ISSA Proceedings 1998 – Magnitude Beyond Measure: Judgment And Justice In The Late Twentieth Century

If classical tragedy has any residual wisdom for our age, it may lie in the possibility that the imperatives of forensic judgment prefigure a renewed sense of genuine civic life. Argumentation becomes rhetorical whenever it engages the priority, urgency, or importance of public matters. In the present century, the once-reliable borders, taboos, and hierarchies for grounding and guiding such argumentation have eroded, while the calamities and exigencies of our time have expanded in scale and enormity. Thus an ongoing dialectic of *magnitude* takes on the momentum of an irreversible process yielding a foreclosure of human agency, and virtuous reconciliation to catastrophe as *fait accomplis*. With this essay, I explore three twentieth century concepts designed to stabilize rhetorical argument over "magnitude' in civic and social life; these are the concepts of the *public*, the *spectacle*, and the *rhetorical forum*. In the West, these concepts are the ironic legacy of three unlikely Nineteenth century rhetorical figures (Henry Thoreau, P.T. Barnum, and Ida Wells). In an institutional sense, these same three concepts are the residue of the three foundational genres of rhetorical argumentation; the deliberative, the ceremonial, and the forensic. Most important, these concepts depict inventional moods of civic argument; the utopian, the tragic/farcical, and the retributive/conciliatory moods of judgment and forgiveness. The body of my presentation will stress the allegorical voices of this latter forensic mood: in the Nuremburg trials, as well as in the International Truth and Reconciliation Commission. Such cases as these, exceptional as they are, help to capture the unfinished inventional possibilities of argumentation and civic culture.

The figures of Nineteenth century America – Thoreau, Barnum, Wells – loom over our still unfinished epoch with an expansiveness that seems larger than life. In mirroring back to us a cultural history more grand, and grandiose, than our own, they introduce nagging questions about what has become of magnitude as

solitude, magnitude as magnificence, magnitude as the soul's tumult: the implacability of rage within. Whether we might actually find or construct a map for the typical nineteenth century consciousness, it is clear that the vast panorama of that vision has receded.

The confident progressive histories, so prominent at a new century's first moments, have also lost their traction. The not-always-felicitous union of concept and event, a residue of other discredited systems, continues to hover over the damage. It was Marx who once prophesied that philosophy would replace religion, only to be replaced by history and then politics. But the once-vibrant trajectory of modernity resists any easy assimilation. I do want to suggest, however, that even in an era of "dark times," the work of rhetorical reflection, and all its attendant weights and measures, persists. Specifically, I want to show by way of some culturally specific evidence that magnitude, however momentous its eventful compass, may nonetheless be judged. Such judgment is not only possible. It is absolutely necessary if rhetoric itself has any lingering hope of surviving the crimes of the century.

1. Retracing Modernity: Some Preliminary Codicils

"The category of greatness is in a peculiar situation these says… One has become accustomed to the fact that philosophy no longer represents the knowledge of the time, as the ancients still would have had it. Philosophy has acclimated itself, as it were, to less lofty altitudes" (Habermas 1971).

Of course, knowledge of any culturally-specific time, lofty or not, is elusive. There are as many dialectical oppositions in thematized history as there are dialectical opponents, and no single opposite or contradiction rules by necessity. What we do know is that, if philosophy has opted out of any representational mission for the knowledge of its time, it is the pliably resilient and creative practice of rhetoric that remains wedded to time's residue: the still unfinished magnitude of eventfulness in history.

Retrieving as much as we can from Aristotle's treatment, we might conclude that a strict identity logic will quickly exhaust itself, where the relationships of magnitude are concerned. An important correlary follows from this realization. To the extent that magnitude is always glimpsed in relation to some external aspect, we will either need to find some fixed archemedian point to gain *the full measure* of things, or we will need to gain access to a rich lifeworld of events, projects and actions, so that our measures acquire relational meaning in practice. This is what

I mean by *the eventfulness* of rhetoric. And it brings us as close to a dialectical relation as I am able to offer in these pages. In the world of modernity, as before, rhetoric's language of magnitude has attempted to give order, priority, perspective, and depth of recognition to a myriad of simultaneous and successively jarring events. But not only does rhetorical magnitude offer weight and measure to what it encounters. Increasingly, its own destiny is weighed and measured by these events as well.

