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## In Defense of Community: Athenian Legal Rhetoric and Its Modern Legacy in American Foreign Policy

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# IN DEFENSE OF COMMUNITY: ATHENIAN LEGAL RHETORIC AND ITS MODERN LEGACY IN AMERICAN FOREIGN POLICY

By: Bradley Aron Cooper

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## I. INTRODUCTION

In the Athenian legal system, whether a case was won or lost often depended solely on the skill of the legal speechwriters who wrote, and sometimes even delivered, speeches for their clients.<sup>1</sup> The goal of the speechwriter was to create an argument through which he could persuade the *dikastai*—a tribunal composed of several hundred Athenian citizens from all walks of life<sup>2</sup>—to cast their votes for his client.<sup>3</sup> Since

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1. See Michael Gagarin, *Series Introduction to AESCHINES*, at xxiii, xxiv (Chris Carey, trans., 2000) (explaining that a litigant normally presented his own case but “he could enlist the services of a logographer, who presumably gave strategic advice in addition to writing a speech.”).

2. See Josiah Ober, *Public Speech and the Power of the People in Democratic Athens*, 26 PS: POLITICAL SCIENCE AND POLITICS 483 (1993) (claiming that Citizen Assemblies “were open to all citizens (adult, free, native-born males)” and “[w]ith the

the speechwriter's discourse was not limited to strict legal argumentation, and because there was near unanimity on Athenian values,<sup>4</sup> the speechwriters often appealed to community ideals when crafting a defense or sharpening an attack for their client in order to prompt the way the members of the *dikastai* should vote.<sup>5</sup> Accordingly, speeches surviving from that era provide the modern reader with evidence of the types of principled arguments that would have been persuasive to the average Athenian.

This Article will examine how the rhetoric of the legal speechwriters reflected idealized views on participatory democracy and the rule of law. Next, this Article will attempt to show that these same views also supported a strong Athenian tradition of opposing tyranny, and that this, in turn, led to the inclusion of anti-tyrannical rhetoric in some of the legal speeches. Finally, this Article will address the lasting legacy of this anti-tyrannical rhetoric by giving evidence of its modern usage in the rhetoric of American foreign policy and by proposing reasons for its enduring presence.

## II. COMMUNITY AND THE RULE OF LAW

### A. *The Concept of Community*

One of the most fundamental concepts in Athens was that of the *polis*. As Aristotle explained, the *polis* was a political community whose ultimate goal was the highest good.

Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good.<sup>6</sup>

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exception of the exclusion of citizens from age 18-29, there was little difference between the sociological profile of typical Assembly and typical jury.”). *See also id.* (“Immediately after the two speeches, the *dikastai* voted, without formal consultation, by secret ballot; a simple majority determined innocence or guilt.”).

3. *Id.*

4. *See* Alastair J.L. Blanshard, *What Counts as the Demos? Some Notes on the Relationship Between the Jury and “the People” in Classical Athens*, 58 PHOENIX 28, 29 (2004) (stating that there was a general unanimity or consensus on Athenian values).

5. *See* KENNETH JAMES DOVER, *GREEK POPULAR MORALITY IN THE TIME OF PLATO AND ARISTOTLE* 5-6 (1994) (stating that the speechwriter “could not afford to express or imply beliefs or principles which were likely to be offensive to the jury”).

6. ARISTOTLE, *POLITICS* 51 (Benjamin Jowett trans., Random House, Inc. 1942).

As the goal of the *polis* is “the highest good,” it necessarily follows that the community’s pursuit of this common good must be prioritized over individual interests and well-being.<sup>7</sup>

For even if the good of the community coincides with that of the individual, it is clearly a greater and more perfect thing to achieve and preserve that of a community; for while it is desirable to secure what is good in the case of an individual, to do so in the case of a people or state is something finer and more sublime.<sup>8</sup>

The *polis*, however, was more than simply a political construct to Aristotle, who also described the *polis* as a composite made up of its citizens.<sup>9</sup> Therefore, to understand the Athenian concept of the *polis*, one must also understand the roles reserved for its citizens, which, according to Aristotle, included “the power to take part in the deliberative or judicial administration” of their state.<sup>10</sup> This civic participation seemed to flow from the idea that Athenian citizenship also implied ownership in the *polis*.

The Athenians did not normally speak of “citizenship” as an abstract entity; they spoke instead of “having a share in the *polis*” . . . and this may be more than an idle metaphor. A citizen in democratic Athens was in a position somewhat akin to that of a shareholder in a modern company: a joint owner, entitled to play at least some part in decision-making, and expecting in good times to receive a dividend from the profits of the enterprise.<sup>11</sup>

[T]he idea of citizenship is often conveyed by the verbal phrase “*metechein tēs poleōs*” . . . to have a share in the community. The phrase is both precise in describing active participation and also vague in not specifying one particular sort of share or participation. Thus “sharing in the city” describes a kind of community membership or citizenship that can have different modes and manners.<sup>12</sup>

As these two passages relate, participation was viewed as both a duty and a right. Citizenship thus entitled one to reap the benefits of the city, while at the same time it demanded service to the *polis*. Accordingly, Athenian laws reflected the foundational importance of civic participation, and as shall be shown, participation was frequently demonstrated through the enforcement of the law.

Solon, the great Athenian lawmaker, demonstrated the importance of participation when he insisted on a revocation of citizenship to

7. ERIC MOUNT JR., COVENANT, COMMUNITY, AND THE COMMON GOOD: AN INTERPRETATION OF CHRISTIAN ETHICS 31 (1999) (“As Aristotle states, the common good calls people beyond private interest to the well-being of entire communities.”).

8. *Id.* at 30 (quoting ARISTOTLE, NICOMACHEAN ETHICS bk. I, at 64 (James Alexander Kerr Thompson & Hugh Treddeneck, trans., 1976) (c. 384 B.C.E.)).

9. ARISTOTLE, *supra* note 6 at 125.

10. *Id.* at 127.

11. S. C. TODD, THE SHAPE OF ATHENIAN LAW 182 (1993).

12. Cynthia Patterson, *Athenian Citizenship Law*, in THE CAMBRIDGE COMPANION TO ANCIENT GREEK LAW 267, 270 (Michael Gagarin & David Cohen eds., 2005).

those who “did not choose one side or the other in times of civic dispute.”<sup>13</sup> Additionally, Solon forbade citizenship to any foreigners not permanently exiled from their home country.<sup>14</sup> Both laws emphasized the importance of participation. “If someone does not take part, he should not have a part; and a part should not be given to a foreigner if he does not establish an active household in Athens.”<sup>15</sup>

Additionally, in 451 B.C., Pericles proposed an even stricter citizenship law, which demanded that “anyone who was not born from two *astoi* should not share in the *polis*.”<sup>16</sup> *Astoi*, the plural form of *astos*, referred to “insiders” and was often contrasted with the term *xenos*, which referred to foreigners or “outsiders.”<sup>17</sup> While Patterson argues that Pericles’s proposal may have more to do with protecting Athenian property from conveyance via inheritance to foreigners than simply limiting the access to the imperial treasury,<sup>18</sup> the key element in either case is the protection of community wealth.

This concept of protecting a community through membership was common in the ancient world. In early Christianity, participation was as foundational to the community as it was to the Athenian *polis*. However, as this was a religious community, participation was judged by moral standards:

To be a Christian was to be a member of a community. The basis of the community was not only a common belief, but also a common practice. It was the task of the community as an organization to keep itself pure. The offences against which it had to guard were not only the open crimes which fell within the cognizance of public law, but also and more especially sins of moral conduct and of the inner life.<sup>19</sup>

However, as the Early Church had the mandate to expand its membership, protection could not be achieved through overly restrictive membership measures. Accordingly, initiation into the Christian community via the cleansing of baptism became a measure of protection, for “[i]n Christian initiation, what is to be kept pure is the *community*.”<sup>20</sup> Of course, while this practice did not necessarily limit membership, it served—as did the Athenian citizenship laws before it—to

13. *Id.* at 273 (internal quotations omitted).

14. *Id.*

15. *Id.* Interestingly, because many of the speechwriters were not citizens of Athens, they were technically barred from public service, and were only able to contribute through their writings.

16. *Id.* at 270.

17. Cynthia Patterson, *Citizenship and Gender in the Ancient World: The Experience of Athens and Rome*, in *MIGRATION AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER* 47, 52 (Seyla Benhabib & Judith Resnik eds., 2009).

18. Patterson, *supra* note 12, at 278–83.

19. EDWIN HATCH, *THE INFLUENCE OF GREEK IDEAS ON CHRISTIANITY* 162 (1957).

20. WAYNE A. MEEKS, *THE ORIGINS OF CHRISTIAN MORALITY: THE FIRST TWO CENTURIES* 33 (1993).

reinforce the distinction between those within and those outside of the community, as the act of baptism implied a boundary between the pure Christian community and the impure society that its members had come from.<sup>21</sup>

### B. *Protecting the Community and the Rule of Law*

The demand for purity, however, was not unique to Christian communities. In Greek religious thought, homicide pollutes the murderer and everyone who comes into contact with the murderer.<sup>22</sup> Accordingly, murder cases were always held outdoors in order to prevent the judges from coming under the same roof as an individual polluted by their crime.<sup>23</sup> Perhaps even more importantly, the entire community was supposed to be protected from the impurity of the murder. Accordingly, a prosecution would begin with instructions to the alleged murderer to abstain from the community's religious and social activities in order to prevent the defendant's impurity from spreading.<sup>24</sup>

At this point, one is able to begin to discern the synergy that develops between the various aspects of *polis*. First, the *polis* is a community that strives for the highest good. Accordingly, membership *requires* active participation towards achieving that highest good. As a result, membership *must be limited* to those who are working toward that goal, and members *should be protected* from any impure influences so that they might attain those goals. In the end, laws are initiated to ensure that these *requirements, limitations, and protections* are in place. Accordingly, as the weight of Athenian success rests upon the shoulders of the law, punishment becomes an indispensable key to the "highest good" that Athens strives for.<sup>25</sup> Of course, once punishing crime is seen as necessary for the rule of law—and thus the common good—it becomes yet another avenue by which a member of the community may serve the *polis* through participation.

