Ciceronian Rhetorical Justice: The Vital European Rhetorical Tradition

Rhetoric has many important European lineages, often traceable to Athens: the contingent nature of truth, the best forms of pedagogy, the ways to speak and lead well politically, or the questions of aesthetics and virtue. Each contains important strands of knowledge for Europe and around the world outside of narrower confines of Western philosophy. Yet, one particular tradition especially gives meaning to being human with others; one achieves not just civic empowerment and wisdom, but also a bulwark against the worst destructive tendencies in mankind against one another, the environment, and good thought. I want to focus attention on this important rhetorical tradition that gets less attention but constitutes the vital strand if we review European history: Cicero's conception of rhetorical justice.

In this analysis, I will only cover two moments within the twists and turns to take us from 50 BCE to 2013 CE: Cicero responding to the Roman republic's decline and its resurrection by Chaïm Perelman and Hannah Arendt, responding to twentieth century totalitarian horrors. We come to see the development of an anti-foundational, pluralist natural rights theory, the recognition of strong leadership and human action in circumstances of diversity, and an awareness of the aesthetic and contextual nature of justice that still allows a place for limited and provisional unity and universals.

The first section of this analysis will review Cicero's reception of Stoicism and subtle blending with Greek rhetorical theory. The second section will then uncover Perelman and Arendt's negotiations of this theory in the context of

modernity. The conclusion will review the two moves and argue for us to center our contemporary rhetorical studies around this most vital humanist tradition, and extend it into post-humanist grounds for the contemporary demands of justice.

Cicero & the Stoics: Rhetorical Justice

Stoic thought had a significant impact on the European history of rhetoric. Only recently have these influences gained much notice. Catherine Atherton's 1988 essay gave early coverage to the Stoic handling of the distinction between rhetoric and dialectic made by Cicero. More recently Lois Agnew's book (2008) looked at how Stoic ideas of propriety might have influenced eighteenth century rhetorics of taste and eloquence. And then a special issue of *Advances in the History of Rhetoric* surveyed various statements and receptions of Stoic thought from Roman antiquity to contemporary cosmopolitanism (O'Gorman, 2010).

Most ideas about Stoicism generally, but especially about Stoic rhetoric, come through Cicero, whose works preserve the fragments and ideas by generations of Stoic philosophers. As anyone knows who had read Cicero, though, it is not easy to categorize him as a Stoic (Glucker, 1988). He borrowed, and in some cases, nearly copied wholesale many of their ideas; yet, at the end of the day, he also owed much to Plato and the Academics, Aristotle, Isocrates, and even occasionally the Epicureans. But especially on the topic of justice, Cicero was chiefly Stoic.

In *De Legibus,* Cicero argued that shared law commands individual obedience through the internalization of duties. For the Stoics, accentuated by

Cicero, this shared sense of law had a great deal to do with speech and common language (*Logos)*, which gives meaning to certain things as honorable, best, and so forth (*De Leg.* I.17). For Cicero, what really mattered was that individuals could "firmly fix" and "fully develop" this capacity as part of their nature as intelligent beings. (*De Leg.* I.6.18-19) Cicero added that this capacity, whether developed or not, helped form a unity of humankind that is the benchmark of justice. In fact, Cicero formed the bedrock of Perelman's "judicial analogy," also called the "Rule of Justice," when he wrote that:

> There is no difference in kind between man and man; for if there were, one definition could not be applicable to all men; and indeed reason, which alone raises us above the level of the beasts and enables us to draw inferences, to prove and disprove, to discuss and solve problems, and to come to conclusions, is certainly common to us all, and, though varying in what it learns, at least in the capacity to learn it is invariable. For the same things are invariably perceived by the senses, and those things which stimulate the senses, stimulate them in the same way in all men; and those rudimentary beginnings of intelligence to which I have referred, which are imprinted on our minds, are imprinted on all minds alike; and speech, the mind's interpreter, though differing in the choice of words, agrees in the sentiments expressed. (*De Leg.* I.10.30)

While we all might speak in different languages and have different contexts for such speech, certain maneuvers of making meaning (definition, metaphor, synecdoche, metonymy, among others) implant an inherent capacity to make

distinctions, build up and tear down, and so forth. Thus, even as we live in very different cultural milieus, something becoming apparent to the land-conquering Romans, one can imagine a basic human analogy that allows us to place laws, principles, and moral dictates on all people.