In the pages that follow, we consider a succession of rhetorical concepts designed to stabilize and assimilate what "matters most" in the twentieth century. The three concepts are those of the public, the spectacle, and the rhetorical forum. In a sense, these concepts are the ironic legacy of our three Nineteenth century figures. Public life was that great oppressive dialectical *other* that Thoreau tried so desparately to escape. But to no avail. In railing against its venality and short-sightedness, in decrying its lack of true "measure," Thoreau was actually recreating this same public as audience. He became, despite himself, what Hegel noticed as a "character in the middle" of public life. Barnum, of course, was not nearly so complicated.

As the primary inventor of spectacle, Phineas T. Barnum deserves at least an asterisk next to every forgettable superbowl half-time show, celebrity trial, and Olympic ceremony. For well or ill. And as for Ida Wells, whose rage could neither be silenced nor censored, there was literally no choice but to go *outside*, elsewhere for a fair hearing, a witnessing, and a venue where wrongs could be documented, and judgments rendered. To the rhetorical practice of Ida Wells, then, I trace an invention of considerable importance: the rhetorical forum.

2. The public

From its auspicious beginnings to its oft-rumored decline, the idea of the "public" has been one of Modernity's most notorious seductions. The prospect that there are others *like us* who share our priorities, engage us in free discussion, document our collective annoyances, validate our outrage has been the mainspring for the mechanism of liberal politics. Born amid the leisure of Enlightenment cafe society, where idle chatter somehow transformed itself into communicative action critique, the *public* was seen by its apologists as escaping the irony of its bourgeois origins to become a figurative measure of magnitude and historic progress.

Looking backwards, probably the least outwardly apologetic treatment of this "zone" of civic life comes from Jurgen Habermas.In his first book, *The Structural*

Transformation of the Public Sphere, as well as the much more widely distributed encyclopedia excerpt ("the Public Sphere"), Habermas noticed in the public a zone of emergence that seemed to defy its bourgeois enlightenment origins. As he wrote in this early work:

"The bourgeois public sphere arose historically in conjunction with a society separated from the state. The "social" could be constituted as itsown sphere to the degree that on the one hand the reproduction of life took on private forms, while on the other hand the private realm as a whole assumed public relevance. The general rules that governed interaction among privatepeople now became a public concern. In the conflict over this concern, in which the private people soon enough became engaged with the public authority, the bourgeois public sphere attained its political function" (Habermas 1962:127).

This is a vintage Habermas account, fraught with the same dialectical tensions that seem to haunt its subject. Habermas seems to treat the eventful "founding" of the public sphere as a potential emancipatory moment in Western political history. But with characteristic understatement, he reports that "the dialectic of the bourgeois public sphere was not completed as anticipated in the early socialist expectations." Expansions of political rights, broadened inclusion of participatory franchise all promised to imbue the public sphere with a reflexivity of reasoned suspicion, a recourse of advocacy against the unwarranted assertion of state power. But for a variety of complex reasons, the chief engine of potential resistance, "public opinion," became instead simply one more intangible link in a cage of rational domination. Apparently lost in the succession of Habermas's ironic reversals is what "might have been" an emancipatory potential in the rhetorical appeal to public thought as *an agency of moral resistance*. The abandoned tacit question that addresses itself to any secular form of institutional domination remains that of *legitimation*.

As in many a concept in rhetoric, the idea of the public is itself a rhetorical invention. Social facts do not necessarily require empirical residences, however. And this is not to discredit their historical force. A key chapter in the story of the "public" idea took place at considerable geographic remove from Habermas's *ancien regime* of European culture: in the so-called new world to be known, by itself at least, as "the American century." This chapter is initially authored by John Dewey and the liberal-progressive pragmatists; and its call to activism is echoed by an entire modern school of thought in rhetorical theory.