The two main ways citizens participated in upholding the rule of law in Athens were through service in the Athenian legal system, either as members of the *dikastai* or as citizen prosecutors. "The rule of law was a fundamental tenet of Athenian democracy and, as affirmed by the oath taken by all *dikastai*, trials in court were recognized as essen-

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21. *Id.* at 32.

22. CHRISTOPHER CAREY, TRIALS FROM CLASSICAL ATHENS 26 (1997).

23. *Id.* at 27.

24. *Id.* at 26.

25. David Cohen, *Crime, Punishment, and the Rule of Law in Classical Athens*, in THE CAMBRIDGE COMPANION TO ANCIENT GREEK LAW 211, 224 (Michael Gagarin & David Cohen eds., 2005) ("Punishing crime thus appears as the necessary foundation for upholding the rule of law and the democracy on which it is based."); *see also id.* at 215 (Aristotle makes clear that the function of punishing those who transgressed public order is of vital interest to the *polis* as a whole . . . ).

tial for enforcing the law and preserving the democracy.”<sup>26</sup> Thus, by their own oath, members of the *dikastai* acknowledged the importance of serving the community in a judicial capacity. Additionally, citizen prosecution was another method of participating in the government of the *polis*.<sup>27</sup> Accordingly, even when a private dispute existed between a citizen prosecutor and a defendant, the prosecutor could still be viewed as “doing their civic duty to protect the city from wrongdoers” by prosecuting that individual for crimes against the public interest.<sup>28</sup>

Having come full circle, it is important to note that service in the Athenian legal system—by either of these two methods—epitomized the communal responsibility to the *polis* shared by the citizens of Athens. The *polis* was a “composite” made up of citizens whose membership was defined by—and therefore demanded—participation. The rule of law governed these actions, and the Athenian courts enforced these laws. Accordingly, while participation was demanded of all members, those who served in the legal system seemed to provide the most direct support for maintaining the societal structure that enabled the *polis* to attain the “highest good.”

### III. RHETORIC AND THE RULE OF LAW

#### A. *Foundations of the Rule of Law*

The importance of the Athenian legal system, in maintaining the rule of law and protecting the good of the community, was certainly not lost on the legal speechwriters of the day. As Lanni explains, “[e]xperienced speechwriters undoubtedly had a good feel for the types of arguments and information that were likely to appeal to the jury and constructed their speeches accordingly.”<sup>29</sup> With this in mind, it is important to note that the appeals made to the *dikastai* were often based on the concept of the good of the community. Rhetoric was not used “to make an argument about the legal or statutory basis of the case, but to create in the *dikastai* a feeling that will move them to decide in the speaker’s favor *for the sake of the community as a whole*.”<sup>30</sup> Therefore, “given the importance of the rule of law to Athenian democracy generally, it was common for litigants to wrap themselves, so to speak, in the law and assert their commitment to the law against the lawlessness of the opponent.”<sup>31</sup>

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26. Harvey Yunis, *The Rhetoric of Law in Fourth-Century Athens*, in *THE CAMBRIDGE COMPANION TO ANCIENT GREEK LAW* 191, 201 (Michael Gagarin & David Cohen eds., 2005).

27. Cohen, *supra* note 25, at 213–14.

28. *Id.* at 223.

29. Adriaan Lanni, *Relevance in Athenian Courts*, in *THE CAMBRIDGE COMPANION TO ANCIENT GREEK LAW* 112, 114 (Michael Gagarin & David Cohen eds., 2005).

30. Yunis, *supra* note 26, at 208 (emphasis added).

31. *Id.* at 201.

One aspect of this rhetorical strategy would be to “remind” the *dikastai* of the historical underpinnings of their legal system in order to reiterate the goal of community protection. This tactic was typically employed by a prosecutor in order to condition his audience members for their role as defenders of the community. Demosthenes, however, employed this type of rhetoric in *On the Crown* in order to defend against what he considered a personal attack.

I assume that our ancestors founded this country of law not so that we litigants could gather you together and then hurl the proscribed slurs at each other for personal reasons *but to convict someone who may have committed a crime against the city.*<sup>32</sup>

After reminding the *dikastai* that the legal system was set up for the good of the community, the speechwriter would then attempt to convince the *dikastai* that voting for his client was in the best interests of the community.

The speechwriter Lysias neatly presents this entire structure in a single passage of *On the Killing of Eratosthenes*.<sup>33</sup> Lysias’s client, Euphiletos, was on trial for killing Eratosthenes when he found him in bed with his wife.<sup>34</sup> Lysias begins his defense of Euphiletos by pointing out that Greek law demanded a higher penalty for seduction than for rape because “those who achieve their aims by force are hated by those they have violated, while seducers so corrupt the souls of their victims that they make other men’s wives more intimate with them than they are with their husbands.”<sup>35</sup> Because this higher penalty for seduction was the death penalty, Lysias is able to argue that the rule of law actually demanded Euphiletos’s actions.<sup>36</sup> “So in my case, gentlemen, the laws have not only acquitted me of wrongdoing but have actually ordered me to exact this penalty.”<sup>37</sup> In other words, according to Lysias’s defense theory, the law demanded the death penalty; therefore, Euphiletos was serving the *polis* by enforcing its laws when he killed Eratosthenes.

Then, Lysias appeals to the *dikastai* that they too must now uphold the rule of law: “And it is up to you whether the laws are to have

32. Demosthenes, *On the Crown* (c. 330 B.C.E.), in DEMOSTHENES SPEECHES 18 AND 19, at 23, 62 [18.123] (Harvey Yunis trans., 2005) (emphasis added).

33. Lysias, *On the Murder of Eratosthenes* [1.33–37] (Caroline L. Falkner trans., 2001), available at <http://www.stoa.org/diotima/anthology/eratosthenes.shtml> (though all of the elements are found in this single passage, Lysias includes aspects of this argument throughout the speech).

34. See introduction to text, available at <http://www.stoa.org/diotima/anthology/eratosthenes.shtml>.

35. *Id.* at [1.33].

36. See Cohen, *supra* note 25, at 227 (“Whatever the actual merits of this case, the salient point is that Lysias believed that the most persuasive strategy lay in constructing self-help as a means by which citizens acted for the laws and the demos in punishing wrongdoers. In a participatory system for the prosecution of crime that depended on a citizens’ initiative he might well expect such a plea to be persuasive.”).

37. Lysias, *supra* note 33, at [1.34].



authority or to be of no account.”<sup>38</sup> Lysias further explains that this duty rests upon the historical foundations of the laws themselves: “For in my opinion the reason all cities make their laws is so that on any issue on which we are in doubt we may go to them and determine what must be done.”<sup>39</sup> Finally, the speechwriter implores the *dikastai* to maintain the rule of law for the good of the *polis*: “It is the laws which urge the victims in cases such as this to exact their penalty. I urge you to show your agreement with them. If not, you will provide so much security for seducers as to encourage thieves too to claim that they are seducers.”<sup>40</sup>

Aeschines’s *Against Timarchus* is another speech that demonstrates all of these rhetorical elements.<sup>41</sup> In that case, Aeschines was prosecuting Timarchus under the legal action “scrutiny of public speakers.”<sup>42</sup> Setting aside the personal/political reasons for the prosecution, the charge itself stemmed from the allegation that Timarchus had been a male prostitute in his youth.<sup>43</sup> This activity was frowned upon in Athens, and was penalized by a loss of citizenship.<sup>44</sup> As only citizens could participate in the affairs of the *polis*, a non-citizen was forbidden from speaking to the assembly.<sup>45</sup> Thus, Aeschines argued that Timarchus broke the law when he, a former homosexual prostitute, spoke before the assembly.<sup>46</sup>

In his prosecutorial speech, Aeschines first uses the same rhetorical methods shown above in the example from *On the Killing of Eratosthenes*.<sup>47</sup> He begins with establishing the importance of the rule of law in a democracy:

It is agreed that there are three kinds of constitutions in the whole world, dictatorship (tyrannis), oligarchy, and democracy, and dictatorships and oligarchies are governed by the temperament of those in power, but democratic cities are governed by the established laws . . . in a democracy the persons of citizens and the constitution are protected by the laws.<sup>48</sup>

Having established the necessity of the rule of law, Aeschines next moves on to discuss specific laws enacted by Draco and Solon, in their attempt to protect the *polis*.<sup>49</sup> Without going into the details of each

38. *Id.*

39. *Id.* at [1.35].

40. *Id.* at [1.35–.36].

41. Chris Carey, *Introduction to Against Timarchus*, in *AESCHINES* 18, 19 (Chris Carey trans., 2000).

42. *Id.*

43. *Id.* at 20.

44. *See id.* at 20.

45. *Id.* at 20.

46. *See id.*

47. *Infra* notes 33–40, and accompanying text.

