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# The Tyranny of Custom: Discovering Innovations in Forensic Rhetoric from Classical Athens to Anglo-Saxon England

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THE TYRANNY OF CUSTOM: DISCOVERING INNOVATIONS IN FORENSIC  
RHETORIC FROM CLASSICAL ATHENS TO ANGLO-SAXON ENGLAND

by

STEVEN M. SAMS

Under the Direction of Elizabeth Burmester, PhD

ABSTRACT

Scholarship tells the story of the history of rhetoric whereby the study of rhetoric declines first in the “Silver Age of Rome,” then loses any bearings or progress during first the Patristic period of the formation of the early Christian Church in the third through fifth century CE, and undergoes a second decline during the Germanic invasions starting in the fifth century. My task is defining and recovering new sources for rhetoric to spark more creative and in-depth analysis of this period in the history of rhetoric.

Rather than simply move through a bibliographical list chronologically, I narrow in on the evolution of rhetorical appeals at specific points in history when a shift in control and usage of such appeals can be perceived, as the focus moves from static or well-established sources to

fluid peripheral centers. Chapter 1 explains the exigence and methods for this study, and a recounting of the traditional histories I seek to expand. Set in Classical Athens, and grounded in the species of forensic rhetoric, Chapter 2 discusses how rhetoric, as an institution of the empowered elite, one that enforces societal cohesion, uses rules placed on behavior, thoughts, and identity through logical appeals.

Chapter 3 moves geographically and politically from Greece to the late Roman Empire, and examines how authoritarian political dominance forces rhetors to shift to ethical appeals in order to avoid persecution. Chapter 4 investigates fourth and fifth century Alexandrian culture to trace how early Christian factions moved the focus of ethos from a person to a singular text in order to gain prominence over their theological (and thus their political) adversaries. Chapter 5 visits eighth century Carolingian France to discuss how the authors of empirical legitimacy in peripheral kingdoms used rhetoric to promote access to the authoritative ethical text, while further expanding options for other textual ethical authorities. Chapter 6 illustrates how in ninth century England, non-traditional sources such as hagiography expose contemporary rhetorical strategies.

INDEX WORDS: Forensic rhetoric, Roman rhetoric, Patristic rhetoric, Carolingian rhetoric,

Anglo-Saxon rhetoric, History of Rhetoric, Medieval Rhetoric

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STEVEN M. SAMS

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in the College of Arts and Sciences

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Steven M. Sams  
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## **DEDICATION**

This dissertation is dedicated to Cara Minardi for interesting me in rhetoric as a field in the first place, to Christina Duncan, Laura Barberán, Vickie Willis, Jennifer Forsthoefel, and Emmeline Gros for helping me persevere in my studies overseas and throughout my career, to Dale Chapman for inspiring me to continue in graduate studies, and to Andrew McSherry, Terri Nicholson, Joe Mitchell, David Cater, and my mother Donna Sams for their untiring support.

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## 1 INTRODUCTION

The title of this study refers to the Tyranny of Custom, a phrase borrowed from the philosopher Bertrand Russell. He described custom as a helpful set of practices and beliefs that hold a society together and give people a sense of identity and belonging. In this way, customary ways of living and acting provide societal cohesion. They prevent strife by proscribing actions that will prevent conflict and by creating avenues for the settlement of conflict. Russell saw customs as tyrannical, subjugating the desire and will of the individual, outdated and no longer serving their purpose. In other words, they had simply transitioned into non-productive cultural traditions and norms. Rhetoric, too, especially forensic rhetoric, is a deprecated custom, but it holds the potential to be of greater value to society. While Russell saw philosophy as a way of freeing the mind from chains of custom by making one question the nature of things and systems, in my view, rhetoric, in addition to philosophy, could and should be used to free legal actors from bondage, to make rhetoric a tool of inspiration and innovation. A better understanding of the history of rhetoric bolsters capability and inspiration for both scholars and students in that field.

To start, there is a great gap in scholarship in the Medieval history of rhetoric. My dissertation attempts to provide a narration to bridge the gap in our published anthologies and surveys from late antiquity to the Middle Ages and provides some alternative ways to trace the development and continuance of rhetoric in Europe. Rhetoric continued to adapt to cultural contexts throughout the so-called Dark Ages. Here I wish to demonstrate two ideas to begin to plug the gap: one, the development of innovative rhetorical strategies in the face of various challenges to education in, and the practice of, rhetoric; and two, a greater understanding of

scholars can gain by exploring works outside the established texts of the canon of the Medieval history of rhetoric.

Modern surveys and anthologies of the history of rhetoric do not cover much medieval material. College classes on the history of rhetoric largely skip a thousand years in their assigned readings. This neglect of medieval rhetoric results largely because our received history tells us that rhetoric originates in the classical learning of the Mediterranean world, develops progressively from the Greek civilization to the Roman Empire, withers during the Middle Ages, and then revives in the Renaissance. For current students of rhetoric, whether they are studying rhetoric within programs in English departments or Communication departments, too much reliance on the received works of Aristotle, and interpretations of Aristotle's theories, is unfortunate because his rhetorical ideals tend to reflect those of the elite, and not of the Athenian democracy (Lanni 4). Also, as Patricia Bizzell and Bruce Herzberg note, in *The Rhetorical Tradition: Readings from Classical Times to the Present*, "To speak of classical rhetoric is thus to speak of Aristotle's system and its elaboration by Cicero and Quintilian" (2). My research seeks to situate the historical tradition of rhetoric within more specific cultural contexts, contexts that reveal "native" rhetorics in the middle ages, rather than trying to either recognize classical Greek and Roman rhetoric everywhere we look, or overlooking sources and social formations of discourse because it is outside Aristotle's definition of "rhetoric" or Cicero's "rhetorical activities." Exploration of non-canonical sources exposes the formation, theorizing, and practice of forensic rhetoric during the time period other historians had assumed learning was dormant, and in peripheral geographical regions often excluded or minimized in the master narratives of the history of rhetoric.

Scholars in rhetoric and legal studies would likely not be able to agree upon what it would take to claim the presence of forensic rhetoric as a field in specific times and places, but my position is that the existence of laws, courts, and trials is surely enough to show that argument was a relevant and important topic to cultures that required rhetorical practice to settle community conflicts. Furthermore, the existence of prescriptive advice on law combined with demonstrable forms of legal education throughout the early Middle Ages reveals an arena for discursive argumentation. For example, even though the ninth century is rarely the focus of study on forensic rhetoric, the expected cast and setting for what we can reasonably call forensic debate clearly are present in Anglo-Saxon texts. We see words for judge or official (*scirman*), law (*laga*), witness (*aewdas*), criminal or civil action (*sac*), court assembly (*folk-moot*), and teacher of law (*aelareow*).

Although classical Hellenistic and Roman authors, following Aristotle, regularly divided rhetoric into three species, namely forensic, deliberative, and epideictic, forensic rhetoric stands out as a well-systemized field that has partially survived and adapted into modern law courts and other realms of persuasive argument, so when possible, forensic rhetoric is my primary focus. When certain topics provide value during certain historical periods, I will examine other species of rhetoric for clarity of certain ideas that eventually come back, even centuries later, to impact forensic rhetoric.

Forensic rhetoric refers to argument used in judicial systems. Aristotle identifies forensic rhetoric as “legal or forensic speech, which takes place in the courtroom, and concerns judgment about a past action” (Bizzell/Herzberg 3). Stemming from the Greek and Hellenic traditions, the *Rhetorica ad Alexandrum* (disseminated with a purported letter to Alexander of Macedon, Aristotle’s pupil, and falsely attributed in later historical periods to Aristotle), “offers no

definition of forensic rhetoric” but explains, “The oratory of accusation is the recital of errors and offences, and that of defense the refutation of errors and offences of which a man is accused or suspected” (4.1426b; O’Rourke 19). The *ad Alexandrum*, now attributed to Anaximenes and thought to have been written around the same time as Aristotle’s *On Rhetoric*, also discusses species, topics, subjects, modes of accusation and defense, proofs, and a few other details along with a recommended structure for a forensic speech (Bizzell/Herzberg 169; Kennedy 33). Aristotle wrote his own review of rhetorical handbooks, the *Synagoge Technon*, which Cicero referred to in his *Brutus*, but which didn’t survive (Bizzell/Herzberg 169). From the Latin tradition, another handbook popular during the Hellenistic period and the Middle Ages, the *Rhetorica ad Herennium* discusses judicial cases and focuses especially on invention and techniques of delivery, and forensic rhetoric is defined quite similarly to the Greek tradition: “The judicial is based on legal controversy, and comprises criminal prosecution or civil suit, and defense” (I.II). Such legal controversy covers crimes, as defined by laws, and lawsuits, to protect property, and the strategies used by both sides to pursue their interests in either type.

However, as George Kennedy points out

Aristotle’s *Synagôgê* was understood by later writers to have traced the history of one strand of rhetorical instruction from Corax and Tisias in Sicily in the second quarter of the fifth century. The conclusion of twentieth-century scholars has been that the writing of handbooks of judicial rhetoric began with Corax or Tisias and was continued by Theodorus and others. . . . This tradition now probably needs to be modified in a number of ways. (33-34)

Thus, Kennedy retells the classic narrative of the origin of forensic, but the story is surely non-linear. I am answering that call to re-examine these received traditions and see how they limit or constrain the definition and recognition of forensic rhetoric in different cultures.

Although some scholars have begun to point out the continuance of classical rhetoric beyond the fifth-century Germanic invasions of Rome into medieval literary works, most medieval coverage centers around two arbitrary bookends: Augustine of Hippo's incorporation of rhetoric into Christian homiletics and the humanistic twelfth-century recovery of classical rhetoric in the continental cathedral schools. The many centuries between these two periods still bear the stigma of the outdated concept of a Dark Age—a term applied retroactively by Italian Renaissance poet and scholar Petrarch, and popularized by the humanists throughout the Age of Enlightenment. For example, *Speculum* published Theodor E. Mommsen's article, "Petrarch's Conception of The Dark Ages," in 1942, providing a detailed examination of how that phrase entered the historical record, and following its impact on scholarship. Mommsen explains that during the Renaissance, "Antiquity, so long considered as the 'Dark Age,' now became the time of 'light' which had to be 'restored'; the era following Antiquity, on the other hand, was submerged in obscurity" (228). Mommsen, the grandson and namesake of the German classical scholar and 1902 Nobel Prize Winner, argues that Petrarch, between 1337 and 1341, came up with a "new concept of history," described by the word "tenebrae" or "darkness" (234). First, Petrarch wrote, "What else, then, is history, if not the praise of Rome? (237). Mommsen further argues that Petrarch's choice in his own historical account, *De viris illustribus* (Concerning Famous Men), to only write about the Roman Republic and the Roman Empire was "based on a judgment of value," specifically, "the praise of Rome corresponded to the condemnation of the 'barbarous' countries and peoples outside Rome" (237). Moreover, in 1341, Petrarch "drew a

line of demarcation between ‘ancient’ and ‘modern’ history ... when later on he called the period stretching from the fall of the Roman Empire down to his own age a time of ‘darkness.’ In Petrarch’s opinion that era was ‘dark’ because it was worthless, not because it was little known” (237). Like Plato’s discrimination against Rhetoric, Petrarch set in motion the prejudice against the early medieval historical period for later humanists and historians that persists to our own generation. Yet enough texts survive in this period to demonstrate that intellectual activity continued in old, new, and diverse forms. There are, however, points of exception in our scholarship.

### 1.1 The Received Tradition of Rhetoric

To appreciate the discursive systems that created native rhetorical contributions to the medieval continuance of classical rhetoric, we must first examine the monolithic story of the history of rhetoric as it was received from tradition. Rhetoric as a pedagogical field endured as a legacy of Roman civilization. Although Greek authors first wrote about rhetoric (including Plato, Isocrates, and Aristotle), many of the Greek texts were unavailable to medieval authors. Aristotle, for instance, because many of his works were lost in the West after the fall of Rome in the fifth century, was primarily known as a logician to early medieval Western Europe. What did survive into the Middle Ages were the early writings of Cicero and those of Quintilian<sup>1</sup>. Also,

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<sup>1</sup> Quintilian’s major work, *The Institutes of Oratory*, written at the end of his long teaching career, has been hugely influential for rhetorical theory and history, but was not especially popular in antiquity, according to rhetoric historians James J. Murphy, Lee Honeycutt, and Olga Tellegen-Couperus. As Tellegen-Couperus relates, “Only from the 3<sup>rd</sup> to 5<sup>th</sup> centuries, Quintilian was famous, but then particularly for his writings on education and rhetoric,” not on law or forensic rhetoric. “In the 6<sup>th</sup> century, after the fall of the Western Empire, Boethius and Cassiodorus used [Quintilian] for their own work, and so did Isadore of Seville in the 7<sup>th</sup> century” (20). However, “thanks to the enthusiasm of Petrarch,” Quintilian’s work “enjoyed great popularity,” after Poggio Bracciolini, a book hunter and secretary to a deposed pope, discovered a copy of the entire manuscript in 1416 in a German monastery (Tellegen-Couperus 20; Honeycutt). The first printed edition of Quintilian’s work was available in 1470 (Tellegen-Couperus 20; Honeycutt). As George Kennedy points out, Quintilian studied with Domitius Afer, and “his choice of the

rhetorical handbooks of disputed authorship such as the *Rhetorica ad Herennium* and the *Rhetorica ad Alexandrum* were still available and very popular. It was not the strength of these works, though, that necessarily allowed rhetoric to survive as a discipline. Rather, it was its incorporation into Christianity and the Church's institutionalization of Latin. The rhetoric of the middle ages was not the rhetoric we think of today.

Craig Smith asserts that classical Roman reliance on deliberative rhetoric was needed to increase citizen participation in government. As Augustus Caesar weakened the power of the Senate, he lessened the usefulness of deliberative rhetoric. A century later, Diocletian's reliance on informants and an autocratic judicial system further reduced the effectiveness of forensic oratory for the populace (154). After weakening two of Cicero's three divisions of rhetoric in the late classical period, Roman society was left with epideictic oratory primarily, which lingered as panegyric in the Eastern Roman Empire.

During the Second Sophistic (the period George Kennedy identifies between Rome's silver age and the fall of Rome), the art of rhetoric became notorious for teaching students how to add eloquent but unnecessary embellishments to language. As a result, rhetoric lost some reputation as a field of study. In addition, a Pauline desire for a plain style of speech lessened rhetoric's appeal to early medieval Christians. C. F. Kolbert writes that theology attracted the

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practicing orator Afer as his mentor suggests that he hoped for a career in the law courts." Quintilian did have initial success with law before he became a teacher, after the "apalling year of the four emperors," in 68-70, "perhaps to support himself when there were few opportunities in the courts" (177). Vespasian "emerged as the victor in the contest for the throne," and in Spring 71, Vespasian appointed "Quintilian to a chair in rhetoric supported by the state treasury, the first such appointment ever made" (Kennedy 177; Conley 38). Quintilian "took Cicero as his model in oratory," and even though Quintilian represented "practical application of rhetorical skills rather than [being] a famous declaimer," he also "occasionally undertook to plead legal cases" while he was a professor (Kennedy 177-178). He retired in 89 or 90, and spent two years researching before he composed his master work in 93. Quintilian and Cicero thus are notable not only for their treatises on rhetorical theory, but for their acumen and familiarity with forensic rhetoric. Quintilian, at the end of his treatise in Book 12, "catalogues the orator's duties: to protect the innocent, defend the truth, deter criminal behavior, inspire the military, and in general inspire the citizen body" (Conley 39).

Roman intellectuals who would have formerly studied to be jurists, in an environment of growing imperial absolutism and disintegration of the Pax Romana (32). Augustine of Hippo, in the early fifth century, partially salvaged rhetoric's reputation by applying rhetorical techniques to the reading, preaching, and defense of early Christianity. Since then, rhetoric has been both loved and despised as a tool of persuasion. While some decried the decay of eloquence, others dismissed rhetoric as a type of hollow (yet deceptively beguiling) speech.

The later medieval period saw the birth of universities and other learning centers, including cathedral schools and monasteries. The clerics of this period struggled with what to do with rhetoric and other sources of pagan learning. Ironically, a Muslim solved the Christian theologians' dilemma. Averroes, a twelfth-century philosopher from Spain, suggested that Greek philosophy was compatible with theology and that where two truths seemed apparently to contradict, the religious truth was to be seen as an allegory.<sup>2</sup> This notion allowed for the acceptance of Greek thinking in Medieval Europe, and Averroes' writing became much more popular in Christian Europe than in the Muslim world (Knowles 200-02). At the twelfth century school of Chartres in France, theologians began to apply Biblical exegesis to pagan sources, thus incorporating *ante gratia*<sup>3</sup> philosophers into the Christian cosmology and salvation history. In the thirteenth century, Thomas Aquinas took Averroes' ideas and further developed the

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<sup>2</sup> Averroes also creates a hierarchy of types of believers, wherein the simple ones can look to religion to understand things and the most complex ones need "absolute demonstration" through philosophy (qtd. in Knowles 201). Although such a view invites the acceptance of philosophy, it also perpetuates the subordination of the masses to class-perpetuating religious proscriptions, i.e. the serfs enduring hardship and postponing their corporeal gratification in exchange for a reward in afterlife.

<sup>3</sup> *Ante gratia* translates as "before grace." These philosophers included anyone born or writing BCE, as they had not had the opportunity for salvation. Plato, Aristotle, Cicero. Early Christianity wrestled with the idea of including their teachings in Christian theological works but eventually excluded them. The return of their works to educational canons signaled an opening up to a greater field of ideas.

compatibility of Aristotle's natural law with Christianity (Law 44-45). Through this surge of humanism, schools taught rhetoric as one of the seven liberal arts.

In Medieval Europe, the classic Ciceronian division of rhetoric into three purposes (declamatory, epideictic, and forensic) was further dropped and replaced with an emphasis on preaching and clerical communication. Some modern scholars have attempted to understand how rhetoric persisted through an age of sacerdotal<sup>4</sup> suspicion. For example, James J. Murphy highlights letter writing, poetry, and preaching as three of the most important medieval uses of rhetoric. Murphy's edited collection *Medieval Eloquence* gives scholars an opportunity to posit a variety of different types and uses of rhetoric in this time period. Nevertheless, Murphy demonstrates a clear dominance of the how-to guides of Latin instruction. These manuals were all clearly instructive in nature and used in contemporary scholastic settings. On the other hand, George A. Kennedy in his chapter "The Survival of Classical Rhetoric from Late Antiquity to the Middle Ages" discusses rhetoric's new Christian use in "interpreting the Bible, in preaching, and in ecclesiastical disputation" and includes treatises on grammar (271). Due to this shifting subject matter covered in medieval rhetoric, scholars struggle to delineate the boundaries of medieval rhetoric but also enjoy the flexibility in genre offered by the field.

In the Middle Ages, rhetoric was not only an interpretative hermeneutic but also a process of creating handbooks for composition and, on occasion, moral behavior. These skills were called *ars*<sup>5</sup> in Latin. The Latin tradition of rhetoric infiltrated a wide variety of social

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<sup>4</sup> Sacerdotal indicates "relating to priests and the priesthood"

<sup>5</sup> *Ars* is the Latin equivalent of Aristotle's *techne*, the Greek translation for "skill or craft," thought of as a branch of knowledge, particularly in Aristotle's *Nicomachean Ethics*. Rhetoric for Aristotle was an example of *techne*. In his dialogue *The Phaedrus*, Plato used the phrase *logon techne*, meaning "art of speech" (Kennedy 30), and Isocrates also discusses rhetoric as a *techne* (Kennedy 48). In Quintilian's theory, as Kennedy observes, he introduces "the idea of *ars* (theory), *artifex* (speaker), and *opus* (the work of art). In *the Institutes of Oratory*, "books 3 through 11

discourse, from educational to spiritual to artistic. *Ars dictamins* instructed students how to write letters (Murphy 4). Examples include Alberic of Monte Cassino's *Flores rhetorici* and Anonymous of Bologna's 1135 *Rationes dictandi* (3). Grammar and rhetoric had also become very blended by this time, partly because so much of the study of each was devoted to analysis of language, the former syntactically and the latter perhaps more figuratively. Grammar handbooks, or *ars grammatica*, were popular as instructional tools, and many modern scholars tend to lump this genre in with rhetoric. Alexander de Ville's 1199 *Doctrinale* and Evrard of Bethune's 1212 *Graecismus* partially supplanted older, reliable grammars from Donatus (4<sup>th</sup> century Rome, "the most famous of all Latin grammarians, according to Kennedy, 274) and Priscian (6<sup>th</sup> century Rome, the author of the standard textbook for the study of Latin; Kennedy 281) (xx). Grammar was subdivided into *ars prosaicum* (prose writing), *ars rithmica* (the study of rhythm or meter), and *ars poetria* (poetry). The instruction of poetry overlapped with the study of rhetorical devices in the late Middle Ages because of its intense scrutiny of diction and figurative language (xxi). Famous examples of poetry manuals include Matthew of Vendome's *Ars versificatoria* and Geoffrey of Vinsauf's *Poetria nova*.

Not only did medieval rhetorical manuals provide compositional instruction, but they also provided moral instruction. In addition to the interpretive guidance of exegesis, already described above, attention was also given to the arrangement and oratorical techniques of preaching a homily. The *ars praedicandi* were textbooks clerics wrote to help themselves and other preachers properly create and perform sermons. Examples include Robert of Basevorn's c. 1322 *Forma praedicandi* and Alain de Lille's *Summa de arte praedicatoria* (Murphy 111). Such conduct

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deal with the ars" (Kennedy 183). In Roman Rhetoric, *ars* typically translates as "art," indicating a system that can be taught, and was used with rhetoric and poetry and other genres, including preaching and letter-writing.

literature followed students to their deaths, as is evidenced by the existence of *ars moriendi*, instructions on how to die well, from the fifteenth century.

Authors always wrote these guides, scholastic or spiritual, in Latin. Therefore, no matter the topic of instruction, the audiences either had to be educated in Latin or clergy had to interpret the texts for others. In this way strict control of education and behavior was maintained through the adherence to Latin. Charles Barber notes that certain groups fought hard for the continuance of Latin for certain domains of knowledge or occupations because their “professional monopoly depended on excluding ordinary people from the mysteries of their art” (177). While he cites doctors as an example, it is easy to see how the same philosophy could be applied to lawyers as a professional class and to the field of forensic rhetoric. Medieval rhetoricians were primarily clerical, though sometimes lay, educators or theologians, who would not benefit through dismantling the institutions that brought them knowledge, power, and prestige. Of course, all of this began to change in the later middle ages with the rise of the national vernaculars. Thusly ends the history of medieval rhetoric—or so the story goes.

## **1.2 Critical Perspective**

To say that there is no current understanding of alternative forms of medieval rhetoric is an overstatement, but comparatively speaking, there is very little supported work in medieval rhetoric. There has been significant work done both in identifying a continuance of classical thought into the medieval era and in searching for new conceptions of rhetoric outside of the classical tradition. In terms of the former, some anthologies reprint or translate medieval interpretations or commentaries on classical rhetoric from the likes of Macrobius, Boethius, Isidore of Seville, and Bede, to name only a few (Murphy; Conley; Bizzell and Herzberg). Other

critics like Janie Steen have looked to Old English literature to find evidence of classical learning in the demonstration of rhetorical devices such as figures of speech and thought.

Contrarily, scholars at times have presented alternative taxonomies<sup>6</sup> of rhetoric outside of Aristotle's classical deliberative, forensic, and epideictic divisions. The recovery work of these scholars in the history of rhetoric offers a precedent to claiming previously overlooked texts and genres as evidence of rhetorical thought and writing. For example, James J. Murphy has assembled a collection of handbooks that suggests the invention or further development of rhetorical traditions of instruction on letter writing and poetics as well as the aforementioned homiletics. Moreover, he edits a collection of essays that explores a mixture of traditional and speculative rhetorical genres, such as logic, commentary, and grammar, and then looks for their application in a variety of linguistic and cultural traditions. Joseph M. Miller presents an anthology of medieval rhetorical works that includes evidence of the continuation of classical genres as well as the development of the newer genres proposed by Murphy. Scott D. Troyan edits a collection that examines composition instruction, invention, and other traces of classical rhetoric in medieval poetry manuals, works of personal devotion, book introductions, poetic and prose literature (particularly that of Chaucer and Sir Gawain), and pastoral manuals. Patricia Bizzell and Bruce Herzberg, in the first edition of their canonical *The Rhetorical Tradition* (1990), only included Augustine's *On Christian Doctrine*, Boethius's *An Overview on the*

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<sup>6</sup> I use taxonomy here to mean classification of sources, whether geographical, chronological, and based on subject matter. Taxonomy requires the criteria for selection as well as the categorization and arrangement of the selections. Bizzell/Herzberg, for example, use a traditional criteria of selection, anything that falls within the five classical parts of rhetoric, such as invention, arrangement, delivery, and the present the selection in a chronological order, divided by historical time periods. While my study will also travel chronologically, the criteria of selection has been broadened to include writing that is persuasive by intent of the author. Laura Gray-Rosendale and Sibylle Gruber argue that rhetoric in a given time and place reflects a value system, and exposing that system is where much of the value is within the exploration of the history of rhetoric (2).

*Structure of Rhetoric*, Anonymous' *The Principles of Letter Writing*, and Robert of Basevorn's *The Form of Preaching* for the section on Medieval Rhetoric, jumping from the end of antiquity in the fourth and fifth centuries, to the twelfth century. In their second edition, published in 2001, they expand the Medieval section to examine letter writing, poetry, and homiletics, and they further include works from Christine de Pizan (fifteenth century), in order to show the eloquence of medieval women and how they used rhetoric to effectively argue their moral and literary positions. Yet, Bizzell/Herzberg continue to overlook the periods between Augustine and Boethius and the 11<sup>th</sup> century, conveying the idea that no notable work in rhetoric occurred during the early Middle Ages.

Too often the story of rhetoric during the Middle Ages either strengthens the triumphal and monolithic history of the Christian church, or it does the opposite, wherein classical knowledge and wisdom, including rhetoric, are submerged under a thousand-year sea of darkness, anchored by the authoritarianism of the church and unceasing waves of savage barbarians. These two opposing descriptions neither fit nor serve a constructive purpose; the story of rhetoric is much more complex. Existing typological studies of medieval rhetoric keep rhetoric in a narrow channel of possible fields. To better understand the medieval usage of rhetoric as a domain of knowledge and persuasive heuristic, we need to re-envision the re-emergence of rhetoric in the late Middle Ages as a continuance of traditions that endured throughout the previous centuries, as well as a convergence of new and metamorphosed ideas. After all, as Ronald L. Jackson II points out, to envision Greece as the beginning of rhetoric is itself flawed: "We need to recognize that rhetoric did not emanate in Greece or Rome. How could it unless of course the origins of humankind can be found in Greece or Rome, or unless we are willing to concede that no human being held the capacity to think, to organize ideas, or to

compose arguments prior to Greeks and Romans?" (*Octalog III* 117). In support of a revision of the chronology of rhetoric, I begin in Egypt to discuss the origin of law. While I focus initially on the territory of the received canon of rhetoric, I quickly shift to other regional centers such as Alexandria, France, and England.

Indeed, rhetoric is not solely the collected body and tradition of rhetoric and its instruction as inherited from Greece and Rome. There are many other sources to find rhetoric, ideas about it and its usage in legal and other venues, such as continued systems of education, composition on rhetoric, laws, transcriptions of legal cases, synods, councils, noble edicts, and more, though these sources are not always neatly defined and presented as rhetoric. C. H. Lawrence pronounces "Some muffled echoes of the debate can be heard" (79), and the job of the historian of rhetoric is to listen and try to make out the words. As an example, in James J. Murphy's analysis of various medieval instruction manuals (or *ars*) on letter writing, poetry, and preaching, which he labels rhetorical arts, he also offers an expanded definition: "If one defines 'rhetoric' as a set of precepts that provide a definite method or plan for speaking and writing, then each of these medieval arts can be called 'rhetorical.' One of the authors called himself a grammarian, a second was a theologian, and the third was *dictator* in a Bolognese school. Nevertheless, each one, in his own way, shared in the Greco-Roman preceptive tradition ..." (viii). Here Murphy is finding and defending new sources for classical rhetoric, while he also allows for any kind of instruction regarding discourse to be an appropriate source for rhetorical exploration. There is value in expanding on Murphy's approach, selecting sources that demonstrate discursive argument as new forms of rhetoric, yet it is necessary to go beyond the search for traces of the Greco-Roman tradition as well. Murphy describes medieval rhetoric as

“the Western perceptive tradition,” and he stresses the diversity and selective pragmatism of medieval rhetors within this received tradition:

... the writers of letters fastened upon certain rhetorical doctrines: preachers of sermons selected still others, and even the grammarians compounded the original expansion of Donatus by broadening their field of studies. The basic principle of medieval rhetoric is a frank pragmatism, making highly-selective use of ideas from the past for the needs of the present. (xiv)

Murphy indicates that Medieval writers were practical and applied and expanded rhetoric for their purposes, so he advocates for expanding the canon of rhetoric to include these innovative sources. Such diversification is rightly necessary in the search for new, inventive resources as they reflect a more realistic use of rhetoric in historical periods beyond the copying and interpretation of classical sources.

### **1.3 Methods and Methodology**

As Sharon Crowley suggests, "We undertake our work with pedagogical goals in mind;" (*Politics* 7). While teaching argument in composition classes, I began delving into different ways to analyze court cases, teaching students how to find the issues at hand and to make their cases, when I recognized that very little training was given in school for this civic responsibility and practical need in life. Stasis theory provided an initial avenue into this exploration and I adapted it to the composition classroom, utilizing television court shows and excursions to local magistrate courts.

