CHAPTER 3

Rights, Rhetoric, and Adam Smith

David M. Speak

Associate Professor of Political Science at Georgia Southern College

As Nicholas Xenos writes, "One of the achievements of the Reagan administration has been its ability to create a crisis atmosphere around so many important issues." One of those issues is the notion of rights, and one area of rights discussion highlighted so prominently by the President and his policies centers on the notion of the cross-cultural assertion of rights. The cultural gaps between and among minority and majority groups in this country as well as the cultural gaps between this nation and other nations are at the heart of the most serious questions of rights raised relative to Reagan's domestic and foreign policies. This paper is an attempt to probe some of the roots of the difficulties of reaching an agreement about rights across such cultural gaps. Specifically, it advances a notion of the proper rhetoric to be applied to such agreement, examines two related characteristics of rights claims, and offers Adam Smith's Theory of Moral Sentiments as a tool for understanding some of the difficult questions of discussions of rights in a multicultural setting.

Proper political rhetoric faces in two directions. It must appeal to the truth, and it must appeal to an audience. Truth is not always persuasive, at least in the short run. One the other hand, a political actor who disregards the truth cannot hope for stable success over an extended period of time. In the long run, truth takes its toll. Political rhetoric, properly understood, is the art of taking into account both the audience and the truth at once. The task of the rhetorician is to know the truth and to know the audience (these are not separate tasks, but emphases within the same task, for the two must be accommodated in public action. Most cross-cultural discus-
sions about human rights (e.g. the United Nations Convention on the Elimination of All Forms of Racial Discrimination) face particular difficulties as they attempt to operate within this rhetorical arena. It is more difficult to discover the truth and more difficult to know the audience across a cultural divide. In order to show how this is so, it will be useful first to look at two aspects of rights discourse and then to bring the thought of Smith to bear on the discussion.

To the extent that "rights" describes a set at all, it is a set of several and various types of members. We might differentiate rights by their sources or by their necessary associations or by their force. In discussions about rights, one of the most serious pitfalls to understanding is over generalization. The referent of the term "right" in the sentence "Every human being has a right to life" may have little in common with that in the sentence "Under the Social Security Act I have a right to certain payments." And yet to claim that rights come in a variety of forms is not to disallow all talk of rights in general. Richard Flathman accurately writes that rights "presuppose and cannot be understood apart from the larger social milieu in which they operate," and that in itself is a significant characteristic.

Many statements about rights contain a more or less implicit reference to membership in a group. The relevant group may be defined by citizenship, or by specific legislation, or by species membership or by organizational rules. It is difficult to imagine a right which does not make a least implicit reference to some group. Since these references are frequently not explicit, the referent group may be well or poorly defined (while "stockholders" refers to a precisely defined group, "human beings" does not). The relevant group is not (necessarily) the group claiming or exercising the right, but rather the larger group within which that claim is expected to gain recognition. In this sense, reference to group membership is closely tied to the recognition of a particular audience. By making a rights claim, a speaker is implicitly referring to the group, the audience, within
which the claim is viable. Quite diverse uses of the word "right" share this notion of membership.

Consider this example: You and I reach an agreement of a sort which, for whatever reason, could not be carried to a court or other social arbiter. You renege on your part of the bargain and I protest: "I have a right to expect this of you!" It would be easy to trivialize the notion of membership by saying that the referent group for my "right" claim was a group of only two members: You and me. But the sense of the claim is stronger than that. If you and I are the only agents that can be considered relative to our bargain then I might wheedle, cajole or threaten; I might say "You had better" or "You must," but I will not say "I have a right." To advance the latter claim is to up the ante by enlarging the referent group (in effect enlarging the audience). To claim a right is to advance a claim that, when properly understood, should be accepted by a larger group than the particular adherents to a particular bargain. When I say "I have a right," I am saying something like "my claim, when properly understood, should be accepted by most or nearly all or perhaps even all members of this society (or club or species), and therefore should also be accepted by you." In some circumstances, a representative of the audience may be substituted for the audience itself, as when a legal claimant has in mind a claim that a judge (as representative of the society) will accept. The notion of group membership, addressing part of the demands of proper rhetoric, is an important part of rights claims.

