

## Volume 37, 2000 Speaker and Gavel

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## Volume 37, 2000 Speaker and Gavel

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# Speaker and Gavel

**Compliance-gaining and Fundraising:  
Making Two Worlds Meet**

Amy Sedlacek  
Jane Koehler

**President Herbert Hoover's *Elocutio* Versus *Actio*:  
Innervation Versus Enervation  
in the 1932 Campaign**

Halford Ryan

**Hagiography And Historiography  
In Free Speech Theorizing:  
Revisiting The Case Of Eugene V. Debs**

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***Diabolus in Musica*:  
The Rhetorical Vision Of *Slayer***

Scott Stroud

**Editor's Essay** \_\_\_\_\_

**Interpretation, Ethics and Education:  
A Critique of the NIET  
"Ethical Use of Literature Policy"**

Daniel Cronn-Mills

Journal of  
**DELTA SIGMA RHO—TAU KAPPA ALPHA**



# ***Speaker and Gavel***

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# ***Speaker and Gavel***

Volume 37 / 2000

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# Speaker and Gavel

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## **Compliance-gaining and Fundraising: Making Two Worlds Meet**

**Amy Sedlacek  
Jane Koehler**

### **Abstract**

This study examines the effectiveness of various compliance-gaining messages when used in fundraising for a non-profit organization. It differs from previous compliance-gaining research because it focuses more on the reactions of the receiver to a message rather than the intentions of the sender. A majority of the compliance-gaining techniques commonly used for persuasion were found to be ineffective when applied to a fundraising situation. Of the 16 most frequently agreed upon compliance-gaining tactics, promise was found to be the only truly effective tactic. Instead of using the 16 tactics outlined in compliance-gaining research, fundraisers should focus on providing information about their cause to further their goal of compliance.

### **Introduction**

In any given month, how many times does someone ask you for money? Two, ten, twenty, thirty times? It seems as if we are constantly being bombarded by telemarketers, bell-ringers, jars at check-out stands, door-to-door visits, and myriad other methods that philanthropic organizations use in an attempt to persuade you to give money to their cause. More times than not we dismiss these efforts, passing them by without a second thought.

The challenge for the non-profit fundraiser lies in finding ways to make us, as contributors, actually stop, give a second thought, and then give a donation. We are not likely, however, to simply change our ways on a whim. Non-profit fundraisers must persuade us, usually with little interaction, to start to care enough to give. Persuading people to offer assistance, such as a donation to charity, falls under the realm of compliance-gaining theory. Studying compliance-gaining will offer us insight into the types of messages required to persuade people to donate. Discovering which message types are most effective is the main purpose of this study. It differs from previous compliance-gaining research because it focuses more on the reactions of the receiver to a message rather than the intentions of the sender. We will seek to answer the question "Which compliance-gaining strategies are most effective in persuading a person to donate money to a non-profit organization?"

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Note: The paper was prepared as part of a course on communication theory taught by Professor Jessica Henry, Hastings College, Hastings, Nebraska.

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### Rationale and Justification

Unfortunately, finding the right message to induce compliance is easier said than done, especially with the large number of non-profit organizations vying for our dollars. Over 40,000 non-profit organizations were operating in 1995 (Statistical Abstract of the United States, 1998, p.397). These include any non-governmental organizations with funds and programs managed by their own trustees or directors and whose goals are to maintain or aid social, educational, religious, or other activities deemed to serve the common good (Statistical Abstract of the United States, 1998, p.397). As one can see, these charitable groups seek to provide for a wide variety of needs. The top 20 charities in the United States in 1997 ranged from the Salvation Army at number one to the YMCA at number seven to Cornell University at number 18 (The Time Almanac, 1998, p.818). With such diversity among non-profit organizations, it is important that they tailor their messages to target those who are interested in their cause.

Finding just the right message is essential when one considers the limited resources that most non-profit organizations are dealing with. For example, the American Cancer Society's latest treasury report states that the organization raised \$556.2 million last year. This an impressive figure, considering they only spent \$122,910 thousand on fundraising efforts (Zacks, 1999). With such a small budget, it is important that the efforts of the fundraising staff are carried out in the most effective manner. Therefore, an organized study of the methods that best persuade individuals to contribute to non-profit organizations would be of great benefit to them.

The need to identify the most effective messages is also crucial because the level of individual donations has remained relatively constant since 1974, as cited in a report by the American Association of Fund Raising Counsel Trust for Philanthropy (Barry, 1996). With all the developments in technology, research and advertising methods, why these figures have not increased is a mystery. Common sense would suggest that as income levels have risen (which, of course, they have) charitable donations would have risen as well. Unfortunately, that is not the case.

People do not donate to charity simply because they have money. There must be some motivating reason to give. This could be as general as the fact that it makes you feel good knowing you've helped another human being or the fact that your employer expects this behavior (Harvey, 1990). Donating could also be motivated through personal ties to the cause or charity or by family involvement. Unfortunately many people are not effected by these motivational circumstances and do not feel obligated to contribute to a cause that doesn't concern their personal life.

What will it take to change people's attitudes towards giving? We hope to answer this question as part of our study by discovering which message strategies receivers are most receptive to. This is one of the single biggest challenges facing those in charge of fundraising for non-profit organizations. Studying this change in beliefs, attitudes, intentions, motivations, and behaviors all falls under the umbrella of persuasion techniques, specifically within the theory of compliance-gaining (Gass, 205).

It is important to recognize and remember the differences between the um-



brella of persuasion and the niche of compliance to understand why fundraisers would be interested in compliance-gaining rather than persuasive techniques. Persuasion is "concerned with changing beliefs, attitudes, intentions, motivations and behaviors," (Gass, 205). Compliance is a more restrictive term referring to changes in a person's overt behavior (Gass, 205). Simply put, traditional persuasion research has focused on identifying what strategies are believed to be most effective in changing people's attitudes, while compliance-gaining research focuses more on what strategies people will actually use and react to. Because of this, compliance-gaining theory seems to offer more realistic applications to fundraising. This difference is significant because fundraising is mainly concerned with making overt behavior changes in a receiver. The emphasis in most compliance-gaining research has been primarily focused on the "senders" rather than on the "receivers." In fact, Seibold, Cantrill, and Meyers (1994) estimate that at least 124 studies on compliance-gaining focusing on the sender have been conducted. This research has primarily studied what kind of messages senders use in certain situations, rather than their effect on a receiver. Compliance-gaining in relation to fundraising, however, must focus more on the receiver. Fundraisers are trying to get people to comply with a request that will not seem to directly affect them in a positive or negative way. Therefore, the fundraiser must take the receiver's perspective into account to establish a more effective message.

All of this focus on what methods work best for the sender has left the receiver as an outcast in compliance-gaining study. However, the receiver is the most vital link in providing non-profit organizations with a means of financial stability to continue their efforts. Without the receiver, or donor, non-profit and charitable organizations would cease to exist. Typical compliance-gaining research has forgotten this. It has targeted the senders and what messages they choose to use.

A majority of the studies on compliance-gaining and articles on successful fundraising techniques have concentrated on the importance of interpersonal, face-to-face contacts rather than one-to-many contacts. For example, Thibodeaux (1992) explains that "The difference [in fundraising] lies in whom a donor is giving to. Donors feel more connected to an individual and give more freely to an individual than to an entity" (p. 61). The article goes on to give fundraising techniques, highlighting the need for personalization in presentation, graphics, and message (Thibodeaux, 1992). Many of today's fundraisers, however, do not have the luxury of time or resources to personally solicit funds from each individual on their donor list, as suggested by Thibodeaux. Instead, fundraisers need to know, specifically, which persuasive compliance-gaining techniques work best in a one-to-many relationship where the receivers of the message come from a variety of racial, social, and economical backgrounds.

After all, an organization could spend a large amount of time and money developing a message or campaign that may look great on paper, but if it fails to persuade the targeted audience to donate, the message is a failure. That is why answering the question of which technique motivates receivers to donate is important.



### Theoretical Framework

The theory most relevant to our research is compliance-gaining. Compliance-gaining focuses on what people do when they want to get someone to do something or act in a certain way (Gass, p. 205). Gerald Marwell and David Schmitt originally developed this theory in 1967. Prior to this study most research had focused on why people comply, rather than how people go about gaining compliance. Marwell and Schmitt sought to define typical techniques used in compliance-gaining that potential message receivers responded similarly to. Their study devised 16 different message techniques for gaining compliance (See Appendix A).

However, Wiseman and Schenck-Hamlin (1981) argued that one of the problems with Marwell and Schmitt's typology was that it left out significant strategies that people might use in seeking compliance. Their criticism said the original strategies were based not on real life experiences but on previous research of the theory. They contended that the 16 tactics were merely created out of convenience in the minds of the researcher rather than through real life observation. Stating this, Wiseman and Schenck-Hamlin developed a new typology, based on strategies created by real people in persuasive situations. Their research distinguished 14 compliance-gaining strategies, many of which offered stark contrast to Marwell and Schmitt's original list of 16 strategies. Although Wiseman and Schenck-Hamlin argue Marwell and Schmitt's categories are insufficient and lacking in their analysis, Marwell and Schmitt's 16 strategies remain at the core of compliance-gaining research and study.

Two approaches towards the development of compliance-gaining research can be distinguished. The first and most prevalent approach focuses on deriving the different compliance-gaining strategies from various theories of social influence already in existence. This is known as the deductive approach. The second approach examines compliance-gaining strategies through the process of induction. These strategies are generated by subjects for a particular persuasive situation. These responses are then examined for patterns and/or generalizations that form the basis for a new category scheme. In other words, the deductive approach provides a subject with a list of the possible strategies and asks him or her to choose the one he or she would most likely use. The inductive approach offers participants a situation and then simply asks how they would construct a relevant compliance-gaining message.

Marwell and Schmitt's 16 techniques form the framework for the deductive approach. Marwell and Schmitt (1967) analyzed subjects' ratings of the likelihood of their using each of the strategies in four different situations. This analysis of likelihood revealed five dimensions of compliance-gaining: rewarding activity, punishing activity, expertise, activation of impersonal commitments, and activation of personal commitments.

A subsequent study by Miller, Boster, Roloff, and Seibold (1977) incorporated Marwell and Schmitt's (1967) methodology to construct a cluster analysis with situations that were more systematically varied. Collecting the same type of data as Marwell and Schmitt, they found that the use of compliance-gaining strategies varied with the type of relationship and goal. Relationships they outlined for



a persuasive situation were interpersonal v. non-interpersonal and the nature of the goal (long term v. short term).

Concerns in the differences over the study of compliance-gaining coupled with Marwell and Schmitt's strict outline of only 16 strategies prompted researchers to begin to use a more inductive approach to study compliance-gaining. Clark (1979) for example compared data collected from subjects who composed their own messages instead of choosing from given strategies. He found that subjects choosing from the pre-given strategies tended to choose strategies that were most socially desirable, rather than the strategy they would actually use when faced with the situation. This research was reinforced by Hunter and Boster's (1995) reanalysis of the Marwell and Schmitt data and Miller group studies (1979).

As we have shown, compliance-gaining is a very provocative theory that can be studied in a variety of ways. Faced with so many perspectives, we found it necessary to look at a variety of documented studies to determine the best foundation for our particular study.

### **Literature Review**

In order to answer the question of which compliance-gaining strategy best persuades an individual to donate money to a non-profit organization, it is first necessary to look at the results of previous research. Since little, if any, research has been done specifically linking compliance-gaining and fundraising we will review each of these areas individually. This review will cover the critical compliance-gaining and fundraising studies that best relate to each other and to our question.