Cicero added to the Stoic ideas about justice by thoroughly finessing the basis of speech or rhetoric (*Eloquentia*) in ways that Stoics had not. Stoics had left the project incomplete, to Cicero, by conflating the dialectical and rhetorical modes of speech put forward by Plato, essentially saying that speech was a unity revealing man's capacity to reason. To pull this off in practice, they often spoke in terse syllogisms and philosophical absolutes in public life (Atherton, 1988). Cicero rejected this style (Cic. *De or.* 3.65), even as he agreed with the fallacy of the Platonic binary. He instead theorized rhetoric by focusing on a robust diversity of speech modes that could ground naturalness, distinction, and universality. Because it was natural to speak passionately and broadly, and because this demonstrated our capacities of reason most fully, eloquence and wisdom united were the gateway to then imagining and instituting shared judgment for universal truth, laws, and justice.

It is of course unlikely that Cicero was really intending to tout plurality in the way we moderns think of equal plurality, or multicultural respect. In many of his works, he mocks the idea, highlighting the position of masculine Greco-Roman thought above others. Yet he did suggest that judgment was available to all, and thus, by extension, education and good speech. In *De Legibus,* Cicero emphasizes that justice and law are not static things "out there," but develop

from speech, as the basis of thought and language, in the individual. Even as he seemed keen on cosmopolitan thought, he also disapproved of radical equality. Still, in upholding the Stoic ideas as worthy of tweaking toward robust oratory, he began a path toward speech as a centerpiece of human nature, and thus, human duties and justice.

Speech, for Cicero, was natural because it was common and embodied (Cic. *De or.* 1.114), nor should even the most learned orators or philosophers deviate too far from natural styles (Cic. *De or.* 1.12). As a faculty of judgment, that speech capacity takes in an understanding of the full range of human nature (Cic. *De or.* 1.53; 1.124-25), in contexts organic to that particular community (Cic. *De or.* 1.307-308). Speeches themselves are composed and arranged organically (Cic. *De or.* 1.310-1.325). Rhetoric, as embodied speech, reflected human nature at its finest and an organic community from which such excellence sprung. Stoics, on the other hand had gone astray in positing a universal reason without stressing public oratory as a vital and culturally contingent part of such speech. So, with Cicero, we begin to see an emphasis on plurality and diversity out of a universal, natural rights ethic—even if his focus was more on supreme excellence than maintaining diversity.

Stoics emphasized that choosing rightly or wrongly depended upon a person's nature and the materials that surrounded him or her. The excellence of no two persons was exactly the same, because the familiarization process by which each person had come to access their material surroundings varied. In *De Oratore,* Antonius and Crassus are praised for their dissimilar forms of thought

and eloquence. Distinction from different aspects education, the relative types of training, regional differences, and specific civic duties all work together for better political action.

Finally, rather than radical incommensurability or diversity, as we sometimes see in postmodern theory, Cicero used the naturalness and distinctiveness of *eloquentia* to argue for essential unity. Quoting Eleatic philosophy, *De Oratore* calls wisdom and eloquence the basis of an underlying unity of the universe, “bound together by a single, natural force and harmony. For there is nothing in the world, of whatever sort, that can either exist on its own if it is severed from all other things, or that can be dispensed with by the other things if they are to preserve their own force and eternal existence” (Cic. *De or.* 3.20). Cicero returned to tropes of synecdoche and metaphor to suggest a kind of basic and ultimate coherence or uniting force amidst the chaos of language and difference.