48. Aeschines, *Against Timarchus* (c. 346/5 B.C.E.), in *AESCHINES* 23, 24–25 [1.4–5] (Chris Carey trans., 2000).

49. *Id.* at 25–35 [1.6–.32].

law, it is important to note that they served little legal purpose in this case, as Timarchus was not charged with violating them. However, they served the critical rhetorical purpose of establishing a history of legislation concerning male/male relationships and crimes of *hubris* in the *polis*. These legal examples helped Aeschines show a legislative pattern of protection for the community.

After presenting this foundational history of legislation, Aeschines is able to conclude his speech with an appeal that the *dikastai* must now uphold the rule of law and its legacy of protection: "To put the matter briefly: if you punish wrongdoers your laws will be noble and valid, whereas if you acquit them, the laws will still be noble but no longer valid."<sup>50</sup> And, as a final reminder, Aeschines turns back to his opening remarks on democracy to point out the dangers facing the *polis* should the *dikastai* fail to uphold the law: "the laws are overturned, and the democracy is corrupted, and the practice becomes still more widespread."<sup>51</sup> Simply put, Aeschines presents the *dikastai* two choices: 1) vote for his position, and in so doing uphold the rule of law and protect the community; or 2) vote for his opponent, corrupt democracy, and aid in the destruction of the *polis* through lawlessness.

### B. *Historical Allusions*

One additional rhetorical tactic frequently used by the Athenian speechwriters, was an appeal to the actions of great historical figures of Athens's past in order to demonstrate what course of action the present Athenians should undertake.<sup>52</sup> This approach went beyond the more general appeal to "the laws" or the "lawmaker," as Lysias used in the above example, and was likely an effective method of persuasion to use on the *dikastai*.<sup>53</sup>

These allusions often appeared as a specific appeal to patriotic figures from the past, as the speechwriter assumed that they would be even more likely to stir a similar response from the jury.<sup>54</sup> However, as the accuracy of these historical allusions "does not conform to the standards generally expected of historians,"<sup>55</sup> they are more appropriately viewed as an aid to speechwriter in painting an *idealized version* of Athenian behavior in order to support the speechwriter's suggestion that this pattern must now be followed.

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50. *Id.* at 82 [1.177].

51. *Id.* at 83 [1.179].

52. P. Harding, *Rhetoric and Politics in Fourth-Century Athens*, 41 PHOENIX 25, 34–35 (1987) (describing the use of historical precedent as a tool for motivating the Athenians).

53. Lionel Pearson, *Historical Allusions in the Attic Orators*, 36 CLASSICAL PHILOLOGY 209, 209 (1941) ("[T]heir use of the argument from history shows that they expected the decisions of the assembly to be swayed in some instances by the traditions of the past.").

54. *Id.* at 219.

55. *Id.* at 209.

In *Against Timarchus*, Aeschines uses this rhetorical device in order to set an example of community morality for the *dikastai* to follow:

I shall speak also of our ancestors. They were so severe in their attitude toward shameful behavior and took so extremely seriously the chastity of their children that one citizen who found that his daughter had been corrupted and had not preserved her maidenhood honorably until marriage sealed her up in an empty house with a horse, knowing that she would be killed by it . . . .<sup>56</sup>

This historical foundation then serves as a type of communal justification for the present prosecution and creates the demand that the *dikastai's* vote should serve as a further measure of community protection. "So then, this was the view of your fathers on the issues of shame and honor. Will *you* acquit Timarchus, a man guilty of the most shameful practices?"<sup>57</sup>

In this same speech, Aeschines also *anticipates* the use of this rhetorical device by the defense, as Demosthenes apparently used this tactic frequently.<sup>58</sup> Since the charge brought by Aeschines rested partially on Timarchus's homosexual prostitution, Aeschines predicts that Demosthenes will attempt to diffuse any moral outrage in the *dikastai* by pointing to Harmodius and Aristogiton, who were regarded as heroes in Athens, despite their homosexual relationship.<sup>59</sup>

He will cite first of all your benefactors, Harmodius and Aristogiton, and speak of their mutual loyalty and the good their relationship did for the city.<sup>60</sup>

Accordingly, Aeschines tries to preempt this strategy by first mentioning the heroes and then drawing a clear distinction between homosexual love and prostitution:

According to my definition, desire for those who are noble and decent is characteristic of the generous and discerning spirit, but debauchery based on hiring someone for money I consider characteristic of a wanton and uncultivated man. And to be loved without corruption I count as noble, while to have been induced by money to prostitute oneself is shameful.<sup>61</sup>

This approach also serves to create a distinction between the motives and actions of the heroes and Timarchus.

56. Aeschines, *supra* note 48, at 84 [1.182].

57. *Id.* at 84 [1.185].

58. Pearson, *supra* note 50, at 219 ("[T]he great majority of [Demosthenes'] historical allusions are to famous events and characters in Athenian history, of which the patriotic Athenian certainly liked to be reminded.").

59. E. Kent Webb, *The Athenian Tyrannicides: Icons of a Democratic Society* (Oct. 18, 1997) (unpublished symposia essay, Bryn Mawr College), available at <http://www.brynmawr.edu/archaeology/guesswho/webb.html>. See *infra* pp. 17-19 and accompanying notes for a discussion of Harmodius and Aristogiton.

60. Aeschines, *supra* note 45, at 68 [1.132].

61. *Id.* at 69 [1.137].

In this way the city's benefactors, Harmodius and Aristogiton, those men of outstanding virtues, were brought up by that decent and lawful feeling—call it love or what you will—to be men of such merit that when their deeds are praised, the panegyrics seem inadequate to their achievements.<sup>62</sup>

By making this distinction between love and prostitution, Aeschines robs Demosthenes of the possible impact of this historical allusion by clearly distinguishing the precedent of that earlier, historic relationship from the present case of Timarchus.

Above all, it is important to keep in mind that the main goal of rhetoric was winning:

So in the case of rhetoric, the only goal that it considers is how to win the audience over to the speaker's view; in court that means victory over the opponent. Because from the point of view of rhetoric victory is the only objective, everything else – justice, law, statutes, communal welfare – is reduced to merely instrumental interest.<sup>63</sup>

Therefore, as it is safe to assume that appeals to the rule of law, the protection of society, and the values and actions of past Athenians would have had a persuasive effect on the *dikastai*, it necessarily follows that these ideals and allusions would have been valued by the Athenian society as a whole.<sup>64</sup>

#### IV. RHETORIC AND TYRANNY

##### A. *The Chief Enemy of the Polis*

In Part One, this Article examined the foundational importance of the rule of law to both the good of the community and the “highest good” that the *polis* sought to achieve. Thus, the legal system was seen as the protector of Athenian democracy as it served to uphold the rule of law. Part Two of this Article then concluded that the rhetorical appeals to the rule of law, and to the wisdom and actions of past Athenian generations, demonstrated that the Athenian society continued to embrace the traditional ideals of the city's fathers. Accordingly, the goal of the prosecutor was to convince the jury that the individual on trial was a threat to the community and that allowing the threat to go

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62. *Id.* at 70 [1.140].

63. Yunis, *supra* note 26, at 192–93.

64. However, within the speeches there is also evidence that not all members of society acted “for the good of the community” with the same fervor that is reflected in the speechwriters' finished product. See Demosthenes, *supra* note 32, at 35 [18.13] (“[I]f [Aeschines] saw me committing such prodigious crimes against the city, as he has now been recounting for us in that tragic voice of his, he ought to have pursued the prescribed penalties when the crimes occurred.”); see also Demosthenes, *Against Neaera*, in DEMOSTHENES, SPEECHES 50–59, at 151, 176–80 [59.72–.78], [59.80–.83] (Victor Bers, trans., 2003) (showing that despite how Neaera's actions have harmed individuals and the *polis*, nobody—including an Areopagos fully aware of her misdeeds—sought any punishment in defense of Athens).

unchecked would result in a “corrupted democracy.”<sup>65</sup> However, if a defendant—accused of breaking one law—could arguably be viewed by the *dikastai* as a threat to democracy, then it is not difficult to imagine the Athenian abhorrence of a *tyrant*: a man who does away with the rule of law entirely.

As shown earlier, Aeschines set out tyranny as the opposite of democracy, for democracies are governed by the rule of law, while dictatorships are ruled by the whim of the tyrant.<sup>66</sup> Due to the antithetical nature of these two types of government, it was natural for Athenians to view the tyrant as the chief enemy of the *polis*.<sup>67</sup> Tyrants also became “a favourite subject of Greek and Roman rhetoric,”<sup>68</sup> in which “extremely negative stereotypes came to epitomize one-man rule.”<sup>69</sup>

The pervasiveness of these views led to the enactment of legislation designed to protect the democracy:

Solon instituted a council of four hundred, one hundred from each tribe, and appointed the council of the Areopagos to guard the laws, just as previously it had been overseer of the constitution. In general it watched over most and the greatest of the city's affairs; it corrected wrongdoers, having full power to punish and chastise . . . it tried those charged with conspiring to dissolve the democracy, under the law of denunciation which Solon enacted to deal with them.<sup>70</sup>

Solon's law was later augmented by the *eisengelia*, which allowed for the prosecution of four types of offenses: 1) the attempted or actual overthrow of the democracy; 2) the foundation of conspiratorial clubs; 3) treason; and 4) the acceptance of bribes for the purpose of misleading the people.<sup>71</sup>

### B. *Defenders of the Polis*

This antipathy for tyrants was also reflected in the celebrated status of Harmodius and Aristogiton, the Athenian heroes mentioned

65. Carey, *supra* note 41, at 82–83.

66. Aeschines, *supra* note 48 at 30 [1.19–20]; see also Uwe Baumann, *Thomas More and the Classical Tyrant*, 86 *MOREANA* 108, 108–11 (1985) (discussing the evolution of term tyrant from that of absolute monarch to a despot who does not feel bound to the law).