Unencumbered by what it considered the baggage of Nineteenth century Idealism, and freed as well from any overarching theory of history, Dewey's concept of the public is that of a purposive agency and regulator of change. In an oft-quoted passage from his seminal study, *The Public and Its Problems*, Dewey wrote:

"We take then our point of departure from the objective fact that human acts have consequences upon others, that some of these consequences are perceived, and that their perception leads to subsequent effort to control action action so as to secure some consequences and avoid others. Following this clew, we are led to remark that the consequences are of two kinds, those which affect the persons directly engaged in a transaction, and those which affect others beyond those immediately concerned. In this distinction we find the germ of the distinction between the private and the public. When indirect consequences are recognized and there is effort to regulate them, something having the traits of a state comes into existence. When the consequences of an action are confined, or are thought to be confined, mainly to the persons directly engaged in it, the transaction is a private one."

Reading these words, over Seventy years later, one is struck by residual curiosities in this straightforward pragmatic account. For instance, while the "germ" of Dewey's distinction still seems intuitively plausible, its presentational "voice" suggests a mechanism of determination that all but evaporates the force of human agency. Others are "affected." indirect consequences "are recognized." There "is effort" to regulate them (i.e. consequences). All of these things seem to be going on at a remote and inaccessible distance. One of Dewey's most articulate and sympathetic commentators, Lloyd Bitzer, correctly positions this account as a "genesis" theory, beginning with the deceptively simple fact that (as he puts it), "public acts occur." He also offers us a very emphatic answer to a question where Dewey himself seems ambiguous: "Note that the public is *called into being* by the consequences: persons affected by such consequences comprise a public, whether or not they are aware of their identity as a public." Bitzer follows this statement with a quote from Dewey where he appears less than exact on the same question: "The public," he writes, "consists of all those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for." Deemed necessary, one wonders, by *whom*?

Bitzer is able to write, with nary a trace of irony: "The machinery of a state –

offices, officials, laws, tribunals, and the like – are invented to assure the well-being of the public."

Thus, it has been argued (by Fraser, as well as McGee and Martin) that what critical theory regarded as "the public sphere" mutated from a burden of proof of legitimation *for* the state into a sort of presumptive entitlement *on behalf of its* secular representatives. To be fair to Bitzer, it could be retorted that this was surely not his original intent. Still less so in an era where one party's hegemonic intrusion may be another's site of resistance.

Isn't this all simply a matter of "point of view"? The uncomfortable acknowledgement must be that one hopes (I hope) that this is not so. Clinging steadfast to this hope, I must concede that something happened to the "public sphere" (in both thought and history) when universal pragmatics was succeeded by its more mechanistic new world relations.

I have not the space here to do full justice to the complex difficulties of the pragmatically theorized 'public' and its own indirectly thematized consequences. For instance, the paradox of inhabiting a "public" that one does not know one is in only intensifies with Dewey's tortured diagnosis of the public's disappearance. If a public does exist, Dewey writes, "it must certainly be as uncertain about its own whereabouts as philosophers since Hume have been about the whereabouts of the self." Whatever one makes of such a passage, it implies that recognition of public identity must have at least something to do with the full realization of that identity. Between such recognition and the mute acceptance of official attribution lies the shadow of majoritarian silence.

Yet there is a less-noticed aspect to the pragmatic conception of the public that needs to be underscored, especially if we are to fully appreciate the dialectical reversals of public agency in modern times. I say this is a less-noticed aspect because I myself did not notice it until quite recently. Note in Dewey's original formulation, and again in the section quoted by Bitzer, what it is that calls the public into being or existence: "Human acts have consequences upon others," and again, "those who are affected by the indirect consequences of *transactions* [my underlining], and again (from Bitzer) "public acts occur." It is not so much that this formulation is question-begging. The more serious problem is that Dewey apparently limits the genesis of the public to the consequences of already-situated *human action*. Now this makes sense in a loose metaphorical way if we remind ourselves that the philosophy of pragmatism originally situated the mind in the midst of experiential interaction throughout the unfinished process of nature.

However, even if we extend this interpretative generosity to Dewey,we are still forced to dilute the meaning of "action" to the point that issues of power and control are flattened beyond recognition.