#### Compliance-gaining

In our research we have discovered that compliance-gaining is a very broad theory. There are many dimensions and factors that determine the success of each compliance-gaining attempt. In reviewing the literature on compliance-gaining we found that studies can be divided by various influential factors, such as the relationship between the sender and the receiver, the message, the sender and the receiver themselves, and the situation. Each study of compliance-gaining has a high tendency to overlap each of these areas in providing background support and credibility. In organizing our literature review we will try to follow a general outline, grouping the studies into the most appropriate dimension, however some will fall into several categories.

**Sender-Receiver Relationship** The first sub-category is the relationship between the sender and receiver. The degree of intimacy between the sender and the receiver has been found to exert influence upon the type of compliance-gaining message selected and the success of that message. For example, Boster and Rodriguez (1995) have suggested that friends reply more with requests than strangers and that their compliance is constant across message types. Strangers, on the other hand, need more of an incentive to comply with a message because they lack an intimate relationship with the sender. The norm of reciprocity leads the stranger to believe that since he or she has no personal connection to the sender, he or she is



less obligated and would receive little, if any, reward for simple compliance. Boster and Rodriguez found that a pre-giving strategy worked most effectively with strangers. This strategy involves the sender offering something to the receiver. This offering is followed by a request for compliance, in hopes that the norm of reciprocity will lead the receiver to feel obligated to comply. Among friends, however, Boster and Rodriguez demonstrate that it is reasonable to expect compliance from a direct request because the norm of reciprocity is not as prevalent in intimate relationships.

Another study echoes the connection of intimacy in relationship and the message selected for compliance. Miller and Steinberg (1975) found a conceptual distinction between non-interpersonal and interpersonal communication transactions based on the kinds of messages senders use in predicting message outcomes. Predictions for use of non-interpersonal messages are based primarily on cultural and sociological information, whereas predictions for interpersonal messages are based primarily on psychological information about that individual. Miller and Steinberg found that persons involved in interpersonal communication are typically expected to be more successful in selecting their choice of message strategy, since their messages are based on personal information in regard to their receiver's sociological and cultural characteristics. These receiver characteristics would most likely be similar, if not the same as, the sender's cultural standards. Simply put, this means the message is tailored to a particular person from whom the compliance behavior is desired. On the other hand, they also found that most strategies used in non-interpersonal communication were based on, at most, infrequent relationships. This hypothesis was supported by findings that the most typical strategies selected for non-interpersonal compliance requests were grounded in punishment or harsh words. However, if these more direct and confrontational strategies were to be used in interpersonal attempts of compliance-gaining, the message would most likely scar or threaten the stability of that relationship, making the receiver reluctant to comply.

**Message Characteristics** A second major division of compliance-gaining research focuses on the message. The actual content of the message has equally been shown to have a great effect on the success of compliance-gaining. Grant and King (1994) found that pro-social behaviors are generally more effective compliance-gaining strategies than anti-social behaviors. Pro-social strategies are those that offer rewards, either physical or mental, for compliance. Anti-social strategies are those that threaten punishments for non-compliance. This study is of value in answering our specific research question because it focuses on the actual message rather than variations in such factors as language intensity. The study by Grant and King stated that, although the difficulty of the request, situational constraints, and other factors may be important in the persuasion process, the specific strategy utilized in composing the message is very important. For example, subjects in this study reported a 90 percent likelihood of compliance with pro-social messages while anti-social messages produced only a 36 percent chance of compliance.

Miller, Bolster, Roloff, and Seibold (1977) explored many of the issues associated with the role of the message, particularly the relative lack of concern in message choice by the sender. They held that when people seek to exert a message



to influence the behavior of others they must select from among a set of available symbolic alternatives. For example, statements like "Any fair and ethical businessman should honor his product warranty," and, "If you don't fix my brakes, I'll sue!" (Miller et al., 1997, p. 39) seek the same persuasive outcome to fix the defective brakes. However, the strategic assumptions underlying each message are markedly different. This statement demonstrates the effect of message choice. Miller, Bolster, Roloff and Seibold found that the choice of the first message assumes persuasion will occur based on moral appeal. The later message implies compliance based on threat and potential punishment as more likely to result in persuasive success.

In constructing a message strategy, situational influences often play a key part. Cody, McLaughlin, and Jordan (1980) examined this relationship and its influence on compliance-gaining success. They desired an understanding of potential strategies available to interpersonal persuaders. In their research, they found that several strategies employed by persuaders fell outside the realm of the classifications of Marwell and Schmidt (1967). These multidimensional results indicated that interpersonal tactics could be differentiated on the basis of two dimensions: direct v. indirect and rational v. irrational. Clark's (1979) research helped formulate this study. Clark differentiated messages into categories that focused on three possible communicative objectives; which were instrumental, interpersonal, and identity managing. Fitzpatrick and Winke (1979) also identified factors involved in constructing message strategies. Their five factors of interpersonal conflict tactics were (1) manipulation, (2) non-negotiation, (3) emotional appeal, (4) personal rejection, and (5) empathetic understanding. Cody, McLaughlin, and Jordan (1980) sought to capitalize on the research of Clark (1979) and Fitzpatrick and Winke (1979) to develop a working typology of relevant compliance-gaining message strategies based on cluster analysis and multidimensional scaling techniques. Subjects were asked to construct and sort strategies they would use in three compliance-gaining situations. The result showed messages grouped by a direct-rational, manipulation, and exchange-threat strategies.

**Sender and Receiver Characteristics** A third division of compliance-gaining study looks at the characteristics, attitudes, and beliefs of the individual sender and receiver. The individual characteristics of both the sender and the receiver play an integral part in determining the outcome of compliance. For example, the amount of power that either the sender or the receiver holds will affect the choice of compliance-gaining tactic and its success. Boster and Kazoleas (1995) conducted a study which generalized that if people were not in an intimate relationship, then the amount of power the sender held relative to the receiver determined the variety of messages the sender could choose from. As the sender's power over the receiver increases, the sender will be more willing to send a greater and more varied number of messages. In other words, if the sender holds a position of power over the receiver, the sender will be more likely to be persistent in seeking compliance and will feel comfortable trying a number of message techniques because the sender will feel he or she has enough authority to do so. For this reason, a sender of higher power often has more success with compliance-gaining. On the other hand, if the sender is in a lower position of power, he or she will not feel as comfortable



repeatedly seeking compliance. The sender may also not feel comfortable using as wide a variety of tactics because he or she may feel that some of the tactics require more power than he or she holds.

Miller, Boster, Roloff, and Seibold (1977) offer another study correlating message choices and the characteristics of the potential persuader (sender). They found that if the sender is regarded as highly knowledgeable in a particular area, then attempts to control the attitude and behavior of receivers in this area are likely to rely heavily on expertise strategies. Similarly, physical and /or social prowess may cause a communicator to make frequent use of threat and punishment strategies.

In examining the role of the receiver in compliance-gaining, it has been found that guilt can have a dramatic effect in gaining compliance. Boster, Mitchell, Lapinski, Cooper, Orrego, and Reinke (1999) established that receivers of compliance-gaining attempts typically comply with a request to help more frequently when they feel guilty versus when they do not feel guilty. Guilt was found to produce an unpleasant affective state that the receiver sought to relieve through compliance. It was found that the majority of adults link pro-social actions, such as helping, with obtaining rewards. Obtaining rewards creates a positive affect necessary to reduce guilt. Participants who did not feel guilty had no need to relieve the negative affect, giving them less reason to comply. In other words, it is important to keep the feelings and emotional state of the receiver in mind when developing a compliance-gaining message.

**Situation** The situation in which the compliance-gaining occurs affects each of the areas previously discussed: the relationship between the sender and receiver, the message, and the individual characteristics of the sender and receiver. Sillars (1980) says that not all strategies are appropriate for all situations. He says the decision depends largely on three things. First, how important is it to get the compliance. Second, the decision to use a strategy may depend on how much persuaders think the strategy will affect their relationship with a persuadee. Finally, the likelihood that the strategy will be used may depend on how successful the persuader thinks the strategy will be.

Compliance-gaining situations are often viewed through dimensions, which allow for the narrowing of message selection. In other words, before considering the situation, senders have a plethora of messages to choose from but the attributes of the particular situation in which the message will be used will enable the sender to narrow this range of possible message choices (Dillard and Burgoon, 1985, p.289). Dillard and Burgoon suggested that compliance-gaining could be divided into six salient dimensions. These six dimensions are (1) the degree of intimacy between the target and the actor, (2) the extent to which compliance would personally benefit the receiver of the message, (3) the consequences of compliance-gaining to the relationship of the sender and receiver, (4) the rights of the receiver in the situation, (5) the extent to which the sender typically dominates the receiver, and (6) the degree of resistance the sender expects the receiver to offer to the compliance-gaining attempt. These categories were reaffirmed by Cody, Woelfel, and Jordan (1983). In a study by Boster and Kazoleas (1995) it was found if people are not in an intimate relationship then as the power of the speaker relative



to the target increases, the speaker should be willing to employ more persistent and more diverse message behavior.

### **Fundraising**

Now that we have examined the current research on compliance-gaining, it is necessary to look further into fundraising research in order to build a firm foundation for our own research. In researching, we found that very few compliance-gaining studies have addressed the domain of fundraising. It seems as if, until recently, fundraisers simply tried a message and hoped it worked. If the message was ineffective they simply moved on to the next tactic. Few people attempted to find out what messages would be most successful and why. Our research is important for this reason. Much of the small amount of literature and research that does exist is politically based. However, political fundraising and fundraising for non-profit organizations is very different. Politics often conjure up negative image where many non-profit organizations do not carry this type of stigma. Merely uttering the word "politics," or some derivative of it, immediately forms a positive or negative perception in most people's minds.

One study linking fundraising and compliance-gaining explored the effect of pregiving and "foot in the door" (FITD) techniques in seeking compliance for a donation request to charity (Bell and Cholerton, 1994). The FITD procedure attempts to increase compliance by first making a small request, followed by the larger request that the fundraiser is ultimately seeking compliance for. Pregiving focuses on offering a gift or favor to the receiver before even mentioning the compliance request. The power of this strategy lies largely on the norm of reciprocity which creates a feeling of obligation to be generous to those who have been kind to us. Fundraisers hope that the norm of reciprocity will cause the receiver to comply in order to cancel the debt they now feel towards the sender from the original gift or favor (Gouldner, 1960). Results of the Bell and Cholerton study indicated FITD and pregiving techniques were more profitable than a simple direct request for a donation. The study pointed out that fundraisers must be careful when combining these two techniques, lest they cancel each other out. Pregiving was found to sabotage FITD when placed before the initial request.

The study also offered insight into the overall effectiveness of the pregiving tactic, a term originally coined by Marwell and Schmitt. The study's comparison of pregiving and the control message proved pregiving to be an extremely cost-beneficial method for generating funds. The presentation of a brochure costing \$0.20 (the gift used in the study) led to an increase of \$1.07 in the average donation received, paying for itself five times over. This finding was consistent with past research by Cialdini (1986), which suggested that small favors could produce substantial gains. Regan (1971) found that favors increased compliance rates even for unfriendly and initially non-complying individuals. His study showed that compliance was more often produced by providing a receiver with even the most trivial of benefits. Within the literature on the reciprocity of helping behavior and compliance lies evidence that most of us feel obligated to help those who have voluntarily helped us due to the psychological mechanism of indebtedness (Greenberg, 1980).



Barry and Shapiro (1992) offered a direct insight into the relationship between fundraising and compliance-gaining when they examined how offering a rational exchange in compliance-gaining situation interacts with the type of influence tactic used. They investigated two approaches, soft tactics and hard tactics. Soft message tactics are employed when compliance is sought through flattering and friendliness. Hard message tactics involve an assertive request for assistance. They found that hard and soft tactics work equally well, depending on the situation.