67. See EURIPIDES, *SUPLIANTS* (c. 422 B.C.E.) (E.P. Coleridge, trans.), available at <http://classics.mit.edu/Euripides/suppliants.html>.

68. Martin Ostwald, *The Athenian Legislation Against Tyranny and Subversion*, 86 *TRANSACTIONS AND PROC. AM. PHILOLOGICAL ASS'N* 103, 111(1955).

69. Webb, *supra* note 59, at para. 5–6 (“It is then clear that the tyrant in the Athenian conscience was not a real figure but a construction, or a product of discourse which characterized the tyrant as the antithesis of many of the most important Athenian values.”).

70. ARISTOTLE, *THE ATHENIAN CONSTITUTION* (c. 332–322 B.C.E.), at 8(4) (P.J. Rhodes, trans., 1984). See Ostwald, *supra* note 65, at 105–10 (arguing that some form of anti-tyrannical measures predate Solon's law.).

71. Ostwald, *supra* note 68, at 115.

above.<sup>72</sup> As Aristotle relates, the tyrants Hipparchus and Hippias were the rulers of Athens when Hipparchus fell in love with a young man named Harmodius.<sup>73</sup> Harmodius, already in a pederastic relationship with Aristogiton, enraged Hipparchus by rejecting his advances.<sup>74</sup> In reprisal, Hipparchus prevented Harmodius's sister from being a basket carrier at a festival,<sup>75</sup> an action that would have implied that she was impure.<sup>76</sup> The lovers then planned an attack against the two brothers that resulted in the death of Hipparchus.<sup>77</sup> Harmodius was killed by a bodyguard during the attack, and Aristogiton was killed shortly thereafter by Hippias.<sup>78</sup>

Though Hippias's tyranny lasted several more years, the lovers "passed into legend almost at death and were credited with the overthrow of the tyranny."<sup>79</sup> Eventually, the two came to be seen as heroes of democracy.<sup>80</sup>

To Athenians, the two men . . . were so significant that the democratic state celebrated them with bronze statues in the agora, a tomb in the Kerameikos, annual memorial rites (*enagismata*) as well as a whole host of other honors bestowed upon their descendants . . . . Clearly the tyrannicides meant a great deal to the Athenians who throughout the democratic era venerated them in what amounted to a civic cult.<sup>81</sup>

It is easy to recognize the factors that led to this "enshrinement" of Harmodius and Aristogiton. First, as the Athenian community was based on democracy and the rule of law, lawbreakers were seen as threats to the community, and the participatory legal system was seen as her defender. Accordingly, a tyrant (being understood as a usurper of all laws) would be considered the greatest threat to the *polis*. Therefore, as overthrowers of the tyrants, the two lovers become viewed as the greatest defenders of liberty and the rule of law, and their martyrdom set an idyllic standard for participation in the *polis* search for the "highest good."

### C. Tyranny in Against Ctesiphon and On the Crown

As tyrants came to be seen as the greatest danger to the *polis*, accusations of tyranny became an essential element of Athenian political

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72. Pearson, *supra* note 53, at 209, 219; Aeschines, *supra* note 48, at 84 [1.182], [1.185]; see *supra* text accompanying notes 51–54.

73. ARISTOTLE, *supra* note 70, at 18(1)–(2) (Thucydides also presents this story with some differences).

74. *Id.* at 18(2).

75. *Id.*

76. See Webb, *supra* note 59.

77. ARISTOTLE, *supra* note 70, at 18(1)–(4).

78. *Id.* at 18(6).

79. Aeschines, *supra* note 48, at 68 n.143.

80. Demosthenes, *supra* note 32, at 198 n.246.

81. Webb, *supra* note 59.

discourse.<sup>82</sup> The rhetorical discussion of tyranny in the legal setting is seen in a pair of opposing speeches: Aeschines 3 and Demosthenes 18. Again leaving aside the personal motivations for the prosecution, Aeschines's speech charges Ctesiphon—who had proposed a crown for Demosthenes as a reward for his civic endeavors—with bringing an illegal measure.<sup>83</sup> In language that mirrors his opening remarks in Aeschines 1,<sup>84</sup> the speechwriter begins by pointing out the importance for the rule of law:

You are well aware, men of Athens, that there are three kinds of constitution in the whole world, dictatorship (*tyrannis*), oligarchy, and democracy, and dictatorships and oligarchies are governed by the temperament of those in power, whereas democratic cities are governed by the established laws.<sup>85</sup>

Aeschines then uses another familiar tactic of appealing to the historical underpinnings of the legal system. In this case, he reminds the *dikastai* of the legislator's intent in writing the juror's oath, claiming "he was well aware that when the laws are protected for the city, the democracy, too, is preserved."<sup>86</sup> This appeal to history leads to the demand that the jurors "should hate people who draft illegal decrees," the very crime that Aeschines has accused Ctesiphon of committing.<sup>87</sup> Then, after presenting his arguments for finding Ctesiphon guilty of the charge, Aeschines returns to the language of tyranny in order to encourage the *dikastai* to rule in his favor.

In a democratic city, the ordinary man has a king's power through the law and his vote. But when he hands these over to someone else he has *subverted his power* of his own accord. . . . The fact that in the present circumstances, you the masses are *abandoning the bastions of democracy to the few*, I cannot approve. . . . Won't you keep in mind that nobody in the past ever attempted to *overthrow the democracy* until he had made his power greater than that of the courts?<sup>88</sup>

In his speech in defense of Ctesiphon, Demosthenes also deals with the concept of tyranny, though from a slightly different angle. Rather than attempting to convince the *dikastai* that they needed to decide the case a certain way to preserve the rule of law and prevent tyranny, the speechwriter argues that the proposal of a crown for him is legiti-

82. Nigel M. Kennell, *Herodes Atticus and the Rhetoric of Tyranny*, 92 CLASSICAL PHILOLOGY 346, 353 (1997).

83. Chris Carey, *Introduction to Against Ctesiphon*, in AESCHINES 159, 159–60 (Chris Carey trans., 2000).

84. See generally Carey, *supra* note 41, at 19.

85. Aeschines, *Against Ctesiphon* (c. 330 B.C.E.), in AESCHINES 166, 167–68 [3.6] (Chris Carey trans., 2000).

86. *Id.*

87. *Id.* at 168 [3.7].

88. *Id.* at 243–44 [3.233–35] (emphasis added).

mate as his past efforts had been directed at protecting Athens from tyranny.<sup>89</sup>

After referring to King Philip II of Macedon as a tyrant, Demosthenes explains his course of action for dealing with him: “That, in fact, was my policy, and when I saw him enslaving all mankind I opposed him, and I constantly proclaimed and advised that people should not surrender.”<sup>90</sup> Unfortunately for Demosthenes, this policy culminated with a devastating loss to Philip’s forces at the battle of Chaeronea. Accordingly, Demosthenes also has to argue that this was the correct policy for Athens despite the loss. To do this, Demosthenes first presents the foundational principals that demanded his actions by describing the Athenian tradition of defending the rule of law and protecting liberty:

For if the city chose to surrender without a fight the position that our forefathers faced every danger to acquire, who would not have spat on—you . . . . But that was not part of the Athenians’ heritage; it was intolerable and not in their nature. Since the beginning of time, no one has ever been able to persuade the city to side with the powerful but unjust and to find safety in servitude. Rather, in every age, despite the danger, the city constantly fought for the first prize in honor and glory. You consider that principle so important and intrinsic to your character that you praise most those ancestors who demonstrated it in action.<sup>91</sup>

Demosthenes then goes on to list specific examples of ancestors who acted in this fashion, and though Harmodius and Aristogiton are not included in the text, their actions—and the posthumous honors that they received—are clear examples of the accuracy of Demosthenes’s statements.<sup>92</sup> Finally, Demosthenes asks the *dikastai* to focus on the actions of their ancestors rather than the law when deciding the case: “To judge the transactions of daily life, you should consider your own laws and practices, but to judge public policy you should look to the standards of your forebears.”<sup>93</sup>

In the end, both Demosthenes and Aeschines claimed that their actions were necessary for the preservation of democracy: Aeschines argued that his charge against Ctesiphon protected the rule of law, while Demosthenes insisted that even if the result of the battle of Chaeronea was known in advance, the Athenian tradition of defending liberty demanded the decision to go to war.<sup>94</sup>

Since Demosthenes secured victory in this legal conflict, it would appear that his argument resonated more strongly with the *dikastai*.

89. *Infra* notes 87-90 and accompanying text.

90. Demosthenes, *supra* note 32, at 49 [18.72].

91. *Id.* at 80–81 [18.200, .203–04].

92. *Id.* at 81 [18.204].

93. *Id.* at 82–83 [18.210].

94. *Id.* at 80 [18.199].



Accordingly, their acceptance of his rhetoric would seem to suggest that the patriotic appeal to the defense of liberty accurately reflected the Athenian concept of participatory democracy. To be sure, participating in the legal system, and thus upholding the rule of law, was a major component of the concept of service (and so Aeschines rightly appeals to the *dikastai* to fulfill that duty). But, as seen in the cult status of Harmodius and Aristogiton, opposing tyranny was seen as the highest service one could offer to the *polis*. Accordingly, Demosthenes's appeal to his own patriotic service, coupled with historical allusions to past Athenians who acted in a similar fashion, proved to be a winning combination of rhetoric.