I noticed that plaintiffs and defendants both often lacked the skills to argue effectively in a judicial context. Actors were able to argue about morality, ethical behavior, and basic rights, but somehow, they had been given no framework to fit these ideas constructively into a

framework for legal effectiveness. Judicial power had been relegated to official professionals, such as lawyers and judges, with the occasional exception of juries, who had to have legal rules and responsibility briefly explained to them beforehand, case by case. When so much of modern life involves legal duties, I thought it preposterous that these skills were not being taught. It is highly likely that students will buy a home, evict a tenant or be evicted themselves, sue another individual or be sued by them, face civil or criminal charges, or sign a myriad of contracts throughout their lives, many of which could be performed without a lawyer.

These thoughts led me to wonder where and when the right to argue for oneself had been taken away, rhetoric entirely professionalized as a costly service, and whether that right had ever existed. It became clearer that knowledge of rhetoric had been subsumed in a long, historical power struggle. Other historians of rhetoric have certainly made this observation as well. James Berlin strategizes that historians of rhetoric “explore the relationship of discourse and power, a rhetoric again being a set of rules that privilege particular power relations.... Since a rhetoric is best understood in its difference from other rhetorics, from competing versions of normal discourse, it reveals the conflicts of an historical moment” (*Politics* 12). The study of the history of rhetoric clarifies history itself, so by tracing the history of argumentation, I hope to establish a foothold for further research for my own scholarship and that of others, point readers to additional sources and debates, and promote instruction on the matter so that some ability can be returned to popular learning, at least for those less complicated and common legal matters.

Richard Leo Enos advocates that “the diversity of approaches in rhetorical criticism illustrates the expansiveness of rhetoric. That is, we see now that rhetoric operates in a variety of dimensions and ways that were unforeseen by the traditional methods of classical rhetorical criticism” (“Classical Rhetoric” 364). There are many ways to approach the history of rhetoric,

all useful in creating a better understanding of the past and its application to the present. In this study, I focus on both classic and overlooked written rhetorical texts along with their propagation and methods of transmission in order to investigate the intentionality in stages of the process as well as to delineate who had access to them. I move chronologically to select key historical moments in rhetoric, and in each historical period I pinpoint authors, sources, or events that demonstrate its continuance and theoretical innovation, uncovering the roots of the field. Robert J. Connors challenges that the history of rhetoric is important, "As a field, we need connection with roots. Rhetorical history can provide those roots, that self-definition" (232). Connors also offers that the history of rhetoric provides "hard knowledge," historical facts, and proof (232). Legal historian Adriaan Lanni extends Connors' point by arguing that the history of rhetoric, because of its broad focus on society and institutions, is even more constructive than traditional historical approaches: "The Athenian courts can tell us something about the "Athenian mind" that is more than the historian's convenient fiction: the product of many generations and many hands may bear the imprint of the collective more deeply than that of any individual's work ..." (5). Therefore, I follow the intersections of historical socio-political movements, philosophy, and religion, in order to illuminate further which social groups held rhetorical power and access to legal systems and other rhetorical avenues of persuasion in order to seek out those roots and the hard knowledge we need in order to create historical narratives.

In the field of History, Edward Said's postcolonial *Orientalism* encouraged historians to look beyond the narratives of the historical victors and to examine history from the perspective of the oppressed, whose stories were often obscured and overlooked. Similarly, back to the field of Rhetoric, Malea Powell submits, "We have to learn to rely on rhetorical understandings different from that singular, inevitable origin story" (*Octalog III* 122). In agreement with that

methodology, my study does not show a continuous path; rather it shows peripheral, parochial, and overlooked, albeit still European, cultures appropriating or creating their own rhetorics. Historian Benedict Anderson's 1981 *Imagine Communities* examined various nations and geographies as mythical entities, socially constructed ideas passed along through generations. While some actors within these entities purposefully sought to create and promote these ideas for political purposes, the reality was that populations living with them were unaware or less essentially bound to these political constructs. Subsequent generations began to believe these fabricated histories, often gaining a sense of belonging and identity through their association with them and their othering process against those they wished to exclude. The creation and promotion of these social constructs for political purposes is exactly the power rhetoric had as well and what I seek to draw out in my research. Frankly, envisioning a Golden Age of rhetoric in Classical Athens would be an imagined history. Therefore, influenced by postcolonialism, I embrace multilinear narratives and focus on the periphery and the overlooked, as I approach the history of rhetoric.

Robert J. Connors asks, "Why did the culture and the writing teachers of the periods covered need and demand such teaching tools as the modes? What did that say about their culture?" (238). Similarly, Nan Johnson speaks to the raw uncovering of humanity and lost ideas that is possible in exploring the history of rhetoric: "Intellectual curiosity-Inquiry- Discovery- Who were we then?" (*Octalog II* 24). I ask precisely the same sort of questions—I want to know who these people were and what their ideas were. James Berlin illustrates how important it is to have a mimetic understanding of sociopolitical movements in the time and place of a particular text, indicating:

Rhetoric, any rhetoric, ought to be situated within the economic, social, and political conditions of its historical moment, if it is to be understood. A rhetoric is a set of rules that attempts to naturalize-an ideology-to make one particular arrangement of economic, social, and political conditions appear to be inevitable and ineluctable, inscribed in the very nature of things. To understand a rhetoric, it is thus necessary to examine its position in the play of power in its own time. (*Octalog* 11)

Everything about a historical text can be deconstructed by its relationship to power, such as the rhetorical situation of the author, what influenced the author, who it challenged, how it was promoted, why it endured over time, and so on. While the evidence gathered is never exhaustive, every idea gleaned from this sort of investigation can be used as threads in a new narrative and to add to the bodies of narratives. Like Nan Johnson promotes, I want to do more than present evidence; I am trying to tell a story, to craft the history of rhetoric into a narrative (*Octalog II* 9-10). Similarly, Jay Dolmage, too, sees the value in the accumulation of constructed narratives, the product of which are new super-narratives: "My own perspectives are the creative and sometimes conscious layering of other people's stories and ideas. When I can do this with some cunning and ingenuity, I am doing my job as a rhetorical historian" (*Octalog III* 113). This is a good way to describe my approach to the secondary sources and scholarship on the topics to follow. Recovering, closely reading, and layering historical narratives produce the chain of being Richard Leo Enos calls for when he insists, "Works are best understood when viewed not as isolated and autonomous events but as intertextual, that even discrete texts are part of a diachronic chain of being" ("Recovering History" 14).

Furthermore, I wish to add to the field of Composition by giving teachers and students new ways to look at argumentation and its historical uses. Connors insists, "The history of

rhetoric adds weight to the current field of composition, which can be seen as newer (*Rhetorical History* 233), drawing attention to the "uniquely troubled nature" (*Rhetorical History* 236) of the field. Richard Leo Enos applauds the development of new evidence and new sources, but he does not solely worry about their application to the classroom (*Politics* 8). With this sentiment I do not entirely agree. Although I personally get fascinated in these historical details, I do feel there needs to be application to, if not the classroom, then at least to personal and civic life skills—yet these are usually learned in the classroom. Robert Connors also touts the value of rhetoric beyond the classroom, "The rhetorical world is wider than the world of teaching composition" (*Politics* ?). Uncovering historical ideas about argumentation provides a good deal of knowledge to today even outside of the classroom, though surveys and teaching do seem to be the primary means of transmissions available for any new ideas along that line. Regardless of immediate relevance to the classroom, every newly discovered historical events, text, or methodology, is a stepping stone from which other scholars may build their own pedagogical applications.

Connors says there is a "moral charge" to what you do with the field (*Rhetorical History* 238), insisting, "What saves us from historicism in composition studies is what I will call, perhaps naively, our open and almost ingenuous desire to do some good in the world with our study and our teaching" (*Rhetorical History* 237). Likewise, my analysis is much more focused on what use can come from it rather than promoting my strict, biased interpretation. I point back to the exigence of my research, to improve the lives of students and help them find entry points into argumentation in their practical world in the overlooked area of legal civic activities. History of rhetoric accomplishes this better than most subjects. Connors reminds us, "History situates us—what we can and can't do and how people faced these questions before" (*Rhetorical History* 239). What could be more useful for a student to learn?

The field of rhetoric embraces a variety of approaches to studying the history of rhetoric, even retelling known narratives through new perspectives or angles. Connors advocates a diversity in approaches of historians of rhetoric (*Rhetorical History* 231). Advocating a diversity in approaches of historians of rhetoric, Connors advocates, “I would never claim that any one of them can be studied in isolation or studied perfectly using only one methodology” (*Rhetorical History* 231). Two entry points, expanded historical genres and historical points of innovation in rhetorical strategy, I find most useful in order to begin to gather new data through analysis of historical events and texts—to help myself and other scholars craft new interpretations and narratives about the history of rhetoric. Rhetoric existed beyond prescriptive texts like monastic rules and didactic texts like hagiography and underlies the sociopolitical power struggles and the rhetorical strategies agents used. Susan C. Jarrett says to look beyond rhetorical handbooks for students and to explore other fields and their dialogue with rhetoric (9), and I agree with this, although I still take stock in the handbooks, as they are clear evidence. I want to expand our thinking past the three Medieval rhetorics of Murphy and the conduct literature and look anywhere, in poetry and prose, for example. Not only are others genres besides traditional classical rhetorical sources such as handbooks as well as novel prescriptive genres, such as letter writing and homiletics, worthy of continued exploration but also other prescriptive genres of writing, such as hagiography, and non-prescriptive genres, such as the large body of Anglo-Saxon literature, worthy of investigation. It is necessary to seek out the cultural transmission of forensic rhetorical strategies and settings and historical events that reveal innovative developments in rhetoric itself. These developments are revealed through strategies of actors, such as textual ethos, interpretive ethos, synods to establish heresy, scriptoriums, and typological comparisons. As Jan Swearingen feels, the field of rhetoric need to reclaim hidden traditions

(*Octalog II 22*) (though she is speaking of women's writers). I, too, feel traditions can be reclaimed through analyzing non-explicitly rhetorical sources, and even historical events and discourses around those events can be analyzed for rhetorical strategies. Dolmage emphasizes the extra-textual, "I see rhetorical history as the study not of just a selected archive of static documents or artifacts, but a study also, always of the negotiations, valences, shifting claims and refutations, canons and revisions that orbit any history" (*Octalog III 113*). And this speaks to the range and diversity within my scope.

#### **1.4 Arrangement**

I begin with an exploration of the foundations of forensic rhetoric. When possible in subsequent chapters, I focus on forensic rhetoric, but the sources are not always available to support the continuous focus on forensic rhetoric, and oftentimes, the innovation in rhetoric I wish to highlight is not necessarily found in a debate which would be considered classically forensic. To this end, the second chapter dispels any notion of a monolithic, altruistic, populist field of rhetoric in Classical Athens. Instead, I argue that forensic species of rhetoric, as a tool of legal persuasion, is inexorably linked to power and the maintenance of order in order to protect property. I explore how privileged elites create and perpetuate rhetoric as one of many institutional channels within which privileged elites obtain and preserve social cohesion.

Robert J. Connors explains why it is important for historians of rhetoric to find where cultures in the past developed ideas and institutions to fit their circumstances, writing, "'Historical study ... tell[s] us how other persons in other times have set up their visions of the field, have asked and answered questions that seemed valuable to them, have shaped a discipline according to their perceived needs and cultural presuppositions" (236). I would agree and point to two significant Roman historical rhetoricians, Cicero and Quintilian, who steered rhetoric in a

new way as a reaction against what they perceived as harmful to their societies. In my third chapter, I suggest that during two stages of political crisis in the Roman Republic and later in the Roman Empire, Cicero, didactically, and Quintilian, defensively, adapted the Greek tradition of rhetoric by strengthening the influence of ethical appeals in rhetorical education. Both these phases of development have been studied before, but I wish to compare them together to create the narrative of the development of ethos as the springboard for the development of further innovative changes in rhetoric during the medieval period.

Chapter 3 moves geographically and politically from Greece to the late Roman Empire and examines how authoritarian political dominance forces rhetors to shift to ethical appeals to avoid persecution. Chapter 4 centers on fourth and fifth century Alexandrian culture to trace how early Christian factions moved the focus of ethos from a person to a singular text, in order to gain prominence over their theological (and thus their political) adversaries. Innovations included textual ethos, consensus on interpretation of the textual authority, and claims of heresy as a rhetorical strategy to maintain control of said interpretation. Chapter 5 visits eighth century Carolingian France to discuss how the authors of empirical legitimacy in peripheral kingdoms used rhetoric to promote access to the authoritative ethical text, while expanding options for other textual ethical authorities. Innovations include typology and scriptora, which expands access to the text and its interpretation. Chapter 6 shows the application of applying close reading to overlooked genres to look for forensic rhetoric or for any of the rhetorical innovations described in the previous chapters.

In the conclusion, I consider how the moves across appeal strategies reflected the further appropriation of rhetoric as a tool of power amongst shifting hegemonies. I also suggest how the information from these chapters can be used pedagogically as guideposts in designing and

teaching surveys and special topics courses to better understand how the history of rhetoric was affected by the so-called “Dark Ages,” rather than glossing over the period for expediency. Although scholars have explored rhetoric in places and periods throughout history, it is difficult to find a guiding narrative that strings this research together to help the student bridge the gap from classic to modern. Learning and knowledge does not disappear for one thousand years; the received story is too linear and shallow. Contrary to the traditional conception of rhetoric as having drastically declined in the Middle Ages, diverse sociolinguistic groups of medieval Europe instituted their own culturally-specific forms of rhetoric. Connors explains, “Meaningful historical writing must teach us what people in the past have wanted from literacy so that we may come to understand what we want” (*Octalog 17*). Oftentimes, we often do not know what we want until we find it.

## 2 FEAR AND CONFIDENCE: FORENSIC RHETORIC AND SOCIAL COHESION IN CLASSICAL ATHENS

Practitioners of rhetoric have attempted to see the origins of forensic rhetoric as a progressive system of reasoning and effective persuasion up to the collapse of the Roman Empire. Historians of rhetoric often brush over how the historical texts of the rhetorical canon constructed a system that privileges some actors over others in getting their desired judgments. Although early texts focus on the process and strategies of debating in a court, forensic rhetoric allowed for little popular participation, even in democratic Athens, where the sophists charged high fees to study rhetoric, and others hired themselves out as logographers, writing the speeches that other men delivered at trial. Only male citizens could bring lawsuits or appear in court, excluding all immigrants and slaves, but also those from lesser families and from lesser means. Thus, few could apply these skills, and regardless, the scales of justice were inherently weighted towards the privileged group maintaining control over their property.

To demonstrate these less visible—and less clearly spoken—issues behind forensic debate, this chapter will hone in on Aristotelian rhetoric and its practical applications in the courts of fifth century B.C.E. Athens. In this context, forensic rhetoric elevated the elite citizens and suppressed non-citizen others by determining what people could do, what people could know, and who could belong. Participants, who could wield legal and political power, wished to reduce their social and economic fear and gain confidence in their safety (Lanni 1). Analyzing the constraints on legal conduct, knowledge, and participation within Classical forensic rhetoric disabuses romantic delusions of an idealized classical democracy or notions of an astoundingly wise age.

Fear drove action. In his *Rhetoric*, Aristotle reinforces the connection between fear and human behavior: “Let fear be defined as a painful or troubled feeling caused by the impression of an imminent evil that causes destruction or pain” (II.V. 1). Such evils must also be “near at hand and threatening.” Individuals are wary of the fear itself and watch for signs of things or events that “appear to have great power of destroying or inflicting injuries that tend to produce great pain” (II.V.5). According to Aristotle, envy was the motivator of those who had less. He cautions, “Those who have spent much envy those who have only spent a little to attain the same thing” (II.X.7-10). He described how the capability, hatred, and anger of individuals created the scenario for danger and how even society could cause such distress through institutional conditions that promote the possibility of injustice.

Confidence was the goal for those in power. Empowered citizenry, the elite, sought confidence that they would be free from harm or loss of property. Confidence implied not just a lack of injustice but also freedom from fear of those injustices. Aristotle described confidence in opposite terms from his framing of fear, “... so that the hope of what is salutary is accompanied by an impression that it is quite near at hand, while the things to be feared are either non-existent or far off” (I.V 17-21). In fifth century BCE Athens, rhetoricians assisted in this endeavor by crafting strategies to decrease fear and raise confidence among the public. Law as an institution and forensic rhetoric as a learned skill provided a sense of safety and public good, at least at the surface level.

For understanding human judgment and human actions, Athens, Greece, was unique in establishing criminal and civil trials and an elaborate court system that included judges, juries, and citizens acting as prosecutors and defenders. Other ancient cultures had law codes and used

judges and witnesses, but Greece invented forensic rhetoric.<sup>7</sup> The tragic playwright Aeschylus created the mythical origins of jury trials in his drama, *The Eumenides*. In the play, the third in the *Oresteia* trilogy (458 BCE), Apollo defends Orestes, who upon Apollo's order has avenged the murder of his father Agamemnon, at the hands of his mother, Clytemnestra, by killing her. Prosecuted by the Furies, Athena chooses twelve men to be jurors and establishes the tradition of the jury trial, with herself as judge, ultimately converting the Furies into the Eumenides, "The Kindly Ones," by the skillful use of rhetoric, which undoes the cycle of physical violence, replacing it with reason and justice. Athena and Apollo represent the new Athens, particularly its democratic form of government and the role of poetry and rhetoric within it, while the Furies represent the old ways and the older deities and generations.

This democratic approach to judgment seems objective and altruistic. Isocrates discussed how, indeed, the institutions of a society, such as law and the arts, separate mankind from the other animals (Parrish 15). But while there was a nobility of purpose in providing courts of law where disagreements in a community may be settled, these courts aimed at what were likely impossible ideals. Truth is elusive, rhetoric is the available means of persuasion, dealing with probabilities, not necessarily discovery of truth—one of the reasons Plato was so suspicious of it. Human judgment is inevitably subjective, and unfortunately, court rulings are often politically or personally motivated as is the rhetorical art of gaining these judgments. Furthermore, moral and legal justice are not the same. Therefore, forensic rhetoric has much to do with maintaining societal cohesion, made evident through the Athenian court system, the privileging of elites, the nature of forensic rhetoric, and the inherent structure of jurisprudence.

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<sup>7</sup> For context, George Tridimas writes, "The direct democracy of ancient Athens emerged in 508 with the Cleisthenes reforms that transferred policy making power from the landed aristocracy to the Athenian demos" (102).

Societal cohesion is the maintenance of the political and cultural structures that preserve the social stratification of a particular time and place. In addition, societal cohesion preserves the status quo, protects the property of the wealthy and the prestige of the privileged, and also prevents internal conflicts that might threaten to disrupt the system, such as civil war or rapid movement vertically through the system. In addition, cohesion creates strong cultural identity to protect the internal system from outside influence or inward migration of groups wishing access to that system. Adriaan Lanni explains a dominant scholarly view on the subject, that law courts and the forensic rhetoric used within them focused on extra-legal issues and were “not aimed chiefly at the final resolution of the dispute or the discovery of truth; rather, the courts provided an arena for the parties to publicly define, contest, and evaluate their social relations to one another, and the hierarchies of their society” (1). Legal accusations could have political purposes, such as to disgrace a political figure publicly or undermine opposing policies. Furthermore, accusations could also be used more personally to discredit rivals. Courts were, in practice, vehicles for exclusive actors to preserve their status and property and rank themselves against each other.

## **2.1 Law in the Athenian Courts**

The Classical Athenian legal system developed to provide societal order. The first such attempt to seek justice and order was the creation of narrative *mythos*, which had the intent of passing along an assumed divine law. *Mythos*, the imaginative tales of the actions of gods, was the first type of knowledge the Greeks used to explain the world around them as well as human activity. The mythic gods brought law and order to the world. *Mythos*, meaning plot or sequence of events, passed wisdom along culturally. For example, King Sisyphus is punished with endless labor in Hades for his craftiness and thus serves as a warning to other treacherous politicians.

Rhetoric even appeared in the literature of *mythos*. As Kennedy and Walker argue, the poetry of Homer and Hesiod, and even Sappho, mention rhetoric and persuasion, as well as demonstrate its power in language and actions.

In the third through first millennia BCE, cultures outside of Greece were also evolving, and possibly influencing each other. Ancient Egypt had a legal system and law books. Although none of those books remain, Egyptians personified Ma'at, a principle of order and justice, as a Goddess. The idea of a divine order she represented was eventually codified into law (Andrews). Elsewhere, Jack R. Lundbom shows how Hebrew rhetoric is recorded from Deuteronomy to Jeremiah from the eighth to the sixth century BCE. Once writing is introduced into Greece in the eighth century BCE, laws, whether considered human, natural, or divine, were some of the first ideas written down (Carey 2).

Logos was a development arising out of *mythos* and eventually evolving into *gnosis* and *nomos*, although when the Older Greek Sophists used *logos* in their texts it meant everything including words, language, knowledge and speech (Bizzell/Herzberg 4; Kennedy 11). By the time of Aristotle's rhetoric, logos specifically referred to reason and rational thinking, as well as "logical argument," and it used deductive and inductive reasoning to explain events less metaphysically. Logos also used invention to create arguments based in probability (Kennedy 3). Within the realm of Ancient Greek philosophy and religion, knowledge was still characterized by its relationship to order and to nature, and continued to provide contrast between the divine and the human. According to classics scholar Karen Carr, "The Greeks often thought of the world as being a fight, or an *agon*, between the two forces of rationalism and chaos, or between law and nature. The Greeks called these two forces 'nomos', meaning law and order and rationalism, and 'physis,' meaning nature."

*Nomos* also indicates control, while *physis* describes forces and emotions beyond human control. *Nomos* was personified as the *daimon*, or spirit of the law, often attributed as the father of the goddess Dike, who embodied justice, moral order, conventional rules, and right-doing (“Dike”). Laurent Pernot also notices that *physis* can mean natural ability or talent, “a natural gift,” while *episteme* can indicate “learning” (219). *Nomos* was the label given to rhetorical exercises where students wrote a speech proposing a new law (Pernot 148). *Dike* as a term and a goddess represented human or man-made laws, while her mother Themis was the deity for divine order, natural laws and customs, and fairness. Themis from Ancient Greece led to Iusticia (Justitia), or “Lady Justice,” in Ancient Roman mythology. Accordingly, Themis:

was the Titan goddess of divine law and order--the traditional rules of conduct first established by the gods. She was also a prophetic goddess who presided over the most ancient oracles, including Delphoi (Delphi). In this role, she was the divine voice (themistes) who first instructed mankind in the primal laws of justice and morality, such as the precepts of piety, the rules of hospitality, good governance, conduct of assembly, and pious offerings to the gods. In Greek, the word themis referred to divine law, those rules of conduct long established by custom. Unlike the word *nomos*, the term was not usually used to describe laws of human decree. (“Themis”)

Dike’s siblings included Peace and Good Order. Dike, as one of the *horae*, “watched the deeds of man.” In an Orphic hymn, “She was the enemy of all falsehood, and the protectress of a wise administration of justice” (theoi.com). The three sisters together personified the stability Athenians desired. However, Adriaan Lanni urges a more human fabrication, “Although the Athenians liked to tell themselves that their legal system and laws were the product of single intelligence—‘the lawgiver’ of the distant past—Athenian court procedures developed from a

combination of laws passed at different times by the popular assembly and an accumulation of custom and practice” (4). For this reason, law reveals much more about the collective desires and needs of a culture than a rhetorical handbook written by one author; although, both the collectively imagined history of the culture and the historical artifacts of the civilization reveal useful information.

Once law was institutionalized and written down in Greece, rhetors debated the motive of law, the object of the courts, and the purpose of forensic rhetoric. Forensic rhetoric developed as a skill with which to navigate within and win cases in the court system. Aristotle says the object of forensic rhetoric was “genuine justice” (*Rhetoric* I.XV), but there were actually many objects. For example, the purpose in homicide law in Athens was revenge, purification, and deterrence. In homicide cases, the killed person was considered to have been done a wrong that required revenge or retribution (MacDowell 1). One responsibility of the courts was to “free the state of the pollution incurred by the homicide” (3). In addition, there was a duty of the family of the killed person to seek revenge, through the courts or otherwise, and it was a religious offence to forsake this duty (3). Failure to take vengeance by the family could be prosecuted legally as well under the charge of impiety: “You will thus achieve three good things: you will diminish the number of future criminals, you will increase the number of god-fearing men, and you will free yourselves from the pollution which this man has brought upon you” (Antiphon qtd. in MacDowell 5, 9).<sup>8</sup> This pollution was not only spiritual, a kind of curse or sin, but also physical, as it had the potential to lead to revenge and unrest.

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<sup>8</sup> Sophocles’ *Antigone* examines the contradictions within this system when divine law interferes with human law. Antigone loses her rights because she follows familial responsibility and divine law, but the play demonstrates that the man-made law in this case, the tyranny of the king, was at fault.

Although some written laws were written on stones and available to the public, the rules and structure of the courts of Athens were complicated and geared towards the more powerful sector of Athenian society. Unusual for this historical period, large juries decided cases, led by an administrative archon. Lanni describes the makeup of the court system, "... the Athenian hostility towards professionalism resulted in the expectation that private parties initiate lawsuits and, with some exceptions, represent themselves in court" (31). The division of the court system into two parts was based on who had been harmed; there were private cases (*dikai*) and public cases (*graphai*) (35). Since the system was designed by and for the propertied classes, much attention was given to preventing and recuperating from theft. Court cases could also be politically charged: the citizenship status and charges of impiety could be used politically to exert force or power against enemies and to create a stronger sense of identity to individuals belonging within certain privileged groups. Lanni agrees "some litigants were undoubtedly motivated by a desire to gain honor on a public stage" but that "social or ideological functions" were not the primary function of such extra-legal argumentation (44).<sup>9</sup> Christopher Carey demonstrates that courts were originally and increasingly more political in nature, even allowing for legislative actions to be brought up for review if they were said to be in contrast to previous laws (4-5). He divides the court systems of Classical Athens into distinct systems that dealt primarily with cases involving homicide, assault and wounding, property, commerce, and citizenship. There was little enforcement or prosecution run by the state, so trials relied on private initiative. The legal system reflected the direct democracy of the government in that

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<sup>9</sup> However, elsewhere Lanni demonstrates how the court system failed to provide end-to-end justice on its own as "Publicity provided accountability for litigants' out-of- court behavior: the courts provided a venue for litigants publicly to shame their opponents for wrongdoing. This informal enforcement of norms was important to maintaining order in Athens because it compensated for systematic under-enforcement due to the absence of state prosecution and enforcement mechanisms" ("Publicity" 119).

participation was limited to male citizens. Trials, both amateur and popular, were publicly viewable and provided some amount of spectacle and entertainment as well for the public (Lanni, "Publicity" 119-120). A wronged party could pursue legal action by making a proclamation, or possibly an arrest if relevant, to the courts. The litigant would gather evidence and there was a preliminary hearing. If arbitration could not settle the dispute, the case went to trial by jury. Juries were made up of citizens chosen through an elaborate process. Litigants gave oral speeches and presented testimony to sway the jury. Judges presided over the proceedings. Majority vote by the jurors decided the outcome of a case, and generally, the punishment was already set by law or agreed upon by the litigants (Lanni, "Law" 31-39).

The homicide courts of Athens show what steered actors in this arena and illustrate the complexity of the broader court system, the design of which ensured compliance of beneficiaries and excluded non-participants.<sup>10</sup> Some homicidal action was allowed, as evidenced by the existence of the concept of unintentional homicide, like death in an athletic contest, dying in the care of a doctor, or self-defense in a fight, and of lawful killing, such as fighting off a highwayman, defending oneself against a brigand, or the justified killing of an adulterer if the husband caught him inside the house with his wife, as in the case by Lysias on the murder of Eratosthenes, defending Euphiletos (Falkner). Any of these exceptional acts of killing had to be immediate and performed by the one being wronged, for example the owner of the property. Others justified acts allowed one to act officially on the part of the community, such as punishing

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<sup>10</sup> The broad divisions of the law itself are often relevant to note as well, whether there are commercial suits, whether there is a difference between civil and criminal codes and procedures, and whether there are public or private suits, as the divisions reveal insight into a community's notions of property and ownership. Carey describes how almost all cases were private in reality, but citizens could volunteer to sue for the public good (12). According to Carey, homicide law had a distinct religious scope, so Athenian society was conservative in making any changes to it; defendants were seen as unclean and court proceedings were held in the open air to keep participants from being polluted (1).

offences against the state, executing someone who breaks exile, or impeding those setting up a tyranny or overthrowing a democracy (MacDowell 75-77). All of these protected offenses sought to maintain social, governmental, and economic institutions.

The fact that any male citizen who caught a traitor could kill him legally denotes that this system was immature and in flux (MacDowell 78-79). MacDowell observes, “The usual direction of development for a society is from habits of self-help towards the use of legal trials; the fact that an Athenian was still permitted in the fourth century to kill a nocturnal thief or an adulterer for himself instead of taking him to court shows that Athenian society in this respect remained primitive” (MacDowell 80). Nevertheless, despite its novelty the courts established an institutional channel through which both older families and the newly wealthy and acclaimed could act within established, protected manners in order to stake and achieve their legal claims. The less powerful feared legal retribution and false accusations. For example, Deborah Kamen demonstrates how the courtesan Neaira, formerly of the privileged chattel slave class, had to defend her freed woman status through a trial, after she had bought her way out of slavery later in life (19-31).