Another approach to fundraising was offered by Goldman (1986). Goldman compared the joint effects of the FITD technique and the door-in-the-face (DITF) technique. Similar to FITD, the DITF method of fundraising is demonstrated through two sequential messages. The sender first issues a request containing substantial cost to the receiver. When the receiver turns down the request the true request is given for compliance. This strategy assumes that the receiver will see the second request as a compromise and, feeling less pressure, will comply. Goldman's work created a curiosity for further investigation of strategies with underlying compliance tactics.

One such investigation studied the differences between large and small initial requests. Dillard (1990) noted that using varying initial requests before the actual request for a donation could take two forms. One form states that a large initial request would be more likely than a small initial request to lead to positive self-attributions, which support compliance with the critical request. The other form argues that a person who has executed an initial request, rather than simply agreeing to do so, would be more likely to comply with the critical request (Dillard, 1990).

James Harvey (1990) presented another fundraising study that suggests a helpful direction for research efforts. Harvey pointed out that America's non-profit fundraising organizations are facing new challenges in today's "business-as-usual" environment. Government support for non-profit organizations is decreasing. For-profit organizations are entering markets that used to be almost exclusively non-profit. Donations from the unmarried, young, and wealthy are down. Harvey contends that improved market segmentation would help alleviate these problems. His research identified five general categories of donors: managers, low involvement, skeptics, guardians, and crusaders. Harvey criticizes fundraisers for failing to recognize the diversity of these contributing markets and developing uni-dimensional messages that really do not meet anyone's needs. Harvey does not, though, suggest what techniques would best suit each category. Our research could lead to more specific follow-up research that would help identify which compliance-gaining tactics would be most effective on each of these audiences.

As we have shown in the previous literature review, compliance-gaining and fundraising researchers have rarely crossed each other's paths. O'Keefe and Shepard (1987) point out that compliance-gaining researchers have focused on the strategy selection in hypothetical situations, while largely ignoring the effectiveness of various strategies in real world compliance-seeking situations. The first step in bridging the gap between these two worlds is to investigate strategies of compliance-gaining in general. This will pave the way for more refined studies, further



linking these two areas. Consequently we offer the following research question:

RQ: Which compliance-gaining techniques most effectively persuade a person to donate money to a non-profit organization?

### Method

#### Participants

Forty individuals were surveyed in our study, 21 females and 19 males. The respondents ranged in age from 20 to 61. Approximately half of those surveyed were college students while the other half were employed full-time in a working environment. The surveys were distributed to various adults in Hastings and our home communities of Pierce, Nebraska, and Omaha, Nebraska. Participants came from a variety of environments. Most reported being middle to upper-middle socioeconomic class.

#### Procedure

In studying the question of what strategy of compliance-gaining best fits the fundraiser's needs in soliciting donations we used our own uniquely formatted four-part questionnaire (See Appendix B). We developed the four-part questionnaire based on criticism of previous compliance-gaining research that relied on checklist methods developed by Marwell and Schmitt (1967). Critics of the checklist only method feel it encourages participants to select strategies that they may not typically use or not have even thought of without the suggestions on the list. Therefore, researchers suggest that to obtain a well-balanced study the experiment should contain a free response portion in addition to a checklist (O'Keefe, 1987).

The first portion of the questionnaire presented a fundraising scenario in which the respondent receives a letter from the World Vision organization (an actual non-profit group) asking the participant for a donation. The participant was asked to list several message ideas that would best persuade him or her to comply with the fundraiser's request for charitable contributions. The free-response portion of the questionnaire was included first in order to obtain results that accurately reflect the true behavior of the participant. This method is also less prone to social bias (O'Keefe, 1987).

The next part of the questionnaire presented the same scenario in which the participant receives a mailing from World Vision with a pamphlet describing the organization and its sponsorship program for needy children in third-world countries around the world. This is an actual program that World Vision organizes. The mailing also contains a letter asking for a contribution. The descriptions were followed by a list of the 16 compliance-gaining strategies outlined by Marwell and Schmitt (1967). Each strategy contained an example of a message relating to the World Vision scenario that displays the technique in seeking compliance. The participants rated each strategy based on their perception of how effective the message would be in eliciting a contribution to the charity. To rate each message, the participant used a Likert scale of one to seven, one being extremely effective and seven being extremely ineffective.

The third portion of our questionnaire asked the participant to rate the believability of the fundraising situations presented. This will be used as a manipulation



check on the previous portions of the survey to determine if the scenarios were believable and able to solicit accurate results.

The fourth portion of our questionnaire was a brief demographics section asking general information such as age, sex, race, occupation, and income level. This information may be used in the future to determine any donating trends found within certain subgroups. It could also lead to further research in more specific areas of compliance-gaining and fundraising.

### Analysis

A content analysis was conducted on the written answers generated from part one of the questionnaire. This analysis involved reading each individual answer and determining which of the 16 compliance-gaining strategies it most closely resembled. Participants' answers often included more than one strategy. Analyzing the second part of the questionnaire involved determining statistically which strategy or strategies each participant ranked most effective and most ineffective.

### Results

Two types of analysis were used to compile data gathered. To analyze the free response portion of the survey (Part I), both researchers read through the responses, comparing them to the tactics outlined by Marwell and Schmitt. As shown in the table (see Table 1), over half of the suggested messages for the content of a letter from World Vision did not fall into the 16 tactics of compliance-gaining. For example, 16 respondents wanted precise information about how the money they donated would be used, such as how much money actually went to the child compared to how much money went to overhead administrative costs. Statistical information was the most requested message.

**TABLE 1**  
**Results of Free Response Portion of Survey**

<b><u>Suggestion</u></b>	<b><u>Total</u></b>
<b>Promise</b>	
Newsletter with updates	8
This will be only mailing sent	5
Picture of child	3
Do not sell my name to others	1
<b>Self-feeling (negative)</b>	
Guilt	4
<b>Specific information about child</b>	5
<b>Statistical information</b>	
Where does my money go?	16
How successful has program been in past?	1
How much does a sponsorship cost?	4
<b>Other</b>	5
Web site	
Testimonial from a unbiased group	
What makes this organization unique?	



Of the suggestions that did fall within strategies of compliance-gaining, a variety of opinions within each category were expressed. For example, the tactic of promise was viewed from several perspectives: follow-up, results of donation, and assurance. A promise of future information about the sponsored child, in the form of newsletters, letters from the child, and stories of their progress, was suggested by eight individuals. The promise of a one-time contact from World Vision was suggested by five individuals. Other individuals requested pictures of their sponsored child and assurance that their names would not be sold to or shared with other organizations. Part II of the survey used a Likert scale. A tally was compiled to determine the overall effectiveness of each tactic. As shown below in the table listing the Likert Scale portion of the survey (see Table 2), promise, expertise (positive), and liking were found to be the most persuasive messages. These strategies have the majority of responses listed as either 1 or 2 on the Likert scale. Threat, pre-giving, adverse stimulation, moral appeal, self-feeling (negative), altercasting (negative), esteem (positive), and esteem (negative) were found to be extremely ineffective tactics for persuasion. These strategies had the majority of responses within categories 6 or 7. The remaining strategies of expertise (negative), debt, self-feeling (positive), altercasting (positive), and altruism were found to be fairly neutral in their effectiveness to persuade the receiver to donate. The neutral strategies were usually given a rating of a 4.

**TABLE 2****Results of Likert Scale Portion of Survey**

<b>Tactic</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>Ttl</b>
Promise	7	10	9	6	6	2	0	40
Threat	1	0	0	1	2	2	34	40
Expertise (positive)	9	10	10	9	2	0	0	40
Expertise (negative)	0	4	8	11	5	6	6	40
Liking	4	18	8	6	3	1	0	40
Pregiving	2	1	5	8	3	9	12	40
Aversive stimulation	0	1	2	1	6	5	25	40
Debt	5	7	9	11	5	2	1	40
Moral Appeal	0	1	5	1	4	10	19	40
Self-feeling (positive)	3	5	10	12	3	3	4	40
Self-feeling (negative)	1	1	2	7	3	11	15	40
Altercasting (positive)	0	2	3	7	11	10	7	40
Altercasting (negative)	0	1	1	1	3	11	23	40
Altruism	2	9	16	6	2	4	1	40
Esteem (positive)	0	3	2	7	6	11	11	40
Esteem (negative)	0	0	4	2	1	12	21	40

As one can see, most of the 16 tactics outlined by Marwell and Schmitt were not determined as very effective by those surveyed. Most respondents wanted more general information and hard facts. The tactics deter-



mined by Marwell and Schmitt did not cover the information that most individuals sought.

#### Discussion

This study was undertaken to determine which compliance-gaining techniques most effectively persuade a person to donate money to a non-profit organization. Marwell and Schmitt's 16 compliance-gaining tactics were used as a skeletal basis for our research; however, the results of the free response portion demonstrated that the most popular techniques were ones not outlined by their research. Rather our results supported ideas presented by Cody, McLaughlin, and Jordan (1980). They found that several effective strategies used in compliance-gaining are not outlined or provided for by Marwell and Schmitt. Study participants were asked to cite messages they viewed as most persuasive. They requested more specific information about the non-profit organization and facts about its programs. Almost every participant listed some form of statistical information. Therefore, we suggest that non-profit organizations focus more on providing detailed information with a persuasive twist. The use of hard facts and statistics would provide a more solid presentation of the validity of the non-profit group, helping it to stand out among hundreds of charitable causes. This would also help to reassure people that their money is actually supporting the cause they intend it to and not being lost to overhead or administrative costs. The bottom line, as found by the free response portion of our research study, is that organizations should worry less about how they say something and more about what they actually have to say. Less focus on persuasive tactics and more focus on pure honesty was another request by many participants. Individuals do not want to be bored or to feel their time is being wasted by another corporate message; they want a true story with facts and pictures to draw them in.

Participants show in their selection of the three tactics of promise, expertise (positive), and liking, that they want fundraisers to present their situation in a positive light. This is the only way it will be viewed as a successful message. A successful fundraising campaign or program should also offer a form of guarantee that what has been stated and promised by the fundraiser is actually being done. This could be accomplished through a website, testimonial from other non-biased and respected foundations, or a regular newsletter. This allows a receiver an opportunity to feel connected to the mission he or she is supporting on his or her own terms without constant reminders to give. Our participants did not appreciate feeling pressured into support by repeated requests for donations.

Although our study did uncover new findings in the area of fundraising and compliance-gaining, there were a few limitations that could be improved for further research. One such limitation was the wide variety and extremes of the 16 compliance-gaining tactics. Tactics such as threat magnified the perceived usefulness of other possible tactics because participants saw the threat method as extremely unrealistic. In reality, no non-profit group has the power to enforce or imply such a tactic and have it be believable. The inclusion of threat and other far-reaching tactics, like aversive stimulation, may have made some of the other tactics, such as altercating (positive), appear more effective to the participant. When presented with such absurd options as threat, tactics that were even remotely real-



istic suddenly appeared as effective when this may not have actually been the case.

The study was also limited by demographic constraints. The area studied was predominantly Caucasian and of middle class social economical status. These are not the only group of people who donate to charities, so a larger and more diverse group of participants would provide more accurate results of overall trends.