Because of this complex view of unity and diversity, Cicero formed the bedrock for much in the way of contemporary natural rights and democratic theory. Cicero made situational wisdom and taste the centerpiece of this system, as each particular judgment of appropriateness (*decorum,* Cic. *Or.* 69-71) gave meaning to the larger system of a universal ethic. This ability to connect the particular with the universal should be available to all, in the Ciceronian system, but of course historically this sense of “taste” was captured by the upper classes. Cicero himself was quite elitist, but he was also Stoic, focusing on the striving toward decorous judgment, and putting forward a model in the *orator perfectus . .*

. at the same time, admitting this model could never be fully achieved even by the rich and powerful (Cic. *De or.* 1.6-16, 94).

With the decline of civic republicanism as a coherent philosophy in the rise of modern democracy, there also arose the question of the masses: can thousands or even millions of people be prudent? What would this look like? So prudence became an economic and docile feminine quality, not one of courageous judgment (Hariman, 2004). In the realm of theory, this shift occurred as well. Immanuel Kant, the person most responsible for reviving the Stoic-Ciceronian of a universal ethic for politics, reduced the embodied orator down to the philosophical thought-project of the legislator: the imagined space of making rules for all despite one's modern subject position to the contrary.

Another difficulty in all this is the issue of modern science and expertise, with the hope in modernity of a rational science to take the place of messy, contingent political action. Giambattista Vico, a Ciceronian humanist, tried to tease out the two apart in theorizing *sensus communes* separate from the rational sciences, acknowledging that the former was still incredibly important for political action in the domain of rhetorical influence. Finally, as Lois Agnew's *Outward, Visible Propriety* shows, the other recuperation of Stoic philosophy in rhetoric, by eighteen-century British rhetorical treatises, often gets caught in their social project of uplift of the unsophisticated, by disciplining private and public boundaries (16). Stoic thought functioned more to restore a sense of harmony and a preservation of order than any coherent theory of action. Agnew's study of Anthony Ashley Cooper, Third Earl of Shaftesbury, Thomas Reid, Adam Smith,

Lord Kames, George Campbell, Hugh Blair, and Richard Whatley shows a reframing of classical rhetoric in modern terms of epistemology and psychology, with the primary utilization for emotional control and entrance into polite society.

All of these are useful projects, as “civility,” civic and economic management, and reasonable thought get nuanced over intervening centuries. But in the mid-twentieth century came the realization that the recuperation was incomplete at the ultimate level. Totalitarian regimes looked for polite, ’civil’ (quieted) subjects who put their own economic improvement as their ultimate concern. Rationality, when made to look perfect in the realm of politics, could lead to ultimate destruction or demands for purity, rather than the messy stuff of compromise and disagreement.

20th Century Pluralist Rhetorical Theory

In 1958, at least five significant works in rhetorical studies (as understood today) emerged from the presses touting contextual thinking, ancient rhetoric, pluralist political action and justice as answers to modernity’s ills (Frank, 2011). Totalitarian regimes, genocide, and war framed political communication in twentieth-century Europe, so these authors looked for understanding and answers. Speech and symbols were directed at a politics of avoidance, of “never again,” and of projects of competition and coalition democracies in lieu of efficient regimes.

Rhetorical theories tried to bridge the *vita contemplativa* with the *vita activa* by foregrounded lived argumentation as natural human activities, amidst

pluralism and agonism (Frank and Bolduc, 2004). Chaïm Perelman and Hannah Arendt were both resistance workers against the Nazis, with one working explicitly with "new rhetoric" while the latter essentially also calling for a "new rhetoric" to thwart totalitarian silences and anonymity. Both also followed up with Stoic-Cicero rhetorical justice, overcoming the deficiencies of modern, technical rationality in the realms of legal and political thought. Perelman and Olbrechts-Tyteca read Cicero's rhetorical ideas, reporting the experience as a "revelation" (Frank and Bolduc, 2011, 76). Arendt's vision of a new republican theory based on the "political genius of Rome" (*The Human Condition, 1*95) came throughout her writings, but explicitly shifted to Cicero's works on oratory in her *Lectures on Kant's Political Philosophy* (63).