A less generous reading would be forced to inquire what has been purchased by this rather odd view of origins. Why odd? Does any late-twentieth century denizen of modernity think that only human actions occasion matters of public concern? Let me go further and suggest that it is not just modern brushes with epidemics like AIDs, famines, natural disasters that broaden our sphere of public "acquaintance." In Aristotle's famous discussions of "phobos," and pity (from the *Rhetoric*), there is a rather striking list of what occasions these emotions: "all things that are destructive, consisting of griefs and pains, and things that are ruinous, and whatever evils, having magnitude, are caused by chance. Deaths and torments and diseases of the body and old age and sicknesses and lack of food are painful and destructive." With fear, it is the large destructive forces that we are unable to control. Fear nonetheless, we are told, inclines us toward deliberation. Aristotle concludes an earlier section by saying: "fearful things, then, and what people fear are pretty much the greatest things." Perhaps one of the few things Aristotle had in common with modernity was the realization that not everything that impacts public interest and awareness is already an outcome of human action.

So let us pose the question again. What has Dewey been able to purchase with this: unusual framing of public origins? While we can not know with any certainty, I strongly suspect that it is a certain balanced ratio of defeasability for action itself. Put another way, if consequences that impact and constitute a public's existence are already human in origins, then they must in some manner be capable of being 'cared for," "tended," (the nurturing version) regulated, controlled (the hard-boiled version). Hindsight is twenty-twenty, of course. But there is still irony aplenty with Dewey's own modernist confidence in the science of social control and expert valuation, given the timing of his remarks after "the Great War." How many more events would be open to the framing of "action," and therefore public regulation? The depression? The machine age, the war culture, the bomb, genocide, the paving of America and then the world? The great modernist dream of progressivism turned upon the dubious enthymeme that, if only human nature could be perfected, so could everything else. It took the jaundiced comic spirit of Kenneth Burke to realize a Faustian truth that perfection

is a term of entelechy, *not* of ethics. Abigail Rosenthal makes the point I have been circling around:
"Well, let us say briefly this: in the late-nineteenth and early-twentieth century, Western people believed in themselves. They believed, that is, that they were members of the most enlightened and progressive association of related cultures in the history of the world, and that they had both a right and a duty to bring their cultural light into the remotest corners of the inhabited world. Since that belief's heyday, members of Western culture have seen World war I, the Armenian massacre, the great depression, the failure of the versailles treaty, the Hitler and Stalin eras, the nuclear arms race, the ecological threats to the habitability of the planet, and other catastrophes, almost all of them issuing out of or related to factors in Western culture" (Rosenthal, 1987).

Rosenthal is looking for an explanation for the upsurge in what she considers, "moral relativism." But I think her recitation of "big events" illustrates a related theme as well. John Dewey, like many progressive optimists of his era, simply assumed that the avenues of activism and socio-political progress were necessarily public mechanisms, and accordingly that the great events, with their enduring consequences, would be able to generate great and enduring publics, with great leaders, and great symbols accessible to all. But the events which unfolded, while arguably human in constitution, were immeasurably larger in compass than any actional perspective might grasp. Lacking an archimedian point,a lever, a mechanism of agency, each moment of phobic recognition became its own dialectical ground of inertia. And so a rhetoric of compensatory resignation set in. A culture of delusion was succeeded by a culture of disillusion.
Lloyd Bitzer's valliant attempt to revive Dewey's public idea has been castigated too many times, from quarters too intellectually impoverished to deserve charitable reconstruction here. Rereading his concluding words, in the midst of yet another post-war disillusionment, I find it difficult not to experience – in almost equal portions – inspiration and a poignant sadness. Words such as these:
"We seem unable or unwilling to acknowledge that some truths are not to be found in these kinds of time frames, but rather *become,* over time, and perhaps pass in and out of existence. Why should we not acknowledge that some truths exist as faint rays of light, perceived perhaps dimly in a near-forgotten past, but which light up again and again in the experience of generations?… The great task of rhetorical theory and criticism, then, is to uncover and make available the public knowledge needed in our time and to give body and voice to the universal

public."
In these eloquent words, the logic of defeasability still rules: "The exigencies are global, and no less than a universal public is sufficient to authorize their modification." But if the clarion call lacks traction in these times, our times are the poorer for this fact. Bitzer's vision perhaps hovers now as an horizon beyond the public eclipse, a progressive-humanist article of faith asking for belief not despite implausability, but *because* of it.