In conclusion, this study shed a great deal of light on the problems faced by non-profit fundraisers in securing financial donations and gifts. Fundraisers are limited not only by resources but by the power and authority from which they can produce message strategies. For further research we recommend that studies focus more on what types of facts and information are most appealing to the receivers. This research should also target specific market segments to develop the most effective strategy. For instance, would hard statistical data or heartwarming stories or a combination of both prove most effective? We also recommend that further studies be conducted on possible divisions within the three tactics that were identified as the most effective of those outlined by Marwell and Schmitt. For example, we found that the tactic of promise could be broken down and divided into four separate categories ranging from the promise of follow-up information on the organization to promises of no future contact. Further research might also be conducted using the five tactics of Fitzpatrick and Winke (1979) rather than the traditional compliance-gaining research using the tactics of Marwell and Schmitt. These strategies focused on more emotional and personal tactics that may be more appealing to the receiver. We anticipate that the finding of this study and the suggestions for further research will provide a clear understanding of the difficulties faced by today's fund-raisers. Their messages must be two-fold. They must secure a donation while at the same time pleasing and meeting the requests of their contributors. This original study has shown that the area of persuasive messages geared toward the receiver requires a second thought and closer look for maximum effect and development

### Appendix A

#### MARWELL & SCHMITT'S COMPLIANCE-GAINING TACTICS

**Promise:** If the receiver complies there will be a reward.

**Threat:** Issues an ultimatum for compliance, saying do this or be punished.

**Expertise (positive):** Compliance will assure a reward due to the nature of the situation.

**Expertise (negative):** States the opposite of expertise (positive); with an outcome of punishment for not complying.

**Liking:** Suggests that the sender acts friendly and helpful to put the receiver in a positive, likewise, helpful mood of compliance.

**Pregiving:** Offers a reward before the compliance is requested.

**Aversive Stimulation:** Condone punishment until the receiver agrees to comply.

**Debt:** Places guilt on the receivers, requiring compliance for past favors the sender has performed.

**Moral Appeal:** Suggests the receiver is immoral for non-compliance.

**Self-feeling (positive):** Promotes a boost in self-esteem if the receiver complies.



**Self-feeling (negative):** Reverses the situation, making the receiver feel worse about themselves for not complying.

**Altercasting: (positive):** Hints that a "good" person would comply.

**Altercasting: (negative):** Makes the receiver believe that only a "bad" person would fail to comply.

**Altruism:** Asks the receiver to comply due to the sender's desperate situation.

**Esteem (positive):** Says the receiver will be valued as a better person for complying.

**Esteem (negative):** Says that people will look down upon the receiver if they choose not to comply.

### Appendix B Fundraising Survey

**DIRECTIONS:** This survey is being conducted to study the effectiveness of various fundraising messages. This survey is for class use only. All information gathered is anonymous and will be kept confidential. Please complete all four parts of in their entirety and return to the surveyor.

Thank you for your participation and help in our research project.

#### Part 1

You have received a letter and pamphlet in the mail from World Vision, a international organization that cares for children in third-world countries by arranging for them to be sponsored. A sponsorship will provide this child with food, clothing, medical care and an education. They are asking for a donation to be sent back in the enclosed return envelope. The pamphlet fully explains the purpose and goals of World Vision and how you could become a sponsor or make a one-time donation. What would you like to read about?

**DIRECTIONS FOR PART 1:** Please list ideas for a message for the letter that would best persuade you to read the rest of the letter and make a donation.

#### Part 2

You have received a letter and pamphlet in the mail from World Vision, a international organization that cares for children in third-world countries by arranging for them to be sponsored. A sponsorship will provide this child with food, clothing, medical care and an education. They are asking for a donation to be sent back in the enclosed return envelope. The pamphlet fully explains the purpose and goals of World Vision and how you could become a sponsor or make a one-time donation. Which of the following messages in the letter would you find most persuasive?

**DIRECTIONS FOR PART 2:** Using the following scale, fill in the appropriate number in the blank

Extremely	1	2	3	4	5	6	7	Extremely
Effective								Ineffective

1. If you make a donation we will send you a monthly newsletter featuring children that World Vision is helping.
2. If you do not donate, we will tell your boss or professors how selfish and

uncooperative you are.

3. Your donation ensures that a child will have adequate food, clothing, medical care, and education.
4. If you do not make a donation, a child will suffer from a lack of adequate food, clothing, medical care, and education.
5. Five year old Marcos is very happy now that he is able to go to school and be with his friends instead of working all day, thanks to the support of World Vision sponsors.
6. We have enclosed magnetic picture frame for your enjoyment in hope that you will also want to give to someone you don't know.
7. If you do not contribute, every time you buy a pop or candy bar, you will feel guilty that you are not feeding a starving child instead.
8. I am sure that you or someone you know has gone without at some point in his or her life and could have used a helping hand. Now is your chance to return that favor.
9. It is morally wrong not to donate to a cause that will benefit others in need.
10. Donating to World Vision will make you feel good because you know you are helping a needy child.
11. If you do not make a donation to World Vision, you will feel bad later on for not doing your part to better the lives of others.
12. Since you are a mature, intelligent person, you will naturally want to donate to World Vision because it helps those in need.
13. Only a very selfish person would refuse to donate to an organization that helps needy children.
14. I would really appreciate your donation because World Vision will not be able to feed and clothe all the needy children of the world without your help.
15. All of your fellow students or co-workers will be proud of you for donating to World Vision.
16. Your fellow students or co-workers will be disappointed in you if you fail to donate to World Vision.

### Part 3

DIRECTIONS FOR PART 3: Keeping in mind situation Part 2, please circle the appropriate number as a response.

1. I think situation #2 is believable.  

very	1   2   3   4   5   6   7	not very
believable		believable
2. I could imagine myself in this situation.  

easy	1   2   3   4   5   6   7	not easy
to imagine		to imagine
3. Situation #2 is realistic.  

very	1   2   3   4   5   6   7	not very
realistic		realistic

### Part 4



DIRECTIONS FOR PART 4:

Please supply the following demographic information.

1. Age \_\_\_\_\_
2. Gender \_\_\_\_\_
3. Race  
     \_\_\_\_\_ Caucasian  
     \_\_\_\_\_ Native American  
     \_\_\_\_\_ African American  
     \_\_\_\_\_ Hispanic  
     \_\_\_\_\_ Asian  
     \_\_\_\_\_ Other (please specify \_\_\_\_\_)
4. Occupation \_\_\_\_\_  
     (if you are a student, please indicate year in school and major)
5. Annual Income \_\_\_\_\_

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**President Herbert Hoover's  
*Elocutio* Versus *Actio*:  
Innervation Versus Enervation  
in the 1932 Campaign**

**Halford Ryan**

"But since the whole business of rhetoric is with opinion, one should pay attention to delivery, not because it is right, but because it is necessary," affirmed Aristotle, who regarded delivery "a vulgar matter when rightly understood" (218). On the other hand, Quintilian recognized delivery's power in persuasion: "For my own part I would not hesitate to assert that a mediocre speech supported by all the power of delivery will be more impressive than the best speech unaccompanied by such power" (XI, 3, 5). But what of the inverse relationship between style and delivery? Can lackluster skills in *actio* or delivery annul deftness in *elocutio* or diction?

To win a second term, Hoover and his staff quickly realized that personal, presidential speeches were needed to counter Governor Franklin D. Roosevelt's assault on Hoover and the Republican Party (Robinson and Bornet, 255-256; Lloyd, 170-171). Given that Hoover's canvass, according to French Strother, who was administrative assistant to the president, 1920-32, would not broach Roosevelt's poliomyelitis "because of the inhibitions we have established against any material which suggests in the slightest way Governor Roosevelt's physical handicap" (Papers), the only rhetorical path open, according to Theodore Joslin, who was secretary to the president from 1931 to 1933, was "that if the President's cause was to be presented properly to the people, he would have to do it himself. He could not do the whole job from Washington. He must go to the country" (297).

Hoover took his case to the electorate by addressing large audiences while his remarks were simultaneously broadcast to the nation. He made a number of subsidiary speeches and numerous whistle-stop talks from his railroad observation car as he traversed the country to his major speaking engagements, but his broadcasts reached the largest audiences. In addition to his acceptance address, delivered in Washington, D.C. on August 11, Hoover gave seven major campaign speeches. Four of these are generally regarded as his best persuasive efforts: Des Moines, Iowa, October 4; Cleveland, Ohio, October 15; Detroit, Michigan, October 22; and Indianapolis, Indiana, October 28. Although these addresses have been treated from economic and political perspectives, their style has not been dealt with, and their delivery has been discussed only in passing.

Albeit Hoover had marshaled military metaphors from 1930 onward in his speeches to combat the Depression (Olson, 206), he made full use of them in the

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Note: Ryan conducted research in the Herbert Hoover Presidential Library, West Branch, Iowa, on a grant from the Hoover Presidential Library Association, Inc.

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1932 campaign. He declared a figurative war in his acceptance address and he waged that symbolic war during the campaign. Hoover used militaristic language to stress his role as commander in chief, rather than as chief executive, in order to persuade voters that he could in a second term defeat the Depression.

Governor Franklin Roosevelt eventually sensed the efficacy of militaristic language as a rhetorical response to the nation's needs. Roosevelt concluded his famous "Forgotten Man" radio address from Albany, New York, April 7, 1932, with an action-oriented war metaphor: "We are in the midst of an emergency at least equal to that of war. Let us mobilize to meet it" (627). But FDR did not exploit fully the effectiveness of military imagery in his speeches until his First Inaugural Address, which, owing to his rallying the country with war-like images, was one of Roosevelt's best and most persuasive speeches (Ryan, 75). The point is that both candidates responded rhetorically to the Depression, Hoover earlier and Roosevelt later, with similar language but with dissimilar results.

Of course, non-speech variables contributed to FDR's election and to Hoover's defeat. The Bonus March and Prohibition figured prominently and the Depression foremostly. Yet, with regard to rhetorical factors, Hoover's handling of two of the five classical canons of rhetoric worked to his advantage and disadvantage. Hoover's dull, dour, delivery skills, unlike those of FDR's, annulled salutary effects that his warlike diction communicated. Hoover's listeners reacted not to his innervating *elocutio* or style but to his enervating *actio* or delivery. Hoover communicated contradictory presidential images: His inept skills in delivery eviscerated his powerful military imagery.

This criticism of selected addresses from Hoover's 1932 campaign is based on the appropriate archival and audiovisual materials that were researched in the Herbert Hoover Library, West Branch, Iowa. President Hoover's speeches illuminate his own rhetorical habits, for he wrote his addresses, including those for his 1932 canvass. "Herbert Hoover," opined Thomas Bailey, "laboriously using a lead pencil, appears to have been the last incumbent to rely almost entirely on his own literary talents, which were not exceptional" (203). Therefore, an examination of Hoover's style will disclose his, and not a speech writer's, deployment of military imagery; moreover, it will reveal that his style, contrary to Bailey's assertion, was more exceptional than has been realized.

Although Hoover commendably wrote his speeches, he nevertheless found the process laborious during the campaign. He complained in a press conference, November 6, that he was forced to compose intermittently his St. Paul, Minnesota speech, delivered on the evening of November 5, between ten whistle-stops in Illinois and Wisconsin that he made en route to St. Paul: "You will realize that trying to write speeches between stops is something of a job. I had to write the whole of the St. Paul speech after 9 o'clock yesterday morning and take in all the stops as well" (769).

This analysis also considers delivery. In rhetorical situations that predated sound recordings and motion pictures, reliable historical materials for mounting a study of a speaker's delivery (vocal pacing and emphasis, gestures and bodily movement, and eye contact) were meager or unavailable. However, with the advent of twentieth-century media technology, one has the necessary resources in



which to conduct meaningful research.

Herbert Hoover was the first modern media president. To be sure, presidential candidate William McKinley was projected in the first commercial motion picture, October 12, 1896, in New York City (Ramsaye, 323). Warren G. Harding was the first president to broadcast an address, "The World Court," St. Louis, Missouri, June 21, 1923, and Vice President Calvin Coolidge first spoke, December 24, 1922, on the Pallophotophone, the forerunner of the "talkies" (Barnouw, 145, 153). However, Hoover had the honor of being heard extensively over national radio and of being heard and seen on sound motion pictures in movie theaters: "The use of the radio was more extensive than ever before . . . . It was also the first presidential campaign in which 'talking motion pictures' were extensively used" (Robinson and Bornet, 272-273). The newsreels, a staple for the movie-going public from about 1928 until their demise in the early 1960s, featured clips of the nation's chief executive. Robert H. Denton, a newsreel cameraman, recalled that his editors would say to him concerning Hoover: "God Almighty! Can't you get him to do this or that. He is not looking at the audience. He can't sell this. He can't sell that" (Denton, 17).

