



Chapter VII

Ethics, Law and Information Technology: The Transformative Role of Rhetoric

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Following a brief consideration of the role of rhetoric in law, science and policy, this chapter explores how rhetorical accounts of new technologies influence the course of legislative, judicial and regulatory decisions. It proposes that such themes have the powerful capacity to determine outcomes and to shape modern concepts of individual as well as societal freedoms and rights.

INTRODUCTION

Histories make men wise; poets, witty; the mathematics, subtle; natural philosophy, deep; moral, grave; logic and rhetoric, able to contend. — Francis Bacon (1625)

If other people are going to talk, conversation becomes impossible. — James McNeill Whistler (1987)

The above quotes reflect two notions of rhetoric which sometimes conflict, but are often and paradoxically held simultaneously. Francis Bacon emphasizes the ability of this subject to aid in the advancement of one's learning and opinions within society. Contained within Whistler's humor is the equally serious suggestion that voices will frequently encounter competition in the form of other speakers.

Depending upon one's orientation, rhetoric is a skill which allows for the effective presentation of a position or a dubious method to silence competing claims. Common to both characterizations, however, is the implicit acknowledgment that rhetoric is necessarily connected with group activity.

While its presence in such overtly social forums as politics or the courts is widely acknowledged, the role of rhetoric in the representation of scientific and technological

claims is less generally addressed. With the advent of research tending to demonstrate that the latter pursuits are also constitutively social, (e.g., Kuhn, 1970) interest in the role of rhetoric has increased.

This paper is about advocacy, debate and technology. Its goal is to identify ways in which decisions concerning life in the digital environment are being influenced. Like the opening quotes, it assumes the rather obvious notion that rhetoric operates within a social framework. This, however, does not mean that it presumes rhetorical sources to be the sole product of social dynamics.

That rhetoric about technology permeates modern life is an inescapable truth. Former "hot" debates concerning such topics as mutually-assured nuclear destruction have left the fore. They have been replaced with arguably less dramatic but no less substantive dialogues about the implications of new technologies. Rather than being poignantly related to the destruction of planetary life, they pose often subtle and frequently complex questions about such issues as privacy, property, autonomy, economics and conceptions of human relationships.

One explanation for this complexity can be found in the nature of rhetoric's sources. A core question of this examination will involve locating the sources of rhetorical content. In other words, we must ask whether persuasive elements are simply formulated by advocates in the preparation of their case, or if they may be traced back to the nature of the issue itself? One of the challenges in this determination has to do with rhetoric's ancient, diverse and contested past.

It is generally held that rhetoric was born during the first quarter of the fifth century B.C. on the island of Sicily (Golden & Corbett, 1990). Significantly, its purpose was to allow common citizens to recover property which had been confiscated by ousted tyrants. In addition to requiring an appearance at court, proof of loss was necessary. Often, records of such proof were nonexistent. Rhetoric provided the ability to apply inference and persuasion to achieve victory (Corbett, 1965).

Rhetoric was brought to Athens in 427 B.C. where it was generally welcomed. Teachers of this new art, the *Sophists* opened schools for its dissemination. They were opposed by some, including Plato, who echoed Socrates' belief that it was merely a cheap and insincere form of trickery. At the heart of his criticism was the belief that partisan rhetoric could not rest upon Platonic universal principles (Corbett, 1965).

Aristotle defended rhetorical practice by endeavoring to make it a scientific and rigorous system. A central aspect of this task was the admission that various human experiences were not amenable to absolute, empirical proof or logical certainty. Rather, the practitioner must exercise persuasion in the form of suggesting probable truths and by appealing to all available methods, including the emotional, the rational and the ethical (Golden & Corbett, 1965).

Professor Edward Corbett (1965, p. 540) notes that Aristotle was primarily interested in the development of persuasive arguments and accentuated the "virtuosity of effort." These factors also contributed to the view that rhetoric was a "morally indifferent activity."

In Rome, Cicero continued to expand rhetoric's scope by stating that the pursuit had no intrinsic subject matter. Instead, the proficient practitioner must call upon a wide range of knowledge in order to achieve persuasion (Corbett, 1965).

Through the Middle Ages and beyond, rhetoric retained its persuasive goal but was conformed to the needs of Western Christianity. Augustine echoed the Aristotelian

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