3.The spectacle
"The diversionists have arrived. Some toy with "desire," the "libido," etc.; denounce responsibility as a "cop's word"; set traps for others and trap themselves in the blind alley of schizophrenization. Their strict complement, Foucault ("This century will be deleuzian or will not be," he says; we can rest assured that it is not) presents all society as caught up entirely in the nets of power, thereby erasing the struggles and the internal contestation that put power in check half the time" Cornelias Castoriadis (1976).
The legacy of the "public" dream (or ideology, if one prefers) has been, in the short run at least, a dispiriting one. And into the vortex of vacated universalism, has come that nightmarish deformation of modernist dreams: the spectacle. The triumph of signification without referents, as well as the eternal youth of Barthe's dead authors (He must have had Barnum in mind) spectacle is the celebration of the bad infinite as the only infinite in town. Spectacle is too many things to adequately encapsulate here. That is because it is too many things, period. It is, in the old critical theory jargon, the choreography of appearances as commodity for visual consumption: the mass ornament. It is the sublime left out in the sun too long, and turned rotten with neon.

To say that spectacle is a rhetorical formation that situates argument will seem strange to those who identify argumentation with critical reflection. For it seems the overarching function of spectacle to erase such reflection in the self-consuming pleasure of the gaze. What I will content myself with in this short excursus is the two-fold observation that yes, an attenuated demonstrative argument of hyperbole is usually going on with spectacle. The redoubtable Guy DeBord has written of spectacle: "The spectacle presents itself as something enormously positive, indisputable, and inaccessible. It says nothing more than 'that which appears is good, that which is good appears.' The attitude which it demands in principle is passive acceptance which in fact it already obtained by its

manner of appearing without reply, by its monopoly of appearance." So there is, in Debord's terms, a sort of arguing going on with spectacle.
It is a kind of panorama of assertion, with no apparent space for mental reservation or resistance. This is not a bad vernacular rendering of the baffling Marxist concept of reification. But it doesn't quite say all that needs to be said. This is because spectacle doesn't ever say it all either. It only purports to. It seeks to dazzle us, to bowl us over with the breathless fulfillment of false totality. As Debord himself inadvertently demonstrates, spectacle always needs to have some sort of subtitle, or decoding caption. Put another way, its imposing choreography of imagistic appearances is always self-congratulatory, but never self-explanatory. This is why we get such euphoric and meaningless consumer captions as , "It doesn't get any better than this," or "When you've said Bud, you've said it all." That is part one of the observation. Part two is sub-titled, "Yes, but…"

Over and against all logic and common sense, I want to suggest there is a sort of hidden normative trajectory within spectacle. Part of this derives from spectacle's warped teleology of desire. As my little graphic makes clear, we are absorbed in spectacle through a kind of delirium-fascination. At its worst, this gaze can resemble the sort of faddish voyeurism that stops to gawk at roadside carnage. But even at its worst, it is not a morally neutral activity. The same *schadenfreude* that brought Barnum's vast heterogeneity of gapers to 19th century sideshows beckons us for largely similar reasons. How could such a deformation of normal order happen? It is so unfortunate, and aren't we fortunate that it didn't happen to us? And worse yet, it is so sad that there is absolutely nothing we can do. If you place these questions end-to-end, they emerge as the fatalistic dialectical other of the four traditional deliberative questions. This is an ethic for visual consumption in a sedentary age. I don't mean to suggest that it is on a par with the categorical imperative. But it is probably better than nothing. Especially if "it doesn't get any better than this." It is probably easier to grasp this normative dimension, if we think about the deformation in a more affirmative way. As Julia Krysteva explains cultural delirium, it tends to inflate a sentimental spectacular object, say, the love objects in *Titanic*, or some sports celebrity into a shape that is both transcendental and accessible. The flaws in these figures simply disappear, so important is it that they become an abstract signifier of our own longing. For what? Well, I am mixing mythologies here, but I suspect the sirens song of fascination is not so incompatible with Krysteva's sense of longing after an endlessly deferred human capacity. Here is the way she puts it:

"… delirium masks reality or spares itself from a reality while at the same time saying a truth about it. More true? less true? Does delirium know a truth which is true in a different way than objective reality because it speaks a certain subjective truth, instead of a presumed objective truth? because it presents the state of the subject's desire? This 'mad truth' of delirium is not evoked here to introduce some kind of relativism or epistemological skepticism. I am insisting on the part played by truth in delirium to indicate, rather, that since the displacement and deformation to delirium are moved by desire, they are not foreign to the passion for knowledge, that is, the subject's subjugation to the desire to know."
So these present themselves as the negative and affirmative aspects of a certain elusive normative content, in the grand Fuji blimp of world wide spectacle.