Legal responsibilities helped to define what it meant to be an elite, full citizen. Laws added more complexity and formality to the quite amateur court systems in Athens.<sup>11</sup> For example, families became obligated to participate in some cases. There is even a term, *apagoge*, which the crime of someone exercising rights to which he was not entitled (MacDowell 26). In the case of homicide, it was the duty, both divine and civil, of the family unit to attain justice for

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<sup>11</sup> Likewise, extralegal obligations impacted the legal strategies of the elite; Tridimas writes, “...in the 4th c. performing a liturgy was a useful defense against court accusations that a rich man avoided his duties to the polis” (105-106). Because homicide was seen as a pollution to the state, performing the liturgy, or public religious ceremony in order to clean the pollution, provided visible evidence to the populations that this societal duty had been taken care of.

the killed person. This important duty extended as far as to sons of cousins and to in-laws. The family performed two actions: proclamation, which included a charge, and prosecution. The funeral proclamation at the tomb satisfied the religious angle, while the legal proclamation in the agora met the civil requirement.<sup>12</sup> An example of these separate actions is told in Antiphon 6, wherein the accused chorus master relates how Philokrates and his family make a charge at the funeral and carry out a proclamation to initiate the legal proceedings (MacDowell 22-23). Failure to carry out these obligations and seek vengeance could result in the charge of impiety against the irresponsible family member; Demosthenes wrote in *Against Androtion* that Diodoros' uncle was prosecuted for impiety on the grounds of associating with the accused killer of his relative (9).

Although moral justice was sought by victims, there was also an obligation to provide economic reparations for any loss. In heroic societies, blood money was a payment that could be made from one party to another to compensate for the wrongdoing that had been done. That blood money and bribery did not resolve disputes legally demonstrates how a layer of legal obligation was necessary for societal cohesion. Families were not necessarily due any type of blood money in retribution. Blood money did not count as vengeance in a religious sense—it did not clear the societal pollution caused by the crime; although such transactions occurred, they were not necessarily legal, or the right thing to do. Law and court proceedings were needed for that part to be done (MacDowell 8-10.) Moral justice was so necessary that even in a homicide case when a known killer cannot be found, and the family still cannot find anyone to accuse, there is still a trial, this measure speaks to the duty and the spiritual cleansing that has to take

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<sup>12</sup> Religious law was also being systematized in parallel with civic; the keepers of religious law were referred to as exegetes.

place for the religious welfare of society (MacDowell 86). Punishment, too, was a religious necessity. If found guilty, the unknown or absent killer was often exiled and animals and belongings were physically exiled in his place (Lanni 77).

## 2.2 Privileging the Elite

Legal procedures illuminated where power was held and by whom. In addition to the preeminence of the aristocratic families, Lanni writes, “Athens saw the rise of groups outside of nobility now demanding a greater share in political power by virtue of their wealth and military contributions” (15). This shift unsettled the status quo, introducing new competition for status between the old and new families. Carey explains further how those with power used political means to slow down the inflow of new elite, “For citizenship it was necessary before 451/0 to have an Athenian father and a free mother; after this date the qualification was stricter, with Athenian parentage on both sides being necessary” (9). Such a qualification excluded recent immigrants and their immediate descendants and favored older, landed families. Citizenship was also the exclusive right of males (9). Deborah Kamen uses the term “class” to describe privileged groups, and quotes Moses Finley’s definition of order to best represent common ground in scholarship on Classical Athens: “A juridical defined group within a population, possessing formalized privileges or disabilities in one or more fields of activity, governmental, military, legal, economic, religious, marital, and standing in a hierarchical relation to others” (1). Kamen then further delineates multiple class statuses for the population of Athens, including chattel slaves, privileged chattel slaves, freedmen with conditional freedom, metics, privileged metics, bastards, disenfranchised citizens, and full citizens with an additional division of male and female to consider (1). Such detailed stratification exposes a complex system of restrictions designed to maintain the older power structure in the face of new, rising groups.

The formalization of law, legal education, and the Athenian court system all delineated boundaries to the roles of legal participants, creating a prescriptive structure which benefitted the elite. The benefits of participation in the legal system defined much of what it meant to be a citizen of Classical Athens. Athens was a grossly unequal society economically. Tridimas describes the inequity:

... in the mid to late 4th c. total Athenian wealth was 12,661 talents, which with a population of 31,000 adult male citizens implies a mean wealth of 2541 drachmas (1 talent = 6000 drachmas) ... median wealth stood at 925 drachmas, the top 1% of the population (that is the class charged with advance-tax-payment liturgy) owned 30.9% of wealth and the top 10% owned 60.2%, and that there were about 5000 landless Athenians. (106)

Athenian democracy was fragile and temporary, something imposed on the aristocracy. Even among male full citizens, participation was limited according to four classes determined by level of land ownership (Kamen 98). Democracy lasted until Athens “finally succumbed to the might of Macedon in 322, who then established a government run by the rich elite that ended the democracy by disenfranchising the majority of middle and low income earners” (Tridimas 102). Eventually, this small elite group reestablished their dominance of the society without the façade of democratic controls that had been put in place earlier in history.<sup>13</sup>

Law, as an institution, maintained the status quo. Customary laws delineated what were the societal norms, passed on the rules of conduct, and maintained identity for communities.

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<sup>13</sup> According to a third century census in Athens, there were around 100,000 citizens, 30,000 of those being adult male citizens who could fully participate. The upper elite would have been even a smaller group (Lanni 19-20).

Lanni writes, “The participatory nature of the Athenian courts assured that the courts were a site of popular norm elaboration. And ... publicity helped to ensure that court sessions were a form of democratic practice that fostered a sense of civic identity” (“Publicity” 119). Federica Carugati, Gillian K. Hadfield, and Barry R. Weingast demonstrate that the Classical Athenian legal system enforced customary norms in a somewhat dynamic and pluralistic city-state: “Athens successfully transitioned to a legal order from purely informal or ‘oligarchic’ order in which ordinary citizens organized their norm enforcement efforts on the basis of classification schemes that combined long-standing norms with those imposed by powerful elites” (296). The application of and access to law was subject to participatory restriction.

Not only were specified actors designated to perform obligatory roles, but also the courts of Classical Athens where forensic rhetoric was performed were a complex geography of procedure, wherein each space was restricted to certain issues. Lanni explains how popular cases allowed for legal and extra-legal argument, were subject to more variability according to the context of the cases, aimed primarily for a just resolution to the case, and had a stricter formality to them (3-4). For example, different types of homicide were tried in the five different homicide courts with different procedures: the Areopagus tried homicide cases from the sixth century on, which was an important “shift in emphasis from self-help to legal sanctions” (Lanni 15); unintentional homicide and *bouleusis* (planning) were tried at the Palladium (MacDowell 64); there was no punishment for lawful killing—athletic contest, waylaying, war, adultery, etc. (73); the Delphinion was the temple where cases were tried where someone admits killing and says he did it lawfully (70); and the Prytaneion and the court in Phreatto courts had trials held for accidental deaths, a person is killed by someone who is not present to stand trial, or an object falls and kills someone, then that object gets tried and cast out (77, 85-6). Lanni argues the

difference between these two approaches is one of ambivalence, the struggle between flexibility and discretion versus “consistency and predictability,” an ambivalence, he claims, “that has haunted law ever since”. He sees the two competing approaches as a result of a “political commitment to maximizing the discretion wielded by popular juries” that still manages to achieve a sufficient level of the aforementioned consistency and predictability (3-4). In this system, societal cohesion is maintained by a careful balance of providing a legal channel to citizens to process their disputes while still maintaining the status quo.

The elite still held much control in the democratic court systems. For example, court offices, such as the *basileus*, were chosen from and elected by the citizens.<sup>14</sup> Tridimas describes how:

... the 4th c. formalization of liturgical duties including the liturgy of advance-tax-payment, and the associated partial redistribution of powers from the Assembly to the courts and Areopagus (where the rich could be more influential), signified an increase in the political influence of the rich and their control of tax revenues, because their agreement and cooperation became a necessary condition for the operation of the system.... extensive 4th c. peacetime public expenditure that benefited primarily the poor citizens (theorica and employment in public administration) aimed to incentivize them to vote for peace instead of war and its spoils. (106)

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<sup>14</sup> The *basileus* was not a judge but rather a magistrate who oversaw homicide cases. The term likely referred to a public official or group of public officials who “had significant power to determine if a homicide case could proceed and which court would try the case” (Gagarin 574). While this role formerly had more power in Athens, it is possible that through it privileged citizens continued to find an advantage in maintaining their place in the social order, by undue class influence, such as trading favors or familiarity, on the *basileus*.

As Tridimas describes, war hurt the wealthy citizens financially, as war was expensive and it shook up society. Therefore, the wealthy citizens contributed to the appearance of measures aimed at pacifying the greater population but in self-interest. Additionally, he points out the transfer of power from the political arena to the legal one, where the wealthiest citizens held even more power and influence, further slanting the legal domain towards an institution that maintained the status quo and privileged the elite.

Duty and obligation, while mandated, inherently allowed for participation as citizens. In other words, rights are a definite part of identity and belonging. Current legal systems use the term, rights, to liberate populations from tyranny, but historically rights maintain societal cohesion through limiting the influence of certain actors; fully participating citizens had rights to their advantage, and foreigners, metics, slaves, and women, for example, were left out or more specifically denied rights by law. A class existed called metics, non-citizen aliens, who also were not extended rights. Similarly, the enslaved belonged to the state, to a temple, or to an individual household and were also treated as property (MacDowell 22.) In addition, the citizens could lose their rights and become *atimos* (Carey 9). Those not extended rights were therefore also excluded from the legal system.

Access to courts was a restricted enterprise; only a citizen could initiate a private suit, or *dikai*, wherein a citizen sues for his own interest (MacDowell 17.) A citizen could also sue on behalf of someone else, which was a *graphai* (Lanni 35). Although there was a concept of the state suing to protect public interest, in actuality there was no institution for enforcement of such a process. Gender and age further restricted participation in litigation in Athens (MacDowell 18). Only male citizens could become fully adult in the matters of the law, which started around seventeen or eighteen years old, when boys could adopt, marry, or join the army (Golden).

Although access to the courts could be gained, further restrictions based on privilege impeded one's effectiveness in trials.

Kamen describes how the elite held a privileged position in the courts as claimants: "Litigation was a big part, ideologically, of what it means to be a citizen."<sup>15</sup> Suits were expensive and held high financial risk. Furthermore, judges and juries gave preference to participants who had benefitted the polis, something the poorer or non-citizens, numbering in the hundreds of thousands, were less likely to have had the capability of doing (Lanni 18). Kamen writes, "The fact that most cases (at least those that survive) represent strife between elites seems to indicate that the courtroom was a forum for primarily elites, rather than nonelites" (100). Litigious ability, then, helped to define informally full participation as a citizen. According to Lanni, a copious and well-attested number of cases are extant, but they reflect the cases of wealthier citizens who could afford a logographer who could record them (Lanni 5-6). Moreover, elite participation in trials was even more exclusive among juries.

Juries were not today's bodies, representative of the population. In the open-air trials of the Areopagos, the jury was constructed of men who were elected to archonships. Upon retiring after the year term, jurors became *Areopagites* for life after their *euthynai*, "the examination of their conduct in office." They were forbidden to write comedies, which speaks to their ethos and the solemn nature of their duty. They were subject to misconduct in office as well. As an additional layer of protection, archons were head of the nine types of law courts, for life, so not influenced by popular opinion or official worries (MacDowell 37-42).

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<sup>15</sup> Courts handled about 40 cases a day, and Athenians were known for their litigiousness, even being the butt of jokes in two of Aristophanes' plays (Lanni 33).

Only male citizens could also be judges, or magistrates, and participation in this role was even more restricted than for litigants or juries. In *Rhetoric* Aristotle described how judges “have to decide actual and definite cases; and they are often so entangled with likings and hatreds and private interests, that they are not capable of adequately considering the truth, but have the judgment clouded by private pleasure or pain” (1354b.7) . Judges acted with an advantage within the system, naturally, as they had “privileged access to a body of authoritative norms” (Posner 11). Furthermore, those in the position of elite authority could more readily interpret and bend legal rules to their advantage. However, judges in Classical Athens interpreted laws and could apply them unfairly, and the elasticity of law benefitted the sovereign more than those subjected to it. Posner asserts, “From the perspective of persons subject to the rules, the fact that rules have fuzzy edges or may be changed does not make them nonbinding. But from the standpoint of the rulers, rules may be so much putty” (52). Clearly, the vision of a democratic Athens where all could participate in trials was not a reality, and this anti-democratic system was by design.

According to Tridimas, “It must also be noted that the 4th century marked the rise of anti-democratic thinking. Philosophers like Plato, Isocrates and Aristotle denounced the democracy as a tyranny of the poor over the rich, while Xenophon and Isocrates also exalted the virtues of kingship.” (106) Rather than providing social equality, Isocrates, Aristotle, and other rhetoricians crafted forensic rhetoric to maintain property interests and class interests. Fear of loss of property was minimized and the confidence of maintaining the status quo was preserved. Lanni suggests, “Litigation was not aimed chiefly at the final resolution of the dispute or the discovery of truth; rather, the courts provided an arena for the parties to publicly define, contest, and evaluate their social relations to one another, and the hierarchies of their society” (1). Litigation was less democratizing and more an apparatus of the elite that enabled them to preserve property and

status. Another example reveals that Demosthenes, one of the greatest of the Ten Attic Orators, and held up as a model for the Romans and during the Middle Ages, “was not the defender of the poor, but of the affluent, of the creditor against the debtor; he also wrote speeches for political allies” (Kennedy 70). Additionally, Plutarch was said to have “severely” censured Demosthenes when he wrote his *Parallel Lives*, because Demosthenes “cynically sold his pen to anyone who would pay” (Kennedy 71). As Carugati/Hadfield/Weingast establish, “Elite competition weakened the elites, threatened to compromise the polis' internal stability, and jeopardized its chances to compete at the international level. Like in other Greek city-states, Athenian elites also turned to written law” (297). In order to make the most of the legal system, the elite needed education in forensic rhetoric.

### **2.3 The Development of Forensic Rhetoric**

Fredrick J. Long gives a summary of Aristotle’s description of forensic rhetoric: “Forensic rhetoric essentially consists in someone formally accusing an individual or the state with a wrongdoing,” so at a basic level the system allowed for settling disputes and maintaining the general peace (2004). Actors, if they knew the rules, could perform accordingly. There was comfort in the security of deterrence, and it ultimately built confidence among the populace. Furthermore, if there was a disagreement and there was some outlet to resolve this disagreement without conflict, then some pacification of the population had been accomplished. Nevertheless, forensic rhetoric formed as an institutional extension of the already privileging legal system.

Rhetoric formed as a kind of conduct literature, explaining how one should behave, and constrained one from acting in a manner against what was predetermined. Legal scholar R. A. Posner explains that although some people do not perform criminal acts because of “moral repugnance,” they also act out of “fear of an external penalty.” Uncertainty, the growing belief

that a perpetrator will get caught in the act of a crime, keeps non-criminals from acting. The perpetrator has a “freedom from encumbrances of uncertainty” (136), thus lessening the likelihood of deviance.<sup>16</sup> No matter the motives, law helped increase confidence in right action.

Following the establishment of direct democracy as a governmental form in Athens and the earlier codification of law, elite male citizens could receive a higher education, which included forensic rhetoric, so that they could write and perform their own oratory in civil trials. For example, Aristotle lectured at the Lyceum, an Athenian temple dedicated to Apollo, and these lectured coalesced into a school and library. T. J. Morgan reveals the comingling of literate and non-literate education in this period, though access to written texts was prohibitively expensive for the non-wealthy (48). Rhetorical training privileged those allowed to participate, partly because it was expensive and so separated the upper classes by their education, and partly because the politically powerful sponsored non-Athenian sophists who taught and practiced for them.<sup>17</sup> Plato used the term sophist critically to refer to those rhetoricians who were paid to teach virtue (Corey 16). Those without the specialized training were at a distinct disadvantage within the law courts. Isocrates, the fourth century Attic rhetorician, advised society to educate its youth in rhetoric: “It behooves all men to want to have many of their youth engaged in training to become speakers” (qtd. in Litfin 73). Morgan insists both Isocrates and Aristotle promoted an elite system of education: “The effect of both their prescriptions is to limit access to education, and to limit it on the twin grounds of ability and wealth (57). For example, Aristotle discussed at

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<sup>16</sup> Similarly, Adriaan Lanni explains Oliver Wendell Holmes’ “bad man” theory of law, “Holmes described the function of law by imagining a ‘bad man’ who viewed the law purely instrumentally and planned his behavior based on what he predicted he could (and could not) get away with under the existing rules” (132).

<sup>17</sup> According to David D. Corey, the Peloponnesian Wars (431-404) led both Aristophanes and Plato to vent their discomfort with foreign influence: “In the charged political atmosphere of war, tolerance of foreigners often runs thin, and the sophists may well have appeared as a group of outsiders teaching potentially subversive ideas to Athenian youths at the worst possible time” (20).

great length the concepts of emulation and virtue that directly explains one process of privileging elites: “wealth, a number of friends, positions of office, and all similar things. For believing it their duty to be good, because such goods naturally belong to those who are good, they strive to preserve them” (*Rhetoric* 243.) Both men were concerned with access to political power through advanced education and literacy (58). Sons of citizens went to school from age seven or eight to age fifteen or so from just after sunrise to just before sunset, in the care of a household slave called a *paedagogos*. Girls were formally excluded, typically trained in domestic arts and married off for family connection as young as age thirteen (Isbilen/Karaduman 42). Although, Anne Meade Stockdell argues that women were able to participate in rhetorical debate within religious ceremonies and cults (4).<sup>18</sup>

An even smaller group of wealthier students went on to private higher education in rhetoric, among other subjects. At this level of education, further prejudices towards ability emerged. Some students were considered by nature to be better at forensic rhetoric. Isocrates argues: “But let no one think, that I imagine justice can be taught; for I do not think there is any such art which can teach those who are not disposed by nature, either temperance or justice; tho' I think the study of popular eloquence helps both to acquire and practice it” (21). He seems education and specifically rhetoric as training for participation of gentlemen to participate in politics, which improved the democracy (Mehdi 15-16). Isocrates envisioned inborn skill to work hand in hand with education:

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<sup>18</sup> Stockdell also emphasizes the funereal domain of duty for women: “Since the female relatives of legitimate citizens were restricted in their access to public spaces their noticeable presence at public funerals, particularly the well-attended ceremonies for aristocratic figures or soldiers fallen at war, would have been disturbing to the dominant class of citizen men, ultimately undermining their total regulation of public spaces” (6). Women’s pronounced influence in this sphere highlights and contrasts their absence from the official rhetorical spaces they could navigate.

For men who have been gifted with eloquence by nature and by fortune, are governed in what they say by chance, and not by any standard of what is best, whereas those who have gained this power by the study of philosophy and by the exercise of reason never speak without weighing their words, and so are less often in error as to a course of action. (*Antidosis* qtd.. in Benson 51)

Both Isocrates and Aristotle promoted the purpose of political participation for education.

Aristotle also saw the strengthening of virtue as a goal, and he relied on a foundation of inductive reasoning (Moseley xi). Both saw the influence of fortune as an advantage in education.

Rhetoric was taught orally before the increase in literacy as an educational requirement. Handbooks like the *Rhetorica ad Alexandrum*, of contested authorship, were used as textbooks. Aristotle was innovative with his full treatise on rhetoric, which was also designed as an educational tool. Systemization of rhetoric as an *ars* was first required in order to teach it. Eugene Garver points out how Aristotle wanted to show that civic activities, namely rhetoric, could be “subject to rational analysis and to presentation as an art,” so as he did in other fields, he did seek to systematize rhetoric (7).<sup>19</sup> There had been no division into three species of rhetoric in the fifth century. Sophists did not divide their categories of rhetoric in the same manner. Schiappa reminds us that applying that schema to the Sophists would be anachronistic. He goes on to say that the sophist Protagoras, for example, might have thought of forensic oratory, in general, as part of a person’s “civic arête,” but Protagoras had no special theory of forensic rhetoric. Rather, Schiappa claims each Sophist had his or her own idiosyncratic theoretical focus rather than prescribing to common schematizations (42). Aristotle’s divisions of rhetoric were all

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<sup>19</sup> Aristotle also wrote on *Physics*, *Poetics*, and *Politics*, to name a few. He focused efforts on artistic endeavors as well as on scientific pondering, often crossing between philosophy and application.

for the purpose of applying skillsets to domains of public life, a formalization which stunted the areas to which the creative and personalized theories of former rhetoricians were applied; systemization was practical, useful, certainly innovative, but more restrictive. Isocrates as well had written of conformity: “And for those sophists who have lately sprung up, and fallen into this arrogance, tho' numerous now, they will be forced at last to conform to my rules” (“Against the Sophists” 19). Here Isocrates speaks to the accused sophist intent of selling training to learn virtue; rather, Isocrates believed virtue was innate but eloquence could be taught. The formalization of rhetoric also set up a historical precedent to further define and control the means of persuasion, to tighten the reins on speculative thought, processes that continued in the millennium to come.

In mythos, Pistis was the goddess of faith, trust, and reliability. Forensic rhetoric relied on the concept of *pistis* as a central persuasive element of forensic rhetoric, what a judgment was based on, but *pistis* is not such a simple concept. George A. Kennedy discusses the many types of *pistis*, “The problem with *pistis* is that it can have at least three different meanings in ... [Aristotle’s] ... text: ‘proof,’ in the sense of logical demonstration; ‘proof’ as a formal part of a speech; and ‘means of persuasion,’ including not only logical demonstration but the trustworthiness of character that a speaker can project and the emotion he conveys” (60). Joseph T. Lienhard argues that one meaning of the word *pistis*, or proof, is “the state of mind produced in the audience,” so rhetoric purports suggestibility if not control of the mind of the hearer (450). Much of the content of handbooks on rhetoric as well as Aristotle’s treatise on rhetoric focus on creating enough proof in the mind of the jury in order to win the trial.

Logos in the fifth and fourth centuries, before the use of the word rhetoric, could be used to mean words, language, knowledge, persuasion, and writing. The actual Attic term for logic is

“logismos.” Within Aristotle’s theory, logos indicates proofs or *pistis*, knowledge, but especially the idea of artistic proofs, or those that could be invented by the orator, using language, drawing on enthymemes, examples, maxims, and also special topics for each branch of rhetoric along with the common topics/commonplaces. Christopher Carey points out that within forensic rhetoric, logos does not directly translate to all the facts of a case; rather, the facts, such as written contractual documents and laws, even depositions from witnesses, were read out by a clerk. Logos was a way to appeal to the jury’s rational minds and intellect in order to win a case. Effective appeals to logos were invented by the orator. Premises could lead to a provable conclusion or state. Aristotle relied on non-contradiction, wherein one could show rationally how something could not be a certain thing and not be that same thing at the same time. Lastly, logos could still also refer to the facts within the orator’s constructed narrative of his side of a case, recounting events that occurred and facts in a particular sequence (95).

Proof did not translate directly to truth, though. Plato and other philosophers had feared rhetoric had the power to deceive. Participants in trials aimed to win their cases, by any means necessary, and forensic rhetoric created a means by which to sway a jury, regardless of the truth. Plato describes the potential trickery behind rhetoric in his *Gorgias*:

At some points, he emphasizes rhetoric’s universality or subject-neutrality: rhetoric differs from the specialized crafts precisely in that the rhetorician can be more persuasive about anything than anybody else. And this subject-neutrality is consistently associated with what I have termed the manipulative conception of rhetoric, on which it is essentially a tool of enslavement” (Barney 103).

Barney creates what she calls conceptions of deceptive rhetoric and terms the action of getting someone to work against his or her own interests, as the manipulative conception (101). Barney

then describes Socrates' cooperative conception of rhetoric, "...this specialized conception fits better with a cooperative conception of rhetoric, on which it involves a genuine expertise in questions of justice—an expertise deployed on behalf of the community, as the doctor deploys his expertise in medicine" (103). Though these conceptions can be either deceitful or altruistic in motive, both demonstrate the falsehood inherent in the outcome of the application of rhetoric. By nature of forensic rhetoric being taught for use in law courts, Aristotle clearly promoted the cooperative conception of the art of rhetoric by creating his school and lecturing at the Lyceum as he wished to prepare selected youth to better perform in civic life for the good of the polity, resolving to create new theoretical improvements in the field on top of the more conventional instruction of better practices through handbooks. Barney further exposes internal and external standards of correct usage of rhetoric, internal refers to using something incorrectly for what it is not intended, while external refers to more nefarious, intentional misapplication (102-103). Again, internal and external standards of correct usage demonstrate yet another way rhetoric, whether applied correctly or misapplied, innately competes against or complicates veracity in practice.

Aristotle inherited a drive to cultivate good and virtuous men, and this tradition would carry on into Roman rhetoric as well. Socrates and Plato had accused the Sophists of promoting *dissoi logoi* as a technique that could be exploited in an amoral way by a skilled rhetorician. Nevertheless, Aristotle argued that being able to argue both sides of a case did not make the rhetorician an advocate for evil or falsehoods, but rather it prepared the rhetorician to defend against someone who did argue for evil. Further, he also said being able to argue both sides of an issue helped the rhetorician fully understand his own argument (*Rhetoric* I). Additionally, Aristotle believed that rhetoric allowed truths and justice to triumph over falsehood and

injustice,” but he understood orators could use it to influence either side of a legal claim (qtd. in Smith 17). Clearly, Aristotle was ambiguous on this subject despite his intent. George A. Petrochilos says that Socrates had first aimed to teach his pupils to possess *kalogathia*. He explains:

The word *kalogathia* means the character and conduct of *kalos kagathos*, that is, of the perfect and just man; thus it could mean kindness, uprightness, and honesty, attributes that finally lead to happiness. In classical Greek, the meaning of the word *kalos* is linked with the human physique rather than human character; thus, *kalos* has to do with the beauty, harmony, of the body, attained through physical exercise. The word *agathos* means the good and virtuous man, who is wise, brave, and just. (606)

Certainly, morality was an intended Aristotelian component of forensic. Morality, though, was not the object of the legal system in practice; rather, law maintained the order of the state, protected higher classes from intrusion by lower ones and foreigners, and secured property and wealth for those fortunate enough to be able to fully participate in the system.

Through the creation of his theoretical work on rhetoric, Aristotle attempted to shape argument into a system that was objective, predictable and scientific. Science can be described as “a branch of knowledge or study dealing with a body of facts or truths systematically arranged and showing the operation of general laws” (“Science”). However, such an endeavor is impossible. Though Aristotle said, “The True and the Just are naturally superior to their opposites” (*Rhetoric* I.i), legal scholar Richard A. Posner details the ambiguity inherent in “problems of jurisprudence”: “... if science does establish certainty, still its methods and domain are so different from those of law that one exactitude of science cannot be translated into exactitude in law, while if science does not establish certainty, then it cannot be used as a

foundation for or model of legal certainty” (67). Furthermore, Lanni points out how circumstantial flexibility outweighed consistency, for a broad array of information was provided in Athenian courts, “... both extralegal and legal information were considered relevant and important to the jury’s decision because Athenian juries aimed at reaching a just verdict taking into account the particular circumstances of the individual case rather than applying abstract rules and principles provided by statutes to the case at hand” (42). Rhetoric could certainly be taught as a skill, but it was never capable of being constructed into a science. Rhetoric’s lack of legal certainty stems from law’s ambiguous and restrictive relationship with knowledge.

#### **2.4 Jurisprudence and Epistemology**

The nature of jurisprudence innately fails to meet the classical stated aims of forensic rhetoric. Rhetoric for the sophists was *epistemic*, “making knowledge” (5), but that knowledge was contingent and relative, even fragmented or multiple, related to a historical moment, a specific cultural context, geography, and subjectivity, being the opposite of Plato’s absolute “Truth” and “Knowledge” (Bizzell/Herzberg 5, 22). Furthermore, rhetoric places constraints and boundaries on the mind and on knowledge because it constrains communication by imposing order and rules, similarly, “Architecture brings space under control, music brings noise under control, and mathematics brings the infinite under control” (Carr). Aristotle argues that rhetoric can be reduced to a system, and that it comprises a science and art. As Richard Parry asserts, “It is in Aristotle that we find the basis for something like the modern opposition between *epistêmê* as pure theory and *technê* as practice. Yet even Aristotle refers to *technê* or craft as itself also *epistêmê* or knowledge because it is a practice grounded in an ‘account’ — something involving theoretical understanding.” Rhetoric works well as a skill based on theories of knowledge, but it falls short of being a science that can discover truth.

Aristotle's effort in systematizing reasoning is near impossible. One need only look at the aims of forensic rhetoric to see the complexity that smothers any such attempt to make legal reasoning into scientific knowledge. Richard A. Posner describes science as "objective, impersonal, determinate ... external" and demonstrates that "important questions of law ... cannot be answered by the use of the methods of legal reasoning ... reasoning runs out and the judge has to appeal to policies, preferences, values, morals, public opinion ... it will often mean that the answer is indeterminate" (37). In sharp contrast, Valeria Cinaglia describes Plato's conception of knowledge, which was clearly a determinate conception:

In Plato's epistemology, there is only one kind of true knowledge: to be able to see what really is, and what the truth is, is the crucial factor that divides knowledge from mere belief. The empirical world and the sensations connected to it are just starting-points of a process of recollection that is the prerequisite for true knowledge; perceptual knowledge, however, is not knowledge in the proper sense" (50).