In the 1932 campaign, Hoover had to sell himself vis-a-vis Roosevelt. Though the election did not have campaign debates as such, Hoover and Roosevelt figuratively debated their respective candidacies before the American electorate. Myles Martel identified five strategies that inhere in campaign speaking: "attack, defend, sell, ignore, and 'me too . . . me better'" (Martel, 62).

Hoover engaged the enemy with three of these strategies. In his acceptance address and speeches at Des Moines and Cleveland, Hoover linked the strategies of defend and sell. He used military metaphors to sell his credentials as commander in chief and to defend his presidential responses to the Depression. Beginning with his Cleveland speech and continuing in his Detroit and Indianapolis addresses, he increasingly added attacks on the Republican Party and Governor Roosevelt to his rhetorical arsenal. These strategies grounded Hoover's persuasive purposes with regard to *actio* and *elocutio*.

## **PRESIDENT HOOVER'S *ELOCUTIO***

### **Acceptance Speech, Washington, D.C., August 11, 1932**

"This address," Theodore Joslin recalled Hoover's saying of his acceptance speech, "is going to be my own from beginning to end. It must be in my own language. I have a style of my own and it is most effective when I use it" (Joslin, 283). After admitting to his Constitution Hall audience of about four thousand people that "The last 3 years have been a time of unparalleled economic calamity" (Hoover, 357), Hoover explained the causes of the Depression. Then, taking credit for his administration's responses to the crisis, Hoover selected militaristic words to stress his generalship on the battlefield:

Two courses were open to us. We might have done nothing. That would have been utter ruin. Instead, we met the situation with proposals to private business and to the Congress of the most gigantic program of economic defense and counterattack ever evolved in the history of the Republic. We put that program in action. Our measures



have [applause] repelled these attacks of fear and panic. We have maintained the financial integrity of the Government [applause] (Hoover, 359).

Hoover's diction with regard to the Depression was vigorous, but his delivery was not. Although the partisan audience applauded Hoover's resolute deeds and his words made robust reading, his delivery was not rousing, for it was communicated by "reading in a low monotone" ("President's Speech is Cheered Wildly," 5). Hoover could not convey his pugnacious diction. He delivered all of his words in bland tones, with an even rate, and with no vocal inflections that could cue important verbal thrusts and parries. Moreover, he evidently did not understand the quality of his own rhetoric. In the time it took the audience to digest the import of "We put that program in action," which Hoover could have highlighted with an upward inflection and/or a rhetorical pause, Hoover plodded on without any cognition of what he had said until the audience interrupted him (Sound Recording 68-65). With military metaphors Hoover marched forward, but his delivery matched not, for "His hands rested on the lectern; he swayed slightly back and forth" ("President's Speech is Wildly Cheered," 5).

Throughout the acceptance address, Hoover dispersed militaristic diction, such as "invading forces of destruction," "definite strategy . . . forming a continuous campaign waged against the forces of destruction on an ever-widening and constantly shifting front," "demobilized and withdrawn," "powerful attack upon the depression along the whole national front," and "We shall march to a far greater *accomplishment* [emphasis in original]" (Hoover, 359, 362, 362, 365, 374). This language sounded the tocsin for voters to enlist in Hoover's army in order to vanquish the Depression.

In addition to ordering bellicose words, Hoover also arrayed anaphora. Anaphora, a figure of sound, is using the same or similar words to begin successive units of speech, such as phrases or sentences. The rhetorical effect of anaphora is to dint an important idea into the audience's mind through repetition and restatement. Thus, when President Franklin Roosevelt, who was famous for his penchant for using anaphora, spoke four successive sentences of "Last night Japanese forces attacked" in his War Message, December 8, 1941, he elegantly communicated Japanese perfidy. President Herbert Hoover, too, could craft anaphora.

But, just as Hoover's delivery was oppressive, his style was onerous. Hoover simply overused parallelism. Bragging to his listeners that he had initiated programs to battle the Depression, he assured Americans he was guided by "eternal principles of our Nation"; then, he inexorably marched in lock step twelve times with the anaphora of "It was in accordance with these principles" (Hoover, 362-363, 363-365). (One might also note that "It was in accordance with these principles" was in the passive voice, which weakened the energy of the thought.) Perhaps sensing that his style had become a battering ram, Hoover relieved the tedium once by substituting "accord" for "accordance"; once he said "It was in accordance with these purposes"; and twice he spoke "It was in accord with these ideas." Hence, Hoover delivered with anaphora fifteen virtually identical phrases that were overkill. Perhaps that is why the editors of the *Atlanta Constitution* noted: "The President gives credit for such benefits as have accrued from relief legislation to



‘the soul of the people’—and then unblushingly takes that glory to himself by saying, in effect, ‘I did it’” (“Editorial Opinion Divided on Hoover’s Dry Revision Stand,” 6).

#### **Des Moines, Iowa, October 4**

For his kick-off speech at Des Moines, Hoover deployed militaristic language to sell and defend his administration’s frontal assaults on the Depression. “Now,” the president assured his audience, “we have fought an unending war against the effect of these calamities upon our people in America. This is no time to recount the battles on a thousand fronts. We have fought the fight to protect our people in a thousand cities from hunger and cold”; moreover, he pressed the attack with other warlike words: “we have forged to win in this war against the depression,” “I wish to describe one of the battles we fought to save this Nation,” “That battle was fought parallel with other battles on other fronts,” “We are fighting to hold the Gibraltar of world stability,” “We had also to meet an attack upon our own flank from some of our own people,” “Now, the battalions and regiments and armies which we thus mobilized for this great battle turned the tide toward victory by July”(Hoover, 461, 463, 464, 464, 470).

President Hoover also marshaled some of his military images in anaphora. Unlike his acceptance address, he fortunately varied his diction for effect, and he used active verbs to strengthen his language:

We have defended millions . . . .

We have fought the battle to balance the budget.

We have battled . . . .

We have fought to retard falling prices.

We have fought to secure . . . .

We have fought for stability (Hoover, 462) . . . .

In the speech’s conclusion, Hoover again trumpeted his commander-in-chief role in staccato-like sentences:

That battle has been won. The next attack on this front is to reverse these processes of deflation and bring things back to their real values. That battle is in progress, and we must all move together. . . . The battle against depression is making progress. We are still faced with forces which render 10 million men idle and agriculture prostrate. We have forged new weapons, we have turned the tide from defense to attack. I shall continue the fight (Hoover, 484-485).

#### **Cleveland, Ohio, October 15**

Thirty thousand people heard Hoover at Cleveland’s Public Hall, and the speech was broadcast to the nation. After speaking at ten whistle-stops during the day, it was little wonder that his voice trailed off at the ends of phrases, which gave the impression of defeatism.

Nevertheless, Hoover employed militaristic diction to fortify his image as commander in chief. In the introduction he warned the people not to change their presidential leadership: “A change in the strategy of that war—of those policies—



may convert what is now a victorious battle in progress into a defeat of the American people"; later in the speech he reminded the people of his successful generalship thus far: "we carried a victorious battle over the winter of 1931-32. Still again, during the past few weeks, I have cooperated with the great national agencies in the remobilization of the voluntary forces of the country for an attack on the forthcoming winter"; he appealed directly to workers: "We have fought a great battle to maintain the stability of the American dollar, the stability of our exchange. We have fought in order that we might protect the working people of the United States"; and in the conclusion, he waved the bloody flag: "If there shall be no retreat, if the attack shall continue as it is now organized, then this battle in the history of our race is won" (Hoover, 519, 528, 536, 543).

At Cleveland, Hoover attacked frontally the Democrats by name and Roosevelt by innuendo. He used anaphora and barbed tropes. Hoover sallied forth against the Democrats with twelve instances of parallelism, which he fortunately varied with slightly different words. His foray focused on the anaphora of "The leaders of the Democratic Party," to which he then added specific charges, "appear to be in ignorance of . . . have apparently not yet learned . . . ignore the effect of . . . never heard of . . . appear not to recognize" and so forth (Hoover, 521-523). The president also figuratively side-swiped Governor Roosevelt. Hoover coyly allowed that "State governments have the primary responsibility to protect their citizens in these matters [speculation in securities] and that the vast majority of these transactions originated or took place in the State of New York," and then he complained that Roosevelt's attacks were like Johnny-come-lately Jeremiahs: "I did not notice any Democratic Jeremiahs" (Hoover, 523, 524).

### **Detroit, Michigan, October 22**

To an audience of twenty-two thousand at Olympia Arena and an untold national radio audience, Hoover unsheathed his rhetorical sword. The president attacked Governor Roosevelt's campaign complaints about the Federal deficit, and sarcastically allowed: "We have had a vast amount of oratory from the Democratic side on the subject of economy during the whole session. The oratory, instead of the facts, seems to have lodged in the mind of the Democratic candidate"; the president enumerated eighteen programs that he and the Republicans had mustered to master the Depression; and with the anaphora of "On," the president tallied eleven specific dates on which the Congressional Democrats sabotaged the ship of state with wastrel spending (Hoover, 578, 582-84, 587-588).

Hoover arrayed his traditional militaristic imagery in the introduction and conclusion of his Detroit speech to sell and defend his presidency. The president charged his audience to stay the course. "The battle must be continued," Hoover implored, for "We have yet to go a long way and to capture many position to restore agriculture and employment. But it can be made plain that if the strategy which we have established is maintained and the battle is not halted by change in the midst of action, we shall win"; however, the diction was delivered without platform presence, without any gestures, without any bellicose phrasing, without any vocal emphasis (Hoover, 610; Sound Recording 72-113). To conclude, like General George Washington at Valley Forge, Hoover succored his American army:



I can well understand that my countrymen are weary and sore and tired. I can well understand that part of this weariness comes from the exhaustion of a long battle. But in the battle we have carried the first-line trenches. It is of transcendent importance that there shall be no interruption; that there shall be no change in the strategy and the tactics used in the midst of a victorious movement. The essentials of American life must not be broken down in chaos and in peril (Hoover, 591).

### **Indianapolis, Indiana, October 28**

As the campaign closed, Hoover gradually shifted tactics. In his previous speeches, he sold and defended his administration with military imagery, and in Detroit he trained his sights on the Republican party and Roosevelt. At Butler University Field House, he aimed his broadside directly at Governor Roosevelt and incidentally at the Democrats. The president spoke militantly, but briefly, in his introduction when he reminded his radio audience and live audience of twenty-two thousand listeners of his continued fight: "[T]he battle has now changed from a successful defense . . . to a forward-marching attack on a hundred fronts through a score of instrumentalities and weapons toward recovery" (Hoover, 610; Sound Recording 72-110). But, for the military imagery Hoover deleted, he countervailed in two tropes.

The figures of speech that Hoover coined were joined to the tariff and deficit. Governor Roosevelt had delivered a speech in Pittsburgh, Pennsylvania, October 19, 1932, in which he attacked the Hoover administration's stance on tariffs and its ballooning deficit. Unfortunately, FDR never specified how he would balance the budget, and he vacillated on the tariff. Although Roosevelt's "Forgotten Man" probably could not fathom the internal contradictions in the governor's address, Hoover could and did, and he determined to refute Roosevelt's careless handling of economic figures. Impugning the catch-phrase of Roosevelt's New Deal, Hoover accurately labeled FDR's waffling on the issues as a pejorative "new shuffle"; later in the speech he correctly likened Roosevelt's economic stance to a "chameleon on the Scotch plaid" (Hoover, 616, 619).