## V. ANTI-TYRANNICAL RHETORIC AND MODERN DEMOCRACY

Because tyrants came to be seen as the greatest danger to the *polis*, accusations of tyranny became an essential element of Athenian legal speech, at least when the parties were also political opponents. However, despite the unique way in which this form of political speech arose, anti-tyrannical rhetoric has continued long after the Athenian culture that gave birth to it passed away. Part Four of this Article will examine the ongoing use of this rhetoric by modern American presidents.

### A. *The Bush Doctrine*

After the tragic events of 9/11, President Bush established a foreign policy position justifying preemptive military strikes for purposes of self-defense and military intervention for humanitarian purposes. This approach, which has come to be known as the Bush Doctrine, has been perceived by some as a radical deviation in just war theory and has been labeled as "Cowboy Diplomacy."<sup>95</sup> However, the Bush Doctrine is actually only a departure from the much more recent "no war is just" theory developed after two world wars and the proliferation of nuclear arms.<sup>96</sup> And, despite the technological advances that distinguish modern warfare from ancient battles, the rhetoric behind the Bush Doctrine shares the same foundational elements examined earlier in the Athenian legal speeches.<sup>97</sup>

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95. Romesh Ratnesar, *The End of Cowboy Diplomacy*, TIME, July 09, 2006, at 20, available at <http://www.time.com/time/magazine/article/0,9171,1211578,00.html>.

96. See Bradley Aron Cooper, *Defending Liberty and Defeating Tyrants: The Reemergence of Federal Theology in the Rhetoric of the Bush Doctrine*, 85 U. DET. MERCY L. REV. 521, 553 (2008).

97. As Greek oratory has influenced so much of western political discourse, it would be nearly impossible to demonstrate a direct reliance upon such an ancient source, and this Article will not attempt to do so. However, for one of the more convincing arguments in that vein, see GARRY WILLS, LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA (1992) (comparing the Gettysburg Address with Pericles' Funeral Oration).

Though no one speech in particular contains all of the elements of Greek rhetoric discussed in this Article, through various sources it is easy to piece together a complete anti-tyrannical argument reminiscent of those made by the Athenian speechwriters. To begin with, Bush had to establish that Saddam Hussein was a tyrant.

According to the administration, the purpose for going to war with Iraq was to protect the American nation and way of life from the dangers posed by Saddam Hussein and his weapons of mass destruction. In addition, the Iraqi people and other people of that region needed to be protected from a dictator who had demonstrated that he was willing to use whatever means necessary to maintain power. President Bush made this clear when he said, "And tonight I have a message for the brave and oppressed people of Iraq: Your enemy is not surrounding your country; your enemy is ruling your country. And the day he and his regime are removed from power will be the day of your liberation."<sup>98</sup>

Accordingly, if Saddam is the tyrant, it is logical—according to this line of rhetorical reasoning—to go to war against him. "We fight, as we always fight, for a just peace – a peace that favors liberty. We will defend the peace against the threats from terrorists and tyrants."<sup>99</sup>

In his Second Inaugural Address, Bush appealed to the historical foundation for his policy decisions when he refers to the "deepest beliefs" of the nation:

From the day of our founding, we have proclaimed that every man and woman on this earth has rights and dignity and matchless value . . . . Across the generations, we have proclaimed the imperative of self-government, because no one is fit to be a master, and no one deserves to be a slave. Advancing these ideals is the mission that created our nation. It is the honorable achievement of our fathers.<sup>100</sup>

Bush continued by claiming that these beliefs demand that freedom must be "sustained by the rule of law."<sup>101</sup>

Having set the foundation for this country's democratic ideals, the President then looks back to a specific historical figure, Abraham Lincoln, for further justification: "the rulers of outlaw regimes can know that we still believe as Abraham Lincoln did, 'Those who deny freedom to others deserve it not for themselves, and, under the rule of a just God, cannot long retain it.'"<sup>102</sup> Finally, after concluding that

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98. Ronald J. Rychlak, *Just War Theory, International Law, and the War in Iraq*, 2 *AVE MARIA L. REV.* 1, 29 (2004).

99. GEORGE W. BUSH, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA* 1 (2002).

100. President George W. Bush, Second Inaugural Address (Jan. 20, 2005) [hereinafter *Bush, Second*], available at <http://www.washingtonpost.com/wp-dyn/articles/A23747-2005Jan20.html>.

101. *Id.*

102. *Id.*

America's past demands the present course of action, Bush emphasizes the participatory nature of a democratic society:

In America's ideal of freedom, the exercise of rights is ennobled by service . . . . Liberty for all does not mean independence from one another. Our nation relies on men and women who look after a neighbor and surround the lost with love.<sup>103</sup>

All Americans have witnessed this idealism, and some for the first time. I ask our youngest citizens to believe the evidence of your eyes. You have seen duty and allegiance in the determined faces of our soldiers. You have seen that life is fragile, and evil is real, and courage triumphs. Make the choice to serve in a cause larger than your wants, larger than yourself, and in your days you will add not just to the wealth of our country but to its character.<sup>104</sup>

Whether the use of anti-tyrannical rhetoric to garner policy support is justifiable is a question that lies beyond the scope of this Article. However, it is clear that this is not the first time—nor is it likely to be the last—that an American president has used rhetoric to justify a foreign policy of expanding or preserving democracy.

### B. *The Rhetoric of War*

On April 2, 1917, President Wilson, in an address to Congress, set out his argument for declaring war on Germany.<sup>105</sup> As Bush would do so many years later, Wilson made it clear that the German people (like the people of Iraq) were not our enemies:

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval.<sup>106</sup>

Rather, Wilson argued that the fight was “against selfish and autocratic power:”

The world must be made safe for democracy . . . . We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them. But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts - for democracy, for the right of those who submit to authority to have a voice in their own Governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free.<sup>107</sup>

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103. *Id.*

104. *Id.*

105. *Id.*

106. President Woodrow Wilson, Speech to Congress (Apr. 2, 1917), available at <http://www.firstworldwar.com/source/usawardeclaration.htm>.

107. *Id.*

Similarly, just months before the United States entered the Second World War, President Roosevelt, in a radio address announcing his purchase of the first defense savings bonds and defense stamps, spoke to the importance of preserving democracy at home and abroad:

It is fitting that the President in his purchases should be a sort of a symbol of the determination of all the people to save and sacrifice in defense of democracy. In a larger sense, this first defense bond and these first defense stamps sold to the President constitute tangible evidence of a partnership—a partnership between all of the people and their Government—entered into to safeguard and perpetuate all of those precious freedoms which Government guarantees . . . . We know that we are engaged in an all-out effort to perpetuate democracy in the New World by helping it to be safe and by aiding embattled democracy in the Old World and everywhere else.<sup>108</sup>

Shortly after the conclusion of that war, President Truman—describing a policy strikingly similar to the current approach in Iraq—set out his support for extending democracy to the Germans and the Japanese:

The President laid emphasis on the sovereign equality of all nations, large and small. He said that Americans believed in the eventual return of sovereign rights and self-government to all peoples who have been deprived of them by force. In a qualified manner he indicated that his countrymen approved the grant of independent status to dependent peoples, at least to those who are prepared for self-government. Americans believe in democracy as well as in independence. Peoples should be free internally as well as externally. To this end the United States will continue, the President said, to promote freedom of expression and freedom of religion throughout the peace-loving areas of the world.<sup>109</sup>

Additionally, while few would argue that President Barack Obama is seeking to expand democracy as aggressively as his predecessor, the presence of anti-tyrannical rhetoric has also found its way into his speeches, both at home and abroad. On March 28, 2011, President Obama addressed the American public regarding the decision to join a coalition of countries that were using force to prevent Muammar Qaddafi from committing attacks on the Libyan population.<sup>110</sup>

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108. President Franklin D. Roosevelt, Radio Address on the President's Purchases of the First Defense Savings Bond and Stamps (Apr. 30, 1941), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=16108>.

109. Percy W. Bidwell, *Ideals in American Foreign Policy*, 22 INT'L AFF. 479, 481 (1946) (summarizing President Truman's Navy Day speech of October 1945).

110. President Barack H. Obama, Remarks by the President in Address to the Nation on Libya (Mar. 28, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

Like President Bush before him, President Obama appealed to a historical basis for his actions.<sup>111</sup> “For generations, the United States of America has played a unique role as an anchor of global security and advocate for human freedom.”<sup>112</sup> Next, the President made it clear that the nation’s opponent is, once again, a tyrant:

For more than four decades, the Libyan people have been ruled by a tyrant—Muammar Qaddafi. He has denied his people freedom, exploited their wealth, murdered opponents at home and abroad, and terrorized innocent people around the world—including Americans who were killed by Libyan agents.<sup>113</sup>

Next, President Obama detailed the horrors that awaited the Libyan people had the United States failed to act, before closing with another appeal to historical consistency in foreign policy:

To brush aside America’s responsibility as a leader and—more profoundly—our responsibilities to our fellow human beings under such circumstances would have been a betrayal of who we are. Some nations may be able to turn a blind eye to atrocities in other countries. The United States of America is different. And as President, I refused to wait for the images of slaughter and mass graves before taking action.<sup>114</sup>

However, this President has also acknowledged that military might is not the sole means by which to combat tyranny. On July 11, 2009, in an address to the Ghanaian Parliament, President Obama made it clear that democracy remains the best way forward for a nation seeking to overcome tyranny:

No person wants to live in a society where the rule of law gives way to the rule of brutality and bribery. That is not democracy, that is tyranny, even if occasionally you sprinkle an election in there. And now is the time for that style of governance to end. In the 21st century, capable, reliable, and transparent institutions are the key to success—strong parliaments; honest police forces; independent judges; an independent press; a vibrant private sector; a civil society. Those are the things that give life to democracy, because that is what matters in people’s everyday lives. Now, time and again, Ghanaians have chosen constitutional rule over autocracy, and

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111. See also Michael D. Shear, *Echoes of Bush in Obama’s Libya Speech*, N. Y. TIMES (Mar. 29, 2011), <http://thecaucus.blogs.nytimes.com/2011/03/29/echoes-of-bush-in-obamas-libya-speech/> (comparing language between this speech by President Obama and President Bush’s second inaugural address).