In order to move rhetoric closer to the concept of an investigative science, Aristotle dismisses Plato's ideal forms, grounds knowledge in inductive reasoning and observable evidence, and positions empiricism over rationalism.<sup>20</sup> Cinaglia summarizes Aristotle's primary epistemological views:<sup>21</sup>

What we know better, particulars in the world, need to be explained by what we would have to know better, if we had complete knowledge of universal principles of the

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<sup>20</sup> Law is about conducting or deterring future events. Forensic rhetoric discusses the more immediate and the past. Aristotle wrote, "... to the forensic the past, for it is always in reference to things done that one party accuses and the other defends" (Rhetoric I.III.4).

<sup>21</sup> George A. Petrochilos points out that "Socrates was the first to turn his attention from the philosophy of the Ionians, which was centered on nature, to a philosophy that revolved around mankind. Consequently, for the first time we have discussions about social, political, and economic issues" (603). Thus, that is when rhetoric first starts to become a formal Greek art.

intelligible structure of the world—and of our language—that we can potentially grasp in part through our sensations. Secondly... in Aristotle’s account, a successful process of understanding requires a particular attitude or, more precisely, trained intellectual skills, in order to achieve the kind of understanding that can make sense of what is around us.

(42)

Therefore, although Aristotle had the aim of making forensic rhetoric a science, as Posner describes from a more current understanding of what science is, he did not succeed. Rather, he was able to craft prescriptive procedural rules that constrained the more philosophical explorations of Plato.

*Epistêmê* is connected to skills with *technê*. According to the *Stanford Encyclopedia of Philosophy*, “*Epistêmê* is the Greek word most often translated as knowledge, while *technê* is translated as either craft or art. These translations, however, may inappropriately harbor some of our contemporary assumptions about the relation between theory (the domain of ‘knowledge’) and practice (the concern of ‘craft’ or ‘art’)” (Parry). Richard Parry also explains, “As the concept of *technê* develops, the role of reflective knowledge is emphasized. Whereas *technê* is associated with knowing how to do (*epistasthai*) certain activities, *epistêmê* sometimes indicates a theoretical component of *technê*. Then it is associated with understanding (*gnôsis*)” (Parry). Another older term for describing knowledge by the Greeks was *sophia*, usually translated *wisdom*. The sophists, the teachers of rhetoric, were “wise men” (Kennedy 7). Making rhetoric a learned body of reserved knowledge and a specialized practiced skill grants power to those with expertise, because they hold exclusive access to information others need.

*Episteme* and *techne* can also lead to discussions of knowledge versus opinion, and the relationship between tradition, received knowledge, and conduct. According to Bruce

McComiskey, “The sophists ... believed that all ‘knowledge’ is opinion (*doxa*), and that all laws and policies (*nomoi*) grow out of opinion,” so rhetoric was the way to master opinion and function well in society (207). Plato argues that rhetoric teaches an amoral form of persuasion. Socrates tells Gorgias, “And so the rhetorician’s business is not to instruct a law court or a public meeting in matters of right and wrong, but only to make them believe” (qtd. in Benson 11). This belief is a form of conviction, but not one based in an absolute truth, but a conviction in what seems believable, but may not be right.

Aristotle’s *Rhetoric* states that the object of forensic rhetoric is judgment—not persuasion. A claimant does not need to persuade anyone or change his mind or convince him; rather, a claimant simply needs to get the judgment he wants (II.i.2). At times, the desire to see justice and the desire to win a case coexist. In the *Rhetorica ad Alexandrum*, of contested authorship, the author writes, “By means of this study [rhetoric] you will come to know how at the present time to form reasonably sound opinions about the future, how not ineptly to instruct your subject peoples what each should do, how to form correct judgments about the right and the just and their opposites and, besides, to reward and chastise each class as it deserves” (V.iv). Within this claim, the author shows a desire to instruct practitioners of rhetoric in the art of discernment so they can perfect the skill of making reasonable and righteous judgments, but this claim sits within a handbook that also teaches the art of winning the case.

Ultimately, particular justice was sacrificed as dispensable towards maintaining the public good. Petrochilos asks, “Given that justice was a quiet cooperative virtue and that the achievement of prosperity for the city ... may have required ... [injustice], the following question arose: When did injustice become a better means to the desired end of stability and

prosperity than justice?” (606).<sup>22</sup> In contrast, Lanni dismissed the idea of justice as the appropriate moral consequences, given the knowledge of a case. Instead he presents justice as legal certainty of economic reliability brought about by “repayment of debts, payment according to contract, promise, or obligation, safekeeping of money or property of another, and honesty in transactions” (27). This conception reinforces the idea of forensic rhetoric protecting the social structure, the status, the power, and the property of privileged classes over the epistemological goals of truth or scientific knowledge.

## 2.5 Conclusion

In an attempt to maintain societal order, Athenians first developed *mythos* to explain the order of the universe. They eventually started to use the concept of *logos* to create a more manmade order, with *nomos* as a way to delineate the human institutions that could be shaped and controlled and in contrast to the uncontrollable *physis* of the world around them. They create laws, wrote them down, and designed a legal system to maintain order and especially property for the more privileged male citizens and their families.

Access to this legal system was restricted to male citizens, and at every layer, restrictions were introduced to make the system a privileged one. There was little ability for suits to be done by the government for the public good, even though a great deal of public policy was transferred from the legislative assembly to the law courts. Every role in the legal system was restricted to male citizens and excluded metics, non-citizens, women, children, slaves, and other classes. The

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<sup>22</sup> Plato’s ideal society was served the public good over the interests of the individual. Petrochilos writes, “In Plato’s terms stability and efficiency—that is, the efficient administration of the state—will be provided mainly by the philosopher-king and his guardian class, who are *kaloï kagathoi* and have all the necessary ethical attributes to rule in the best interest of the community. This shows that Plato had a more value-oriented notion of a society structured to support an ‘ethical elite’...” (607). These learned, moral, elite citizens were carried into Aristotle’s view of teaching forensic rhetoric.

more prestigious the role, such as a magistrate, the more restricted the access. The geography and division of the courts acted as a physical manifestation of those same restrictions.

Rhetoricians developed forensic rhetoric to fill the need to argue a case in these courts. The stated aim of many of them, such as Isocrates and Aristotle, was to better prepare citizens to participate in their civic duties, for the betterment of the state. The ability to argue either side of a case was a powerful and necessary tool, and although that strategy was not immoral, there was the sacrifice of moral justice in this practice. Aristotle attempted to go beyond the use of handbooks for best practices in this field and develop a theory of rhetoric that elevated it to a more predictable and consistent science. However, jurisprudence is not scientific by nature. No systematized legal certainty or predictability was produced.

Despite the Athenian legal system's attempts to reduce fear and gain confidence among its populace, legal insecurity remained Lanni writes:

The lack of consistency and predictability in the Athenian courts resulted in widespread uncertainty regarding one's legal rights and duties. This relatively high level of legal insecurity had a pervasive effect on Athenian social interactions. The capability of the written law to guide conduct and order social relations was extremely limited, and legal uncertainty imposed significant costs on many private transactions. (132)

Forensic rhetoric, as a technical craft or *ars*, was elevated to an influential and practical field of study, if only available for the privileged elite pursuing their interests to rank themselves against each other and generally maintain the status quo.

During the Hellenistic Age, between the fall of Greece and the rise of the Roman Republic, "Hellenistic rhetoric continued to be primarily concerned with judicial oratory," which proved "that for the average person rhetorical skills were most useful in law courts" (Kennedy 82). It

would take a more draconian form of government to impose stricter laws and rules on the public body. In the Roman Empire, under authoritarian regimes, rhetors would find a stricter body of law and legal system, but they found their ability to act and speak within the new system itself restricted.

### **3 THE RISE OF THE GOOD MAN SPEAKING WELL AND THE TRIUMPH OF GREEK ETHOS IN ROMAN RHETORIC**

The Roman Republic inherited from the Greeks a well-established tradition of three species of rhetoric: deliberative, epideictic, and forensic. Mainly through Marcus Tullius Cicero's (106 – 43 BCE)'s writing, which adapted Hellenistic rhetoric in the Greek language into Roman principles and Latin terms and applications, these species remained, but Cicero added the five canons of rhetoric, an innovation beyond Aristotle's rhetoric, creating divisions and elaborating rules for Invention, Arrangement, Style, Memory, and Delivery. Cicero's rhetoric, from its republican foundation, survived into the Roman Empire, where it was further transmitted and adapted by Marcus Fabius Quintilianus (35 – 100 CE). While classical Athenian forensic rhetorical texts gave great emphasis to logical proof and emphasized the training and strengthening of the mind in those techniques, early Roman Republican rhetorical instructional texts followed suit to reflect a similar interest in logos. However, due to a series of imperious political challenges to any vocal dissention during the early Roman Empire, rhetors eventually shifted the subject of their instructional writing to what they considered a safe zone, a greater exploration of ethos and its training.

Cicero and Quintilian had a few elements in common. Both studied law and practiced law, Cicero in Rome and Quintilian in Spain; they both wrote treatises intended to teach new audiences about their rhetorical theory; and they each wished to preserve the history of rhetoric for those coming after them. While Greek writings on forensic rhetoric focused largely on the nature of truth or on winning a case through logos, there is a profound shift in Roman rhetoric, in two phases, both in times of dictatorial distress; first, Cicero moved the conversation to dialogue

on ethos and the nature and application of morality, then, Quintilian discussed the institutionalization of ethos into society through education.

In the Greek rhetorical tradition, Aristotle had preferred logos in rhetoric to the other appeals of ethos and pathos, but he certainly had also understood that all three were necessary and applicable. Joseph T. Lienhard points out that using ethos does not lessen one's use of logos automatically, "... it is possible for the speaker to inspire confidence in his own character or produce disposition in the auditors apart from the deductive and inductive processes of rhetorical reasoning; such a use of ethos and pathos seems to be precisely that condemned by Aristotle in the first chapter of the *Rhetoric*..." (449). Despite any condemnation, Aristotle had suggested that trust in a speaker made an audience more susceptible to his arguments, ethos boosted logos, and that all three appeals worked together in concert to create the most persuasion (Smith 79). Craig R. Smith argues, "The genius of Aristotle's conception of ethos was that it was audience based" (80). To Aristotle ethos began with prior reputation, the impression of the speaker the audience already had in mind (80). However, he wrote, "Now this trust, too, ought to be produced by means of the speech" (qtd. in Benson/Prosser 57). Towards that end he discussed three artistic ways to increase ethos with the audience: demonstrating sagacity, goodwill, and character. Sagacity was shown through showing expertise in the subject and good sense in how a speaker connects things together. The speaker projects goodwill when he can convince the audience he cares about their welfare. The speaker evinces character by getting the audience to feel he is moral and that he matches the values of society (Smith 80).

Ethos was relevant in declamatory rhetoric as well, which focused on the speeches in the senate and assemblies, beyond the creditability and moral character of a legislator, in that

legislators had to demonstrate a law itself had ethos, or was of a good and beneficial character.

According to the Greek rhetorical handbook, the *Rhetorica ad Alexandrum*:

One who wishes to advocate a law has to prove that it will be equal for the citizens, consistent with the other laws, and advantageous for the state, best of all as promoting concord ...contributing to the noble qualities of the citizens or to the public revenues or to the good repute of the commonwealth or the power of the state ... (Benson/Prosser 69)

This Greek author described in more detail what was beneficial to the state: “Expedient for the state are such things as concord, military strength, property and plentiful revenue, good and numerous allies” (Benson/Prosser 65). These elements all continued to create the social cohesion that benefited elite citizens.

The effects of this transition from logos to ethos would be long felt. The consequences of the change to a focus on ethos in late antiquity would last throughout the early Middle Ages, past philosophical and political struggles among the practitioners of the early Christian Church through successive waves of Germanic invaders on the continent and on the island of Great Britain. Within a few centuries in Alexandria, ethos was harnessed by ecclesiastical demands for political power. United with secular authority, this monopoly on ethical faculty in the church gained widespread European recognition. Later, cultural Renaissances among the Franks and Anglo-Saxons failed to overturn the power of ethical appeal; instead, they coopted it to the advantage of secular authorities. First, however, Cicero translated ethos from its Greek origins into the Roman culture and the language of Latin.

### **3.1 Translating Ethos from Greece to Rome**

Personal ethos is the character and reputation of an individual that lends that individual persuasive authority in a matter. There was a distinct focus on ethos in the Roman Republic and

Empire and personal ethos continued to be the most powerful appeal in Western Europe throughout the Middle Ages. According to James M. May and Jakob Wisse, political oratory played an important role in the first century BCE Roman Republic because both the Senate and assemblies as well as the criminal and civil courts relied on it (4-5). Cicero pleaded cases in the courts and rose through the ranks to become a quaestor, praetor, and eventually consul in Rome. He opposed the Catiline conspiracy then was exiled by the alliance of Julius Caesar, Pompey, and Marcus Crassus in 58 BCE. Caesar declared himself to be “Dictator for Life,” but his rule was both brief and not without a lot of push back and resistance, coming from the senate and senatorial classes. Soon after he delivered his invectives against tyranny in the Senate in 43 BCE, Mark Antony and Octavian ordered his execution (8-9).

These political circumstances influenced his writing greatly, inspiring him to write of ethical character, the ideal orator, and the place of good men in politics. His first challenge had been navigating the patriotic tensions between Greece and Rome. He had toured Greece and met famous rhetoricians and philosophers there, including influential Stoics. Cicero’s contribution to ethos was that he added to Aristotle’s audience-based definition of ethos; Cicero insisted on the moral character of the orator and not just the reputation. Also, he lessened emphasis on the symbiotic bolstering of the three forms of appeals. James M. May and Jakob Wisse reveal how Cicero carefully integrated Greek tradition with Roman society, “Cicero himself aimed at combining the best of what the Greeks and the Romans had to offer, but he also wanted to persuade his more skeptical fellow Romans,” those who distrusted the Greeks as “theoretical, impractical, and arrogant, ... of the validity of his views” (6). Therefore, he selected, amplified, and innovated in the areas that were relevant and useful in Roman society.

The Romans had inherited their educational system from the Greeks after all, and rhetoric was a core subject in school (Murphy x-xi). Schools were systematized because citizens of the Republic expected the same services they would receive in Rome: “Where the soldiers went, the schools went as well” (Murphy xii). James J. Murphy describes how “the subject of rhetoric was so highly schematized by the lifetime of Cicero (born 106 B.C.E.) that even as an adolescent (aged fifteen to seventeen) Cicero was able to rehearse what he had learned and produce a major treatise on rhetoric—his *De invention*” (x-xi). Cicero built onto this inherited structure. His aims in his writing were the systematization of Roman rhetoric, the preservation of his own place and legacy within that system, and changing the identity of rhetoric from Greek to Roman. His philosophy began with his belief in the merit and primacy of individual human beings: “His concern for human beings was a splendid contribution to an age dominated by autocrats like Sulla and Caesar” (Grant 7). Both Aristotle and Cicero believed rhetoric dealt with the realm of probabilities. Philosophy and science were for certainty. Cicero wrote both rhetorical treatises and works of philosophy. His emphasis on ethos was a cry for political reform. Cicero divided moral goodness into three parts: ability to distinguish truth, restraint of one’s passions, and cooperating with others, three skills lacking in his contemporary political climate (*On Duties* 5,17).

From his focus on character, Cicero moved to an analysis of reputation, or the perception of moral character in others. For Romans, reputation was a key aspect of ethos that could be manipulated by the orator in order to appeal to an audience. For example, the Roman rhetoric handbook, *Rhetorica ad Herennium*, instructs:

From the discussion of our own person we shall secure goodwill by praising our services without arrogance and revealing out past conduct toward the republic, or toward our

parents, friends, or the audience ... likewise by setting forth our disabilities, need, loneliness, and misfortune, and pleading for our hearers' aid, and at the same time showing that we have been unwilling to place our hope in anyone else (I.V).

Alternatively, the *Rhetorica ad Herennium* described how a similar strategy could be used to denigrate the ethos of one's opponent:

... from the discussion of the person of our adversaries we shall secure goodwill by bringing them into hatred, unpopularity, or contempt. We shall force hatred upon them by adducing some base, highhanded, treacherous, cruel, impudent, malicious, or shameful act of theirs. We shall make our adversaries unpopular by setting forth their violent behavior, their dominance, factitiousness, wealth, lack of self-restraint, high birth, clients, hospitality, club allegiance, or marriage alliances, and by making clear that they rely more upon these supports than upon the truth. We shall bring our adversaries into contempt by presenting their idleness, cowardice, sloth, and luxurious habits (I.V).

A person could attack the motive of a defendant in this manner, by focusing on previous manners of life such as previous offences and suspicion of offence (II,III,5). Furthermore, Cicero showed how a person could look after his own interests through subordination to another person who has power: goodwill, gratitude, eminence, profit, fear, reliance on promise, and bribery (*On Duties* 6, 21). All of these were essential starting points in forensic rhetoric in judging someone's character or in trying to understand motivation and appropriate punishment in trials. Although Aristotle had written of strategies to attack ethos, these ethical starting points stand out against the exploration of logical starting points provided by the Topics and commonplaces of Greek rhetoric.

Cicero advised the way to gain reputation was to increase three feelings among the public: goodwill, confidence, and respect (*On Duties* 8, 31). What Cicero instructed was not so much how to go about accomplishing this precisely but more so how to look at these three public sentiments as adding to the concept of reputation as ethos. Reputation has practical, societal application: “For popular favor is profoundly influenced by a name and reputation for generosity, beneficence, fair dealing, loyalty and all the other good qualities which are associated with an attractive and agreeable character” (8, 32). Winning confidence is done by being intelligent and just (9, 32). But there is a caveat—it takes both: “Intelligence without justice creates no confidence at all” (9, 32). On the third factor in reputation, he writes, “... they admire qualities that exceed their expectations. And so they heap praises and respect upon any individual in whom they claim to discern remarkable and exceptional features...” (10, 36). Seeing the decay in civic life, Cicero yearned for these qualities in citizens, not just in the political arena but also in the courts of law.

He praised, “But it is in the courts that the possibilities for winning approval are the greatest” (*On Duties* 14, 48). In the area of forensics, he provided ethical guidelines for prosecution. Although Cicero cautioned against prosecuting often, he suggested it is worthy to prosecute if it is in the best interest of the state. Importantly, never prosecute to infringe against the civil rights of an innocent person (*On Duties* 14, 49-51). Great respect is due the defender of the innocent:

The greatest renown, the profoundest, gratitude, is won by speeches defending people.

These considerations particularly apply, when, as sometimes happens, the defendant is evidently the victim of oppression and persecution at the hands of some powerful and formidable personage. (*On Duties* 14, 52)

Defense of the innocent was a suitable counter to the increasingly hostile political developments of Cicero's era.

Like Cicero, who cautioned to prosecute or defend for just purposes, Quintilian centered on being moral in argument, and he elevates this didacticism above rhetorical techniques such as style, which the Greeks might have used to argue something they knew was false or murky in order to win a case. Quintilian's preference for the rhetorical style of the capital shows a strict deference to authority. The important areas of style are idiom, so that the writer sounds as if from Rome and not merely a Roman citizen, again showing a prestige for the capital city, and propriety, which focuses on clarity, simplicity, and appropriate dignity in speech (Benson 220-222). Listeners and judges may not be able to discern what is being said if language is ambiguous, obscure, or too flowery. This strictness of style is in sharp contrast to even Cicero, who recognized from the Greeks the usefulness of various styles in order to achieve specific aims with an audience. Cicero had instructed:

To prove is the first necessity, to please is charm, to sway is victory; for it is the one thing of all that avails most in winning verdicts. For these three functions of the orator are three styles, the plain style for proof, the middle style for pleasure, the vigorous style for persuasion. (Benson 233)

Cicero's plain style would go on to be the favored rhetorical style of early Christian writers. Quintilian, on the other hand, showed a dialectal prestige and a formal register in his promotion of idiom, that would be inevitably overshadowed by the more flowery and embellished Greek Second Sophistic throughout the first and second centuries.

Lastly, ethos exists in the principles of an entire community. Cicero was vague about the definition of the brotherhood of man and the perfection of virtue (Grant 11). At a minimum,

principle takes a “tremendous social and communal obligation” to get the “basic requirements” (Grant 8). Greek rhetoric had placed religious and legal demands on families, as demonstrated by laws against impiety. However, Cicero saw the threat imposed by the tyranny of the state and wrote about the “fundamental rights of the individual against the demands of the state” and provides a defense of private property in the second book of *On Duties* (Grant 119). Furthermore, he taught what should be done when “right and advantage” clash, but this was to provide a moral guide for the aristocracy after the dictatorial period of Caesar (Grant 119-20). This philosophical direction in his writing was safer for him under tyranny than declamatory speeches or his forensic instruction.

Cicero preserved an attention to societal cohesion and some of the forensic thoughts on prohibition from the Greeks: “True law is reason, right and natural,” commanding people to fulfill their obligations and prohibiting and deterring them from doing wrong (Grant 11). These sentiments harken back to the way that both Cicero and Quintilian tried to criticize society through a gradual increase in focus on ethos as a safer form of rhetorical proof. All men have to treat each other properly because they all reflect the divine (Grant 10-11) and that “it is only the labor of man’s hands that places the profits and advantages from inanimate objects at our disposal” and that skills “are just the thing that make a human being’s civilized life different from the existence of a beast” (*On Duties* 3, 13-15). Cicero argued that man is more powerful than nature and so rhetorical skill to win over other men to your cause is essential.

Although Cicero wrote about the effects in his academic works, he placed the dramatic dates in a previous age, not in the current time—he wanted it to be symbolic, not a record of events. He was not writing a history of his time but responding to the danger in ways he hoped will either lead back to the republic, or that will preserve the accomplishments of the Republic.

Cicero hinted at the dangerous political environment within the Republic for an orator, the erosion of that domain within which orators could practice traditional rhetorical techniques. He perceived the transformation away from the Roman Republic as a failure and criticized those who had been part of the transition and had gained political power from it. He wrote about the effects in his academic works, but he placed the dramatic dates in a previous age, not in the current time—he wanted it to be symbolic, not a record of events. He was not writing history of his time but responding to the danger in ways he hoped will either lead back to the Republic, or that will preserve the accomplishments of the Republic. Still, his criticism of Mark Anthony resulted in his execution. Cicero's own fate points to the political dangers for orators. Cicero's fears were founded and his words manifested in the reality of his assassination. His focus on ethos was a warning against authoritarianism, but it was Quintilian would truly write beneath the tyrant's yoke.

### **3.2 Translating Morality from Republic to Empire**

The Roman Republic changed to the Roman Empire when Octavius was proclaimed Augustus in 27 BCE. Cicero's reality, his constraints and freedoms, were far different from Quintilian's—most especially in regard to forensic rhetoric. Cicero, while experiencing some tyranny and government upheaval, also lived, and practiced law, in a different political structure than Quintilian, and in one that had more in common with Athens than the later Roman Empire. He was very free when he wrote his legal speeches. At the end of this life, when he was writing his treatises, circumstances had changed dramatically—but his theories are impacted by the freedom and the suppression. In the early Roman Empire, orators had to reverse the focus and concentrate on ethos over logos in order to practice their craft while avoiding persecution and to emphasize in a safe manner that good moral character was crucial to matters of state. Quintilian,

over a hundred years later, when the Empire had been in existence for roughly 50 years, left law and began teaching rhetoric to students.

Quintilian may have received his elementary education in Spain, but when he was about sixteen years old he was in Rome for advanced rhetorical education. Under the patronage of Emperor Vespasian, Quintilian taught and wrote about trimming rhetoric of its wasteful flourishes and simplifying it to be more practical (Bizzell/Herzberg 359). Quintilian's purposes were shaped by the politics within which he flourished. Murphy explains:

By the time of Emperor Vespasian (A.D. 70-79) the schools had become an instrument of public policy. Vespasian initiated the practice of granting teachers immunity from certain municipal taxes, a practice which was confirmed and expanded by many later emperors, on the grounds that their service was a benefit to the state. It was also Vespasian who established official professorships to be paid from the state treasury; Quintilian was the first to receive the chair for Latin rhetoric, with its annual stipend of 100,000 sesterces. (Murphy xi)

Quintilian “was placed in charge of the ‘first public school of Rome’ with an annual salary paid from public funds.” He also received “consular rank, bestowed by the Emperor Domitian—which was, for that time, an unparalleled accolade for a rhetor (Murphy xvi-ii). However, despite his accolades, Bizzell/Herzberg insist that even Quintilian was aware of how his work was derivative, though richly sourced, researched and analyzed. His most important contribution, “that the good speaker be a good man” (360). He derived this innovation as a reaction to the environment in which he taught.

Under Domitian, the political climate was worse for orators who spoke their mind than during the Republic or under less dictatorial emperors, so Quintilian focused instead on the

moral character of a rhetor in order to stay in good graces with the emperor. Murphy asserts, “His emphasis upon moral principal as a factor in education must have made a profound impression in the dissolute society of his time” (xv). But his focus on morality was also didactic as a critical meta-discourse on the state of the empire. Murphy describes the political terror that constricted the realm and effectiveness of oratory:

The Roman senate survived in structure but was beginning to deteriorate into a huddle of terrorized sycophants existing at the pleasure of imperial military power. There was no longer any safe position in Rome for the outspoken citizen of the type which Cicero represented in the days of the Roman Republic” (xix).

As a strategy to avoid the wrong kind of notice but still provide a critique, Quintilian drew on the Roman past for examples of virtue and vice in order to avoid retribution with his contemporary political environment, “an age in which public morals seemed to have descended to a savage low” (Murphy xx). For example, this typological comparison of connecting the present to the past would continue to be an effective tool to criticize the present indirectly throughout late antiquity and the early middle ages, as will be seen in later chapters.

In response, Quintilian developed ethos more fully, exploring concepts of moral character, reputation, and community principles. He also showed innovation through his attention to pedagogy, to the entire life of the student and the people in it, presenting a humane and moral contrast to the political world in which he lived (Bizzell/Herzberg 360). Murphy agrees, “Quintilian not only describes for us the educational processes which he had inherited and which were to be replicated substantially down into our own century, but he explains to us why these processes are superior to their alternatives and what they can accomplish for society by educating citizens which are both humane and effective” (x). Quintilian was humane for the

gentle advocacy he displays in his advice for the student and effective in being practical and focused on an implementable and flexible program. His program's successful adoption in Roman society and continuance into early Christian education show the value in these characteristics.

Not only did orators of the Silver Age increase reliance on ethos, but they also simply moved to other fields of study and practice. The historian Tacitus and other Roman writers in the first and second century CE shifted from vocation in the law courts to history and poetry. They stated derision for the way rhetoric was being taught in schools and used in society, complaining of "remote subject matter" and a bombastic style. Bizzell/Herzberg note that Tacitus derided "the retreat of rhetoric teachers like Quintilian to the classroom" (360), reminiscing of an idealized prior era when a rhetor "could accomplish more when, in the general ferment and without the strong hand of a single ruler, a speaker's political wisdom was measured by his power of carrying conviction to the unstable populace" (qtd. in Benson 114). Tacitus blamed the informers for the decline of oratory in his *Dialogue on Oratory* (Kennedy 190), perhaps blaming the decline of rhetoric on the decline of morality in general in the Empire.

### **3.3 Right Reason and Behaving Well: Roman Rhetoric and the Good Man Speaking Well**

First, Roman orators wrote of moral character, prescriptive rules applied to oneself. Much rhetorical instruction was on self-guidance, being good, and acting right. Students still needed to hone their rational skills, but they needed the wisdom to know proper application. Cicero said the law that binds human society is "right reason applied to command and prohibition" (Grant 11); not only does one need to develop reasoning skills but one needs to know when and how to use them. There was reason and then there was, for Cicero, "right reason" (11).

According to May and Wisse, Cicero aligned with his contemporary rhetoricians in that the ideal orator needed "natural ability and practice," "a good voice and appropriate bodily

movements,” “good moral character,” and “devotion and diligence” (9-10). A positive home environment with the high hopes of a father and good speaking skills of the mother and pedagogue gave a student the right start (Bizzell/Herzberg 361). Where Cicero differs is in the rigidity of the system of rules presented in the handbooks, “prologue, narration, argumentation, and epilogue,” offering instead for the orator a more flexible progression through another inherited five parts of a speech, that of invention, arrangement, style, memory, and delivery. This arrangement gives the orator a “comprehensive view of the individual case at hand” (May/Wisse 10). Given Cicero’s experience as an orator in courts and in the political arena, his focus on decorum and performance above and beyond the composition of the speech is natural. Cicero also focuses on the need for the orator to have “universal knowledge,” which included knowledge of philosophy, again showing how he shapes Greek rhetoric into the realities of the Roman system (11).

This cultivated wisdom was the key to happiness. In *On Duties* Cicero wrote, “For surely to be wise is the most desirable thing in all the world. It is quite impossible to imagine anything better, or more becoming for human being, or more appropriate to his essential nature” (Grant 2, 5). He also described how individuals have a responsibility to develop this faculty (Grant 8). Cicero opined, “The Stoics, he said, in spite of this different way of expressing the matter, attached as much weight to riches and good health ...” as they did to spiritual and moral good (*Discussions* 41, 119). Cicero sought to fix this historical misuse of rhetoric through instruction on character. Essentially, Cicero’s *On Duties* was conduct literature because it is a guide to behaving well: “For it is necessary to assume that a method for learning how to behave well does exist—and that the place to find it is philosophy and nowhere else” (2, 5). Morality consisted of moral character and proper action. Cicero warned against doing any harm with words, such as

praising the character of a bad person (May/Wisse 207). Quintilian also combined skill with ethics in his instruction. James J. Murphy accents Quintilian's focus on morality, calling his *Institutio oratoria* a "handbook on the moral duties of the orator" ("Quintilian" xix).