President Hoover saved his most prescient insight of the campaign for the conclusion of his Indianapolis speech. Robinson and Bornet (263) place this attack in Hoover's speech at Madison Square Garden in New York City, which speech was a major disappointment because Hoover refused to discuss Prohibition. But the attack was first mounted at Indianapolis. Joslin (322) termed Hoover's Indianapolis speech the "high point of his campaign." At Baltimore, Maryland, October 25, Governor Roosevelt complained in a campaign address how the Republicans controlled the federal government. In a caustic carp about Republican hegemony, FDR indicted "the Executive, the Senate, the House of Representatives," and then he ad-libbed, "and, I might add for good measure, the Supreme Court as well" (Roosevelt, 837). Well, Hoover was livid, and he censored FDR's politicizing the Supreme Court:

There are many things revealed in this campaign by our opponents which should give Americans citizens concern for the future. One of



the gravest is the state of mind revealed by my opponent in that statement. He implies that it is the function of a party in power to control the Supreme Court. For generations the Republican and Democratic Presidents alike have made it their most sacred duty to respect and maintain the independence of America's greatest tribunal (Hoover, 631).

As a coup de grace, Hoover skillfully crafted a series of three elegant rhetorical questions about Roosevelt's ill-advised statement. These interrogatories, the technical term is *plurium interrogationum* or many questions, were designed to move listeners to support the president's candidacy by questioning the governor's political motives; hence, the audience was supposed to answer "Yes":

Does it disclose the Democratic candidate's conception of the functions of the Supreme Court? Does he expect the Supreme Court to be subservient to him and his party? Does that statement express his intention by his appointments or otherwise to reduce that tribunal to an instrument of party policy and political action for sustaining such doctrines as he may bring with him (Hoover, 358)?

Hoover correctly foretold the future, for early in his second term, Roosevelt unveiled to the Congress and nation on February 5, 1937, his infamous Court-packing scheme, which ultimately failed for the very reasons that Hoover rhetorically deprecated in his three questions (Ryan, 109-126).

### PRESIDENT HOOVER'S *ACTIO*

Hoover was plagued by delivery skills that did not serve well his campaign to listeners in the live audience, over the radio, or on the newsreels. Nicholas Cripe claimed that "Herbert Hoover had neither the vocal delivery nor the bodily eloquence necessary to be an effective public speaker"; Joseph Green, a career diplomat during Hoover's presidency, stated flatly: "He wasn't a public speaker; that fact had to be accepted"; and, reacting to Hoover's 1932 acceptance address, a British journalist skewered Hoover's "unprepossessing exterior, his sour, puckered face of a bilious baby, his dreary, nasal monotone, reading interminably, and for the most part inaudibly, from a typescript without a single inflection of a voice or gesture to relieve the tedium" (Cripe, 634; Green, 26; quoted in Burner, 314).

Hoover's delivery was a detriment over the radio. Joslin found Hoover's *actio* wanting: "And, of vital importance, the nominee must have a 'radio voice.' If he is so gifted, half of his troubles are over. If he is not, he is laboring under a distinct handicap"; Paul Boller scored Hoover's radio speeches, which "sounded dreary, especially over the radio"; and Martin Fausold concluded that in the 1932 campaign, "Roosevelt had the edge," for FDR's "melodious voice sounded better than his opponent's tonal evenness" (Joslin, 317; Boller, 235; Fausold, 209). An example of Hoover's dreadful delivery occurred during his radio address to the nation on welfare and relief mobilization, October 18, 1931. Hoover began with a military allusion: "This broadcast tonight marks the beginning of the mobilization of the whole Nation," but he marred his *actio* with a four-second pause when he stumbled over "with the churches and our [pause] our [four second pause] fraternal and patriotic societies"; hence, the speech's militaristic gambit was outflanked



by a poor presentation (Hoover, 487, 488; Sound Recording 68-69). Particularly poignant examples from the campaign were Hoover's speech at St. Paul, Minnesota, November 5, which Joslin characterized: "He spoke haltingly and without emphasis. his voice was tired. He lost his place in the manuscript again and again," and a short radio broadcast from the president's private railroad car in Elko, Nevada, November 7, in which Hoover was tired, his voice lifeless, his phrasing disconnected ( Joslin, 324; Sound Recording 68-66).

Hoover fared no better on the newsreels. Robert Littell understood the impact of the newsreels on the voting populace: "What counts—and here is a valuable function of the newsreel—is the faces, the voices, the gestures, the personalities rather than the words spoken. For no matter how well prepared a politician's newsreel turn may be . . . the impression . . . will be good or bad according to whether or not the public likes what this glimpse of his face and voice reveals of the man himself" (Littell, 270).

President Hoover's speaking on the extant newsreels reveal a speaker with poor technique. His eye contact was ineffectual. He read a speech while holding it in his right hand, or he fastened his eyes on the manuscript, which was placed on a music stand-like apparatus that was positioned at his eye level (much as teleprompter screens are today), and he sometimes experienced trouble in turning the pages ( Motion Picture 74-425; Motion Picture 74-426; Motion Picture 74-435; for a photograph of the music stand-like fixture, see Hoover, 638-639).

Hoover did not use his head or body for emphasis, and he rarely gestured. His *verboten* mannerisms were placing his hands in his pockets, or holding his hands at his side, except to reach up and turn a page of his speech. Rather than waving or smiling at audiences, when he finished he bowed stiffly (Motion Picture 74-429; Motion Picture 74-434; Motion Picture 74-374).

Hoover did not enjoy giving speeches. This fact was never more evident than for his Pan American Union Address, April 14, 1931. The newsreel included the conclusion of his address, and anyone could easily perceive a president who was obviously disgusted with his entire public performance ( Motion Picture 74-435).

Hoover's lack of skill, whether in public, over the radio, or on the newsreel, was a conscious choice. Denton determined that Hoover, despite numerous admonitions to enliven his delivery, "would just maintain his own pace in a monotonous manner"; Joslin noted that Hoover doggedly delivered his speeches in a manner that he would not correct: "This is not a showman's job. I will not step out of character"; and Lloyd Craig determined that during Hoover's presidency, "his speaking ability did not improve, and apparently he was convinced that not much could be done to improve it" ( Denton, 17; Joslin, 3; Craig, 171).

## CONCLUSION

Critics have long recognized the general weaknesses of President Hoover's skills in delivering a speech. Their findings, not detailed by newsreels and sound recordings, have been confirmed in this study with a specificity that the resources of the Hoover Library permit.

However, Hoover's skill in styling his speeches has not been appreciated. Hoover understood the efficacy of metaphor and anaphora for rhetorical effect, for



he used these stylistic devices in his best campaign speeches. He successfully employed rhetorical questions in his Indianapolis speech against Governor Roosevelt. Although this study has incidentally contrasted Herbert Hoover's style with Franklin Roosevelt's, a further comparison may be ventured. Given the ample evidence of Hoover's utilization of metaphor and anaphora, in which it has been asserted that Roosevelt excelled (Ryan, 162), Hoover was probably FDR's superior in the 1932 campaign. The argument is telling when one considers that Hoover wrote his speeches whereas FDR had ample help from a team of talented writers.

From a persuasive perspective, Hoover invested great personal care in the styling of his speeches, but his delivery, which he consciously neglected, contributed to their relative rhetorical failures. Harris Warren believed the 1932 election might have been less lopsided if Hoover's delivery skills could have better matched his stylistic acumen: "Hoover's vocal pedestrianism, his at times mumbling delivery, failed to do justice to many well-written passages. Had the roles been reversed, the outcome might well have been the same but the vote undoubtedly would have been much closer" (Warren, 266-267).

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## Hagiography and Historiography in Free Speech Theorizing: Revisiting the Case of Eugene V. Debs

Marouf Hasian, Jr.

### Abstract

This essay revisits the historiography and hagiography surrounding the case of Eugene V. Debs. This famous socialist was involved in one of the most controversial of the World War I federal prosecutions for violations of the Espionage Act. The manuscript argues that in spite of the difficulties of deciding what Debs did say in at Canton, Ohio, free speech scholars have used the attacks on the Holmes decision in *Debs* as evidence that the nation was moving toward the establishment of free speech doctrines. By selectively forgetting about the restrictive precedents set by Holmes, free speech scholars have helped us remember a legacy that provides greater Constitutional protections.

### Introduction

Who can say that the Supreme Court of the United States locked up Eugene Debs' ideas by locking up Eugene Debs' body?

—Forrest Black (1932, p. 175)

In 1921, America's most famous social leader, Eugene Debs was finally let out of prison by President Harding (Kalven, 1973, p. 236). For decades, this famous labor organizer and social agitator had "occupied a prominent role in the nation's consciousness" (Salvatore, 1982, p. xi), but his anti-war stance during World War I had landed him in jail. While many liberals and socialists celebrated the release of "Saint Gene," other Americans characterized him as a traitor who should have been deported. With the passage of time, his trials and tribulations have become an important part of our nation's collective memory. His role in the Pullman strikes, IWW affairs, and his Presidential campaigns provide scholars with an abundance of materials on the labor disputes of the times and the rise and demise of socialism in this country. Vilified as a anarchist by some, he would come to symbolize for others the limits of militant activism in America. Yet during the World War I years, both Debs and the nation would change, and so would various public's views of Debs. As Lee and Andrews (1991) noted several years ago, history's "sanctification of Eugene Debs is in many ways a perfect example of the temporal dimensions of historical judgment" (p. 20).

While we have a plethora of biographical (Constantine, 1990; Ginger, 1949/1962), historical (Currie, 1976; Salvatore, 1982), and public address studies of Debs (Brommel, 1969, 1978; Darsey, 1988, 1997; Lee & Andrews, 1991), we

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have relatively few detailed investigations of either Debs's trial or the public reactions to his imprisonment.<sup>1</sup> This is surprising, given the fact that the "Debs case served as a rallying point for socialists and non socialists who deplored the nature of the wartime loyalty program and the excesses of the Palmer Raids following the war" (Constantine, 1990, p. lxxvi). Moreover, communication scholars have sometimes included some of Debs' most famous speeches in textbooks without every realizing that there have been conflicting interpretations of what he said during some of his anti-war speeches in the 1910s.<sup>2</sup> In the Ohio courtroom where Debs would be tried for violating the amended Espionage act, evidence was introduced that was based on the notes of stenographers who only wrote down half of his Canton presentation (Eastman, 1942, p. 50). At the same time, the Department of Justice's records of Debs' speeches contain texts that are markedly different from the socialist literature that has publicized his addresses. This gets even more complicated when we compare the arguments made by the Ohio attorneys who prosecuted Debs in Ohio with the words of Holmes in the infamous Supreme Court decision, *Debs vs. United States* (1919). Kalven (1973) may be partially correct that the "start of the law of the first amendment" is *Schenck* and *Debs* read together" (p. 236), but we know surprisingly little about the fragments (McGee, 1990) that sent Debs to jail for 20 years.

I believe that part of the reason for our cursory treatment of the Debs trial comes from the hagiography surrounding both Debs and Oliver Wendell Holmes, Jr. As Oestreicher (1992) recently explained, Debs was considered a "secular saint" by many members of the political left, and he "generated an enduring cult of hero worship" (p. 49). Several decades later, Holmes was canonized for his contributions to the First Amendment, and his "free speech decisions" have been some of the "best known and celebrated" of his opinions (White, 1993, p. 412). Yet as I note below, Holmes would be considered a liberal jurist in this area because of his dissents in case like *Abrams* (1919), and not for his arguments that appeared in the *Debs* case.