112. President Barack H. Obama, Remarks by the President in Address to the Nation on Libya (Mar. 28, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

113. *Id.*

114. *Id.*

shown a democratic spirit that allows the energy of your people to break through.<sup>115</sup>

Accordingly, we see that the use of anti-tyrannical rhetoric is not restricted to times of war. In fact, the use of such rhetoric in peacetime may be just as important to what nineteenth century Presbyterian clergyman and lawyer Robert J. Breckenridge described as America's destiny "to teach man to govern himself . . . to teach the nations that all are equal . . . to reverence human rights and bestow human privileges, to raise up the down trodden, to sheathe the sword and furl the banner and live in peace . . . ." <sup>116</sup>

While these presidential speeches do not appear to quote directly from Athenian sources, it is evident that the ideals that gave birth to the Athenian democracy are still foundational elements of that method of government today. Accordingly, it should come as no surprise that the popular rhetoric of Athens would find an appreciative American audience as well.

## VI. THE PRESERVATION OF ANTI-TYRANNICAL RHETORIC

While it would be overreaching to presume that an unbroken, homogenous line of anti-tyrannical thought has existed from Athens to today, there is strong evidence that certain factors contributed to the preservation and transmission of anti-tyrannical rhetoric through the centuries. This Article will now turn to an examination of representative treatises and other factors that helped carry this message through the ages.

### A. *The Library at Alexandria*

Perhaps the single most important reason for the initial preservation of this rhetoric was the immediate publication and distribution of the speeches themselves.<sup>117</sup> While the speeches may have been published as a type of advertising for the speechwriters, or simply because there was a demand from the reading public, the speeches were eventually collected and categorized in the great library at Alexandria in the Third Century, thus preserving the texts for future students of rhetoric.<sup>118</sup>

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115. President Barack Obama, Remarks by the President to the Ghanaian Parliament (July 11, 2009), available at <http://www.whitehouse.gov/the-press-office/remarks-president-ghanaian-parliament>.

116. MERLE CURTI, THE GROWTH OF AMERICAN THOUGHT 402 (3d ed. 1964) (quoting ROBERT J. BRECKINRIDGE, FORMATION AND DEVELOPMENT OF THE AMERICAN MIND 21 (1837)).

117. See Michael Gagarin, *Series Introduction to DEMOSTHENES, SPEECHES 18 AND 19*, at xi, xvii (Harvey Yunis, trans., 2005) (discussing the publication and circulation of speeches).

118. *Id.* at xviii; see also CECIL W. WOOTEN, CICERO'S PHILIPPICS AND THEIR DEMOSTHENIC MODEL: THE RHETORIC OF CRISIS (1983) (discussing how Cicero was influenced by the works of Demosthenes).

As these works were studied, the ideas they contained were emulated by later generations of scholars:

Demosthenes became the single most important author in the rhetorical world of later antiquity . . . and, especially in *On the Crown*, was emulated and studied alongside Homer, Sappho, and Plato as representing the best in Greek literature. Demosthenes was a central figure in the revival of classical learning in modern Europe.<sup>119</sup>

One such student was Cicero, who, after studying the works of Greek orators, declared Demosthenes to be the “complete orator.”<sup>120</sup> Yet this cycle would end up repeating itself centuries later during the Renaissance, when Ciceronian Formalism required the imitation of approved classical authors like Cicero.<sup>121</sup>

### B. *Cicero’s Defence of Titus Annius Milo*

In 52 AD, Cicero wrote his *Speech in Defence of Titus Annius Milo*.<sup>122</sup> Milo and his entourage clashed with his political opponent Publius Clodius and his guards during a chance meeting on the road.<sup>123</sup> Clodius died in the struggle, and Milo was charged with murder.<sup>124</sup> Cicero, a supporter of Milo—and enemy of Clodius—wrote the defense speech for Milo’s trial (though the speech was never delivered). In it, Cicero uses the same rhetorical strategies as the Athenians.

First, Cicero establishes that Clodius was indeed a tyrant, by showing that he usurped the laws of Rome and had oppressed his people:

He had polluted the holiest religious observances with his debauchery; he had broken the most authoritative decrees of the senate; he had openly bought himself from the judges with money; he had harassed the senate in his tribuneship; he had rescinded acts which had been passed for the sake of the safety of the republic . . . he had made slaughter of magistrates and private individuals; he had burnt the house of my brother; he had laid waste Etruria; he had driven numbers of men from their homes and their professions. He kept pursuing and oppressing men; the whole state, all Italy, all the provinces, all foreign kingdoms could not contain his frenzy.<sup>125</sup>

119. Harvey Yunis, *Introduction to DEMOSTHENES, SPEECHES 18 AND 19*, at 9, 16 (Harvey Yunis, trans., 2005).

120. CICERO, BRUTUS, *A HISTORY OF FAMOUS ORATORS* 20 (E. Jones trans., AMS Press Inc., 1976), available at <http://www.attalus.org/old/brutus1.html>.

121. John C. Leeds, *Against the Vernacular: Ciceronian Formalism and the Problem of the Individual*, 46 TEX. STUD. IN LITERATURE AND LANGUAGE 107, 107 (2004).

122. MARCUS TULLIUS CICERO, *Speech in Defence of Titus Annius Milo*, in 3 THE ORATIONS OF MARCUS TULLIUS CICERO (Charles Duke Yonge trans., G. Bell & Sons, Ltd. 1913), available at <http://oll.libertyfund.org/title/587>.

123. Asconius Pedanius, *On Cicero’s Pro Milone*, (John Paul Adams trans., 1996), available at <http://www.csun.edu/~hcfl1004/asconius.htm>.

124. *Id.*

125. *Id.*

Cicero's argument was clear: Clodius's open disregard for the law clearly established his tyranny.

Next, Cicero presents Milo as one who upholds the law, thus contrasting him with the tyrant Clodius.<sup>126</sup> However, because there was no law that would justify Milo's actions, Cicero presents a natural law argument for Milo's use of deadly force in self-defense:

But if there be any occasion on which it is proper to slay a man-and there are many such-surely that occasion is not only a just one, but even a necessary one when violence is offered, and can only be repelled by violence . . . . This, therefore, is a law, O judges, not written, but born with us-which we have not learned, or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught, but to which we were made-which we were not trained in, but which is ingrained in us-namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honorable . . . . The law very wisely, and in a manner silently, gives a man a right to defend himself . . . . For the defending of one's self against violence is never a thing to be wished for; but it is sometimes necessary . . . .<sup>127</sup>

Then, Cicero discusses the honor traditionally bestowed upon those who end tyrannies:

Grecian nations give the honours of the gods to those men who have slain tyrants. What have I not seen at Athens? What in the other cities of Greece? What divine honors have I not seen paid to such men? What odes, what songs have I not heard in their praise? They are almost consecrated to immortality in the memories and worship of men.<sup>128</sup>

While not as detailed as the historical allusions used by the Athenian speechwriters, Cicero's objective here is the same. By reminding his audience that tyrannicides are celebrated for their actions, he is able to use past actions to suggest a future course of action. Accordingly, Cicero concludes his argument by exclaiming that since Milo ended the tyranny of Clodius, he should be honored rather than punished for his actions:

Wherefore, if Titus Annius, holding in his hand a bloody sword, had cried out, "[c]ome hither, I beg of you, and listen to me, O citizens: I have slain Publius Clodius; with this sword and with this right hand I have turned aside from your necks the frenzied attacks of that man whom we were unable to restrain by any laws, or by any judicial proceedings whatever; by my single efforts has it been brought to pass that right, and equity, and laws, and liberty, and modesty, and chastity remain in this city;" would there in truth have been any

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126. *Id.*

127. *Id.*

128. *Id.*



reason to fear in what manner the city would receive this announcement? For now, as it is, who is there who does not approve of what has been done? [W]ho does not praise it? [W]ho does not both say and feel that of all men to whom recollection can reach back, Titus Annius has done the republic the greatest service.<sup>129</sup>

### C. Policraticus

As noted above, the preservation of Athenian speeches at the library in Alexandria allowed future scholars, such as Cicero, to study, appreciate, and emulate Demosthenes. This influence is also present in John of Salisbury's *Policraticus*, a Twelfth Century code of conduct for princes motivated, in part, by Henry II's policies towards the church in England.<sup>130</sup> *Policraticus*, however, differed from similar resistance works of that era by promoting the concept of tyrannicide: the killing of a ruler to end a tyrannical reign.<sup>131</sup>

In order to justify the use of tyrannicide, John's argument echoed the Athenian speechwriters that preceded him as he maintained that: 1) the people had a community responsibility to uphold the rule of law; 2) a tyrant, by definition, is a king who rules contrary to the law;<sup>132</sup> and 3) it is up to the community to enforce the law, even if it is the king who violates it.<sup>133</sup> However, before John could reach these justifications, he had to lay a foundation that explained both the necessity of the rule of law and that the rule of law should apply to all men:

Demosthenes, the influential orator, would seem to support this and to subject all men to its obedience because all law is a sort of discovery and gift from God, the teaching of the wise, the corrective to excesses of willfulness, the harmony of the city, and the banishment of all crime. It is proper for all who dwell in the community of political affairs to live according to it.<sup>134</sup>

By tying his argument to Demosthenes, John made it clear to his audience that the authority to resist tyrants flows from a timeless, collective civic responsibility to uphold the rule of law. However, John's use

129. *Id.*

130. See generally JOHN OF SALISBURY, *POLICRATICUS: OF THE FRIVOLITIES OF COURTIERIS AND THE FOOTPRINTS OF PHILOSOPHERS* (Cary J. Nederman ed. & trans., Cambridge Univ. Press 1990) (1159) [hereinafter *POLICRATICUS*].