A second important characteristic of rights claims is closely related to the first. In many or perhaps most rights claims an assertion is made, again usually implicitly, that the specific claim advanced is based upon and justified by valid reasons which would or ought to be accepted by members of the relevant group. This characteristic is related to the truth side of rhetoric. It is one of the dynamics of rights claims that these reasons are not usually spelled out—because they should be evident upon the least reflection, or because they
are flawed or inconsistent and the rights claimant wishes to avoid revealing these weaknesses, or for other reasons altogether. But whatever the reason, rights claims are thus problematically related to truth because the claim is a substitution for an explicit rendering of the reasons that justify the particular claim, suggesting something like "Of course every right thinking person agrees with this," or "You can take my word for this." The rights claim allows for or encourages a shorthand argument, asserting the existence of justificatory reasons without spelling them out. This shorthand argument is closely related to the tie between rights and membership (just as the two requirements of rhetoric are closely tied). The shorthand can only be acceptable if certain shared assumptions or beliefs exist within a certain group. Acknowledgement of such assumptions or beliefs is equivalent to the recognition of a certain "truth." The rights claim does not merely make reference to some group—it rests solidly upon particular assumptions about the group itself and about facts and beliefs accepted by the group. The rights claim is an assertion of the existence of certain shared though unspecified reasons.

These two characteristics of rights claims—the reference to group membership and the assertion of an argument which is not fully spelled out—move in the same direction in tying rights claims into a contextual web of associations, both in terms of human agents and in terms of shared meaning. This web is not incidental to rights but rather central to their existence. This is what we mean when we assert that rights claims are fundamentally and irrevocably rhetorical. Furthermore, the relationship between rights claims and their context is a two-way interaction. The existence of certain defined groups with certain shared beliefs may give rise to rights claims. But it may sometimes work the other way around: advancing rights claims may help define certain groups and/or create shared beliefs. Many rights claims are widely contested when initially advanced, only gaining acceptance after persistent assertion. Recognizing rights claims as inherently rhetorical in the sense just explained
makes it easier to see the difficulty of addressing rights claims cross-culturally. The contextual web of association, the infrastructure supporting rights claims, is much less well-developed across cultural gaps.

At this point it will be useful to turn to the lesser-known of Adam Smith’s two major works, *The Theory of Moral Sentiments*. Although Smith does not explicitly use the language of rights his views on moral judgments, encompassing justice, benevolence, and propriety, are wholly apposite here, representing a broader but inclusive category of claims.

For Smith, all of our moral sentiments are grounded in sympathy. He says:

> We either approve or disapprove of the conduct of another man according as we feel that when we bring his case home to ourselves, we either can or cannot entirely sympathize with the sentiments and motives which directed it. And, in the same manner, we either approve or disapprove of our own conduct according as we feel that, when we place ourselves in the situation of another man, and view it, as it were, with his eyes and from his station, we either can or cannot entirely enter into and sympathize with the sentiments and motives which influenced it.³

Our reliance on sympathy in forming moral judgments is so absolute for Smith that such judgments would not even occur to one who had never engaged in human society. Smith encourages us to imagine a disinterested but omniscient "man within the breast, the supposed impartial spectator, the great judge and arbiter of our conduct."⁴

The utility of this artifice for our purposes is the ambivalence of it. It suggests a radically individualistic approach to social values; this is perhaps the strongest association with Smith in *The Wealth of Nations*. Yet at the same time it suggests a set of values formed in
large part through socialization and general interaction with other human beings. Smith is explicit in his assertion of certain inherent principles in individuals which drive the approbation of certain acts and the disapprobation of others. "How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it." Smith depends upon the basic correctness and even the social utility of these innate attractions and repulsions. Our fear of death is, for instance, "the great restraint upon the injustice of mankind, which...guards and protects the society." Yet the reason for reflection through the eyes of the impartial judge is to correct the mistakes of the unreflective passions. In each individual passion distorts reason. Smith is willing to ground moral judgments wholly upon individual sentiments, yet he seems anxious to correct these sentiments through a socially constructed artifice which reduces any particular individual to relative insignificance.

For Smith the resolution of this paradox is, one can suspect, lodged in his Calvinism. The great Author of Nature has, according to a well-laid plan, left his mark on us and on all we do. The invisible hand which guides our moral lives is the infinitely rational and benevolent hand of the creator. That claim and others of its ilk are generally less persuasive in the twentieth century than they may have been in the eighteenth. But that is not to say that we cannot find a way of addressing Smith's scheme which is compatible with contemporary skepticism.

Consider the way in which Smith's account of the impartial spectator meshes with the above rendering of proper political rhetoric. Just as the rhetorician must know his audience, Smith's moral individual must be able to generalize and distill the moral judgments of his fellow human beings. And as the rhetorician must also know the truth, so Smith's moral individual must resist being guided simply by the public's judgments of his action (Smith careful-
ly distinguishes between being praiseworthy and being the object of praise). Smith's account of proper moral sentiments is in some respects very close to this paper's earlier account of proper political rhetoric.