Not only was morality a chose behavior to these orators, but so was rationality. Rationality could be taught. Stoic theory influenced Cicero, and, long after Quintilian, the idea of control and rationality guided the Emperor Marcus Aurelius. Stoic philosophy and Aurelius' work *Meditations* helped create a bridge from pagan rhetoric to Christian rhetoric, and Aurelius is judged to be the last of the "good emperors," driven by his own moral code and sense of "right reason." Since Aurelius read and wrote in Greek as well as Latin, his own education in rhetoric guided him. Rationality was an essential part of the formula for moral character. Cicero believed humans could behave rationally under the worst conditions. In the *Tusculans*, he wrote, "... human beings are capable of acting rationally despite the influence of fears, pains and emotional disturbances ..." (Grant 19). Rationality should be supreme to sentiments. Fitting within his educational program, Quintilian emphasized the learned nature of a student's skills; the best could bring together a broad range of knowledge and practice in all the necessary rhetorical skills when needed.

Character, too, was explicitly joined to knowledge: "Virtue is based on knowledge" (Grant 23). Cicero did not rank morality as superior to cleverness but rather one and the same. In *Discussions at Tusculum*, he explained, "An acute first-class brain is the finest asset anyone can have –and, if we want to be happy, it is an asset we must exploit to the uttermost. But a good brain, mental excellence, is identical with moral excellence ..." (Grant 23, 66). Here morality and rationality combine and drive the formation of good character, which bolsters personal ethos. Cicero also illustrated that character consists of kindness and liberality, traits that blend.

Kindness can be won through personal services or monetary gifts, but he shows how personal acts of kindness is an unlimited fund to draw from, while money is of a limited supply and only should be used when necessary. One must be generous without being extravagant (*On Duties* 15, 51-52, 55). Quintilian, writing a century later, also emphasized rationality and responsible action. He published his comprehensive work *Institutio oratoria* in 90 CE soon before his death. He described the perfect orator as a good man, excellent at speaking, and with excellent mind: “We are to form, then, the perfect orator, who cannot exist unless he is a good man” (preface to Book I). He defined oratory itself as “the good man speaking well,” which clearly has two parts, the former focusing on citizenry and morality (Murphy xviii). Bizzell/Hersberg discuss how Quintilian advocated for a dual focus on character and skill, “Quintilian’s pedagogy suggest[s] that he wants to design a total environment for encouraging love of the good, as embodied in caring teachers, as well as mastery of rhetorical technique” (361). Part of good character, as has been discussed, was wise decision making. Quintilian also left room for intellectual fluidity and did not provide “rigid rules” for his students; “instead, he aims to develop the minds and talents of young men who can themselves decide their own actions in the public arena (Murphy xxvii). Again Quintilian offers a gentler pedagogical approach for his students.

Both rhetoricians bemoaned the impossibility of finding such an ideal orator, but it was Quintilian who thought to create one through the ideal system of instruction, complete with an emphasis on the moral requirements (Bizzell/Herzberg 361). Unlike the audience-based ethos of Aristotle, the ethos both orators spoke of was focused on genuine character and not just on the impression of character. Improvements in character and skill were a lifelong task. And the rhetorician should be inspiring (Bizzell/Herzberg 361). It is this personal ethos that will carry on into early Christian rhetoric over the next few centuries, as Bizzell/Herzberg agree, “This

emphasis [on the moral element] help to explain why Quintilian became a particularly influential resource for Christian rhetoricians from the early Middle Ages until well into the nineteenth century (361).

### 3.4 Conclusion

By the second century CE forensic rhetoric, especially in terms of how it can be taught in education, had moved from a focus on logical appeals to ethical ones. Instruction on logical appeals remained in place, especially for the forensic arena, with an elaboration of stasis theory in the handbook tradition, but innovation in that area had slowed. Most of the work on logical proof in the *Rhetorica ad Herennium*, such as stasis theory, had been passed along somewhat intact from the Greeks, as formulated by Hermagoras and Hermogenes, as well as the earlier *Rhetorica ad Alexandrum*. The most profound innovation in rhetorical theory under Rome was found in the expansion of a focus on morality in instruction on rhetoric. Cicero and Quintilian expounded on subjective matters such as character, reputation, and societal principles. Ethical appeal had proven a safe, attractive, and useful arena in which to expand rhetorical thought. Murphy stresses the lasting significance of Quintilian's educational ideas, "Roman schools, after all, trained such Christian leaders as Origen, Ambrose, Jerome, and Augustine. Saint Augustine ... was himself a teacher of rhetoric in a school following Quintilian's program" ("Quintilian" xxxix). Although those Christian writers would debate rhetoric's place in Christian thoughts and writings, the writers themselves were educated in rhetoric and used it to argue their ideas.

By the third century CE, rhetoric had entered into what Kennedy calls the Second Sophistic. In line with what has been presented here in this chapter, these latter sophists remain conservative in the exploration and application of rhetoric. Kennedy writes:

The older sophists were the radicals of their time: they introduced new methods of teaching, questioned traditional values, and encouraged their students to do the same. The latter sophists were conservatives, even reactionaries: they introduced no innovations in education, they did not generally encourage original thought on the part of their students, when they criticized contemporary society it was generally for its failures to live up to the past standards of conduct ... (231)

Their comparison to perceived golden ages of the past in order to critique their present society was well established by Roman orators of the Republic and Silver Age Empire. The Second Sophists relied on their oratory skills to convey their message rather than the personal ethos stressed by both Cicero and Quintilian. In coming centuries, as the Roman Empire experienced schisms and weakening of central control, forces in the early Christian Church would build on the technique of stressing ethos, while recalling from the stylistic excesses and pagan themes so popular in the late Empire. Criticism through nostalgia, by relating the ethos of a contemporary to one of antiquity, would become a forceful technique.<sup>23</sup> The orators of this Second Sophistic period harkened back to Greek influences for their poetic declamatory and forensic arrangements. Christian leaders, though trained in rhetoric, would also come to criticize the Second Sophistic for its artificiality and floridity, preferring the plain style for their pastoral message.

The Stoic technique of allegorical interpretation of pagan works would also be adopted by the Christians, first with Origen and eventually formalized by Augustine (Kennedy 260). In order

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<sup>23</sup> The Christian rhetorician Tertullian applied this technique in an innovative way, claiming that the true elements of Greek philosophy were derived from Moses and the Jews, thus devaluing Plato and the Greek's contributions (Kennedy 260).

to fully utilize this technique, they would need to create an authoritative text to which they could apply this skill, the Bible. In doing so, they would learn to transfer the persuasive power of ethos from the person to a text, which ignited the pursuit of interpretative power over that authoritative text.

#### 4 PATRISTIC TEXTUAL ETHOS AND THE RHETORIC OF HERESY

Rhetoric and other forms of classical learning experienced a crisis period or turning point towards the end of the Roman Empire. As European society and its institutions moved from pagan to Christian dominance, so did rhetoric. Rhetoric was despised by Christian writers as a legacy of paganism, and it was yet to be seen if and how it would be incorporated into Christian writings. In the second century Christianity seemed to the Romans a sect of Judaism, a cult, and a political conspiracy (Holloway 4). Throughout the Patristic age (100 – 451 CE), as historians and the church itself call the period in which early church fathers wrote, Christian writers used rhetorical learning and skill to transition the Mediterranean world to Christian thought and religious supremacy.

In his own history of Roman Rhetoric, George A. Kennedy identifies how “The period from the death of the emperor Augustus in A.D. 14 until the reign of Marcus Aurelius in the second half of the second century is known as the “Silver Age” of Latin literature in contrast to the Golden Age of the Ciceronian and Augustan periods” (173). At the end of the Roman Republic, Cicero had expanded on the meaning and essential function of ethos in rhetoric, and the Silver Age Roman orators, like Tacitus and Quintilian, navigated to the safe harbor of ethos over logos due to imperial political threats, retreating to discussions on personal morality rather than advocating speech on political dissent. In the fourth century, the Christian Church developed new rhetorical channels in which to practice. Ethos remained the dominant rhetorical appeal, but the development of an ecclesiastical legal system, a professional legal class, and an authoritative text created an innovative, powerful, and enduring rhetorical strategy to shift the source of ethos from the orator to a text. Where Cicero and Quintilian’s ethical appeals relied on the morality and reputation of their ideal orators, the Greek Christian Jerome’s (347 – 420 CE)

assembly of the Latin Vulgate Bible instead allowed bishops to appeal to it and their interpretation of it in their ecumenical debates. Kennedy describes a new form of “radical Christian rhetoric ... that prefers authoritative proclamation to rational argument” (258). Once these pieces were in place, a series of historical contests enabled the winners to claim interpretive victory, and thus, profess to hold the authoritative, divine truth.

Reactions to early secular and pagan persecution forged the path for many of the arguments that would develop within the early Christian church. Over the course of a few centuries Christianity gradually moved from being illegal to a state religion. Hostility towards Christians had emerged since Nero’s reign (54 – 68 CE): “Persecution continued sporadically until the abdication of the emperor Diocletian (284 – 305), who made liquidation of Christianity one of the major goals in his program of imperial renewal” (Brundage 7). Diocletian was Emperor of Rome from 284 to 305. He reunited the Roman Empire after the crisis of the third century, when the Empire had been split into the Gallic, Roman, and Palmyrene Empires. It is not surprising that Diocletian chose to eliminate other potential sources of disunity within the Empire. The Diocletianic Persecution of religious minorities, Christians, Manicheans, and others, lasted from 303 to 311.

Constantine, who reigned as emperor of Rome from 306 to 337 CE, ceased persecution of the Christians. In 313, his Edict of Milan decriminalized practicing Christianity. The Emperor Gallien had previously legitimized the religion, but Emperor Diocletian’s period of persecution had followed. Ilaria L.E. Ramelli argues Constantine’s intent his act as a restoration with the added motivation of consolidation of power under him through monotheism (65-66). Then, in 380, Constantine issued the Edict of Thessalonica, in which Christianity became the official church of the state. Noted medieval European historian and scholar of medieval canon law,

James A. Brundage writes that by that point "... the church became virtually an organ of imperial government, enriched by privileges, favors, and public funds, but also used as an arm of imperial administration" (7-8). Official status reversed the role of persecution, now Christian against pagan, and created a new arena for early Christian figures to compete against pagan influence and against each other.

Because of Christian writers' dislike of rhetoric and pagan authors, they developed a number of innovative approaches to rhetoric. They implemented a strategic shift to textual ethos as the strongest appeal and applied this textual ethos in ecumenical battles over heresy. One of the greatest centers of rhetorical conflict was in Alexandria, Egypt, a historical center of learning in the eastern part of the Roman Empire. There, Athanasius, Eusebius, and other bishops newly empowered by Christianity's rising legitimacy, sought to devalue the knowledge and the political standing of pagans, to standardize and authorize a text, and then negotiate power by gaining control of the interpretation of that text. I define textual ethos as the authority wielded by a written source as opposed to the verbal skills of an orator. Once Christian bishops established this rhetorical appeal of textual ethos, the fourth and fifth centuries became a narrative of bishops declaring politically disruptive theological teachings of other Christians as heresy, or an idea or practice against the official teachings of the church.

#### **4.1 Christian Prejudice Toward Pagans and Rhetoric**

While the Christian leaders in Alexandria referred to "pagan practices," their use of pagan as a label denied the diversity within a variety of non-Christian groups, including competing mysticisms, ancient learning, and the Jewish and Islamic faiths. The city of Alexandria in Egypt during the fourth and fifth century was a hybrid of cultures and sketches an excellent illustration of the battleground for rivaling groups looking for civil and spiritual

authority, and from the perspective of the particular, Alexandria illuminates what was happening regionally throughout the crumbling Roman Empire as the old institutions of Rome faced external Germanic tribal threats and internal dictatorships and schisms on its way to becoming the Holy Roman Empire. In this region, the Christian church faced many conflicts, internal, from the state, against other established or budding religious sects, such as mystic cults of Bacchus and Isis, Gnosticism, and others, against which they maintained an ideological or philosophical stance of the promotion of faith to the pagan populations.

Alexandria had been an epicenter of pagan learning in the Hellenistic and Roman periods with a university, although the fabled library had been destroyed in previous centuries. It was now equally an epicenter of Christian theology and an influential crossroads of cultures. The provincial infighting in the church reflected larger patterns of east and west divisions in the Empire, stemming from the consequences of partitive inheritance, the multiplicity of cultures, ethnicities, and languages, and the gradual fracturing of centralized Roman political control. Although there was much diversity in religious practice, from the Christian perspective, there were two strong and divergent societies coexisting in the Roman footprint, Christian and all the others, lumped into a pagan category.

Christians bishops engaged in rhetorical, and eventually legal, combat against pagans through theological apologies, exclusive community practices, and, secular legislation. Pagan Roman contact with Christians had been acrimonious and rhetorical attacks proliferated on both sides. According to American Archaeologist and classics scholar, R. Ross Holloway, writing of Rome and Emperor Constantine (2004):

It was in this context of official restraint but occasional sporadic repression and universal suspicion that the debates between pagan critics and Christian apologists began. The

record of the pagan voices was largely erased by the triumphant Christians but the attacks of two of them, Celsus, who wrote in the time of Marcus Aurelius, and Porphyry, who lived on into the opening years of the next century, can be reconstructed from the refutations offered by their Christian opponents. Beside the prejudices of the ordinary pagan citizen, we find in these writers a searching refutation of Christian theology. (6)

Given the erasure of the pagan voice, it is difficult to reconstruct how pagan rhetoric developed during this time. However, traces are evident, through the influence of paganism on early Christianity, especially by way of Stoicism and Neoplatonism.

Celsus and Porphyry were both students of Plotinus. Sara Ann McGill explains the importance of Celsus as a Neoplatonic philosopher in the transition from pagan to Christian worldviews, “In his lost work, ‘True Doctrine,’ Celsus argued that Christianity went against logic and reason. In answer to Celsus' accusations, a Christian named Origen in Alexandria, who lived during the third century, wrote ‘Against Celsus.’ Origen (c.185 – c.254 CE) was [also] a Neo-Platonist” (2). Porphyry wrote about Plotinus’ ideas about the soul, the intellect, and the mind at the same time Athanasius attempted to explain the Alexandrian Christian church’s perspectives on the nature of the Word (Valantasis 61). In the Christian world, there was a movement from the Stoic concept of virtue leading to happiness to the Platonic concept of virtue being unattainable without the assistance of the divine, a shift that imposed a permanent fallibility over the material being.

To gain authority, the Christians first of all had to devalue pagan forms of philosophy, knowledge, and ritual. One such instance was that of pagan rhetorical style. Jiří Kraus explains a more stylistic reason Christian philosophers disliked rhetoric, “This animosity of the first Christian thinkers towards rhetoric was escalated due to rhetoric in early Christianity being

dominated by the manner-ism of the Second Sophistic. Although some Christian authors were willing to tolerate it during public gatherings or in court, they rejected it in preaching the word of God when believers expect ... the ‘simplicity of expression, not eloquence’” (85). Christians saw their teachings seen as pastoral, for the impoverished masses; they disliked the embellishment and flourishes of Greek rhetoric. Cicero focused on style in his work *De Oratore*, employing the Latin rhetorical elements of style: plain, middle, and grand. Despite Christian characterizing of pagan rhetoric as grandiose this tradition emphasizes the right style for the right purpose. Additionally, he integrated the Greek tradition of style, highlighting correct language, clarity, distinction, and appropriateness (May/Wisse 36).

In matters of education, the Christians separated themselves from the pagans as well. Brundage writes, “Christian parents ... were encouraged to see to it that their children were taught exclusively by Christian teachers. Christian teachers ... were warned repeatedly to beware of the harmful consequences of having their pupils study pagan literature and philosophy save under strict supervision, lest they imbibe ideas and attitudes that might inhibit proper spiritual development” (16). These restrictions ensured orthodoxy, protection from contamination of ideas from foreigners, and the distribution of the ideas of the church and its leaders (16). Although Constantine did not legislate against the pagans directly, his son Constans did (C. P. Jones 25). The fourth and fifth century sees a vacillation between imperial tolerance and intolerance towards the pagans. Theodosius, Roman emperor from 379 to 395, made “deviance from approved Christian doctrine or disobedience to the behavioral standards set by the bishops ... a capital crime” (Brundage 17). By the reign of Theodosius II and the completion of his *Theodosian Codes* in 438, secular authority fully enforced doctrines of the church and legislated

against pagans (C. P. Jones 24), a necessary step to occur before the Christian adaptations of rhetoric would fully form.

Pagan rhetorical strategies had also infiltrated institutions outside the church. Secular courts also relied on pagan rhetorical strategies inherited from the Romans. These proceedings would have been similar to how trials ran throughout the Roman Empire in the previous centuries, relying on stasis theory and Roman law. A professional class of lawyers had developed. Being a paid advocate was not legally possible in Rome until its conversion to imperialism yet had become a solid professional class by the fourth century (A. H. M. Jones 507-13). Secular law was not directly directed against pagans; it was, however, supportive of Christianity. Christopher P. Jones notes, “The [secular] legal codes contain no law of Constantine directed against paganism, though several that reinforce Christianity” (24). On the other hand, still weakly consolidated, church courts varied regionally and idiosyncratically, and they often borrowed much from Roman law at the time (Brundage 12). Christianity had begun instituting its own legal system as a practical matter. Church laws were referred to as canon law. While the two legal tracks, secular and sacred, maintained different systems, canon law and the church legal system became more intricate and established. James A. Brundage writes, “... the church soon began to develop its own legal system, for its leaders quickly discovered that a viable community ... required some rules and regulations for the orderly conduct of its business, to define the functions of its officers, and to govern relationships among its members” (5). This development in church law allowed for the strengthening of the church in interpreting its own institutional positions instead of relying on imperial, secular determinations. The self-regulation and consolidation instituted by the strengthening of canon law would parallel the growing need

for a consensus on matters of theological interpretation of Scripture; without regulation, discord and chaos reigned within the church structure and among its followers.

Next, church legal texts were institutionalized as an authoritative judgment as the need arose. Formative legal topics focused on “the preservation of beliefs and practices that church authorities regarded as essential” (Brundage 13). Michael Edward Moore explains how the decrees of the Eastern bishopric, which included Alexandria, were enshrined into canon law:

The highest regard was extended to the bishops of the early councils, such as Nicaea, but collectively all the bishops of recognized and accepted councils could be called ‘ancient fathers’. Canon law was often collected in chronologically ordered compilations, revealing a perceived connection between the law of the councils and the course of ecclesiastical history. (247)

Furthermore, bishops used canon law to differentiate Christian cultural practices from pagan ones. Pagan targets included the gladiatorial games, animal sacrifice, and divination, for example (C. P. Jones 25). Christian cultures also strove to preserve itself among the pluralism of cultural communities. They fought against interreligious marriages. They also sought the permanency of marriage and also required both parents’ consent for marriage. All three of these practices were stabilizing factors, which would help to define and keep identity and peace in a community. Christians proselytized at every level, especially among lower classes. When they advocated for the fair treatment and other family rights of the enslaved, they spread Christianity among the enslaved class, another method of securing growth of the burgeoning religion (Brundage 14). Again, preservation and growth of the Christian community was behind much of this doctrine and canon law, providing their own sort of societal cohesion upon gaining freedom from persecution followed by authoritative ascendancy.

Not all Christian objection to paganism stemmed solely from preservation of the community, though, as some ideas sprang from ideological or philosophical differences. Porphyry, a leading Neoplatonist, also objected to animal sacrifice (C.P. Jones 68). Christians relied on scripture such as from the book of Amos to defend their antagonism towards animal sacrifice, and this doctrine was turned into canon law. Christopher P. Jones explains this process of transition from scripture to law, as well as the consequences for transgression:

The Apostolic Canons, a collection of eighty-five ecclesiastical regulations dating from the fourth or fifth century, and later regarded as the earliest set of “canon” laws, laid down that no Christian should eat meat containing “the blood of its life,” or meat from an animal that had been killed by another animal or had died a natural death; an ecclesiastic of any rank who broke the rule suffered deposition, a layperson excommunication. (68)

Canon law forbade elements of the pagan diet. Thus, early Christians used their own legal system as well as that of the government to differentiate from, discriminate against, and dominate pagan culture.

#### **4.2 Christian Practices of Rhetoric**

Christian writers did, however, appropriate elements of the pagan philosophy of Neoplatonism. In the Christian world, there was a movement from the stoic concept of virtue leading to happiness to the platonic concept of virtue being unattainable without the assistance of the divine, a shift that imposed a permanent fallibility over the material being. In time, a Neoplatonic ideological superstrate also covered both Christian and pagan philosophies. Both these philosophies transferred into the Christian world.

James J. Murphy explains how Roman education was preserved: “While there were some zealous Christians like Tertullian and Cyprian who wanted to renounce learning in favor of a

simple faith, the fifth century church decided instead to pursue the values of the educational system already in place” (vii). Augustine of Hippo, trained in rhetoric and a teacher of rhetoric, was a Neoplatonist, and he incorporated elements of the philosophy into his Christian writings after converting. Other Christian writers and church leaders did the same. For example, Neoplatonism underpinned the arguments Athanasius used to secure political power within the church. The bishops in and near Alexandria were heavily influenced by Neoplatonic thought. Neoplatonism, a movement with third century origins, expounded on the philosophies of Plato but also had a religious element. A Neoplatonic ideological superstrate eventually covered both Christian and pagan philosophies, though a link between the two seems to fade in the fourth century.

A Neoplatonic wave swept over the region as philosophers shifted from the ontic, or the physical and observable, to the ontological, or the metaphysical. Neoplatonism was taught by Plotinus and his student Porphyry. It was based on Plato’s writing but was original enough to be considered its own school of thought. Plato had envisioned a transcendent world apart from the material one. McGill summarizes how Neoplatonism extended on this concept,

Plotinus taught that at the center of Plato's transcendent world is a unified and perfect being called One. Out of the One came the Divine Mind or Logos. From the Divine Mind came the World Soul, which connected the material world to the upper or transcendent world. Below these three things is the material world that we live in. The goal of humanity is to, through meditation, reach the Divine Mind and join the One. (2)

Plotinus’ philosophy was metaphysical and quasi-religious. Neoplatonism existed alongside Christianity but was distinctly pagan. Students of Plotinus and their extended followers believed they were simply a continuing line of disciples of Plato’s philosophy, part of a continuing

tradition that gained popularity when Plotinus opened his school in Rome (Remes 1-3). For example, Porphyry used Aristotle's *Categories*, a work about logic not philosophy (Strange 7), to argue for ontological dependence of particular things on their ideal Platonic forms (4), an idea that was carried on by the Bishop of Alexandria—Athanasius (296 – 373 CE)—and other early Christian philosophers, establishing their argumentation about the nature of the Word, a term used to mean God. Plato believed there was a perfect version of everything in the material world out beyond sight. The Neoplatonists believed in the dependence of material things on this metaphysical world and applied that relationship to humans in order to come up with the concept of a soul, which Christianity then borrowed.<sup>24</sup> Christian scholars saw the Word as the divine truth that flowed through both the immaterial and material worlds. Control of the debate on the nature of the Word, whether intentional or not, meant having control of bodies and minds. The outcome of this contest for control would demonstrate how new rhetorical strategies focusing on textual ethos and control of the interpretation of the authoritative text could prevail. Bishops used these innovative rhetorical strategies ultimately to direct church doctrine, reinforce political power, and introduce Christian theology more deeply into law and forensic rhetoric.

The leaders of this movement, who focused on the ethos of the text, were trained in rhetoric and other classics (Weinandy 1). Athanasius was trained by Alexander, the Bishop of Alexandria, and studied scripture and local theological traditions as well as literature and philosophy in order that he could refute those topics (Weinandy 1). Athanasius "... obviously became a shrewd and astute ecclesial politician during the course of the Arian controversy"

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<sup>24</sup> John Dillon explains in his introduction to Plotinus' *The Enneads*, "... the Celestial Soul, concentrated in contemplation of its superior, and the Lower Soul, called the Nature-Looking and Generative Soul, whose operation it is to generate or fashion the lower, the material Universe upon the model of the Divine-Thoughts ... this lower principle in the Soul is sometimes called the Logos of the Universe" (xxxiv).

(Weinandy 8). Athanasius' works such *Orationes contra Arianos* and *Apologia ad Constantium* are rhetorical works in practice. Athanasius admitted there was a pagan contribution to education: "One cannot grow in holiness without the help and example of others" (Weinandy 130). Some New Testament writers such as Paul and Luke were familiar with Greek literature and used rhetorical devices in their writing (Kennedy 258). The Christian orators Origen and Augustine of Hippo used rhetoric to develop a Christian rhetorical technique of Biblical exegesis, in which one peeled back multiple layers of metaphor in the Bible to reveal divine meanings (260). The Christian writer also "found *On Duties* adaptable to the needs of the Church" (Grant 33). Christian rhetors, despite being suspicious of the pagan origins of rhetoric, found innovative ways to adapt rhetoric to promote their ideas.

The endurance of rhetoric in the Christian Church through all of these avenues aided Christian theologians in their internecine debates on theology and assisted them in gaining and maintaining positions of authority. Greek rhetorical rules had set the stage for a host of ways to argue within a religion about religious matters, but for Christianity, the focus became purely about the legitimacy of an interpretation of a specific text and agreement on that interpretation.

### **4.3 Textual Ethos: Creating an Authoritative Text in Christian Rhetoric**

Once Christianity became dominant and legitimized by the state, Christian bishops in competing power centers with alternative theological teachings turned on each other for control. Creating an official Bible allowed the bishops to turn on each other for control of the interpretive authority among their ideological rivals. I use textual ethos to describe the persuasive authority found in a written text as opposed to the personal ethos that emanates from the morality, character, or reputation of an individual. For a text to have the ethical authority, a definitive text had to be established and reproduced enough to be available to individuals and groups eager to

wield power. First of all, imply moving from orality to text was an act of power among a largely illiterate community. This movement created a power distance between the literate text owners and the rest of the populace.

The rise of the codex as a writing form aided the creation of an authoritative text. The codex was a book form of writing, made up of sheets of parchment, vellum, or other material. By 300 CE, the codex had begun replacing the scroll, one long parchment with rollers on either end, and was equal in availability with scrolls at that point. The codex spread with Christianity and particularly with the Bible. It replaced the scroll within about two centuries (“Codex”).

Monasteries were influential in this rise of the codex. There were no monastic scriptoria until the early sixth century. However, the monastic movement itself spread across the Eastern Roman Empire in the fourth century (Lawrence 11). Lawrence cites the dissemination of literature as one of the reasons interest in monasticism spread (11). He writes, “It was the literature of Egyptian monasticism that brought the first flood of converts. More than any others, the work that made the deepest and most long-lasting impression upon Western readers was the *Life of St Antony* by Athanasius (11).

Competing mystery religions stressed orality; Christianity moved in a different direction. Even in Neoplatonic writings there was a mysticism that discouraged writing down teachings (Valantasis 52-3). In the fourth century, the Christian, monastic scholar Jerome translated the Bible into Latin, called the Vulgate, so from that time on an official text could be referred to in rhetorical debate. In addition, other rhetorical texts appeared that narrate the story of the church as a linear, monolithic entity, such as Eusebius’ *Ecclesiastical History*. The first church regulatory handbook appeared around the turn of the first century, but by the second and third century there were longer rulebooks (Brundage 5-6). Augustine of Hippo describes how “the

divinely inspired writings have created for us the canon of scripture with its most beneficial authority” (qtd. in Green 105). Once the authoritative text was established, the interpretation of that text was next under debate

Christian bishops interpreted the Bible differently to come up with competing theological ideas; they needed consensus on the interpretation to end internecine political disputes within the church. James Jasinski also insists that “there can be no final or ultimate ground that proves, once and for all, what ... [a given text] ... means” (293). The Bible, nor any text, rendered an automatic, infallible interpretation. Augustine wrote, “There are two things which an interpretation of scripture depends: the process of discovering what we need to learn, and the process of presenting what we have learnt” (qtd in Green 101). Using his experience in rhetoric and a system created by Origen, Augustine created a process of textual criticism for interpreting multiple layers of symbolism in the Bible and even in profane text, wherein one searched for salvation allegory within the passages beyond the literal meaning. Thus, Augustine lays out how rhetoric could and should be used within a Christian exegetical context, securing the control of how to interpret the authoritative text. Steven Mailloux discusses how a group of readers reach agreement or consensus on an interpretation of a text: “Interpretive work always involves rhetorical action [and] attempts to convince others of the truth of explicating and explanations” (qtd. in Jasinski 292). Christian bishops, as a group of readers, inherently used rhetoric to settle their interpretive disputes. The bishops who held the interpretation, held great power, and they used this power to subjugate and control other rival bishops with competing ideas.

#### **4.4 The Rhetoric of Heresy**

After gaining legitimacy for the Christian Church through Constantine’s edicts, Christian theologians and bishops turned against each other over interpretation of doctrine and authority

within the church. The church held temporary councils and synods to debate theological issues, and votes were taken to achieve majority consensus on theological ideas. However, unlike in a legislature, the losing sides' ideas were proclaimed permanently unorthodox or illegal: the concept of heresy was established. Secular authority would enforce these outcomes. To start, the rule of Constantine I (311 – 337 CE) marked the end of the initial persecution of Christians.

Some background on the divisions that developed within the church will help at this point. Bishops, reporting up to the Pope in Rome, the highest Bishop, gathered in councils and synods and created new bodies of ecclesiastical law. The local gatherings called councils, a word of Latin origin, numbered in the hundreds during the fourth and fifth century. The more formal synod, a word of Greek origin, required all bishops to show and to have equal vote, but the terms synod and council are often interchanged in lay commentary. “The church adopted the principle of subordination of authority in the fourth century as a consequence of its integration into the administrative system of the Empire, which was already organized as hierarchical structure” (Brundage 8). Christian structure began to split from within between those who were tolerant towards bishops who cooperated with the Roman authorities during the persecution and those who were not tolerant of those bishops. These divisions continued into the fourth and fifth century, manifesting as competing political centers within the church.