These modern theories hold up nature and natural speech acts without talking about essences,spirits, or ideals, especially as to avoid promoting particular bloodline and ethnicity, or by extension, gender, class, and other identifiers. Rather, both take from Kant one particular part of naturalness—free will. Perelman started not from a fundamental grounding for these rights, but from a theory of natural speech (see Mootz, 2010). He argued that humans produce language and meaning that can be both thoughtful and that cohere with recognized ways of thinking and speaking; and he assigns to both the status of reasonable thought (Perelman 1979, 113). Moreover, the capacity to think deeply is not reserved to philosophers. Instead, he follows Cicero and the Stoics to see dialectic and rhetoric as parts of the same reasoning system: all humans can imagine the universal (the capacity Cicero called *phantasia*). There is no

boundary of speech or thought between the philosopher and the uneducated; both appeal to the universal audience of all reasonable people from time to time in values they imagine timeless and/or global, even if the philosopher does it more as part of her profession. But as a philosopher, Perelman did not want to say these were mere generalizations or just unfounded abstractions. Humans also have the capacity to assent or not—the importance of free choice as opposed to arbitrary coercion—Perelman's idea of *adherence.* 'Rationality' comes from argumentative apparatuses, from good reasons.

Arendt's system recuperated this natural autonomy, with an even stronger negotiation of Kant. Arendt theorized that, following Martin Heidegger and Karl Jaspers's phenomenology, we have as humans a natural capacity for being with others and in the world of labor, work, and action, and that the latter is uniquely important to define our lives as a way to guarantee plurality and the space for shared action. Rather than focus on the speech itself as a part of the universal, Arendt highlighted the communal settings (produced in constitutions of the body politic, institutions, and most importantly, modes of action) that allow human flourishing, even as we do quite artificial acts (and thus not necessarily determined or expected) to create and sustain them. For Arendt, this creation of communal space was natural, but only insofar as it is a decision of the free will to enter them and do something unique that contributes to the life of the larger communities, often for the sheer joy of doing so ("Truth and Politics," 263). The rise of technologies that allow for mass society and totalitarianism, she viewed as

an “unnatural growth” (*Human Condition*, 47) of the natural, bringing to mind the capacity of all cells to bring cancer.

She joins Perelman in a departure from any totalizing claim about mankind’s natural state as tragic, comic, good, or evil, or pre-given with human rights. Rather, she focuses her attention on thought, then speech and action, as common capacities (*On Revolution*). She also imports Cicero wholesale into her work when she says there exists a “faculty of judgment and taste which is beyond the coercion which each speciality imposes upon us.” (*Lectures,* 225). This insistence on irreducible humanity through the faculty of rhetorical judgment spans two millennia.

So with both Arendt and Perelman there is a return to political action as natural capacity, even as they are not as bold as Cicero about the uniquely human qualities of robust oratory or the most excellent forms of speech. Rather, from Kant, they have borrowed a more humble basis for political thought and action in contemplation by an autonomous intellect. Still, they were less Kantian and more Ciceronian than we might think. They both threw the focus onto language and political action as the paradigmatic human act, within which the entire range of human thought and communication occur. For both Perelman and Arendt, language could never be a neutral or value-free tool: it is built on systems of hierarchy and inequality, mirroring the meaning made of the world the language tries to describe. Perelman focused on epideictic genre and values that can be imagined as universal. Arendt focused on courageous risk-taking that often takes embodied performance and thoughtful action.