Classical liberal theorists have therefore chosen to write selective historiographies that have enshrined Holmes' later opinions while quickly passing over some of his more restrictive free speech decisions. These linear approaches to free speech doctrines have provided us an alluring tale of the abandonment of the "bad tendency" test, and the progressive adoption of the purportedly more protective "clear and danger" standard. Yet in the telling of this truncated narrative, we have lost some of the rhetorical richness of this importance site of controversy.<sup>3</sup>

In this essay, I join critical scholars like Gordon (1987) who invite us to supplement our formalist accounts of legal rhetoric with ideological accounts that explain the conflicting rhetorical positions taken by various individuals and collectives.<sup>4</sup> As Gale (1994) averred, an increasing number of scholars are now beginning to critique the "metatext" of jurisprudence, and these writers invite us to see the cultural dimensions of judicial opinions (p. 17). This type of approach assumes that even "mainstream liberal thought" contains contradictory concerns that are systematically repressed in both descriptive and normative accounts of our rules of law (Kelman, 1987, pp. 2-4).<sup>5</sup>

While there are a variety of critical approaches that could be taken in analyz-



ing the *Debs* case, I am interested in illustrating the selective nature of the legal and popular memories of Debs, Holmes, and the Supreme Court decision that followed the events at Canton. Unlike most traditional approaches to the trial, I am not interested in finding the best abstract, *a priori* free speech principle. Nor am I trying to determine the inherent correctness of Holmes' clear and present danger "test." I am more interested in illuminating some of the cultural and rhetorical forces that influenced the creation of some of the classical liberal interpretations of the First Amendment during the first quarter of the century.

In order to understand the symbolic dimensions of the *Debs* case, this essay will be divided into four major parts. First, there will be a section on Debs that focuses on the free speech arguments that circulated in the legal and public spheres prior to Holmes' opinion in *Debs*. Second, I contextualize and unpack Debs' speech at Canton, and provide some indication of why we have competing interpretations of what was said that day. Third, I supply a brief review of both the press coverage and legal discussions of the *Debs* case after the Canton address. Finally, in the concluding segment of the paper, I assess how "Saint Gene" is remembered by various American publics interested in free speech rights.

### **Debs and the Free Speech Tradition Prior to the Canton Address**

Scholars today continue to debate the issue of whether America's free speech legacy is primarily one of suppression (Levy, 1985) or expression (Shiffryn, 1990), but there is little doubt that various audiences have debated the merits of the First Amendment long before the advent of World War I. In the nineteenth century, both the Civil War and the labor disturbances of the Gilded Age tested the nation's willingness to avoid imposing prior restraints on speech activities that threatened the perceived security of the nation in times of trouble.<sup>6</sup> During these periods, the phrase "direction action" was used to label a plethora of speech acts—including address that encouraged civil disobedience, Supreme Court reform, anarchism, socialism, and Bolshevism. Some "agitators," reported an anonymous contributor to *The Unpopular Review* (1914), were under the "delusion" that they had absolute free speech rights, and they acted in ways that either interfered with the "ordinary private rights of others" or incited "disorder." (Some," p. 224).

After America's entry into the Great War, tensions mounted as radicals, liberals, and reactionaries debated about the legal lines that needed to be drawn between "liberty" and "license." On June 15, 1917, after two months of heated argument, Congress passed the Espionage Law, which made it a felony for anyone to willfully obstruct the recruiting or enlistment service of the armed forces. The law also provided "punishment for anyone who willfully makes or conveys false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies" (Carroll, 1919; Rogers, 1918, p. 769). There was a clause in the Espionage Law that also made "non-mailable" any letter or publication that tried to advocate or urge "treason, insurrection, or forcible resistance to any law of the United States" (Rogers, 1918, p. 769). One American patriot, writing in the *Living Age* at the time, defended the Espionage Law, arguing that "such restrictions on the press were not very drastic" and did not "go so far as the English Defense of the Realm Regula-



tions" (Rogers, 1918, p. 769).

Thousands of suspected "slackers," "foreigners," and "traitors," would be sentenced under the Espionage Law, but a review of much of the extant literature of the times reveals that there were just as many complaints that the 1917 restrictions were not being enforced. Many conservative Americans thought that unity in time of war meant that the nation needed to be under martial law rather than civil law. From within this perspective, defendants who were found not to have the requisite legal "intent" to violate the law were simply criminals who did not deserve the civil protections afforded by the Constitution.<sup>7</sup> President Wilson was presumed to have provided the public with the true reasons for America's entry into the war, and many public discussions that contested these claims were immediately suspect.

Enormous public pressure came to bear on Congress to clarify the legislation in this area, because some Americans worried that dissident speeches were affecting the sale of war bonds and the drafting of otherwise patriotic citizens. Other anxious citizens were concerned that the absence of clear laws brought vigilantism and class conflict. In the May of 1918, the Espionage Act was supplemented by what would later be called the Alien Act. Under these new statutes, Americans were prohibited from making false reports or statements with the intent of obstructing the U.S. sale of war bonds or the making of loans. Citizens could also be punished for "causing or attempting" to cause insubordination, mutiny or refusal of duty in the armed forces. Nor could people willfully "utter, print, write or publish any disloyal, profane, scurrilous or abusive language about the form of government of the U.S. . . ." (Carroll, 1919, p. 649). Kimball (1920) noted that the May amendment was "intended to increase the field of criminal utterances" (p. 443). For several years, both the Espionage Act and the Alien Act would be used in thousands of trials and would serve as models for similar state legislation.

### **Debs at Canton: What did "Saint Gene" Really Say?**

Many of the citizens who served sentences or paid fines under these federal and state laws would be forgotten, but this would not be the case with "Saint Gene." Debs got himself in trouble in Canton, Ohio when he gave a public address in which he criticized wars in general and World War I in particular (Kalven, 1973, p. 236). Hours before giving his address, Debs had stopped off at the Stark County Workhouse to see several Cleveland socialists who were serving one year each for their 1917 anti-war stands—Baker, Ruthenberg, and Wagennecht (Coleman, 1930, p. 284; Morais & Cahn, 1948, p. 96).<sup>8</sup>

For more than two hours, America's leading socialist lashed out against the plutocrats of the world, and argued that the "master class" of the world always declared the wars while the "subject class" fought them (Shannon, 1955, p. 114). At one point, Debs is said to have asked the crowd if they were opposed to "Prussian militarism," and he told them that he had "no more use of the Junkers of the United States" (Morais & Cahn, 1948, p. 97). While representatives of the American Protective League went through the crowd checking draft registration cards, court stenographers from the local federal district court tried to keep track of Debs every word (Shannon, 1955, p. 114). Debs apparently spoke so fast that the two



listeners working for the federal authorities had trouble writing down exactly what Debs said, and we have several different (and conflicting) extant copies of what Debs allegedly said that day. Edward Sterling, a young lawyer working in Canton, would later testify that he had to take down notes in shorthand (Coleman, 1930).

Speaking against the war or government was hazardous to one's health even before the passage of the amended Espionage act, but the new laws made even "attempts" at incitement a criminal offense. This exacerbated the problems for speakers who wanted to talk about workers' rights, the Bolshevik Revolution in Russia, or the jailing of comrades. A close reading of one of Debs' "texts" shows that he was very aware of politics of some of his listeners. At one point in his address, Deb seemed to sense the presence of government officials in his audience. Referring to his visit to the County workhouse, Debs noted that

three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the Constitutional right of free speech in a country fighting to make democracy safe for the world. I realize in speaking to you this afternoon, there are certain limitations placed upon the right of free speech. I must be extremely careful, prudent, as to what I say, and even more careful and prudent as to how I say it. . . . I would rather a thousand times to be a free soul in jail than a sycophant or coward on the streets. . . . Why should a Socialist be discouraged on the eve of the greatest triumph of all history of the Socialist movement? (Coleman, 1930, p. 285)

At the end of the speech, agents from the Justice went through the hall that Debs had been in, and they demanded to see the draft registry cards of many of the socialists in the audience (Coleman, 1930, p. 287).

At first it looked like the federal authorities from the Department of Justice were going to be reluctant to take Deb's case to court, but the United States Attorney for the Northern District of Ohio (E. S. Wertz) was persistent. He was able to impanel a Grand Jury in Cleveland that returned an indictment against Debs filled with ten counts of violations of the Amended Espionage Act (Coleman, 1930, p. 288; Shannon, 1955, pp. 114-115). Out on bail, Debs continued to speak out on some of the issues that he had raised in the Canton Address.

Long before the Canton address, patriotic newspaper writers in the region had not been happy with Debs and his critique of the war. Several months before his trial, one writer for the *Cleveland Press* noted on June 19th, 1918 that

Debs is doing more to aid the Hun Kaiser than all the pro-German Germans in America. He is of greatest assistance to the Boches in France than the Turks, Bulgarians and the Austrians. His Canton speech, even now being spread, broadcast through all Germany and all Germany trenches, will kill more American soldiers than all German submarines that hunt the American transport ships. (Coleman, 1930, p. 288)

These were common sentiments at the time, for Debs spent the summer of 1918 antagonizing many patriots who wondered why the famous socialist was even getting a trial.

In September of 1918, Debs found himself being tried for violation of the



Espionage Act in front of a jury of retired Ohio farmers and merchants (Morais & Cahn, 1948, p. 99). Today we have a few iconic and ideographic fragments that help us rebuild the context of the Canton trial. Note, for example, how one friend of Debs described the atmosphere of the Cleveland courtroom during the trial:

The chamber of contemporary justice in Cleveland is of oak and marble, with windows two stories high and a ceiling of gold; the judge sits high up and his desk is as wide as a counter; and behind and above him the full width of the wall is filled with a splendorous painting. It is a painting of angels with beautiful bodies, and stern faces and swords of flame, guarding the tablets of stone upon which are inscribed the ten Commandments of Israel . . . . A kind of flamboyant solemnity of space in all that end of the room, and at the other end, a solid crowd of poor people, standing up, eager, their eyes shining like children's on everything that happens . . . (Eastman, 1918, p. 8)

The prosecution team included District Attorney Wertz and one of his assistants, Kavanaugh. Debs defense team included Stedman, Cunnea (Chicago), Sharts (Dayton), and Wolf (Cleveland). In his opening remarks to the jury, Kavanaugh pointed a finger at Debs and proclaimed that "This man is the palpitating pulse of the sedition crusade. By his words shall he be judged, and by his words shall he be condemned" (Coleman, 1930, pp. 289-290). The defense attorneys during the opening statements tried to show that Debs was using words and phrases that had been used by many pacifists and liberals, including Woodrow Wilson himself before becoming President.

As noted above, several federal agents had been reluctant to bring this case to court in the first place, and the presentation of the prosecution's case did not alleviate these anxieties. One of the two key witnesses for the prosecution, a reporter by the name of Miller, would later apologize for his attacks on Debs (Darsey, 1988). This, however, was not Miller's position in the heated moments of a trial that tested one's patriotism. During the trial, Miller reported that a Socialist convention had been held in Canton on June 16, and that he had personally interviewed Debs at a hotel just before his Canton address (Morais & Cahn, 1948, pp. 99-100). What many legal commentators have failed to notice is that Miller claimed that Debs told him that he would not repudiate the anti-war resolution that had been passed in April of 1917.<sup>9</sup> Another reporter, Virgil Steiner, admitted during the trial that he had only been able to get down the "principal features of the address" (Coleman, 1930, p. 291).<sup>10</sup> This witness testified that he had had trouble taking down everything that had been said, but that he had done the best job that he was capable of (Morais & Cahn, 1948, p. 100).

The testimony of the court reporters and other official stenographers was important because of the specific intent requirements that were believed to be a part of any violation of the Espionage law. In order to convict Debs, there had to be sufficient evidence that he had caused or attempted to cause insubordination, mutiny, and insubordination. This required proof of delivery, a link of key words to any danger to the government, and Debs' intent to violate the law. The presence of draft age youngsters in his audience helped the prosecution, but Debs often vacillated between cautious behavior and outright disrespect for the law. His supporters and admirers often pointed out that in his addresses he was simply using com-



monplace claims that had been circulating in the public sphere for quite some time. One scholar (Constantine, 1990) has recently remarked that "there was little new in the speech—the relationship between capitalism and war, the uneven burden of war on capitalists and workers, the injustice of the convictions and imprisonments being carried out under the wartime loyalty program . . ." (p. lxxvi).