The First Council of Constantinople (381 CE) established the pentarchy of patriarchs with Rome supreme (Brundage 9); five regions were led by Bishops with the most powerful seated in Rome. Brundage illuminates how by the fifth century, bishops created their own regional laws, “Bishops ... established their own courts, the *audientia episcopalis*, in order to adjudicate matters that fell under their authority” (10, 12). Ecclesiastical law had different purposes at its start, related to the organization and administration of the clergy: arbitration,

reconciling, preventing conflicts, and mediating (12). This developed into prolonged, heated, and repeated combats against heresy, which involved harsher punishment for those who challenged the authority of the hierarchy under the guise of “moral lapses” or “Serious deviations from mainstream teachings and doctrines,” which implies that there was actually something mainstream at this time, rather than evolving and growing as has been established by the lengthening of the doctrines available and the incremental formation and establishment of the church courts and synods (12). One must remember these were not heresies until proclaimed so: such movements or political challenges were delineated and then defined as heresies, and it was that process that actually helped define what was orthodox (this is the othering process). It was the heresies that caused the church to maneuver itself into applying penalties in the fourth and fifth century instead of continuing their tradition of arbitration (12). Kennedy writes, “Theological controversy was bitter within the Church between the orthodox (that is, those who eventually won) and heretics (those who eventually lost). All the weapons of rhetoric were used by both sides in life-and-death battles ...” (264). While rhetoric was surely used in the debates themselves, the entire process was rhetorical as well. Majority vote, acting not unlike a jury in law courts, decided the outcome, and that outcome granted extreme persuasive ability to silence or destroy theological adversaries.

Monasticism further restricted epistemological strategies of argument. Athanasius made alliances among the monks to fight Arius (Weinandy 3). Lawrence described how the monks and their ideas were absorbed into the larger Christian milieu: “Its scholars provided some heavy artillery in the Pelagian controversy over grace and free will. It was also a nursery of monk-bishops. The appearance of monks in the ranks of the episcopate signified the assimilation of monasticism into the ecclesiastical organism” (16). Augustine also lent his support to

monasticism and helped to blend it into the organized church (Lawrence 17). Lawrence described how “by the fifth century, then, the ascetical tradition of the Eastern desert had been transmitted to the West” (17). Pachomius of Egypt is credited with moving beyond the more torturous and isolated forms of contemplative eremitism and bringing the anchoritic lifestyle into coenobitical communities, but it was Basil who popularized a new intellectual path to asceticism (8-9). Jerome credited the imperial persecutions for driving Christians into the desert for safety. Columba Stewart sums up the ascetic goals and strategy of Evagrius, a fourth century monastic psychologist: “... Anger differs from lust, though both are triggered by interaction with others ... healing the intellectual requires reading, vigil, and prayer; healing the desiring part of the soul involves hunger, toil, and withdrawal from others; healing the irascible part of the soul requires psalmody, patience, and mercy” (Stewart 68). Lawrence suggests also to view the monastic movement as a reaction of the more austere and devout against the relaxed attitudes of the Christians after the end of the persecutions and thus monasticism itself as a rhetorical argument (Lawrence 1-2). Regardless it created a type of division within the Christianity community, one that Athanasius could take advantage of during times of exile in order to craft and push his larger rhetorical design of building an enforced consensus among all Christian communities.

Another example of securing consensus as a rhetorical strategy emerges from the challenge of Arianism. Arianism was a collection of ideas that became a church political movement, but it became a heresy through the Council of Nice (Ligouri 55). Arius was a very educated African who went to Alexandria to advance in the church. After being snubbed for a promotion, he attacked his opponent, Alexander, for being heretical. The church sided with Alexander and identified two teachings, or differences of opinion and belief, of Arius: namely, that Jesus was created from nothingness and that he was human, capable of virtue and vice (9,

56). Arius preached these ideas publicly (57). Ligouri writes that Alexander first used admonition to sway his behavior. Alexander called a synod of 100 bishops to Alexandria in 320 CE. Arius announced his beliefs there, and the synod excommunicated him in response. The attacks on Arius' character grew worse when adversaries claimed he seduced his female followers (57). He produced a work called *Thalia*, which he used to proselytize his minority views to the common people (57). His ally Eusebius of Nicomedia conducted a synod in Bithynia of favorable bishops to Arius, who asked Alexander to receive Arius back into the church. Another strategy of Arius' supporters was to convince Emperor Constantine that the issue at hand was of no great consequence, a small issue. Constantine acceptingly responded to this minimization by telling all sides to remain quiet about the issue and continue on with differing beliefs (58). From 335 – 337 CE, the Council of Tyre resulted in the exile of Athanasius. The tide against Athanasius' tool of consensus had temporarily ebbed, but changes were soon to follow.

In 325 CE the Emperor called the general council at Nice. Some of the priests there showed wounds of persecution for their beliefs, which is also held ethical power in this assemblage (58). The arguments of those bishops on the side of Arius were seen by their adversaries to have been weakened by their contradictions in opinions (59-60). Eusebius of Caesarea writes, "... many were attracted by the force and elegance of their discourse," but describes how one layman reminded the assemblage that "neither our Lord nor his apostles had taught us the rules of logic or idle subtleties but the truth, which is preserved by faith and good works" (392-3), causing the crowd to remain quieter. The council decided against Arius and proclaimed Jesus and God as consubstantial. Of note, the Emperor appeared on the last day to lend authority to the judgment and proclamation (60). Constantine showed humility towards the

priests, lending himself ethos by yielding it and therefore validating consensus as an effective rhetorical appeal (61). Punishment was the deposition and banishment of Arius (62). The judgment was accepted by the defeated side because they feared the power of the majority and its secular backing and not because of the logical sway of any particular argument (64). Charles Freeman writes, “Confronted by the terrible animosities of Christian debate in the fourth century, one has reason to be relieved that silence fell in the churches” (314). Gregory of Nazianzus wrote, “It is better to remain silent, than to speak with malice” (qtd in Freeman 314). Clearly, the vitriol of the rhetorical debates and the consequences for the losers had a longstanding effect of silencing dissent.

The judgment of this council strengthened reliance on the authoritative text and the control of its interpretation by the empowered majority. Eusebius of Caesarea writes regarding Arius’ novel ideas, “By a little spark, a great fire was thus kindled” (388). Demonstrating how effective proclaiming heresy was as a rhetorical strategy, Aristotle’s *Categories* along with Porphyry’s commentaries on that work also fell out of use in the fifth century as it was no longer considered appropriate to question the nature of the delivered message or contemplate the nature of the divine (Freeman 315). Then, in 362 CE, the Council of Alexandria effectively ended the Arian controversy by combining the concepts of homoiousians with homousian (Weinandy 7).

Athanasius used rhetoric to cripple it profoundly from within. His rationality is the immortality of the soul and its capability to move closer to the Word or further towards non-being, or sin/evil (Weinandy 19-20). This is not classical deduction; rather, it’s imagination. He starts with Aristotle’s “It is rationality that differentiates humankind from the animals,” then departs rapidly (19). Weinandy writes, “... Athanasius was consistently more interested in the truth proclaimed than in the manner in which it was proclaimed,” (7) which rings of Platonism:

“The word is the perfect divine image of the Father ...” (14). The authoritative text is a window into the ideal. Neoplatonism, with its One, Intelligence, and the Soul have a Trinitarian likeness, and through these synods and rhetorical strategies used therein, the concept of the Holy Trinity of Catholicism was born.

Christianity is seen as a mystery here, with the inability for anyone to fully comprehend the Word. Arianism was an attempt to define things. Athanasius and others preserved the religion as a mystery, and Augustine of Hippo (354 – 430 CE) further preserves the mystery. Manichaeism and Gnosticism, two other major heresies of the period, were based on the concept of salvation by knowledge. As Roman rhetoric had already begun to focus on ethos more than logos for argumentation, and patristic rhetoric did the same, angling for control of the underlying warrants or beliefs upon which their system of ethos lay, Manichaeism provided a direct challenge. Christianity was comfortable with the mysterious and the unknown because those were not the method of proof advocated.

Politics from within and without influenced the tactics with which early church figures entered arguments. Donatism, an African heresy, highlights the early church’s desire to maintain their established hierarchy. During the persecution of the Christians by Diocletian, some church leaders had to renounce their faith; Donatists did not forgive this, perceived moral corruption while the church establishment did. Augustine of Hippo had this movement proclaimed a heresy by using legal documents in a church gathering (collation). Melitians opposed leniency as well, causing discord among the ranks of bishops (Weinandy 2).

Another challenge that was met with ecclesiastical consensus as a rhetorical response was Pelagianism. Pelagius (360 – 418 CE), a British monk, studied and settled in Rome. He posited the mortality of Adam and Eve and, thus, the lack of Original Sin, and that infants were born in

this state and, upon dying, have eternal life (Ligouri 110). Disagreeing with these ideas vehemently, Augustine attacked Pelagius' doctrines through letters to adherents and also through his works (112). Augustine broke his ideas down into a system of subterfuges, or very loose reasoning around argument. Augustine argued that original sin had corrupted the power to reason, and through vote on the interpretation of scripture, Pelagianism and Pelagius himself were condemned in councils in 412 and 416 CE (114) (Freeman 346).

Charles Freeman writes, "With the integration of aspects of the Greek philosophical tradition into Christianity, pagan rhetoric came again to be valued," especially in funeral oration, epideictic rhetoric highly focused on ethos (314-5). Freeman writes, "No longer is coherence of [logical] argument valued" (315). Both Tertullian and Augustine praised the irrationality of the Christian message (315). Augustine interestingly throws out the moral value of the speaker, insisting that the message itself, which he sees as divine, has enough ethical weight (315). There is a nod to Platonism in his reasoning: "Truth exists eternally and totally independently of the one who speaks it," Freeman concludes (315). He discusses how approved texts by respected authors came to surpass the creation of new sermons and that the need for rhetoric declined because of it (315). Freeman writes, "The point remains that the link stressed by Isocrates and Quintilian between the moral character of the speaker and the words he spoke has been broken" (399). Such an accusation would throw out the other aspects of rhetoric involved in the presentation and swaying of the audience, such as delivery and ignores that this is better illustrated as a shift of ethos from the orator to the text, a text which could be more tightly controlled than the mutable mind of a speaker.

#### 4.5 Conclusion

The methods of the early Patristic Christians were rhetorical and paved the way to increased power. They found the aid and backing in secular authority to dominate pagan communities and their practices. Then, they created and propagated an authoritative text and imbued it with a new kind of textual ethos. The personal ethos, so highly valued in the Roman Empire, migrated to a new source. Bishops gained consensus, then the sovereign implemented the rulings of the church through secular, legal channels, and a kind of concord was attained. The innovative rhetorical strategy this chapter has described, that of consensus, is unique for the domain of law. While a jury could pass a verdict, all the ideas of the losing side were not thrown out summarily and persecuted. Yet this process flourished in the early Christian church. Legal scholar Richard A. Posner explains, “Authority’ means something else in law. Legal decisions are authoritative not when they command a consensus among lawyers, corresponding to a consensus among scientists, but when they emanate from the top of the judicial hierarchy” (79). This tactic succeeded when it came to arguing for control of the interpretation of religious texts. Once agreement on interpretation was reached, enforcement of that agreement still came from above, whether from church or secular leaders.

Rather than rhetoric disappearing during this time, it was changed and coopted by ecclesiastical forces to use against the pagans and then against each other. Consensus was used to generate authority and then applied to the singular text and those who won the right to interpret that text. Eventually, secular authority backed up sacred authority and rulings, and the legal systems, while separate in structure, became integrated in intent and application of power. In the Christian world, it would be several centuries before a cultural Renaissance among the Franks

opened access to the control of the Bible, its interpretation, and the acceptance of other profane or secular texts as legitimate alternative sources for textual ethos.

## 5 SWEET AND DELIGHTFUL: RHETORIC AS A TOOL OF PAROCHIAL LEGITIMACY DURING THE CAROLINGIAN RENAISSANCE

And, you who read, scorn not a book so small—  
To you brings honey the small-bodied bee. (Alcuin in Howell)

Here we turn our attention to rhetoric in the Carolingian Renaissance. The previous chapter illustrated how competing factions within the early Christian Church in Alexandria shifted reliance in argument on ethical proof from the orator to an authoritative text. The Roman system of study and use of rhetoric declined and nearly disappeared with the epistemological dominance of the Christian Church along with the political collapse of the secular authority of the Roman Empire, under the conquering waves and settlement of the various Germanic tribes from the north and the blockade of access to the seas in the south by Islamic advances. However, rhetorical institutions were actually replaced by new systems put in place by the superseding powers. Factions in the Christian church had appropriated rhetorical technique in order to hold sole interpretive power over a primary authoritative text, the Bible, along with supplemental church doctrine. The impoverished, conquered, or enslaved were just as disfranchised, legally and educationally, as they had always been in early and late antiquity by Greek, Roman, and early Christian Church dominance successively.

In addition, the institutions of the elite were sustained and altered by a scattered and parochial collection of both secular and sacred authorities. These various political rulers used rhetoric to promote cultural growth, learning, and legal codification in order to establish parochial legitimacy. Rich K. Eich writes, “Rhetorical scholars who have prejudged the Carolingian revival of learning would do well to heed Richard Winston's view that “it is risky to judge and condemn the intellectual achievements of one age by the standards of another” (53). George A. Kennedy states, “The seventh was the cultural low point in the West,” though he

points out various isolated rhetoricians who produced extant works up to the ninth century, such as Boethius, Cassiodorus, Isidore of Seville, and Bede as well as works that carried great influence during this early medieval period such as those of Macrobius and Donatus (274-5). Eich disagrees, “The Carolingian movement, then, must not be sidestepped in the comprehensive treatment of the history of rhetoric” (53). The isolated rhetorical works from those writers better known in the history of rhetoric are certainly of great value, but the Carolingian Renaissance contributes as well to the history of rhetoric with its interesting innovations in rhetorical strategies.

Kennedy provides his summation of the devolution of medieval rhetoric thusly, “... the functions of the study of rhetoric in the Church were transferred from the preparation for public address in law courts and assemblies to knowledge useful in interpreting the Bible, in preaching, and in ecclesiastical disputation” (271). However, that description applies only to the strict classical body of rhetorical works and technique, overlooking broader application of rhetoric in other forms and the works of secular actors. In this period, Western Europe saw new parochial kingdoms, such as the Franks, that sought legitimacy. Charlemagne ruled the Franks from 768 to 814 CE and was crowned Emperor of Rome in 800, thus wielding great influence. The Carolingian Empire lasted from 800 to 888 CE. During the eighth and ninth century, Frankish kingdoms saw varying actors utilize rhetoric to vie for their peripheral legitimacy through a variety of innovations in rhetorical strategy, such as promoting a cultural renaissance, which required the expansion of educational centers, the development of a rhetorical typology to justify cultural unity, the codification of legal systems, and the propagation of texts.

## 5.1 The Carolingian Renaissance and Alcuin's Rhetorical Theory

410 C.E. saw the sack of Rome and 476 the end of the empire. Some cultural institutions devolved, but some facets survived these political events. Kennedy writes, "In the West, the schools of rhetoric flourished through the fourth century" (273). He emphasizes the "nonartistic rhetoric of intimidation and brute force that prevailed at the time" (272). In *History, Frankish identity and the framing of Western ethnicity, 550-850*, Helmut Reimitz suggests that the Franks created a post-Roman, Christian West identity, to contrast against the Byzantine and Islamic centers, that eventually developed into a Western European identity.

Richard E. Sullivan defines a renaissance as:

quicken and redirected activity in thought and expression that derives its prime impetus and fundamental shape from conscious turning to an earlier cultural tradition in search of models that will allow the creation of cultural artifacts capable of animating the minds and spirits of a particular collectivity, the members—or at least some members—of which perceive themselves to be restrained and confined by a deficient cultural milieu. ("Introduction" 2)

The members' rhetorical claim was that society was deficient; they wished to restore it to what they perceived as a better past. Sullivan advises that the goals of the Carolingian age (751 – 987 CE) included "appropriating the Greco-Roman classics, purifying Christianity, cultivating the power of reason, and improving the human lot" (4). Partitive inheritance eventually subdivided the Empire, but this chapter does not seek to establish the legacy of the efforts of this period, rather, it seeks to expose and describe rhetoric's adaptation to the cultural milieu, its innovation, and its strategic application.

The political restructuring in France was due to aristocratic rebellion and not nationalistic or ethnic sentiment. Patrick Geary writes, “The result was that regional strongmen created powerful regional alliances that, while professing loyalty to distant Frankish kings, managed their own affairs. Here Roman law, in the *Theodosic Code* or in abbreviated forms such as the *Breviary of Alaric*, provided the uniform territorial law for all, and counts and dukes ... developed powerful regional identities” (139). Geary writes, “The wars of expansion fought by the Frankish kingdom under its Carolingian kings introduced a new role for ethnic and legal differentiation within Europe as one of the building blocks of the Empire” (153). This conception of a shared ethnicity provided an underlying foundation for members of the Renaissance to build from.

James J. Murphy claims, “If the schools outlasted the [Roman] empire, it was also true that the teaching methods outlasted the Roman schools themselves. The history of medieval education is only now being written, but there is increasing evidence that the basic pedagogy which the Romans had inherited from the Greeks was passed on into the Middle Ages substantially unchanged” (xiii). Here, Murphy posits a continued classical education into the Carolingian Empire. Charlemagne wished to expand on this infrastructure. In 795 CE he issued “On Cultivating Letters,” which commanded religious centers, monasteries and churches, to institute a program of instruction for classical learning, namely grammar and rhetoric. Kennedy claims the intent was to expand the number of people who could read Scripture (282). Spiritual edification satisfied the goals of those who promoted an improved society. Thomas F. X. Noble explains Charlemagne’s religious purpose for his efforts:

Charlemagne’s massive program of educational reform and spiritual revival ... was focused directly on the Bible. The whole idea of the reform was to communicate biblical

truths to the people so that all might be led to salvation. In order for the clergy to preach the Bible, and for the people to understand what was being preached to them, books had to be obtained and copied, teachers had to be trained, schools had to be formed, and pupils had to be recruited. (238-9)

Although advocates sought cultural spiritual improvement, Charlemagne had a practical need for educated persons to administer his Empire as well. He also sought cultural unity to maintain order (Eich 53, 57). Among other cultural endeavors, he did so by reviving, imitating, and preserving the Roman tradition of rhetoric.

To accomplish this goal, Charlemagne “appointed Alcuin to become Abbot of Tours in 796 ... entrusted with the reform and revitalization of a venerable and wealthy institution that was deeply rooted in the history of the Frankish monarchy ...” (Dales, 149). Alcuin was educated in classical rhetoric. Kennedy writes, “Alcuin was a Briton whom Charlemagne came to know and placed in charge of the palace school at Aachen in 781 as an effort to improve literacy”; to enact his educational agenda, Alcuin produced the *Dialogue of Charlemagne and Alcuin concerning Rhetoric and Virtues* in 794 (282).<sup>25</sup> This text provided a rhetorical text to help spearhead the movement, backed by both secular and spiritual goals. He headed the Palace school, where “ambitious youths of good families resorted to the courts of the Merovingians [the previous Frankish dynasty that had succeeded in unifying Gaul] and their mayors in the expectation of learning whatever a ruler ought to know ... the students were exposed to weaponry, etiquette, leadership, and discipline as well as to rhetoric and the other liberal arts” (Eich 55-6). The text and the system of education itself were not so much novel as was the

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<sup>25</sup> Available in an English translation by Wilbur Samuel Howell.

rhetorical strategy of initiating a new and improved educational system. Joseph M. Miller writes, “The *Dialogue*, like the treatises of Cassiodorus and Isidore of Seville, did not contribute many original insights ...” (123). Focusing only on the canonical rhetorical theory overlooks Alcuin’s purpose and skillful application of rhetoric in his works to address larger concerns for a cultural reflowering, an education system in its infancy, and Frankish political claims for legitimacy. Kennedy judges Alcuin’s work as derivative of Cicero’s forensic rhetorical theories and largely based on the handbook Julius Victor (282). Miller admits, “It goes beyond the mechanical definitions of terms to include practical advice on how rhetoric and the virtues could influence daily life of the sovereign and his subjects,” a sentiment echoing Cicero and Quintilian’s focus on morality and living a virtuous life (123). In this way, it bolstered both moral and practical aims of its promoters.

In his introduction to the *Dialogue*, Alcuin compares a book of lessons on rhetoric to a small-bodied bee that brings something sweet and delightful. Although Alcuin lived in a time when many classical institutions of learning were being forgotten or destroyed, he took part in an organized effort to reinvigorate the concept of an education. Alcuin had Charlemagne reflect a utilitarian desire in the *Dialogue* when he has Charlemagne say, “... it seems absurd not to know the rules of an art when the necessity of using it confronts us daily” (qtd. in Howell 67).

Emphasizing the distributed curricula of schools and their necessary interconnectedness, John J. Contreni notes:

But no school ever offered the full range of theoretical and practical studies that was possible during the Carolingian realms. Everything depended on local resources, interests, and talents. Indeed, the unevenness of the curriculum fostered interdependence

among centers and stimulated masters and students to create networks that linked schools, libraries, and, of course, people. (127)

The young education system varied regionally and local and was subject to availability of resources, yet the system was fluid and interconnected.

Despite early Christian resistance to rhetoric as pagan, in the sixth century writers had first found a desired way to use rhetoric, hagiography as a type of epideictic praise rhetoric in order to make their points, allowing secular powers a chance to challenge and expand the canon of authoritative texts. Frankish scholars also looked at pagan and secular works as authoritative texts, Cicero, for example, and they certainly found them supplemental and of value: “A broad pattern emerges of interest at court in patristic writings as well as classical literature, along with more technical books about grammar and computation” (Dales 297). Scholars accepted pagan works more than in previous centuries in order to amass the educational material needed for this endeavour. Charlemagne and Alcuin did not just tolerate pagan and secular authors but also valued them; they needed the historic, pagan knowledge to enact cultural reforms and push for greater legitimacy. Perhaps Charlemagne felt freer to incorporate these works, relatively protected as he was from the church, with many of the theological debates that established orthodox doctrine having been resolved in previous centuries. James Palmer describes the Frankish appreciation of “a variety of non-Christian cultures which influenced the Franks from within, from the communities incorporated into the Frankish imperium with only the most superficial Christianization, to the works of the ancient Roman and Greek poets which played an important part in the Carolingian Renaissance” (404). Furthermore, “only education dedicated to improving Latin literacy offered” a way to access the learning of the past (Sullivan 57). Latin works had influenced Alcuin’s education and choice of texts, as Greek sources were less

available at that time. It was Boethius' writings several centuries earlier that carried Aristotle, by way of Porphyry, on into the Middle Ages, at least in the West (Watts 12). Alcuin had been educated at York's cathedral school (Howell), and the works of Boethius and also Bede, available in Northumbria, were crucial to Alcuin and thus highly influential in the creation of the Carolingian course of study (Dale).

Alcuin's rhetorical instruction did not contain much innovation, mostly passing on the learning of the past. Alcuin bases his *Dialogue* on rhetoric on Julius Victor and Cicero. "For Rhetoric the textbooks were the *De Oratore* of Cicero and the *Institutio Oratoria* of Quintilian" (Knowles 1964). David Knowles explains that rhetoric remained a key component of education in Western European cultural centers, "Between 600 and 1000 the *quadrivium* was in eclipse as an educational syllabus, and was either omitted altogether or treated simply in a brief, factual way." He describes how dialectic faded from the curriculum as well. "This left Grammar and Rhetoric—that is, a purely literary education—in possession of the field" (1964). Rather, Alcuin's rhetorical act lay in the exigence and execution of his work itself, situated in the context of political legitimacy.

## 5.2 Rhetorical Typology and Frankish Legitimacy

The power of ethos as an appeal lingered, and creative writers could strengthen national ethos through an innovative strategy of rhetorical typology, an extension of Christian Biblical exegesis already in use for centuries. Augustine of Hippo had already promoted rhetorical analysis as Biblical exegesis in the fifth century. The Franks applied this technique to the cultural strengthening and reputation of their growing empire. Both the Frankish and English assemblage of kingdoms took part in using rhetoric and other forms of classical learning to practice nation building, a storytelling strategy which had sprung from Celtic and Nordic dynastic poetic

traditions. These fledgling attempts to establish legitimacy reach full literary force by the time of the Matter of Rome, especially Troy, the Matter of Britain, and the Matter of France.<sup>26</sup>

The unification of language, culture, and identity drove the proponents of these new nations. Claims of national origin tended to focus on the ancient past—typically that of Greece, Rome, or Troy (Geary). In this vein, Charlemagne and his court wished to connect the Franks back to the Biblical Israel. The imagined elements of nationhood were language territory, and a distinct culture (Geary 35). The states of the early eighth century were the product of regionalism, figureheaded by local elites and made up of new combinations of cultures. Here is where legal codes become instrumental in establishing an imagined community: the “Carolingians created a new kind of European ethnicity based on an individual’s own legal code rather than ancestry or culture” (Geary). Legal identity was just one of the ways in which Franks imagined themselves a cultural entity. They also saw themselves as an ethnicity founded on Christianity.

Mary Garrison discusses how the Franks claimed to be the Elect of God as the new heir of Israel rather than claiming descent from a fallen Roman Empire (114). Garrison writes, “The concept of election becomes an ideology of legitimization when it is appropriated by ruling groups to justify political arrangements, territorial expansion, exclusion, or oppression” (116). A rhetorical strategy used to justify this thinking was typological thought—whereby a new event can be understood as a fulfilment of an earlier one” (Garrison 117). This typology can be “optative, descriptive, or prescriptive” in intent, meaning the metaphor can describe how things

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<sup>26</sup> The Matters of Rome, Troy, etc., were collections of tales that attributed lineage of contemporary kingdoms back to Biblical ones or fabled kingdoms from Greek classics such as Troy. Authors tried to connect the present day to an imagined, glorious past and to claim direct descent and inherency, which assisted in ranking one kingdom against another and to legitimize the ruling claims of the king or emperor to his own people.

should be, how things are, or how they must be (118). Karl Leyser agrees, “Both the mythology and cosmology in which Europe emerged as one of the constituent parts of the word intrigued and exercised the imaginations of the Carolingian court circles they reached and, it could be said, poured into their lavish poetry up to the end of the ninth century” (1). This style of textual criticism stemmed from Origen and Augustine’s Biblical exegesis, which the church had formerly used to see religious allegory and soteriological messages in both religious and profane texts, only now it had been adopted by scholars to integrate secular politics into those religious readings.

Noble claims, “The point of the careful Old Testament exegesis in the *Libri Carolini*, coupled with the designation of Charlemagne as David, was precisely to make the Frankish ruler, and him alone, the authentic representative of and heir to the Davidic kingship of Israel” (239). Not only did the Franks wrestle internally with rhetorical authority, but they also fought to establish their authority in argument externally; Noble writes, “For the Carolingians to take their place in the roll of nations, they had to battle the Byzantines, who also laid claim to the direct inheritance of the Roman Empire. To do this, they contested them on every field that really mattered; the biblical, the apostolic, the ecclesiastical, and the institutional” (248). They ranked their ethnic identity above other ethnicities and saw a noble, religious role for their ruler.

The Bible was the authoritative text for any spiritual or even political debate, empowered with ethos, with only select factions allowed access to, and interpretation of it, a condition I called *textual ethos*. The Carolingians created a rhetorical innovation by projecting that ethos back to their secular ruler. For example, Garrison asserts, “By the 790s, Old Testament comparisons had gained a new prominence and a new public at the Carolingian court. Typology was reified, and the Bible’s role as an authoritative text was such that biblical law could be

applied to the Franks in the *Admonitio Generalis* and Charlemagne himself could be addressed as David rather than merely compared to him” (159). Scholars compared contemporary king to historic or Biblical king. For example, Alcuin wrote of Charlemagne, “Behold our Solomon, resplendent with the diadem of wisdom” (qtd. in West 47). The Franks had created a rhetorical innovation of typology as a persuasive appeal.

The cultural movement was successful. Verily, Charlemagne did promote wisdom and learning in his kingdom. In fact, “the nurture of cultural life was elevated to the level of public policy by Charlemagne” (Sullivan, “Context,” 56). Charlemagne’s edict made the cultural boom an official, national project, but this effort was not Charlemagne’s idea alone; according to Sullivan, there were many actors that influenced this focus: poets, the papacy, the episcopacy, monarchs, the aristocracy, and monks (“Context,” 65-71). The Biblical comparisons and the concept of a New Israel was sought because it could connect the Franks to the Christian Promised Land and could elevate the Franks to the status of God’s chosen people. Garrison gives credit to the papacy for initially spurring on the typological comparisons for the Franks as the New Israel: “... it was not the Carolingians themselves who began to depict themselves as the elect, but the popes ... papal letters to [Charlemagne’s father] Pippin began to incorporate comparisons between Moses and David and Frankish kings, between Israel and the Franks” (123-4). Charlemagne proclaimed the letters from the papacy as wise and ordered their preservation (Garrison 128). Purveyors of Frankish election, those who encourage viewing the kingdom as divinely chosen, linked the kingdom to Trojan ancestry as well (151). In the Trojan mythos, “Priamus was their first king,” and the Franks migrated from Troy through Macedonia under a figure named Francio (Leyser 4). Interestingly, while clergy used a hermeneutic to seek out earlier, supposedly truer, primary sources to authenticate their contemporary points, royalty

chose instead to use the rhetorical technique of exegesis applied to the singular, sacred, authoritative text in order to create metonymical symbolism to bolster their arguments.