The much more obvious zone of reflection in the pageantry of spectacle occurs in those occasional indigenous participatory moments that seem to fly in the face of all the choreography. We cannot fail to notice them, for they startle us all when they occur – almost as if we were being awakened from a dreamlike daze.

Moments like Tieneman square. Or, an occasionally rude interruption by what, for want of a better term, can only be regarded as "reality." To mention only a few Olympic moments, the Black September massacre of Israeli athletes in Munich 1972, the genuinely heartfelt remembrance of Sarajevo in Lillyhammer in 1992, and the Atlanta bombing just two years ago. These rude interruptions are rarely pleasant. But in their very unpleasantness they shred the veil of false amusement. In a minor version, one must be a bit startled by the still confounding revolt of People magazine readers that forced the Queen to say, in best Clintonesque style, that "yes, I feel your pain." Where false tranquility is the norm, rude interreuptions may also be rude awakenings.
What may be said at this point is that, like its generic antecedent of epideictic discourse, spectacle has at best an accidental relationship to reflection about magnitude. It demonstrates, it choreographs, it magnifies, it embellishes. The only times we are able to reflect about what genuinely matters is either: a) when we are able to decode the choreography allegorically, or b), when some unpleasant aspect of "real life' rudely interrupts the procedings. But spectacle, for all this, is extremely important to the state of reflective argumentation about magnitude for historical reasons that have their own ironic mimetic claim. There are times when spectacle appears to be the only game in town.

4. The Rhetorical Forum

The final rhetorical formation for addressing the legacy of magnitude beyond measure is that of the rhetorical forum. The public, the spectacle and the forum are, as we have seen, the exotic legacy of the deliberative, ceremonial and forensic genres. If I may quote myself, a rhetorical forum creates " a symbolic environment within which issues, interests, positions, constituencies and messages are advanced, shaped, and provisionally judged" (Farrell 1993: 282). Less jargonistically put, a rhetorical forum is an encounter-setting where discourse may be gathered, situated, thematized, stabilized. Students of argumentation, I suspect, are sufficiently familiar with the concept of "forum" to require no more than an attenuated description of it here.
What I would like to do, however, is to amend my category schema somewhat, by allowing two qualifications. First, it will not do to separate forum off entirely from the previously discussed types of public and spectacle. The most enduring cases of rhetorical forum have always had some public aspect to them. They are known, talked about, often controversial. And then there is the fact that their own operations typically engender discussion, colloquy, a process that seems to me not all that different from Habermas' idealization of discursive will formation. So far as spectacle, there are clearly family resemblances here as well.

Consider the extended example I use to illustrate rhetorical forum: the famous Nuremberg trials. The city of Nuremberg was itself symbolically chosen as scene. It was virtually rubble, but for an area on the fringe where stood the ironically named, "Palace of Justice." This latter locale was where the all-important initial trials were held. Widely circulated photos at the time heightened the profound contrast. To the press and, I suspect, any moderately inquisitive observor, this semiotics of display said something like, "in the midst of barbarism, a search for the restoration of civility." Perhaps an attempt to find real justice in this Palace of name only? The inside of the Palace is arranged so as to stress of course the moral seriousness, the formality of these proceedings. This is why you see the flags, the hangings, the elevated sight-lines for justices as jury. All this is spectacle, or at least theater. We can be grateful that they did not bear more modern traces of commodification: spin doctors, play-by-play announcers, commercial interruptions, and of course endorsements; perhaps the Nike "swoosh" on the judicial robes. My second qualification is that there is no *a priori* reason why the forum should be limited to judicial examples, and forensic proceedings, with a mode of judgment the preferred mood. All I would say at this point is that the most conspicuous and successful prototypes of the rhetorical

forum, at this juncture of history, have typically been forensic in character. Perhaps temporal distance remains the best arbiter of perspective where rhetorical magnitude is concerned.