Chaim Perelman, rejecting the popular characterization of rhetoric as the art of elegant speech, ties rhetoric back to the truth without loosening rhetoric's ties to the audience:

All who believe that they can disengage truth from opinion independently of argumentation have a profound disdain of rhetoric, which relates to opinions; they grant, at best, only a rhetoric which serves to propagate the truths guaranteed to speakers through intuition or self-evidence, but not a rhetoric which seeks to establish these truths. But if we do not concede that philosophical theses can be founded on self-evident intuitions, we must resort to argumentative techniques to make them prevail. The new rhetoric becomes the indispensible instrument for philosophy. Those who, with Paul Ricoeur, acknowledge the place in philosophy of metaphoric truths which, since they propose self-evidence, cannot deny the importance of rhetorical techniques in making one metaphor prevail over another. They can disregard such techniques only if they grant the existence of an intuition which would compel a unique vision of reality excluding all others.7

This account accommodates a two-sided rhetorical construct like Smith's quite readily to philosophy in a post-Newtonian world where the number of universes may be as great as the number of the beast (to borrow a phrase which Robert Heinlein in turn borrowed from the Old Testament8). Compare Perelman's account of rhetoric with Knud Haakonsen's recent account of Smith:

...One of his main objectives is to fulfill the positive task of pointing out the efficient causes which create order in human
life. He starts from the foundation of man's existence, here mere physical survival, arguing that it is not left to 'the slow and uncertain determinations of our reason' to look after this. We are prompted to apply the necessary means for life and welfare by various 'original and immediate instincts...and without any consideration of their tendency to those beneficent ends which the great Director of nature intended to produce by them'! Smith's real feat as a philosopher, of course, is to point out that something exactly analogous applies to man's social life, and to have worked out a theory of the efficient cause which can, so to speak, take that place of (on the one hand) the instincts which direct our physical existence and (on the other) the kind of constructive rationality which only belongs to mankind in its philosophical mood. This is theory of mutual sympathy as a selection mechanism of behavior, which renders social life possible....

Haakonsen makes the two sided nature of the artifice of the impartial spectator clear in the following passage:

When we strive towards his standpoint we are in reality seeking the position which is most widely compatible with existing values, the position which fits the moral context. This is obviously not an absolute and final test. On the other hand it does not make moral judgements completely relative to the given system of morality for, as we have seen, the standpoint of the impartial spectator implies a universal rule and it is by seeking this that we can gain independence from the given social morality. So it would seem that when we judge of the moral value of an action we consider whether it is in accordance with the general rule and whether the type of action prescribed by this rule is generally compatible with existing values.

Notice how closely this last line mirrors the dual concerns of rhetoric with the truth and the audience.
So where does all of this lead? What difference does it make that we can see rights as rhetorical and dependent upon sympathy as Adam Smith describes it? The goal of this exercise is to move toward a better understanding of the problem of rights in American national policy, which is to say, the problem of rights in a multi-cultural setting both within this country and in foreign relations. Sympathy, as Smith would have it, is a difficult task across cultural divides. Being able to put oneself in the other person's shoes is a difficult task if the other person appears to us to be fundamentally different. But working toward that perspectival leap is at the same time working toward the creation of community. As Smith says, affection is really just habituated sympathy. To the extent that we attempt to follow Smith's lead reaching toward some understanding of cross-cultural and international rights, we are actually creating new communities which will in turn ground greater possibilities for understanding. In creating the habit of sympathy we are as much creating truth as we are discovering it. Community may not be a prerequisite of this dialogue so much as it is a correlative activity and/or product. The multi-faceted task is not an easy one. As Smith says:

Of the conduct of one independent nation towards another, neutral nations are the only indifferent and impartial spectators. But they are placed at so great a distance that they are almost quite out of sight. When two nations are at variance the citizens of each pays little regard to the sentiments which foreign nations may entertain concerning his conduct. His whole ambition is to obtain the approbation of his fellow citizens' and as they are all animated by the same hostile passions which animate himself, he can never please them so much as by enraging and offending their enemies. The partial spectator is at hand: the impartial one at a great distance.11

Our problem in talking about rights, then is that the impartial spectator is at great distance while the partial spectator is close at hand. Whether talking about the welfare rights of poor black women
in Detroit or in the self-determination rights of Salvadoran peasants, our task is not to look for some idealized list of proper claims on our concern and resources. To look for a list of this sort, self-evident or written into the structure of the world is to seek a chimera. Our search must be for mutual understanding, with the goal of achieving and then habituating sympathy. This does not mean that we can treat rights as created rather than discovered, for no strategy could more radically undermine the notion of rights itself. Smith's treatment involves a notion of truth, even though it may be a parasitic one. We interact to discover those commonalities about which we can create consensus. We don't create human rights— at least not exclusively. Neither do we discover them exclusively. The process of exchanging sympathetic understanding is a process which involves both the discovery and the creation of right.
ENDNOTES


5. Ibid., p. 47.

6. Ibid., p. 53.


10. Ibid., p. 62.