Nostalgia and disaffection with their present age motivated the Frank. Matthew Innes posits, “The past . . . might provide a legitimating template for the current order of things, explaining how things were meant to be thus, or an image of an ideal order, a Golden Age against which the present could be judged” (Innes 1). Biblical or historic figures and narratives could be used as that legitimizing template. Likewise, per Douglas Dales, Alcuin’s goal for education was nostalgic and typological: “In a letter to Charlemagne, written in the spring of 799 from Tours, Alcuin alluded to their hope of recreating an academic tradition that would emulate that of Athens of old, where the seven liberal arts would now be completed by the sevenfold gifts of the Holy Spirit” (194). Education was both didactic and secularly available as well: “Within this intellectual tradition, logical thought had its place alongside the authority that sprang from divine revelation. Moreover, education was not to be confined just to clergy or monks: it was to be accessible to the laity as well, men and women, some of whom were Alcuin’s closest allies and friends. Learning and morality were to go hand in hand, whether in the policy of the Carolingian state, or in the conduct of private individuals” (195). Within this sentiment as well is praise of Plato’s idealized philosopher-king (Plato had envisioned an ideal leader who would be trained in philosophy), a role Alcuin envisioned Charlemagne performing (196).

Alcuin’s rhetorical analyses of the Bible had an ethical strategy, similar to how I argued in Chapter 3 that the Alexandrian bishops vied for interpretive control of the authoritative text. Dales reveals how Alcuin saw himself as church teacher, criticizing the morality of the day, and how he connected this to a Biblical counterpart, the wise King Solomon:

Solomon, was described by the word *concionator*, which was a translation of the original Hebrew designation and which in Latin meant public demagogue and moral exhorter, a role with which Alcuin himself clearly identified in his letters and elsewhere ... He was addressing the ethical state of both Church and society during a boom-time in a manner similar to some of the biblical elements in Carolingian legislation. (158)

Not only was Charlemagne subject to typological comparison, but so was Alcuin. Alcuin saw a typological connection with himself to church historical figures as well. Such connection allowed all empowered Franks to draw such comparison simply because of their newly constructed ethnicity.

The church followed suit. It was not just secular leaders who took part in the expansion of sources available for typological rhetorical comparisons, but also church leaders took part in this legitimizing endeavor. Knowles describes how Canon Law was also collected and distributed for greater central control by the clergy: "... in the middle of the ninth century the whole corpus had been contaminated by the work of a group of ecclesiastical reformers ... who, in order to free the Church from the secular power and from Celtic customs, produced the tendentious and in part spurious collections known as the False Decretals and the False Capitularies" (157-58). In this case, church members used older sources to position their arguments against competing elements within the church. Knowles further explains, "... the contest between the Empire and the papacy set the papalists searching for old and original sources in support of their case ..." (158). In a process similar to the assembly of the Bible as the authoritative text, here the clergy continued to argue for authoritative textual ethos as a rhetorical strategy of appeal.

### 5.3 The Codification of Legal Authority

Classical forensic rhetoric still applied to an elite class and “justified serfdom by a variety of intellectual constructs that reduced peasants to an inherited, almost subhuman status” (Geary 20). The populace at large did not recognize themselves as an ethnic community because of linguistic similarities (30). The classical dichotomy of Roman versus barbarian had eroded since the sixth century in favor of burgeoning regional polities. The creation of national entities such as Britain and Gaul blurred “the lines between Roman and barbarian, when not abolishing them altogether” (120). It was no longer relevant to be Roman in practice. Geary writes, “By the beginning of the seventh century, such a distinction meant nothing. Roman citizenship was meaningless; regional populations were divided by social stratum, not by language; and all of society ... were united in a single faith. Thus, the term *barbarus* began to take on new meaning: that of foreigner, and increasingly, pagan foreigner” (140). Christian and Frankish were more powerful identities. By the ninth century, *Romanus* simply meant people from the city of Rome (Geary 141). This setting allowed Charlemagne to divert power and influence from Rome to his kingdom, as Frankish identity, and more so class identity, outranked the political and church authority that emanated from the historic Roman power center. It had become more useful to be of Roman origin in a historical sense.

In the early Middle Ages, identity was a rhetorical choice in the legal system; litigants could claim belong to the legal system that best suited the conditions of his case. For example, Geary writes about the contemporary Lombards, another Germanic people, who had like the Franks, conquered parts of the former Roman Empire, but in the Italian peninsula, “Law was, initially, a major means of creating a Lombard people. From the mid-seventh century on, the heterogeneous barbarian warriors serving in the kingdom were expected to follow Lombard law

unless permitted an alternative legal tradition by the King. Certainly, Lombard legal identity was not a matter of birth but of royal decree” (123). These multiplicitous legal heritages also became intertwined. Geary describes law as a “resource” rather than a “fact of birth” (124). Law was not illustrative of ethnic identity (125). Extraterritorial Franks acted like colonists in conquered kingdoms, “proudly preserving their particular legal systems, and transmitting it to their children. This patchwork of legal systems, requiring every individual who appeared in court to declare his or her law, long outlived the Carolingian legal system” (Geary 154). When legal systems varied so much, identity became a more useful tool of forensic rhetoric.

Nevertheless, some classic elements of forensic rhetoric remained. In the Frankish system, ethos was still highly valued. For example, *conjuratores* were witnesses who swore on a matter as testimony, and their status affected the weight of their appeal (Lacroix 352). Where these cultural programs most impacted the history of forensic rhetoric was in the transferring the ethos of the authoritative texts from just the Bible and other church laws to codices of secular laws and the moving to include the secular or profane as an acceptable domain of learning. Harkening back to the aforementioned typological comparisons, Geary suggests:

At the same time that Carolingian imperial policy was creating new meanings for old labels, Carolingian ideology was inventing ancient genealogies for them ... the new codifications of regional laws emphasized their antiquity ... they projected the history of these laws into the distant past; thus, the imagined history of the law codes justified the Carolingian imperial system (155).

Imperial policy applied to the codification of law the same typological comparisons scholars used to link Charlemagne to the New Israel.

Law codes conformed to changes in cultural interaction. For example, the *Theodosian* (429) and *Justinian* (529-534) *Codes* show a change from tolerance to destruction concerning pagan temples (Mirow 263). Sometimes the purpose of the law codes was more constructive: “One underlying goal of the *Theodosian Code* was to resolve conflicts between the eastern and western empires through a unified text of laws” (265). Despite the intent, law puts constraints on cultural identity. “In the east, the *Theodosian Code* was soon supplanted by the *Justinian Code*; in the west, many of its provisions were to continue as a fundamental source of laws for the Visigothic king, Alaric II, who in 506 promulgated the *Lex Romana Visigothorum*, ... This work, or the Code xi itself, influenced greatly the sixth and seventh century codes of the Merovingian Gauls” (263). Rather than culture conforming to law, law in effect conformed to culture.

There was an increasing provinciality to the creation of law as the Roman Empire continued to splinter and lose central authority. C. F. Kolbert writes, “Provincial governors [issued] Edicts on matters relevant to the governing of their provinces” (15). One might think this provinciality in the origins of laws would decentralized actual power, but Paul Lacroix suggests that despite its distributed provincial origins, the Salic Law, the standard law of the Franks compiled around 500, and other legal codification increased the power of the king: “... far from lessening supremacy of the King, the national customs which were collected in a code extended the limits of the royal authority and facilitated its exercise” (344). Salic law also ends the practice of private courts held by nobility (346). In the face of varying and unpredictable legal systems, more legal unification and standardization was needed to provide societal cohesion and legal surety.

This was the rhetorical strategy behind the practice of codification: “The reasons behind codification in this era are complex, but certainly one important aspect of codification was an

attempt to centralize power and unify legal rules and practice over large areas ... to codify legal rules was also to define and structure political, social, and religious practices” (Mirow 265). Having laws written down and available ubiquitously allowed greater central control in both secular and sacred affairs. Charlemagne would then use sacred authority in turn to enforce his own efforts. Michael Edward Moore writes of “the extensive use of the Fathers as a source of conciliar law beginning in the late eighth century. The canon of Christian authors was formalized and their writings were presented as binding doctrine” (294). Following codification, Charlemagne needed production and distribution of his broader array of textual authorities in order to promote his cultural and legitimizing program.

#### **5.4 The Role of the Scriptorium**

In order to lessen the Church’s restricted access to the Bible as the sole textual ethical authority, it was necessary to create and distribute copies of it. “Crucial to education were books, as well as those capable of copying, reading and teaching them. The preservation and proliferation of books, Christian and classical, was one of the most abiding and striking legacies of the Carolingian renaissance” (Dales 196). As I argued in Chapter 3, the Bible had already been established as the authoritative ethical text in Christian regions, creating textual ethos as the prominent application of rhetoric. Dales explains the successful proliferation of that authoritative text:

The scriptorium of Tours rapidly became one of the most important centers of Carolingian learning, producing many other fine manuscripts in elegant Caroline minuscule. But ‘this multiple reproduction of the biblical text during a sixty-year period cannot be paralleled: in all, some forty-six Bibles were produced along

with eighteen gospels that still survive from the years before 853, when the Viking attacks began to make a serious impact on the life of the monastery. (149) Charlemagne charged the churches in his kingdom to reform education and produce more manuscripts. Dales remarks how availability was more the purpose than uniformity:

The concern of all these reformers was to establish a clear and accurate Latin text of Scripture, though not necessarily a standard one as has sometimes been thought; and to establish alongside it a consistent and orthodox interpretation of that text in the light of the teachings of the Church Fathers. Thus the copying of Bibles was complemented by the proliferation of copies of the Fathers and especially of their commentaries on Scripture. (150)

A clear and accurate Latin text of the Bible was needed for legibility and increasing the volume of readership. The commentaries of the Church Fathers, many individuals over centuries, such as Origen, Jerome, Augustine, etc., was part of the expanded group of sources that secular and church figures considered authoritative texts. Uniformity was not Charlemagne's primary agenda because he was not arguing church doctrine; he was expanding access to the authoritative text for the enhanced administration of his kingdom rather than restricting access to the authoritative text, as had been the case in church battles over heresy in the previous centuries.

The work of the scriptorium served to blend secular and sacred institutions and further established Biblical textual ethos in the region: "This exemplary role was part of the wider program of establishing the authority of the Bible in the Carolingian church and state" (Dales 149), but under the direction of the state. Through the scriptorium at Tours, nobility attempted to wrestle away some of the interpretation of the authoritative ethical text from the clergy. Dales writes, "The style of the Tours Bibles also gave to the Scriptures royal authority, setting a norm

of presentation that would have a long influence on the way the Latin Bible was perceived and used” (149). So not only does the authoritative text have consensus in interpretive consensus by the church, but it now has the backing of the secular, political authority. Specifically, the use of images runs against the iconoclastic dictates of the 787 Second Council of Nicaea.

Ecclesiastical professions were highly factional, as Chapter 3 revealed. Bishops led diocese, while abbots led monasteries. The Church viewed bishops as more powerful, but that was not always the case in local practice. The Council of Paris in 615, which set rules for secular and sacred appointments for officials, had effectively split ecclesiastical and civil legal systems, thus limiting the power of royalty in church matters (Kolbert 345), but royal agendas found other avenues down which to advance. The monastic community contributed to the centralization of authority in the kingship over the bishopric because their land and their practice became indebted to the king. C. H. Lawrence writes that it was a “growing practice” in eighth century to give “the abbey and its estate to Charlemagne, who took it under his protection and removed it from the jurisdiction of count and bishop” (78). This encroachment of power by the secular authority was part of Charlemagne’s larger pattern of legitimizing his rule and power to the church as well. He had already typologically asserted himself as analogous to the Biblical figure of Solon and his kingdom linked to salvation history as the New Israel.

The conduct of monks across Europe was also increasingly standardized and governed by the Rule of St. Benedict, a popular set of customs and practices for monastic life from the fifth/sixth century (Lawrence 78). Monastic rules were a form of conduct literature and thus rhetorical in nature. Rules constitute a form of education, they are persuasive in nature, and they express dictates on style and behavior, maintaining cohesion and uniformity within the monastic

communities.<sup>27</sup> The Rule eventually became enforced by imperial power: “Special *missi* were appointed by the emperor to visit monasteries and inquire whether the decrees were being observed” (79). Lawrence elaborates how “the autonomy of each community in the management of its internal affairs was now curtailed by the overriding authority of the abbot-general, which was backed by the power of the secular government” (80). Rules of enclosure kept monks more often sequestered within the monasteries and uninvolved with external (and political) affairs. Lawrence describes another relinquishment of educational influence of the monks in the schools they provided: “it was safer to leave the conduct of the external school in the hands of a secular master” (81). Royal maneuverings had converted an internal monastic movement and thus relegated the authority of the monks to producing more copies of the authoritative texts that were promoting the legitimacy agenda of the nobility. Lawrence states, “But as a whole, the monastic contribution to the Carolingian Renaissance largely lay in the transmission, collection, and preservation of the past rather than in new creation,” a role that played well into the typological imperative of the King (82). Because monastic communities were under the protection of the King, the King enforced the conforming Rule of Saint Benedict, monks were often enclosed from public life, monks operated the scriptoriums, and secular teachers taught at the public monastic schools, this component of the religious institutions of the Franks posed little barrier to, and promoted the authority of, the King, thus allowing Charlemagne to fully enact his rhetorical program unencumbered.

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<sup>27</sup> According to Lawrence, Benedict’s abbey in Inde “came to have a central role in the monastic reform as the official model of the Benedictine observance for all the imperial abbeys—a kind of ascetical staff college, where abbots and monks would be sent to learn the approved practices” (78).

## 5.5 Conclusion

Despite its gap in surveys on the history of rhetoric, from the evidence above, there was a continued strain of rhetorical education in Carolingian France. However, the Franks were to craft innovative developments in rhetorical strategies to address their needs for cultural unity and political legitimacy. In order to legitimize the new Frankish Empire, under the dual effort to educate his people in order to fill his administrative positions, Charlemagne anointed Alcuin to create a vast program at the palace school to create cultural unity. Exegesis was used to create a typological comparison of Charlemagne to the Biblical David and the Franks to the New Israel. Legal codes were collated and produced to unify a diverse populace of competing aristocratic factions. Clergy attempted to codify their textual authorities as well but lost some control of the authoritative text through Charlemagne's guided effort to produce and interpret the Bible in the scriptoriums, while monastic communities also unified under the royally promoted Benedictine Rule.

While Charlemagne's kingdom had geographic as well as tightly woven political and religious ties to the Mediterranean world, the Christian Church, and the Holy Roman Empire, the remote island of Great Britain struggled to maintain such connections. The Romans had colonized Britain many centuries before, but successive waves of Germanic invaders and migrants in the fifth and sixth century had eventually subsumed the Romano-British colony. By the time of Charlemagne, Britain remained fragmented by warring kingdoms, bereft of Roman cultural institutions. By the ninth century, significant Danish invasions resulted in the conquest of half of the island. While the Christian Church had maintained outposts and Christianized the Anglo-Saxons, the Anglo-Saxons had brought with them their own legal systems and forensic rhetorical strategies. Once King Alfred the Great forcibly united the remaining Anglo-Saxon

portions, in the 880s he began, like Charlemagne, to institute legal reforms and education, more authoritarian than aimed at personal justice, creating and preserving a Christian, Roman heritage in contrast to the pagan, Danish threat. By promoting continental legal structures, Alfred's reforms had the effect of limiting the efficacy of inartistic proofs inherent within the native culture.

## 6 DISCOVERING ANGLO-SAXON FORENSIC RHETORIC: ETHICAL AUTHORITY IN *ELENE* AND *LIFE OF SAINT BASIL*

In the late ninth century in Britain, King Alfred forcibly united the portion of England not occupied by the Danes, and he instituted legal reforms and education, creating and preserving a Christian, Roman heritage in contrast to the pagan, Danish threat.<sup>28</sup> This Alfredian Renaissance pivoted primarily off the accomplishments of the seventh century foundations of the monastic Northumbrian Renaissance. In Anglo-Saxon England, forensic rhetoric combined the structures and strategies for conflict resolution of heroic societies with those inherited from the Greco-Roman system, such as discursive argument and reliance on artistic proofs. The literature of ninth century Anglo-Saxon society shows this transition, the two systems often represented in combined form or side by side. However, Old English literature frequently contains scenes of debate that resemble a forensic argument. Within these scenes, scholars may glean glimpses of forensic rhetoric, especially in terms of what was considered acceptable categories and how and why a participant could win an argument. This chapter looks at two such sources, *Elene* and *Life of Saint Basil* to demonstrate how a close reading of the literature can provide an insight into the techniques and uses for forensic rhetoric for the Anglo-Saxons.

Kevin Crossley-Holland writes that the Anglo-Saxons “brought with them a code of values typical of a heroic society. Its axis was the bond between a lord and his retainers and its stress was on the importance of physical and moral courage, on the blood feud, and on loyalty” (x). In Anglo-Saxon legal literature, we see cultural struggles taking place representative of the

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<sup>28</sup> Alfred had had trouble with his own officials officiating their proper duties and wanted to increase their ability to read and write for better administration of his kingdom. To this end, he established a school for “his own children but also ... [for] ... the sons of his leading men and others of lesser birth” (Keynes 35-6). His program successfully created educated clergy throughout England and produced many copies of philosophy, religion, and history books, while still restricted to his primary goal of improving religious life (36).

clash of Greco-Roman institutions with Germanic ones, such as violence versus mediation or Christianity versus *comitatus*, the word Tacitus used to describe the Germanic warbands in his work *Germania*. These struggles profoundly impact the course of rhetoric by creating more uses for and strategies concerning rhetoric. Commenting on the complexity of the system in the epic poem *Beowulf* from centuries earlier, John M. Hill indicates, “We begin to see the economy of honor and gift giving as open to social complexity, competitiveness, and possibilities for manipulation” (259). However, by the ninth century, institutions based on loyalty, kinship, and retainership were more formally shifting to institutions based on law (259).

Laws had been codified by other kings in Britain in the centuries before, but there had been a lengthy gap.<sup>29</sup> Then, the ninth century saw Alfred and other Anglo-Saxon kings attempt to codify laws.<sup>30</sup> Law was also made outside of the codices in a large body of charters, wills, court cases, and edicts. Ellis asserts “These laws are mainly concerned with the regulation of morals and Church principles, the enfranchisement of slaves, and the suppression of paganism” (1926). Therefore, law continued to provide for the preservation of power and property for those who possessed either. However, with the rising legal authority of the King in civil matters, came an extension of peace and safety to public spaces. Paul Lacroix quotes “a clever and learned writer”:  
 “it was his province to calm human passions; by the moral power of his seal and his hand he extended peace over all the great lines of communication, through the forest, along the principal rivers, the highways and byways, etc.” (350). Although such endeavors had the intention of

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<sup>29</sup> The first cluster was from the kingdom of Kent, such as the Laws of Aethelbert (597-616 CE), the Laws of Hlothaire and Etric (673-686 CE), and the Laws of Wihtraed (690-725 CE). The Laws of Ine in Wessex (688-725 CE) were written down and copied.

<sup>30</sup> The Laws of Guthrum and Edward the Elder in Wessex (871-901 CE), the Laws of King Edmund (940-946 CE), the Laws of King Edward the Elder (901-924 CE), the Laws of King Edgar (959-979 CE), and the Laws of King Athelstan (924-939 CE), for example.

maintaining societal cohesion, again for the maintenance of authority and preservation of property, they also had some intention of promoting the public good. Individual actors still had to utilize some forms of forensic rhetoric, classical or not, to navigate the constraints of these legal systems.

Besides the more obvious extant law codes, scholars may look to other non-traditional sources from Anglo-Saxon literature to find examples and explorations of forensic rhetoric in practice. For example, Jennifer M. Randall examined Old English homilies as a form of epideictic rhetoric. Other scholars have attempted to recover overlooked texts and genres as evidence of rhetorical thought and writing. For example, James J. Murphy has assembled a collection of handbooks that suggests the invention or further development of rhetorical traditions of instruction on letter writing and poetics as well as the aforementioned homiletics. Moreover, he edits a collection of essays that explores a mixture of traditional and speculative rhetorical genres, such as logic, commentary, and grammar, and then looks for their application in a variety of linguistic and cultural traditions. Joseph M. Miller presents an anthology of medieval rhetorical works that includes evidence of the continuation of classical genres as well as the development of the newer genres proposed by Murphy. Scott D. Troyan edits a collection that examines composition instruction, invention, and other traces of classical rhetoric in medieval poetry manuals, works of personal devotion, book introductions, poetic and prose literature, particularly that of Chaucer, in the work *Sir Gawain and the Green Knight*, and in pastoral manuals. A specific exploration of forensic rhetoric, though, is absent from the scholarship.

Both the works under study, *Elene* and *Life of Saint Basil*, are examples of saints' lives stories. Hagiography was already rhetorical in that it was used as conduct literature on how men

and women should behave in imitation of the life of Christ. Each includes a type of trial, and although there is no judge or jury, except perhaps the reader, the characters within use various forensic rhetorical strategies to win their claims. The outcomes express the verdict. Upon close reading, each work reveals innovative sources of ethos and other rhetorical strategies that illuminate the adapted strategies of forensic rhetoric available to Anglo-Saxon society. In particular, the stories show reliance on ethical authority, or ethos garnered through moral character, reputation, and a position of power. Ethos as an appeal had developed greatly at the end of the Roman Republic and during the Roman Empire as a strategy to persuade societal change without the danger of persecution. Ethos had strengthened during the Patristic period. Then, early Christian writers had developed textual authority as an appeal, persuading through the righteousness of the Bible. However, bishops had maintained their ethical authority through strict access to interpretation of the text. The Anglo-Saxon texts make strong connections to ethical and textual appeals throughout. This chapter will show the value in looking at Anglo-Saxon culture for rhetorical theory, namely the innovative and syncretic mix of cultural rhetorics found in previously overlooked prose works such as these and, ultimately, will assist in the filling in the gaps in the history of medieval rhetoric.

*Elene* is a West Saxon poem written in Old English sometime between 750 and 1000 by an undetermined author named Cynewulf. This story of Christian heroism and triumph narrates not only the conversion of the Romans of Constantinople but also the potential redemption and the conversion of the Jews. *Elene* is from a larger collection of hagiography. *Lives of the Saints* is another hagiographical work by the Anglo-Saxon abbot Aelfric of Eynsham (c. 955 – c. 1010), which includes a section on the “Life of Saint Basil.” Within this smaller story is a tale about a man who made a deal with the Devil. Both works contain scenes of discursive argument.

## 6.1 Personal Ethos, Violence and Other Rhetorical Strategies in *Elene*

The story of *Elene* is a tale of Constantine's mother Helena, called Elene in the poem, and her fabled discovery of the cross on which Jesus was crucified. The tale begins with an anachronistic battle between the Roman Emperor Constantine's (reigned 306-337) forces and an invading army of Huns. However, Constantine would not have been able to engage the Huns in battle. Attila, the commander of the Huns, lived circa 406-453, and the Huns advanced on Constantinople in the mid-fifth century. Nevertheless, the stories are meshed together in this narrative for good reason. Medieval historian David Knowles proposes, "Soon after the end of Erigena's career the Carolingian renaissance foundered under the stress of dynastic and feudal wars and invasions of the Northmen, and a century (880-980) began which, save for England under Alfred, Athelstan and Dunstan, was as dark as any that had gone before it" (1964). The Welsh monk Asser had produced the biography *Life of King Alfred* to preach the benefits of living under the protection and rule of the Anglo-Saxon Alfred. The goal was English unity for a holy war against the pagan forces of the Vikings (Keynes 41-2). Likewise, the story of the Christian, civilized Constantinople being attacked by the barbarian hordes of the Huns provided a familiar narrative to the Anglo-Saxon Christian kingdoms being attacked by Viking invaders. The poem begins with Constantine's defeat of the invaders by showing them the cross, which he had seen in a dream. He converts to Christianity and seeks to find the relic of the cross, so he sends his mother Elene to Jerusalem with an army to find it.

Once there, Elene summons wise counselors from the land to convince them to give up its hiding place. The Jewish counselors know of it but keep the information hidden from Elene, fearing what will happen to them if they concede to having been responsible for Jesus' crucifixion. They hand over Judas, who knows more of Christianity, and Elene imprisons and

starves him until he reveals what he knows. Judas leads her to where three crosses can be dug up, and one cross miraculously brings a dead man back to life. Satan then appears and argues his case and threatens them. Constantine also wants the nails from the cross as well, and Elene finds these as well through a miraculous vision.

Elene's ethos is established in a number of ways, through her might, her battle prowess, and her ability to enforce her wishes through violence. She also shows a joyful obedience and a wit: *collenferhðe, cwen siðes gefeah* ("The queen rejoiced of her journey") ("Elene" 247). Elene is ready and willing to do her son's bidding. The rest of her ethos is established by typological analogy of subject matter selection and allusion to the Bible, which further establishes her personal ethical authority. Her knowledge of the Bible, as evidenced by her knowing its stories, gives her textual ethical authority as well.

Elene is automatically given authority through a few typological comparisons. Typological comparisons usually related to heroic figures from the Bible. Elene creates a typological comparison simply by the characters and period presented as the subject matter, through direct Biblical references, and by historical claim and analogy to Rome. First, the setting and characters of the story are part of the Matter of Constantine, which is a typological genre, such as the Matter of Troy or the Matter of Britain, stories that harken back to imagined histories of a fabled era and lend legitimacy and authority to burgeoning national groups or kingdoms. The Matter of Constantine from such a distant location as Great Britain did not suggest the territorial rhetoric of empire as in late medieval cases when some used the Matter of Troy for such purposes; rather, it suggests a nostalgic connection to a purer, more powerful Golden Age of Christianity. Constantine was the first Christian Roman Emperor, so this period would have been seen by readers as a golden age of Christianity, pure, powerful, and important, when Christianity

achieved legitimization and pagan and secular authorities ceased persecuting Christians. In addition, Biblical correlations and references offer ethical weight by comparing the characters and events to Biblical ones. For example, the emperor wins his battle against the Huns after having a prophetic dream and putting the sign of the cross on his banner. Also, Elene reaches directly into Biblical stories to argue that the Jews used to be the chosen of God and spurned his redemption and explains how they rejected the instruction of prophecy. Lastly, Constantine and Elene are also direct and metaphorical heirs of the Roman Empire, another move by the write to demonstrate power and legitimacy. In a further allegorical technique, the author diminishes the ethical authority of the antagonists, Judas is named so as a direct reference to the betrayer of Jesus, since in this case he is betraying Satan (920-921).

Elene also presents the threat of violence as a tool of persuasion. In *Rhetoric*, Aristotle recognized there are some proofs that must be dealt with outside of argumentation. These arise from circumstances outside of our own creation and include laws, contracts, depositions and witness testimony, including oaths, all of which exist and cannot be invented or crafted—they just are (I.I.2). The actual Greek word is *atechnoi* meaning without *techne* (skill, ability, craft). In a more contemporary context, citation and the use of quotations as evidence (a collection of facts) is also “inartistic.” These “inartistic” proofs have uses, but they cannot be invented and thus are not open to rhetorical theory, and they are not persuasive on their own, but they can be used by the rhetor. The Roman tradition continued this omission. *Elene* shows the further continuance of this tradition with witnesses appearing to testify for her adversaries, though they claim to know nothing, and by the use of imprisonment and torture by Elene to get the result she wants from her captive.

Much of Elene's reliance on the threat of violence is through initial visual impression. There are many ways Elene persuades with the perception of a threat of violence. She travels *wigena þreate* ("with a force of warriors") (217a). Her army was epic in size and strength: *Ne hyrde ic sið ne ær / on egstreame / idese lædan, / on merestræte, / mægen fægerre* ("Never have I heard before or since that a woman led a fairer force upon the water's current, over the sea's street.") (240b-242) She herself has a royal and almost godlike personification as *hwonne heo sio guðcwen / gumena þreate* "that queen of warfare with her throng of men" (254). The passage includes a lengthy description of the men and battle equipment (256-258), common for heroic poetry. The army itself is lauded as *corðra mæste* "the greatest of armies" (274b). She also wields intimidating miraculous powers, or says she does, another divine linkage, as she eventually threatens the Jewish assemblage with a miraculous violence, a fire to burn the assembled Jews, so they give in and at last present Judas to divulge the truth (575-578). At least one of her threats is carried out. In a later scene, when Judas continues to lie, she applies isolation in a dungeon as well as starvation and bondage in chains (691-708).

Besides relying on her ethical authority and threat of violence, as established above, Elene uses discursive strategies to win her arguments. Here, the influence of traditional forensic rhetoric interacts side by side with the methods of a heroic society. Despite her ability to inflict violence and potentially win what she wants through warlike engagement, Elene consistently turns to discursive techniques to attain what she wants. Elene continues successively to call for legal counselors, or wise men, to negotiate with rather than using force or calling for warriors with whom to battle: *Gangaþ nu snude, / snyttro geþencap, weras wisfæste, / wordes cræftige, þa ðe eowre æ / æðelum cræftige / on ferhðsefan / fyrmest hæbben* "Now go forth quickly, consider your counselors, skillful and wise-fast men, crafty in their words, those that have your law first

in their noble hearts” (313-316). She further argues the illogic of spurning the one who offered them freedom from eternal damnation. Elene next turns to logical argument for her claim. Using invention to find a new position to argue from, she discusses how the guilt of their actions continues to harm the Jews (315). She believes they will know *þa me soðlice / secgan cunnon, / ondsware cyðan / for eowic forð* (“they know how to say to me truly, to reveal an answer on your behalf”) as a representative/authority figure. Here the authority is being placed in advocates with wisdom in this arena (317-318). She indicates the other side *ond gewritu herwdon* (“despised the writing”), with a nod to tradition and education as the *fædera lare* (“teaching of our fathers”) (387b-388a). She points out their actions as contrary since *þeah ge þa æ cuðon* (“you know the law”) (393b). She also points out to Judas the irony of how they remember the details of older events such as the Trojan War.