For my own purposes, the case of the judicial forum, or encounter-setting, or tribunal is particularly important, because it helps to illustrate special problems of invention, authority and legitimation that are perhaps unique to our age. It has been observed, with undue frequency, that idealized postulated settings for speech often come to regard rhetoric as an unwelcome, insincere intruder. But this somewhat smug observation ignores the logical question of how *any* reasonably impartial setting is created in the first place. Far from being obliterated by the fierce lens of ideality, rhetoric is what makes the flickering glimmers of ideality possible; at least that is the view sponsored by the body of this essay.

If the forum is regarded as one of those "social emergents," very little serious intellectual labor has been devoted to the question of just how such "emergents" emerge. Institutions do not drop, fully formed, out of the ether like some Rawlsian a priori. Just as surely as "de jure" authority is made up from "de facto" authority, just as surely as today's Nobel peace prize winner may have been yesterday's terrorist, the regulative principles of real-life institutions must be constructed, fabricated from the ball of confusion that is real life.

For my specific, far from perfect, exemplar of Nuremberg, two performative exigencies were uppermost. Rhetorical performance must first legitimate the authority of this forum, a formidable task for a trial by the victors of the vanquished. Rhetoric must also move beyond this daunting objectivity of event to the more human forensic scale of guilt, responsibility, confession, mitigation, retribution. My question then is how, if at all, was rhetorical performance able to do this?

The full(er) answer to this question moves far beyond the confines of this report I can at best outline my overall approach here. Without begging the question too much, I think we can say that a rhetorical forum needs a certain sense of sponsorship, of serious regard, by those who witness its proceedings. If no one pays any serious attention, it will degenerate into what the national party conventions seem to be on the verge of becoming: empty sideshows. Secondly, and this is so obvious it is frequently overlooked, a rhetorical forum is authenticated not only by the quality of performances it evokes, but also by the

degree of seriousness displayed by the participants as performers. Let us approach each of these considerations. In this discussion, I hope to show that, at Nuremberg, as in institutional life generally, rhetorical performance was able to ply its craft on multiple levels.

Once it was determined that there would be trials (No less an authority figure than Winston Churchill thought we should just shoot the lot of them) the next question, of critical importance, was what sort of trial. Would the defense have counsel? Could they make their own case to thetribunal (constructed, it will be recalled, from distinguished jurists of the allied countries)? Could there be cross-examination? In passing, I note that there was – to say the least – no tradition of cross-examination in the Soviet Union.

Would the trial be "public"? A considerable contribution to the legitimation of this forum was offered by, of all things, the adversarial principle of procedural justice.

This will seem at least odd to those who bemoan the sophistry of rhetoric. The oldest known rhetorical principle, dating back to Protagoras and the sophists, is the principle of the *dissoi logo*. Crudely stated, it is that any genuine issue admits to at least two arguments (*logo*). It may be affirmed or denied. The cost of any such procedural codicil (as both the early British position and latter Soviet position seemed to sense) is that it repositions this "black guilt," this "obvious guilt" as a matter of uncertainty. There was also the question of providing a forum for these evil thugs to debase the proceedings. The best response to these concerns was given in a speech predating these discussions, a speech delivered by Attorney General Robert Jackson the day after Franklyn Roosevelt died. He said, in part:" I have no purpose to enter into any controversy as to what shall be done with war criminals, either high or humble. If it is considered good policy for the future peace of the world, if it is believed that the example will outweigh the tendency to create among their own countrymen a myth of martyrdom, then let them be executed. But in that case let the decision to execute them be made as a military or political decision… Of course, if good faith trials are sought, that is another matter. I am not troubled as some seem to be over problems of jurisdiction of war criminals or of finding existing and recognized law by which standards of guilt may be determined. But all experience teaches that there are certain things you cannot do under the guise of judicial trial. Courts try cases, but cases also try courts.You must put no man on trial before anything that is called a court…under the forms of judicial proceedings is you are not willing to see him freed if not proven guilty."