131. Cary J. Nederman, *A Duty to Kill: John of Salisbury's Theory of Tyrannicide*, 50 *REV. POL.* 365, 365 (1988); see also Richard H. Rouse & Mary A. Rouse, *John of Salisbury and the Doctrine of Tyrannicide*, 42 *SPECULUM* 693, 693 (1967) ("Although John was not the first Western thinker to propose the legitimacy of tyrannicide, the fact that he was the first to expound the idea fully and explicitly entitles him to be called the 'author' of the doctrine insofar as concerns twelfth-century Europe.").

132. Rouse & Rouse, *supra* note 131, at 696 (pointing out that while "the law" could have been understood as "higher law" or "natural law," it would also have been understood by John's Christian audience as "God's law").

133. See generally *POLICRATICUS*, *supra* note 130.

134. *POLICRATICUS*, *supra* note 130, at 30.

of Demosthenes was not the only significant use of allusion in *Policraticus*.

Following his presentation of the “law,” John, in Book 8 of *Policraticus*, presents a litany of both tyrants and tyrannicides.<sup>135</sup> Scholars disagree over whether these examples are included to justify tyrannicide or simply to assert, as John does in the caption for Chapter 21 “that all tyrants come to a bad end.”<sup>136</sup> However, this argument seems misplaced, as John himself promotes both ideas in a single sentence: “[t]hus wickedness is always punished by the Lord; but sometimes it is His own, and at others it is a human hand, which He employs as a weapon wherewith to administer punishment to the unrighteous.” Accordingly, John appears to employ the same tactic used by the Athenian speechwriters, as he appeals to past tyrannicides so that they might serve as an example for future resisters.

#### D. *Vindiciae, Contra Tyrannos*

In 1579, *Vindiciae, Contra Tyrannos* was written by Philippe Duplessis-Mornay as a direct challenge to the authority and tyranny of the French court in general and Henry III in particular, who became the King of France in 1574.<sup>137</sup> *Vindiciae, Contra Tyrannos* was also a challenging alternative to humanistic vision of a ruler presented by Machiavelli in *The Prince*.<sup>138</sup>

To reach his conclusions, Mornay bases the majority of his argument on the Old Testament, and covenant theology, in order to persuade the Christian population of his country that removing a tyrant is indeed biblical.<sup>139</sup>

Under covenant theology, there are two covenants that govern God’s relationship with kingdoms.<sup>140</sup> The first covenant is between God and the king, under which the “divine right” to rule was understood to be conditioned upon upholding God’s law: “[s]o kings are the vassals of the King of kings, invested with the sword as a symbol of

135. *POLICRATICUS*, supra note 130, at 206–16.

136. Nederman, supra note 131, at 375.

137. See *VINDICIAE, CONTRA TYRANNOS: OR CONCERNING THE LEGITIMATE POWER OF A PRINCE OVER THE PEOPLE, AND OF THE PEOPLE OVER A PRINCE* (George Garnett ed. & trans., Cambridge Univ. Press 1994) (1579) [hereinafter *VINDICIAE, CONTRA TYRANNOS*]. The original work was published under the pseudonym Stephanus Junius Brutus, the Celt. Scholars remain divided over the author’s true identity, some attributing the work to theologian Philippe Duplessis-Mornay, while others point to Hubert Languet, or some collaboration between the two. See George Garnett, *Introduction to VINDICIAE, CONTRA TYRANNOS*, supra, at lv–lxxvi (explaining the authorial debate). This article will refer to Mornay as the author.

138. NICOLÒ MACHIAVELLI, *THE PRINCE* (W. K. Marriot trans., Bantam Classics 1984) (1515).

139. James B. Torrance, *The Covenant Concept in Scottish Theology and Politics and its Legacy*, Vol. 34 No. 3 *SCOT. J. THEOLOGY* 225, 235–36 (1981).

140. See Garnett, *Introduction to VINDICIAE, CONTRA TYRANNOS*, supra note 137 at xxii–xxiii.

royal authority, in order that with that sword they should uphold divine law, protect the good and destroy the bad."<sup>141</sup>

Accordingly, if a king observes and keeps God's law, "both he and his descendants will possess the kingdom for a long time; if he does not, they will suffer the opposite."<sup>142</sup> The second covenant is between God and the people.<sup>143</sup> Under this covenant, the people are to worship God as individuals and as a collective so that they would be the people of God.<sup>144</sup> However, once a tyrant's actions frustrate and prevent the people from being the people of God, the people have the duty to remove the tyrant.<sup>145</sup> Thus, it is the Christian covenantal duty to uphold God's law, rather than the more general duty to maintain the rule of law, that serves as the foundation for resisting tyranny.

However, because Machiavelli wrote *The Prince* from a humanistic perspective, Mornay also resorts to natural law theory to bolster his response to that work. At the heart of this natural law argument is the doctrine of self-defense. Addressing the question "what rights do the people have against a tyrant," Mornay responds: "[N]atural law [*ius Naturale*] teaches us to preserve and protect our life and liberty . . . against all force and injustice [*iniuria*]. Nature implants this in dogs against wolves, in bulls against lions, in doves against hawks . . . ."<sup>146</sup> Importantly, Mornay's use of natural law reclaimed the idea that liberty is at odds with tyranny, a concept that John of Salisbury promoted centuries earlier.<sup>147</sup> Mornay's approach also echoed the natural law argument for self-defense found in Cicero's *Speech in Defence of Titus Annius Milo*. Finally, Mornay seemed to reach back to ancient Athens itself as he declared that "[t]yranny is not simply a crime; it is the chief and, as it were, a sort of summation of all crimes."<sup>148</sup>

Through his arguments, Mornay made it a civic duty—along religious and natural rights lines—to promote liberty by taking up arms against tyrants. Religious duty called for the nation as a whole to maintain its covenant with God, while natural law gave rise to the right to self-defense and the defense of others.

Finally, in order to fully justify resistance to tyrants, Mornay, like his Athenian counterparts, alludes to past tyrannicides, including Harmodius and Aristogiton:

On the contrary, the law on tyrannicide applies in this case. It honours the living with rewards and the dead with epitaphs and stat-

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141. See VINDICIAE, CONTRA TYRANNOS, *supra* note 137.

142. *Id.* at 20.

143. *Id.* at 37–50.

144. *Id.* at 37–38.

145. *Id.* at 41.

146. *Id.* at 149.

147. Daniel J. Elazar, *The Political Theory of Covenant: Biblical Origins and Modern Developments*, 10 *PUBLIUS* 3, 19–20 (1980).

148. VINDICIAE, CONTRA TYRANNOS, *supra* note 137, at 155.

ues, as it honoured Harmodius and Aristogiton in Athens, and Brutus and Cassius in Greece whom it rewarded with bronze statues by public decree, and also Aratus of Sicyon; because they had freed the country of the tyranny of Pisistratus, Caesar, and Nicocles respectively.<sup>149</sup>

*Vindiciae, Contra Tyrannos* was unique for its approach, its impact, and the longevity and range of its influence. Mornay's development of federal theology led not only to a renewed theory of resistance to tyranny, but served as a cornerstone in the development of the political idea of federalism.<sup>150</sup> Accordingly, in addition to being one of the most influential books of its day,<sup>151</sup> the message contained in *Vindiciae, Contra Tyrannos* continued to have an impact on the ideas of liberty and democracy around the world.<sup>152</sup>

### E. *Lex, Rex*

In 1644, Samuel Rutherford wrote *Lex, Rex* as a response to a treatise by John Maxwell, then Archbishop of Canterbury, which had defended the divine right theory and the royal prerogative of kings.<sup>153</sup> Rutherford's work built upon Mornay's covenantal framework,<sup>154</sup> as it promoted the right of the people to defend their liberty against the tyranny of Charles I.

Rutherford begins his work with the familiar formula of defining "tyrant": "[a] tyrant seeketh his own, a king the good of the subjects;

149. *Id.* at 150–51.

150. J. Wayne Baker, *The Covenantal Basis for the Development of Swiss Political Federalism: 1291–1848*, 23 *PUBLIUS* 19, 30 (1993) ("Mornay's *Vindiciae Contra Tyrannos* of 1579, was the first step in developing a political philosophy of federalism, partially based on the idea of the religious covenant.").

151. See C. H. McIlwain, *A Defence of Liberty Against Tyrants, A Translation of the Vindiciae Contra Tyrannos, by Junius Brutus*, 19 *AM. POL. SCI. REV.* 417 (1925) (book review) ("There is probably no book of the sixteenth century on the theory of the state more powerful, more characteristic, more influential in its day, and hence more valuable to a modern student, than the *Vindiciae Contra Tyrannos*.").