The author presents yet diminishes the ethical authority of Elene’s adversaries in order to raise that of Elene herself. The Earls have the ethical authority of being wise and educated. Earls who are already *æcleawe* (“skilled in the law”) go out to find even wiser men to argue for them (321a). Then they retrieve one thousand men, ten times that of a hundred moot for a shire council (316). Eventually, they gather 500 wiser men for an even greater council. Despite their excess of gathered wisdom, they have several issues that still detract from their ethos, as expressed by a clearly anti-Semitic author. They are shown to be lying. They also have the historical sinful deeds of their ancestors: their supposed crucifixion of Jesus, as a sinful weight upon them.

Judas has a redemptive quality to him. He is influenced and guilt-ridden by his conscience. His knowledge and cleverness are cast in a negative light, as he uses those skills to deceive, and it is only his spiritual connections which give him ethical strength towards the end of the tale. Clearly, he is shown to be more knowledgeable about the past, having been trained by

his father in Christian teachings. Eventually, he confesses and converts, which gives him ethos as well. Judas is also allegorical in that he shows the Jews can be redeemed and converted to Christianity. Judas reveals that the wise men know what Elene is asking and they know what their ancestors did and are craftily hiding that information. He suggests not revealing this information, as their power on earth will be diminished, and he suggest crafting a common story they can all agree on to hide the truth. This fear of diminishing material power is a negative ethical trait. This appears to be the issue at hand. The story does not hinge on whether the Jews are responsible. It takes as a fact that they are. Rather, the issue is that they are hiding this information and the location of the cross, an act that lessens their ethos in the dispute.

## **6.2 The Dominance of Sacred Personal Ethical Authority in “Life of Saint Basil”**

Aelfric’s “Life of Saint Basil” is one hagiographical section of his larger work, *Lives of the Saints*. Many of Aelfric’s works are translations of pre-existing Latin saint’s lives; the tradition for Basil begins in Greek, in fact, and it was a highly influential text for western theology. It contains Saint Basil’s origins as well as a sequence of miracles he performs, but one story, which narrates the trial for a man’s soul, revolves around a man who sells his soul to the Devil for the love of a woman and regrets his decision. In the story, a young man is tricked by the Devil into falling in love with a young woman, whose father wants her to become a nun. The boy sees a sorcerer, who brings him to the Devil for magical aid. The Devil wants a formal contract signed that the youth will renounce Christ and his baptism and believe in the Devil instead. The youth agrees and the marriage comes to pass.

After they marry, the youth despairs and admits to his wife how he had been tricked by the Devil into apostasy by the Devil’s interference. She runs to Basil for assistance. Basil confronts the youth, who is indeed repentant for what happens, as he had been deceived by the

Devil as well. The youth formally repents, and Basil welcomes him back into the fold. After a period of the youth's confinement, the Devil appears and produces a contract, arguing his case before Basil. Basil tears up the contract and receives the young man into communion.

Despite the Devil's forensic evidence of testimony and contract, Basil wins his claim primarily through ethos. Basil establishes his ethos through personal moral authority, due to his holiness and connection to scripture and God. Basil also is portrayed as intelligent and learned. As a saint, he has the ability to perform miracles. Basil, vested in tremendous ethos, tears up the perfectly valid contract, showing that the case is decided on moral authority rather than on conjectural evidence. Thus, the sacred ethos of Basil is greater than the inartistic rhetoric of the oaths and contract. Moreover, the story shows that, for the author and the audience, the newer ethical authority from the classical tradition now supersedes the violence and other rhetorical strategies of the Anglo-Saxon heroic society.

The author establishes Basil's ethos through devotion, character, wisdom, and typology. The author uses the character of Basil for particular ethical purposes. This story is another tale harkening back to the fourth and fifth century in a typological way. The figure of Basil represented the Patristic formation of Christianity and the story's audience would have understood his inherent merit and authority as a mythically elevated Christian hero.

Basil treats the youth and his wife with kindness, concern, and forgiveness. Each time they come to him with their issues, he works to resolve them. Interestingly in this story, the witness receives food and good treatment instead of starvation in the dungeon, though both receive forgiveness upon confession and penitence. In contrast, the Devil's approach is cruel, formalized, and rigid; he clings to the details of the contract and offers no flexibility.

The narrative shows that a classical education was valued and strengthened Basil's ethos. During the third and fourth centuries, Christian Patristic authors had fought to exclude the study of non-Christian philosophy in education in a struggle for political and social power. This story was likely originally written in the late fifth century, and by that time, inclusion of respected pagan authors was more admirable and, certainly, useful. "Life of Basil" shows that this idea continued into the tenth century. According to the introduction, Basil was sent to school to learn philosophy at seven because that is what nobility expected men of honor to do. Then, for five years he was sent to Athens to Eubolas' school for further learning—this school is notably a pagan one, which would have promoted a classical education. Notably, the Roman Emperor Julian the Apostate, who reigned 361-363, is also mentioned as going to that same school. Julian had been infamous among the Christians for his promotion of paganism and anti-Christian policies; including him in this section on Basil's education signals an acceptance of non-Christian scholars. Lastly, Basil's devotion to scriptural knowledge lends him ethos, as he had journeyed to Egypt to get the true lore from Christian books, the writings of early church leaders that contained the singular, textual ethical authority on spiritual matters,

On the other hand, given his lack of ethos, the character of the Devil, instead relies on violence, logos, and inartistic rhetoric to support his claim. The young man has agreed to sign over his soul to the Devil in return for the young woman's love. When forging the pact with the young man, the Devil insists, *wryt me nu* ("Write me now"), because he recognizes the weakness and mutability of an oath and desires a legal, written contract ("Aelfric" 379). First, he pulls on the man, performing an act of violence, but this use of force does not prevail. He then presents conjectural evidence to try to sway the argument: he makes a claim that he has been robbed, presents evidence that establishes that the contract is the actual one in question, and provides

witness testimony, for the defendant testifies the signature is his handwriting. Nevertheless, these facts do not provide the conclusion for which the Devil wishes. These outcomes demonstrate that violence and conjectural evidence, a form of *logos*, are weak in this scenario. Rather, *ethos* holds a much greater sway over the outcome. Divine law, as well, supersedes manmade law.

In contrast to Basil, the Devil is conniving, demanding, and angry. In his claim against the youth, he convinces no one through his argument. Rather, he uses magical powers to deceive others and force them to do his will. First, he tricks the young man into falling for the woman, then he consumes the young woman with longing for the young man in return; neither recipient of these tricks has asked for such acts to be done to themselves. Those tainted magical powers are not granted through devotion to God, so they do not carry the ethical weight of divine magic.

### **6.3 Conclusion**

My close reading of these two texts, with attention to ethical authority and classical forensic rhetorical theory, discovers a new site of rhetorical history. My analysis offers innovative applications and strategies for theorizing and recognizing forensic rhetoric. The discursive scenes in both these works illuminate how at the time of these writings Anglo-Saxon society was in a liminal space that combined violence and inartistic forensic strategies with discursive strategies derived from forensic rhetoric, so readers can find evidence, sometimes overlapping, of the two traditions. For example, Elene, though she threatens violence by arriving with an army, calls for a moot rather than engage in battle. A moot is a legal gathering in Anglo-Saxon society, where lords gather as a committee to decide on judicial issues. The moot was a historically Germanic cultural system. These heroic narrative elements are then followed by a lengthy, discursive process, resembling a trial, that reflects the classical forensic rhetorical tradition.

Both narratives clearly show a reliance on personal ethical authority in order to win an argument. Although the primary ethical authority of any of the characters is granted through the strength of their devotion and through divine interference, there are other ways they attract ethos, such a personal character and typological comparisons. Both Elene and Basil show moral character and good reputation, and they both show knowledge of and devotion to scripture, which lends them powerful divine ethical authority. In the stories, violence and inartistic rhetoric, e.g. oaths and contracts, are relied on less and sometimes excluded altogether, e.g. violence and oaths and torture. For example, Elene sees to the imprisonment and starvation of Judas, but “Life of Saint Basil” displays none of these rhetorical strategies as effective.

Carolingian Franks had used typological comparisons, analogies to distant mythical figures and narratives, a century earlier as a rhetorical strategy to persuade those they ruled over and those in other kingdoms that they were the legitimate heirs to not only Biblical salvation history but also the Roman Empire. These typological comparisons crafted mythical national heritages, a foothold from which one might have claimed a political and religious moral authority. In these two sources, the typological comparisons abound but are less Biblical in nature. Rather, they point to the formative centuries of the Christian Church.

In the story of the history of rhetoric, a new chapter now exists. Where there was a gap in the tradition, there is now a foothold from which to discover even more innovative strategies and new sources from which to climb out of the murky conception of a rhetorical Dark Age. There is no doubt that other overlooked genres of sources would illuminate further development of innovative strategies in forensic rhetoric and provide a more continuous and richer narrative of medieval forensic rhetoric.

## 7 CONCLUSIONS

In *On Rhetoric*, Aristotle wrote, “And those who are able to ill-treat others are to be feared by those who can be so treated; for as a rule men do wrong whenever they can” (II.V 1-9). Herein, a fundamental realism rises over idealism. In Chapter 2, the many ways men evoke fear of acts of evil or retribution that have the potential to cause distress or great harm are listed. The structure to defend against this fear, through the evocation of justice, was established early on in Classical Athens and in many early law codes. Societal cohesion was maintained by the creation of law and the training of forensic rhetoric for law courts. Both of which prescribed constraints on conduct, knowledge, and participation against the populace to benefited the landed aristocracy.

In classical Athens, law had been established to keep those who feared external penalty from transgressing. Scholars systematized rhetoric and taught it students who formed the very beginnings of a professional legal class. Rhetors crafted ethical and pathetic appeals, but great emphasis was placed on logical appeals especially stasis theory in order to rely on observable evidence and the decisions of rational juries. However, ultimately forensic rhetoric was applied to winning a case, and the purported search for truth or justice behind it forsaken. And although the state enacted an elaborate legal system that determined roles and responsibilities for the citizenry, the system in turn limited and controlled the manner and place of participation.

Each chapter in this study has shown how successive periods in history used rhetoric in professing an idealism, couched as justice, morality, truth, legitimacy, or spirituality, to promote a realist agenda of dually maintaining societal cohesion through removing fear of harm among the empowered citizenry and increasing their confidence in the secular or sacred authorities.

Chapter 3 focused on the late Roman Empire and how rhetors moved the reliance on logical proof to ethical proof, but still a personal ethical proof. The strength of argument remained in the character of the actors. Works on rhetoric took on a didactic form of discussing morality, in a veiled critique of the draconian society they lived in. First Cicero spoke out more directly against Caesar and Mark Antony and decried the immorality of the political system of the day. Later rhetors, such as Tacitus and Quintilian, developed additional ideas on education and instilling morality in into their students as an approach to improving their world. However, they still stressed an innate morality in preferred students, which gave preference to the elites. All the attention to good behavior preached more constraints on conduct, as has been discussed in Chapter Two. Forensic rhetoric continued in the law courts, stasis theory grew more elaborate, and the legal system remained a force of societal cohesion, if shaky. The education system did nothing innovative to expand the possibilities of argument beyond the privileged, and somewhat subdued citizenry. It is at this point that most history of rhetoric surveys and courses begin to lose their thread, saying the Roman Empire collapsed and classical learning fell away.

Rather, in Chapter 4 we read how under the support of Constantine the early Christian Church, backed by secular authority, subverted rhetoric in order to dominate the pagan populations. Christians constructed the Bible as an authoritative text and transferred ethical power from the person to that text. The reliance on personal ethical proof had firmly shifted to a reliance on textual ethos. Then, actors such as Athanasius negotiated against internal factions in order to claim interpretive control of the text as well, securing sacred power and secular backing. Christian bishops crafted the strategy of gaining consensus in order to make these maneuvers. In heated synods, debated ensued, votes were held, majority winners declared, and then universal opinion enforced. Those who held onto differing opinions were declared heretics and their ideas

heresies. This systematic constraint on knowledge is reflective of the ultimate aim of forensic rhetoric, that of societal cohesion.

Chapter 5 showed within the Carolingian Renaissance a secular grab of the textual ethos. Charlemagne used a typological comparison to Biblical heroes in order to gain popular backing and support from ecclesiastical groups. He opened up the application of textual authority to profane texts. He also codified secular laws and promoted the availability of the sacred textual authority through the scriptoriums. Having the written laws of the state in place allowed for the type of authority that had been given to the Bible by the priests. In addition, he promoted the Rule of St. Benedict in order to keep the monks consistently under the affinity of his regal support and power. In these acts, there was a shift of the textual ethos from constraints of the mind to constraints of identity, from the personal to the social, but still with the realm of thought and language.

Examining non-traditional medieval genres allows researchers to discover hidden rhetoric. In Chapter 6 a close reading of two hagiographical sources allowed for the discovery of Anglo-Saxon concepts of forensic rhetoric and rhetorical strategies such as typological comparison and great personal authority granted by textual ethos. During the ninth century Alfredian Renaissance, King Alfred, too, would expand on the typological metaphors that connected him to Biblical heroes to establish him as a type of savior from the threat to religion and civilization perceived. He established an educational program and codified laws as well to create textual authority. He also aided the movement from orality to literacy. Inartistic proofs were restricted and the reliance on textual ethos was increased. It was from this condition that the continental cathedral schools of the twelfth century sprang. An early liberalism started to

form—not a movement towards equality but an increasing desire to be a fairer participant in the system.

Much about rhetoric is prescriptive; rhetoric constrains conduct. In these movements over time, the notion of constraints experiences a corporeal shift from the personal to the social to the body. This can be viewed as increasingly restrictive, also envisioned as a prisonlike restraint, capturing the mind and imprisoning the body. The malleability of constraint moves from logos, personal ethos, and inartistic proof to textual ethos, since a text is fixed and nonresponsive to argument. So, over time, we see an increase in restraint coupled with an increase in inflexibility. The populace is held—and held tightly. Such a condition is a far cry from the intent purposed at the beginning stages in the formation of rhetoric, when stated claims by rhetors was to give the people a voice and techniques with which either to win their cases or find the truth.

Bertrand Russell wrote, “Philosophy, though unable to tell us with certainty what is the true answer to the doubts which it raises, is able to suggest many possibilities which enlarge our thoughts and free them from the tyranny of custom” (qtd. in Posner 4). I chose “the tyranny of custom” to use in the title of this study to emphasize two meanings: one, the expansion of thought that philosophy brings to problematizing the history of rhetoric, as I have applied throughout these chapters, and two, the unequal application of rhetoric, and specifically forensic rhetoric, that has subjugated democratic and imaginative argumentation. Here, in the conclusion I hope to show a few ways in which ideas from this work can be used in pedagogy, in surveys and in the classroom, to help students discover their own effective means of persuasion.

## **7.1 Implications for Researchers/Scholars**

Further research could be done in any of the periods covered by focusing closer on the actors involved, be they the bishops, the monks, the rhetoricians, or the aristocracy. There is

easily an additional chapter about the Northumbrian Renaissance and Bede in England that could be placed between Chapters 4 and 5. This center was crucial to creating the persona and skillset of Alcuin, who was able to engineer such a vast attempt at cultural unity in Carolingian France. It was this region, and in Ireland, where the monastic centers of learning kept the dream of a Greco-Roman style system of education alive and certainly preserved canonical knowledge from those eras. I would also like to analyze the Anglo-Saxon literary texts to see how the authors and culture in mimetic way struggle with the competing strategies of justice, through artistic and inartistic means. And I would like to analyze the Anglo-Saxon literary texts to see how the authors and culture in mimetic way struggle with the competing strategies of justice, through artistic and inartistic means. Beyond *Elene* and *Life of Saint Basil*, an exploration of other hagiographic sources or other works from other genres of Anglo-Saxon writing, from the perspective of forensic rhetoric, would reveal more rhetorical strategies and usages.

Surveys of historical rhetoric could include more works from medieval authors. More importantly, they don't need to be strictly works on classical rhetoric, as we have seen that rhetoric is utilized in many other forms of narration. Also, different types of rhetoric could be explored in this period. Topics for inclusion in a survey book or course might discuss rhetoric and societal cohesion, the move to ethos at the beginning of the Patristic period rather than the disappearance of rhetoric, textual ethos, rhetoric and political legitimacy and how that interacted with the successive mini-renaissances, and inartistic rhetoric in the heroic cultures of Northern Europe.

## **7.2 Applications for Teaching**

There is a wealth of assignments that could stem from readings and research in each area. In a college composition course, have students read some biblical exegesis so they can

understand typology. In classes, for example, students could go to a magistrate court to witness people misunderstanding the issue at hand so they can better understand stasis theory. This can be done with popular television court shows as well. Students could discuss how legal systems provide societal cohesion and benefit the educated and the propertied. Chapters 3 and 4 provide grounds for an insightful student discussion on ethos in the context of modern politics as well. Teachers could have students learn about and discuss textual ethos, in laws, the Bible, social media, “fake news,” etc., and discuss who has control of the message and its interpretation. Or an excerpt from Alfred’s Laws would provide students an excellent opportunity to discuss inartistic rhetoric. Appendix A includes a course design I created for a Medieval Rhetoric course that could help to fill some of these pedagogical gaps.

Mostly, I would like to give researches and teachers more places to jump off from and to continue looking at how rhetoric was created and used in late antiquity and the early medieval period to shine some consideration into how these ideas and movements give voice to people or take it away. We should reflect on how modern voices are misdirected or constrained as well. Nowadays, we take for granted how the legal system works, and how lawyers are trained, and who is able to argue for themselves in court. But we must realize that these systems are not always in place for our benefit; they can provide as many constraints, on conduct, on the mind, and on one’s ability to participate in the system, as they provide opportunities to work within that system. The ability to argue for oneself might be considered a natural right, and only by breaking free from the tyranny of custom can one fully actualize that right.

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## APPENDICES

### APPENDIX A: MEDIEVAL RHETORIC COURSE SYLLABUS

Books:

Knowles, David. *The Evolution of Medieval Thought*. New York: Vintage Books, 1962. [or better, the 2<sup>nd</sup> edition from Longman Publishing Group, 1989]

Miller, Joseph M. *Readings in Medieval Rhetoric*. Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973.

Coursepack.

Assignments:

Undergraduates: two tests, leading class discussion, short paper

Graduates: research proposal, leading class discussion, research paper and presentation

Calendar:

- Week 1: The Rhetoric of Late Antiquity, or “Hasten Down Rhetoric’s Highway” (Fortunatianus)
  - Primary
    - Epictetus’ *Handbook*
    - Martianus Minneus Felix Capella. *De nuptiis Philologiae et Mercurii*, V: “The Book of Rhetoric” (introduction and excerpt from *The Marriage of Philology and Mercury*), Miller, trans. *Readings in Medieval Rhetoric*, 1-5.
    - C. Chirius Fortunatianus. *Artis rhetoricae libri tres*, I (introduction and excerpt) [in class reading as catechism]

- Secondary
  - George A. Kennedy, “Chapter 12: Christianity and Classical Rhetoric,” *A New History of Classical Rhetoric*. Princeton, New Jersey: Princeton U Press, 1994, 257-270. [coursepack]
  - Knowles, “Plato and Aristotle,” *The Evolution of Medieval Thought*, 3-15.
- Concepts
  - From the Second Sophistic
  - Contribution of Stoicism to Christianity
- Week 2: Patristic Rhetoric
  - Primary
    - Tatian
    - Eusebius
  - Secondary
    - George A. Kennedy, “Chapter 13: The Survival of Classical Rhetoric from Late Antiquity to the Middle Ages,” *A New History of Classical Rhetoric*. Princeton, New Jersey: Princeton U Press, 1994, 271-284. [coursepack]
  - Concepts
    - Development of Apology
    - Development of Panegyric
    - Map study:

- Week 3: Pagan Rhetoric
  - Primary
    - Porphyry's *Against the Christians*
    - Macrobius, *Saturnalia*. Small sample passage that demonstrates the application of rhetoric to literary analysis (Virgil).
    - Marcus Aurelius' *Meditations*
    - David Knowles, "The Latter Platonists and Plotinus," *The Evolution of Medieval Thought*, 16-31.
  - Concepts
    - Attacks on the Christian Church
    - Competing Religions
  
- Week 4: Augustine of Hippo/Biblical Exegesis
  - Primary
    - Augustine
    - Origen [small sample to explain biblical exegesis]
  - Secondary
    - "St Augustine," *The Evolution of Medieval Thought*, 32-50.
    - Etienne Gilson, "The Primacy of Faith," *Reason and Revelation in the Middle Ages*, 3-33.
  - Concepts
    - Development of Exegesis

- Reconciliation of rhetoric into Christian writing
- Week 5: Dark Ages? Sub-Roman? Early Middle Ages? (476/600 CE – 1000/1450 CE)
  - Primary
    - Priscian the Grammarian. *Fundamentals Adapted from Hermogenes*. Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 52-76. Adaptation of Hermogenes' Progymnasmata composition exercises.
    - Isidore of Seville. *The Etymologies*, II. 1-15: "Concerning Rhetoric." Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 79-95.
  - People
    - Boethius (Ravenna, c. 480 CE – c. 525 CE)
    - Isidore of Seville
    - Priscian the Grammarian
  - Concepts
    - Map Study:
 

[http://upload.wikimedia.org/wikipedia/commons/b/b1/Europe\\_526-600.jpg](http://upload.wikimedia.org/wikipedia/commons/b/b1/Europe_526-600.jpg)

- Decline in Literacy
  - Division of Roman Empire
  
- Week 5.5: The Irish
  - Primary
  - Secondary
    - Cahill, Thomas. *How the Irish Saved Civilization*. Gives a historical account of the preservation of Greek and Roman thought through the collapse of the Roman Empire. [may want more current source]
    - Thomas Duddy, *A History of Irish Thought* (Routledge, 2002) [selection]
    - Henry Bett, *Johannes Scotus Erigena: A Study in Medieval Philosophy* (Hyperion, 1979) [selection]
  - Concepts
  - People
    - Johannus Scotus Erigena (812-877)
      - Bio: <http://www.trincoll.edu/depts/phil/philo/phils/scotus.html>
  
- Week 6: Anglo-Saxon Rhetoric
  - Primary
    - Wulfstan. *Sermo Lupi ad Anglos*.
    - Bede. *Concerning Figures and Tropes*. Joseph M. Miller, trans. *Readings in Medieval Rhetoric*, 96-122.

- Secondary
  - Leslie A. Donovan, *Women Saints' Lives in Old English Prose* [coursepack]
  - “Women, Commerce, and Rhetoric in Medieval England,” by Malcolm Richardson, in *Listening to their Voices: The Rhetorical Activities of Historical Women*, edited by Molly Meijer Wertheimer, U of SC P, 1997. 133-49. [need to read this to determine where it fits in]
  
- Week 7: Carolingian Renaissance
  - Primary
    - *The Rhetoric of Alcuin and Charlemagne*. Wilbur Samuel Howell, ed. and trans. New York: Russell & Russell, 1965; reprint of 1941 edition. [need to choose selection]
    - Rabanus Maurus. *On the Training of the Clergy*, III.19. (excerpt and commentary) Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 125-27.
  - Secondary Source Readings
    - David Knowles, “The Awakening of Western Europe,” *The Evolution of Medieval Thought*, 79-92.
  - Concepts

- Map Study:
    - [http://commons.wikimedia.org/wiki/Image:Empire\\_de\\_Charlemagne\\_et\\_son\\_d%C3%A9membrement\\_au\\_Trait%C3%A9\\_de\\_Vermont\\_843.JPG](http://commons.wikimedia.org/wiki/Image:Empire_de_Charlemagne_et_son_d%C3%A9membrement_au_Trait%C3%A9_de_Vermont_843.JPG)
  
- Week 8: Byzantine Rhetoric
  - Primary
    - Michael Psellus, *Didactic Poems on Grammar and Rhetorics* [selections about rhetorics]
  - Concepts
    - Map Study:
      - [http://commons.wikimedia.org/wiki/Image:Europe\\_map\\_998.PNG](http://commons.wikimedia.org/wiki/Image:Europe_map_998.PNG)
  
- Week 9: Arabic & Jewish Influences
  - Primary Source Readings
    - Alfarabi's "Plato's Laws," *Medieval Political Philosophy*. Ralph Lerner and Muhsin Mahdi, Eds. Ithaca, New York: Cornell U Press, 1995, 83-94. [coursepack]
    - Averroës' (Abu'l-Walid Ibn Rushd) "Three Short Commentaries on Aristotle's "Topics," "Rhetoric," and "Poetics," 57-78 ("Rhetoric" only): <http://www.muslimphilosophy.com/books/aver-shrt-com.pdf>
    - Avicenna's *The Cure*, (Part 8 on Rhetoric?). Translates and discusses Aristotle's "Organon," which included "Rhetoric."

- Maimonides' *Guide to the Perplexed* 3.43  
 ([http://www.daatemet.org.il/articles/article.cfm?article\\_id=97&lang=en](http://www.daatemet.org.il/articles/article.cfm?article_id=97&lang=en))
- Secondary Source Readings
  - Parens, Joshua S. *Metaphysics as Rhetoric: Alfarabi's "Summary of Plato's Laws."* Albany, N.Y.: State University of New York Press, 1995. *Call Number: JC71.P264 P37 1995* (at GSU) [need to choose a selection]
  - *Islam and the Italian Renaissance.* eds. Charles Burnett and Anna Contadini. Warburg Institute, 1999. [need to choose a selection]
  - Commentary on Al-Baqillani's *Rhetorical Figures in Poetry and Qur'an.* Joseph M. Miller, trans. *Readings in Medieval Rhetoric*, 129-30.
- Concepts
  - "Rehabilitation of Aristotle"
  - "Defense of Greek philosophy against the Ash'arite theologians"  
 (<http://www.muslimphilosophy.com/ir/index.html>)
- People
  - Averroës' ((1126-1198)
  - Alfarabi
  - Avicenna (Abn Ali al Hosain Ibn Abdallah Ibn Sina) (Persia, 980-1037)

- Avicennism and existence/essence  
 (<http://www.iep.utm.edu/a/avicenna.htm>)
  
- Week 10: The Monastic Schools, or “The Right to Speak” (Deutz)
  - Primary
    - Rupert of Deutz. *A Dispute between a Monk and a Cleric about Whether a Monk Should Be Allowed to Preach*. Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 188-96.
    - Honorius of Autun. *Concerning the Exile of the Soul and its Fatherland; also called, About the Arts*. Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 198-204 (up to Chapter XI).
  - Secondary Source Readings
    - “Christine de Pisan and *The Treasure of the City of Ladies*: A Medieval Rhetorician and Her Rhetoric,” Andrea A. Lunsford, ed. *Reclaiming Rhetorica: Women in the Rhetorical Tradition*. Pittsburgh, U of Pittsburgh P, 1995, 73-92. [author unclear]
    - David Knowles, “The Rebirth of the Schools,” *The Evolution of Medieval Thought*, 71-78.



- Formulae
  - People
    - Peter Abelard
    - Alberic of Monte Cassino
- Week 12: The Cathedral Schools
  - Primary
    - John of Salisbury?
    - Alan de Lille's *Anticlaudianus*, 96-104.
    - Alan de Lille. *A Compendium on the Art of Preaching*, Preface and Selected Chapters (excerpts and introduction). Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 228-239.
  - Secondary
    - David Knowles, "The School of Chartres and John of Salisbury," *The Evolution of Medieval Thought*, 131-140.
  - Concepts
    - Separations into disciplines
    - Scholasticism
    - Categories of Narration
    - Integumental Method
    - 11<sup>th</sup> and 12<sup>th</sup> Century Renaissance

- Week 13: Late Middle Age Rhetoric, or The Universities
  - Primary
    - Poggio Bracciolini. *Two Letters*. Joseph M. Miller, trans. *Readings in Medieval Rhetoric*. (letters and introduction) Miller, Joseph M. Miller, Michael H. Prosser, and Thomas W. Benson, eds. Bloomington: Indiana U Press, 1973, 280-85.
  - Secondary
    - David L. Wagner, “Rhetoric,” *The Seven Liberal Arts in the Middle Ages*, 96-124.
    - David Knowles, “The School of St Victor and St Bernard,” *The Evolution of Medieval Thought*, 140-149.
    -
  - Concepts
    - The Great Schism of 1378
    - Rediscovery of Quintillian’s *Institutio Oratoriae*.
  
- Week 14: Renaissance Rhetoric
  - Primary
    - Erasmus
    - Peacham, Henry. *The Garden of Eloquence* (the section on rhetorical schemes only)

- Peter Ramus (Arguments in Rhetoric Against Quintilian) [selections]
- People
  - Erasmus
  - Henry Peacham (London, 1546-1634)
- Week 15: Renaissance Rhetoric
  - Primary
    - Giambattista Vico (On the Study Methods of Our Time)
  - Secondary
    - “Women, Rhetoric, and Letter Writing: Marguerite d’Alencon’s Correspondence with Bishop Briconnet of Meaux” by Laurel Carrington, , in *Listening to their Voices: The Rhetorical Activities of Historical Women*, edited by Molly Meijer Wertheimer, U of SC P, 1997. 215-32.