With these eloquent words, future chief prosecutor Jackson helped lay the groundwork for a proceeding unique for its time and ours. As for the discourse itself, it ranged from the eloquence of accusation, to the defiance of defense, perorations for the ages, testimony from the third circle, confessions to the beyond, and everywhere in between. It would be something akin to editorializing to say that these proceedings gave to barbarism a human face. In fact, amidst all the tedium, a great many mistakes and blunders were made as prosecutors and defendants respectfully attempted to document and to disavow the unimaginable.

The final section in my somewhat picaresque treatment looks at the proceedings, if you will, from the other side. While it may seem like heresy to credit the defendants with much of anything rhetorically, I have come to a conclusion that might be something of an insight; or it may merely be perverse. I want to suggest that many of the defendants' final words, and in at least one case, an actual confession, did dramatically enhance the stature, authority, and legitimacy of this rhetorical forum.

Let us begin with the confession because I believe it provides the clearest case. In the book I am currently writing (called, *The Weight of Rhetoric*), I have a portion of one chapter devoted to what I call "confessional rhetoric." I argue that, while this is not a terribly prominent genre, it is very important and also quite difficult to do properly. I have even come up with five felicity conditions for properly confessing:

I. An explicit admisson of wrong-doing is made.

II. The admission must be true.

III. There must be remorse for the act committed, or not committed.

IV. The confession must be made before the proper authority (either the aggrieved party, or failing that, an audience/agency empowered to acknowledge, forgive, punish.

V. The magnitude of the offense must be worth the effort and burden of confessing.

There were not many confessions among the defendants at Nuremberg. But in the one brave and stoic statement by Wilhelm Keitel, there is a remarkable congruity with the conditions I mentioned:

"Now at the end of this Trial I want to present equally frankly the avowal and confession I have to make today. In the course of the trial my defense counsel submitted two fundamental questions to me, the first one…was: 'In case of a

victory would you have refused to participate in any part of the success?' I answered: 'No, I should certainly have been proud of it.' The second question was, 'How would you act if you were in the same position again?' My answer: 'Then I should rather choose death than to let myself be drawn into the net of such pernicious methods.' From these two answers the High Tribunal may see my viewpoint. I believed, but I erred, and I was not in a position to prevent what ought to have been prevented. That is my guilt. It is tragic to have to realize that the best I had to give as a soldier, obediance and loyalty, was exploited for purposes that could not be recognized at the time, and that I did not se that there is a limit even for a soldier's performance of his duty. That is my fate.'"

It is an explicit admission. All evidence attests to its truth. Remorse is shown. And surely the magnitude of offense has occasioned the discourse. But what about the proper party? Is *this* the proper party? What I did not realize at the time I first thought through those conditionals, is that sometimes if everything else is in place, the forum *becomes* the proper party. I have no desire to enoble or canonize a person who, by his own admission, was guilty of incalculable evil. But in Keitel's remorseful address to this "High" tribunal, more may have been done than all the eloquence in the world to inscribe the authority and legitimacy of the Nuremberg proceedings.

In the longer version of this essay, I compare and contrast Nuremberg to two other instances of a forensic rhetorical forum: the still-ongoing Truth and reconciliation Commission in South Africa, and the mercifully concluded"Trial of Pol Pot." For quite differing reasons, I hypothesize that neither of these encounter contexts approached the performative rhetorical accomplishmentsof Nuremberg. Does this mean that the Nuremberg trials were a successful rhetorical performance? What a stupifying question. The scale on which such a performance might be measured is simply not known or available to me. The trials were scenes within scenes, a chiasma of activities, finally not open to genuine human closure. What they were able to do, I believe, is offer a modicum of recognition to the human face of barbarism. This is no small accomplishment. For the larger questions, there is only hope – or despair. For anyone who examines these crimes closely, we must marvel at the mid-century hubris of humankind, the rational animals, purporting to mete out justice before the bar of civilization. But there is something hopeful to this naively Utopian project. It is that, even though no act of reason could ever redeem these historic crimes, it has taken no small effort of reflection to ensure that they never be forgotten.

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