This centering on something other than pure rationality takes us back to something almost pre-modern. By not reducing “natural” down to philosophically pure attributes, the two theorists also included at least some diversity, just as Cicero had theorized. This also restored something bolder than Kant’s “ abstract character,” as the focus is not on an individual’s rationality, but a community’s values and actions. As Perelman wrote, "In all fields . . pluralism is the rule." (Perelman, 1982, 160) This entails an acknowledgement of diversity, it being a precondition for successful argumentation. Although values are entirely socially constructed, they are produced by discourse in such a way as to allow for some values that straddle multiple cultures. His writings suggested that the values tend to point to systems of human happiness that prioritize rule-following (deontological) or utilitarian more-or-less thinking. Values are neither incommensurable (contra Berlin), nor easily commensurable, but instead structured in value hierarchies and argued by different groups to develop their meaning.

Perelman harnessed diversity and the pluralism of values into adherence by the universal audience, a way to provisionally and temporarily overcome differences. In a world where particular identities could be the end-all-and-be-all, Perelman suggested the tendency of better discourse—discourse motivated to stand the test of time—to speak to a universal audience: an imagined set of ideal audience members who embody the plurality and reasoning-faculty of humans world-over and over time.

Perelman refocused Cicero's interest in the orator to a priority on audience, not that the two are incongruent, but that he ensured we turn our eyes from ourselves to others. This creates a problem, as it lacks a significant reason to argue internal to the self. For Cicero, it was the way to demonstrate innate virtue and greatness for the great orator, naturally built to lead, act dutifully, and deserving of rights. In a modern era, Perelman offered very little reason to act politically, when values are so plural and contested. This makes some sense, as Perelman was mostly interested in the realm of professional legal argument, which presupposed institutions.

Arendt, alternatively, used the term "enlarged mentality" to argue diversity, following Kant's "impartial spectator" position, to imagine the position of others—not to "feel sentimentally" like them (which Arendt finds impossible), but to use reasoning power to think in another's space as one encounters plurality of viewpoint and identity in political practice. This results in a kind of "universal interdependence" ("Truth and Politics," 242), an internalization of Cicero's political performance. To feel as others, there must be others, and they must be encountered and understood. This is not instrumental rationality, but rather, the kinds of discourse that share a range of human experiences in myths, stories, and personal narratives (Trish Roberts-Miller, 589). Arendt famously adapted Kant's theory of aesthetic judgment (where he situates taste and decorum) for political decision-making, so that decorum is not limited to art or high society, but is the inherent, situational reasoning capacity of living with others and being able to think representatively.

Thus, Arendt and Perelman did not discard actually-existing, sociological diversity. Both make it a precondition for argument, and thus free will—Perelman through a focus on conflictual values that can be argued to a universal audience, and Arendt through a focus on shared space for action and internalized as an enlarged mentality. Arendt justified this struggle for justice-through-plurality in the Ciceronian quest for fame and glory through public display, perhaps preserved in the records of historians and poets for the future model of political action. Perelman, as a secular Jew living in Belgium after the Holocaust, gestured more toward an ultimate value of "equity," a kind of supreme virtue that comes through non-arbitrary argument, when formal systems of justice are not sufficient (*Justice,* 31). Following Cicero, he suggested that this is not done through careful rational institutions, but rather through the judicial analogy of seeing people as similar, as well as the qualities of compassion and care that cannot easily be subsumed into logical judgment systems, but often get expressed in transcendent ethics of religion or human rights. This "rule of justice" allows that, by simple analogy between persons (*Justice,* 23) or situations (*Justice*, 83) being alike, certain rights, obligations, or capacities are due to be protected, maintained or nurtured. In another sense, the rule of justice also provides that arguments "capable of convincing in a specific situation will appear to be convincing in a similar or analogous situation," thus protecting against arbitrary or extremely relative judgments (Perelman and Olbrechts-Tyteca 1969, 464). Justice then becomes about the strength of arguments before universal audiences from situation to situation as analogous. It involves the specific developments of ideas,

individuals, and most importantly, communities that can maintain such argument. Perelman's "rule of justice" is open-ended, but not entirely relativistic because it does not equate ethics with adherence from particular audiences.

