation is too hard. Understanding arguments about the right size of things could help us to understand each other when such recognition seems least likely.92

<sup>91.</sup> ARISTOTLE, *supra* note 3, bk. II, at 174 (fourth and sixth alterations in original).

<sup>92.</sup> This paper benefitted from a very stimulating discussion of its oral presentation, along with the other papers and events at Mercer University Law School. In addition to the named participants, I was asked very penetrating questions from people in the audience whose names I never even learned. I am grateful to the exceptional hospitality surrounding the event.