152. Kathleen W. MacArthur, *The Vindiciae Contra Tyrannos: A Chapter in the Struggle for Religious Freedom in France*, 9 *CHURCH HIST.* 285, 285 (1940) ("The document had widespread influence, not only in France, but in the literature of freedom in seventeenth century England, and in early American thought.").

153. SAMUEL RUTHERFORD, *LEX, REX, OR THE LAW AND THE PRINCE*, xviii–xix (Sprinkle Publications 1982) (1644) [hereinafter *LEX, REX*]. SAMUEL RUTHERFORD, *LEX, REX, OR THE LAW AND THE PRINCE*, xviii–xix (Sprinkle Publications 1982) (1644) [hereinafter *Lex, Rex*].

154. Peter Judson Richards, "*The Law Written in Their Hearts*?": *Rutherford and Locke on Nature, Government and Resistance*, 18 *J.L. & RELIGION* 151, 176 (2002) ("Covenant theology provided a critical foundation stone in the construction of Rutherford's Reformed argument for limited, constitutional government. As with other aspects of Rutherford's theory of politics, there was no particular originality in his treatment of covenant principles. . . . Rutherford followed the covenantal framework laid out in the influential sixteenth-century Huguenot tract, the *Vindiciae contra Tyrannos*.").

for he is no king who is not content and excelleth in goodness.”<sup>155</sup> Then, echoing Mornay and John of Salisbury, Rutherford reintroduces the community responsibility aspect of federal theology, arguing that the covenant gives people the authority to force a king to abide by his oath: “If then, the king . . . come under a covenant to them to seek their good, not his own, to defend true protestant religion, they have power to compel him to keep his covenant . . . .”<sup>156</sup>

Rutherford also used the natural law concept of self-defense as a justification for resistance, arguing that even a creature’s method of self-defense is determined by nature:

Self-preservation in all creatures in which is nature, is in the creatures suitable to their nature. The bull defendeth itself by its horns, the eagle by her claws and bill, it will not follow that a lamb will defend itself against a wolf any other way than by flying . . . . Self-defence is natural to man, and natural to a lamb, but not the same way. A lamb or a dove naturally defend themselves against beasts of another kind only by flight . . . but it followeth not that a man defendeth himself from his enemy only by flight.<sup>157</sup>

Rutherford then steps back from this natural law approach and uses the Bible to demonstrate how David resisted his unjust king, Saul.<sup>158</sup>

Finally, using language that could have been lifted from one of Aeschines’s speeches,<sup>159</sup> Rutherford declares that of the known forms of government, democracy is the surest safeguard against tyranny: “[e]very government hath something wherein it is best; monarchy is honourable and glorious-like before men; aristocracy, for counsel, is surest; *democracy for liberty, and possibly for riches and gain, is best.*”<sup>160</sup>

Thus, in *Lex, Rex*, federal theology edged ever closer to promoting the governmental structure that would come to be known as federalism.<sup>161</sup> Accordingly, “*Lex, Rex* became a proof text of constitutionalist thought.”<sup>162</sup>

155. *LEX, REX*, *supra* note 153, at 198.

156. *Id.* at 199.

157. *Id.* at 159–60.

158. *Id.* at 160.

159. *See supra* notes 45, 81–82 and accompanying text.

160. *LEX, REX*, *supra* note 153, at 192.

161. Daniel J. Elazar, *Federalism and Covenant*, in *THE COVENANT CONNECTION: FROM FEDERAL THEOLOGY TO MODERN FEDERALISM* 245, 253 (Daniel J. Elazar & John Kincaid eds., Lexington Books 2000) (“The evidence is overwhelming that the covenant principle translated into the larger political realm as part of the development of modern popular government produced the idea of federalism.”); *see Baker, supra* note 133, at 19–20 (“[T]he modern political philosophy of federalism is directly linked to the covenantal theology of the Reformation period.”).

162. Michael Mendle, 72 *J. Modern Hist.* 186, 186 (2000) (reviewing John Coffey, *Politics, Religion, and the British Revolutions: The Mind of Samuel Rutherford* (1997)).

F. *Lucian's The Tyrannicide*

The continued endurance of anti-tyrannical rhetoric may also be due in part to the fact that legal questions involving tyranny and the justification of tyrannicide have been used in the declamations, or practice speeches, by rhetoric students for centuries.<sup>163</sup>

Perhaps the best known of these declamations is Lucian's *The Tyrannicide*, which was written in the Second Century AD.<sup>164</sup> In this fictitious case, Lucian establishes that there is a law that rewards the act of tyrannicide.<sup>165</sup> The man goes into a town for the purpose of killing the tyrant but failing to find the tyrant, the man kills the tyrant's son. The tyrant then comes in and, seeing the son with the sword in his body, stabs himself. The man then brings a case claiming this reward, asserting that his actions led directly to the death of the tyrant.<sup>166</sup> It is important to note that in this exercise, the reward for tyrannicide is established by law.<sup>167</sup> Accordingly, the only thing to debate is whether the man deserves this reward for his actions.

In an effort to counter the charge that he did not actually kill the tyrant, who ended up taking his own life, the man argues that the son was the true tyrant and that the son was the root of his father's tyrannical rule:

[The father's] crimes, so it is said, were involuntary; resulting from no tyrannical disposition in himself, but from the instigations of his son. For in him paternal affection had too clearly become a mania; his son was all in all to him; he did his bidding, committed every crime at his pleasure, dealt out punishment at his command, was subservient to him in all things; the minister of a tyrant's caprice, and that tyrant his son. The young man left him in possession of the name and semblance of rule; so much he conceded to his years: but in all essentials *he* was the real tyrant. By him the power of the tyrant was upheld; by him and by him alone the fruits of tyranny were gathered. He it was who maintained the garrison, intimidated the victims of oppression, and butchered those who meditated resistance; who laid violent hands on boys and maidens, and trampled on the sanctity of marriage. Murder, banishment, confiscation, torture, brutality; all bespeak the wantonness of youth.<sup>168</sup>

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163. Ostwald, *supra* note 65, at 111; *see also* Kennell, *supra* note 79, at 351–52 (describing how “tyranny’s memory was kept green by the exercises and speeches” discovered in surviving rhetorical handbooks).

164. 2 LUCIAN, *The Tyrannicide*, in *THE WORKS OF LUCIAN OF SAMOSATA* 173 (H.W. Fowler and F.G. Fowler trans., Oxford Clarendon Press 1905), available at <http://www.sacred-texts.com/cla/luc/wl2/wl214.htm>.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 174–75.

Therefore, because killing the father alone would have led to a greater empowering of the son as heir to the kingdom, the man argues that the death of both entitles him to twice the prescribed reward:

In acting thus, I had thought to increase your obligation to me; a twofold deliverance—I had supposed—would entitle me to a twofold reward; for I have freed you not from tyranny alone, but from the fear of tyranny, and by removing the heir of iniquity have made your salvation sure.<sup>169</sup>

The man also seeks to cast doubts on his opponent's motives in attempting to deny him his reward: "[i]t is surely from no patriotic motive, as he asserts, that my adversary disputes my claim; rather it is from grief at the loss of the tyrants, and a desire to avenge their death."<sup>170</sup>

Through this argument, the man basically completes the anti-tyrannical circle. His actions in slaying the tyrants were obviously done on behalf of the people, so it necessarily follows that anyone opposing him favors tyranny.

While Lucian's work would not have had the same popular impact as the other works described in this section, it undoubtedly exposed generations of students to anti-tyrannical rhetoric. In so doing, it likely helped shape the minds that later contributed to anti-tyrannical treatises and pamphlets.

## VII. CONCLUSION

The preservation of ancient legal speeches allows modern readers to glimpse the popular Athenian views regarding liberty, democracy, and tyranny. Because the rule of law had to be maintained to protect liberty, the tyrant was seen as the chief enemy of the *polis*, and democracy was seen as the best way to avoid tyranny.<sup>171</sup> Perhaps because America was founded on these conclusions,<sup>172</sup> the same anti-tyrannical rhetoric that served as a powerful tool in the Athenian legal arena is still used to great effect today.

While it is beyond the scope of this Article to determine whether the rhetoric of liberty and democracy is always beneficial, it may well be that the use of rhetoric is unavoidable when one is tasked with defending liberty.<sup>173</sup> Accordingly, as long as American society shares

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169. *Id.* at 174.

170. *Id.*

171. *Supra* notes 66-72 and accompanying text.

172. See generally Ewart Lewis, *The Contribution of Medieval Thought to the American Political Tradition*, 50 AM. POL. SCI. REV. 162 (1956) (examining the political philosophy of the founders).

173. Deirdre McCloskey, *The Rhetoric of Liberty*, 26 RHETORIC SCI. Q. 9, 9 (1996) ("For a long time now, of course, intellectuals have been trying to avoid "mere" rhetoric in defense of liberty. They might as well avoid mere reasoning or mere speaking.").

the Athenian affinity for the rule of law, and recognizes democracy as the key to maintaining liberty, anti-tyrannical rhetoric will continue to persevere, and serve as an echo of ancient voices.

My friends, a future of liberty stands before you. It is your right. It is your dream. And it is your destiny. George W. Bush<sup>174</sup>  
And now I come to you, bringing democracy with me, and call upon all men to take heart, and hear the glad tidings of liberty. Enjoy the work of my hands! Lucian<sup>175</sup>

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174. President George W. Bush, Remarks on the Importance of Freedom in the Middle East (Jan. 13, 2008), *available at* <http://georgewbush-whitehouse.archives.gov/news/releases/2008/01/20080113-1.html>.

175. LUCIAN, *The Tyrannicide*, *supra* note 156.