He explains that common understandings of justice often involve equality of things or basic equality, sometimes in things owed based on labor, needs, or desires, and sometimes equality in a way that takes into account rank, class, gender, or some other category. So justice was a bit arbitrary. Still, Perelman found the "rule of justice" in that "essentially similar situations be treated in the same manner." (Justice 83) and at another place "the equal treatment of beings who are essentially alike" (Justice 23). These lines are copied almost word for word from *de Legibus,* and the gestures toward religious or more broad ethical values as modern, perhaps superficial additions, to this broad and basic rule of justice.

In short, both Arendt and Perelman rewrote Ciceronian inheritances of Stoic humanism in modern terms. Justice was enlarged beyond the abstract legal question into every type of justification for argumentation, and the actual practices of argument themselves became the "natural" grounding for them, without the foundation of a religious or transcendent external idea to the activity of arguing, even as those arguments can be admitted. Community and communal spaces allow arguments to move around, sharing power in a more democratic way than Cicero might have ever imagined, as an answer to the technologies of modern mass society.

Conclusion

Perelman and Arendt both pushed Cicero's premodern vision of the virtuous civic orator to a postmodern anti-foundational theory of argumentative action. New possibilities of destruction, of democracy, and of scientific awareness of our place in the *cosmos* called for adjustment of the Stoic-Ciceronian tradition. These twentieth century theorists gave contingent, rhetorical bases for "natural" spaces and capabilities. Duties and rights, from the Stoic-Ciceronian bridge of dialectic and rhetoric, of *vita contemplativa* and *vita activa*, provided pathways to a post-humanist understanding for rhetoric, 2400 years later.

The focus on distinction for personal improvement and distinctiveness as an asset of robust controversy shows a related change. In the modern uptake, the authors privilege plurality in a more egalitarian sense, even if the natural basis for these egalitarian expectations can be read in Cicero's elitist works. Instead of starting from "universal natural rights" that are premised on a perfect ideal, God-given, or primary and external to constructed meaning systems, Arendt and Perelman posit a reason to construct agreements to protect further capacities for debate, plurality, education, and good judgment.

For Cicero, *sapientia et eloquentia* unite all on a deep level of truth and aesthetics, giving new life to a place for shared, universal speech coupled with individual capacity for judgment. All are equal and worthy of enacting justice. Recent focus on the rhetoric of human rights (Lyon and Olson) could be aided by acknowledging this lineage for judgment and human rights theory. Similarly, works on rhetorical judgment (Beiner, 1984; 2011) can do more with Cicero's

rhetorical theory (rather than Aristotelian categories), as this better links with with Stoic cosmopolitanism and natural rights theory that ground much of contemporary thought.

Most significantly, all these ideas about the value of rhetorical judgment as a means to justice need to be placed within post-humanist framing about enlarging the vision as to how it fits, and how we fit, in the *cosmos*. The threat today seems to be less from technologies such as totalitarian state nuclear warfare, and more from internalized fundamentalisms that destroy human and environmental dignity, degrade the spaces and contexts for healthy pluralism, and put economic security above freedom. In this context, we can take the projects forward: making the universal audience intergenerational and framed within a natural, environmental habitat; considering action in digital and physical contexts around issues of anonymity and data collection; and across cultural boundaries outside of self-interested, short-term economic concerns. In other words, we can begin to see rhetorical judgment as decorum, the regulation of eloquence and wisdom that involves who we are, how we act together, and why we act together in a broader and inseparable cosmological context.

As Plutarch captured the Stoic sentiment, we ought to act not like each city is marked off by its own absolute legal system, arrayed against the others, but as "one way of life and order," like a herd grazing together nurtured by a common law [η σύννομος αγέλη συντρεφομένη νόμω κοινώ, *De Fortuna Alexandri,* 329a-b]. Perelman and Arendt focus the attention on audiences and communities rather than orator-leaders, so free speech, education, good health,

and sustainable environments become the contexts for good judgment. As humans come to reimagine their place in the natural order, not separate from it, rhetorical scholars have a leading role to play in building on this important rhetorical tradition of Stoic-Ciceronian rhetorical judgment and the universalizing justice that comes from it.

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