What many analysts of the Debs case have not discussed in any detail is the way that Debs seemed to fear that he would not be convicted.<sup>11</sup> On the day that Debs's defense team was going to put into the trial their own evidence, Debs demanded that he be able to plead his case to the jury in order to educate them about the tenets of socialism. Shannon (1955) once argued that "Debs offered practically no defense at all" (p. 115). Darsey (1988) similarly opined that "Debs had no witnesses in his defense, did not context the prosecution's account of the speech in question, only their definition of it, denied his ability to retract what he said " and resigned himself to being in prison for quite some time (p. 444). What made matters worse is that Debs refused to take advantage of the ways that Steiner's transcript conflicted with Deb's own recollection of the speech (Morais & Cohn, 1948, p. 100).

Yet Sterling (1987) has convincingly argued that the defense lawyers in the case did their very best in spite of Debs. This could not have been any easy undertaking. Whatever holes had existed in the prosecution's case were quickly filled in by Debs himself. He did not retract anything that he said at Canton; he upheld the goals of the Bolshevik leaders during the Russian Revolution; and he admitted that he thought America was involved in an imperialist war. (Morais & Cahn, 1948, p. 103). In his address to the jury, he claimed:

Gentlemen, you have heard the report of my speech at Canton on June 16, and I submit that there is not a word in that speech to warrant these charges. I admit having delivered the speech. I admit the accuracy of the speech in all of its main features as reported to this proceeding. There were two distinct reports. They vary somewhat, but they are agreed upon all the material statements in that speech. (Coleman, 1930, p. 291)

Most of the Debs' diatribe focused on explaining socialist doctrine, and he claimed that he was not in favor of violence but "enlightenment." Moreover, he explicitly portrayed himself as one of the martyrs of history who had been misunderstood, maligned, and prosecuted.

The next day, Judge Westenhaver's charge to the jury made it even more difficult to find a way out for Debs. These jury instructions claimed that the jury did not need to prove that the Canton speech had actually caused mutiny or insubordination. Instead, they only had to decide if there was an "intention" on the part of Debs to perform such acts. After seven hours, the jury returned a verdict of guilty (Coleman, 1930, pp. 293-294).

During sentencing, the verbal sparring between Debs and the patriotic participants in this social drama continued. "Saint Gene" argued that he had chosen to go to prison instead of Congress, and he continually averred that "the people" were waking up to the evils of privation. Judge Westenhaven, considered a liberal by many of Ohio's socialists, responded that he could not believe "the remarkable self-delusion and self-deception of Mr. Debs who assumed that he is serving hu-



manity and the down-trodden" (Coleman, 1930, pp. 294-295). Debs received a ten year sentence for violation of the Espionage Act, and a national controversy over the decision ensued.<sup>12</sup>

Much of the publicity surrounding the *Debs* case appeared in the popular press after the Great War was over. In the early part of 1919, The United States Supreme Court was involved in three Espionage cases—*Schenck*, *Frohwerk*, and *Debs*. As Ragan (1971) trenchantly observed long ago, these cases were not rooted in any "libertarian construction" of the freedom of expression, but rather were based on an interpretation that had the effect of "sanctioning the common law crime of seditious libel" (p. 25). The free speech tradition had yet to be invented.

Because of the sequential nature of legal precedents, the *Debs* case is usually considered to be a decision which simply allowed the Supreme Court to amplify what it had already decided in *Schenck*.<sup>13</sup> This may have been a strategic decision on the part of the justices because of the famous socialist's involvement in the case. In *Schenck* (1919), Holmes would write the majority opinion, and the following words would be cited by legal scholars for decades:

... the character of every act depends upon the circumstances in which it is done . . . . When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men [sic] fight, and that no Court could regard them as protected by any constitutional right. (pp. 50-52)

In both *Schenck* and *Debs*, Holmes did not spend a great deal of time discussing the First Amendment or any other part of the Bill of Rights. Instead, he treated the cases as merely instances of statutory interpretation of *criminal* regulations.

In a very brief, five page Supreme Court review (*Debs*, 1919) of the lower court cases,

Holmes' short opinion methodically answered most of the major points raised by Debs' lawyers in their appellate brief. While he refused to discuss the constitutionality of the Espionage Acts themselves, he did discuss the right of "free speech" (p. 212), the evidential rules of the lower court, the reading of the jury instructions, and the lower court's interpretations of the Espionage Acts. In each instance, he supported the conclusions of Judge Westenhaven, and he refused to overturn the Debs conviction.

Holmes began his opinion by explaining that the defendant was not being put on trial for his social views (pp. 212-213). After quickly outlining the two major counts that were left in the indictments,<sup>14</sup> he wrote several paragraphs that explained the difference between protected and unprotected speech during wartime. He implied that in theory, as long as Debs and other radicals talked about the problems of war in general, they received the protection of the First Amendment. But as soon as Debs began talking specifically about World War I and the U.S. government, his "opposition was so expressed that its natural and intended effect would be to obstruct recruiting" (p. 215). Holmes argued that some of the passages of the Canton address that focused on "Prussian militarism" were presented in such a way that a jury could rightfully find that they were "intended to include the mode of proceedings in the United States" (p. 213). For example, talking to a young audience about the government's role in treating them as little "better than



slavery and cannon fodder" (p. 214) provided evidence for Holmes of Debs' specific intent. The defendant may have sincerely thought that he had a right to discuss "a general and conscientious belief," but that did not mean that he was immune from prosecution from the "intended effect" or the "probable effect" of his words (p. 215).

After this brief sketch of his free speech position, Holmes went on to defend the lower court's evidentiary decisions and reading of the jury instructions. This jurist framed his analysis in such a way that it focused on the external consequences of the Canton address, rather than the internal motivations of the defendant. Debs' lawyers tried to argue in their appeal that the defendant's conviction for this incitement had been based on a lot of hearsay evidence, and on court records from other legal proceedings, but Holmes was not convinced. He took the position that any correct interpretation of the Espionage statutes demanded that a court find a person's actual "intent" and not their alleged goals or motivations. This implied that the prosecution should be allowed a great deal of leeway in going beyond the actual text of the Canton speech, and if this meant looking into a person's prior behavior, then so be it. For example, Holmes argued that the introduction of evidence showing the defendant's support of the Anti-War Proclamation and Program (adopted at a socialist gathering in St. Louis in April of 1917) was properly admissible in the lower court, because it helped show the "intent" of the defendant (p. 216). Holmes pointed out that parts of this anti-war platform included a recommendation for "continuous, active, and public opposition to the war," and this involved "demonstrations, mass petitions, and all other means" within their power (p. 216). Debs had also discussed some of his plans just hours before making his Canton address. According to Holmes, a jury could properly infer that one of Debs' intentions involved taking actions that violated the Espionage Act.

The Holmes opinion is fascinating because it only mentions "the 1<sup>st</sup> Amendment" (p. 212) in the summary of the defense motions.<sup>15</sup> Since "intentional incitement" was one of the exceptions to Constitutional guarantees, Holmes perhaps felt justified in highlighting the lower court discussions of the requisite "intent" required for criminal prosecutions, and ignoring many of the arguments that appeared in the defense appellate briefs. Holmes would not question the constitutionality of the Espionage Act, and this meant that Debs had little chance of overturning his ten year sentence. When Debs heard that Holmes and the rest of the Supreme Court had upheld his conviction, he is reported to have said that

[T]he decision is perfectly consistent with the character of the Supreme Court as a ruling class tribunal . . . Great issues are not decided by the courts, but by the people. . . . I stand by every word of the Canton Speech. . . . the Espionage Law is perfectly infamous and a disgrace as well to the capitalist despotism at whose behest it was enacted. Sixty years ago the Supreme Court affirmed the validity of the Fugitive Slave Law to save chattel slavery. . . . I despise the Espionage Law with every drop of blood in my veins, and I defy the Supreme Court and all the powers of capitalism to do their worst. (Morais & Cahn, 1948, p. 104)

Holmes would later be lampooned and reviled by some liberals and radicals who argued the restrictiveness of this "clear and present" danger interpretation of



statutory legislation (Black, 1932), but this jurist's arguments seemed to have resonated with the majority of Americans of the period. One contributor to *The New York Times* wrote that freedom of speech "is a guarantee with inherent qualifications. It cannot be abused to impair or destroy the social bond" ("The Case," 1919, p. 10). In the year prior to the Holmes decision in *Debs*, Judge Rogers (1918) provided a typical interpretation of the federal law by observing that

If the natural and reasonable effect of what is said to encourage resistance to the law, and the words are used in an endeavor to persuade to resistance, it is immaterial that the duty to resist is not mentioned or that it is to the interest of the person is not suggested. That one may willfully obstruct the enlistment service, without advising in direct language against enlistments and without stating that to refrain from the enlistment is a duty or is in one's interest, seems to us too plain for controversy. (*Masses*, p. 3)

Holmes' views thus resonated with both the bar and the public. Carroll (1919) could confidently proclaim several years after the decision that the Supreme Court in the *Debs* case had "endorsed" the position of Rogers (p. 653).<sup>16</sup>

Ironically, some of Holmes' contemporaries may have viewed the *Debs* case as an example of progressive, judicial restraint. Instead of following the lead of other courts that had struck down majoritarian legislation in the name of some abstract "liberty" of contract or "property" right, this Court had settled for merely interpreting some legislative acts. The jurists who decided *Schenck*, *Frohwerk*, and *Debs* were shocked to find themselves attacked by some of the same liberals who had been advocating judicial restraint for years. Yet as Lee and Andrews (1991) have observed, even some of Holmes' contemporaries pointed out some of his inconsistent stances in the free speech cases (p. 30).

The three most famous critics of the *Debs* decision were Chafee, Hand, and Freund.<sup>17</sup> Chafee (1919) wrote several articles in popular and legal journals that criticized Holmes for not remembering the importance of adapting the law to changing social conditions ("Freedom," 932).<sup>18</sup> This Harvard professor complained that Holmes had forgotten that the founders had crafted a First Amendment that no longer followed Blackstone's notions regarding prior restraint (Ragan, 1971, p. 36). Chafee (1941) later granted the Constitutionality of some of the provisions of the Espionage Act, but he complained that many of wartime prosecutions were based on inaccurate constructions of the legislation. Hand argued for his own test of direct incitement in place of Holmes' clear and present danger standard (Polenberg, 1989).

Perhaps the most devastating critique of the *Debs* case was penned by Freund. In several articles published in May, 1919 issues of *The New Republic*, readers were presented with the claim that in this trial "there was nothing to show actual obstruction or an attempt to interfere with any of the process of recruiting" (The *Debs* case," 1919, p. 13). Freund claimed that there was a huge difference between "verbal or written opposition to the war" and "obstruction," and he complained about the Court's application of the "notoriously loose common law doctrines of conspiracy and incitement" (pp. 13-14). Weeks later, he claimed that "the doctrine of inferential provocation substitutes uncertainty for certainty" ("The *Debs*," 1919, p. 152).



In spite of these critiques, the *Debs* decision and the application of the “clear and present” danger standard were used to send Debs to prison. Rabban (1981) has noted that Chafee and the other critics selectively used precedents in their discussion of the pre-war courts on free speech, and we are perhaps lucky that most members of the legal and public communities have accepted this liberal interpretation. By eulogizing Holmes for his dissent in *Abrams*, we gain some formal consistency in our free speech theorizing—but it comes at the cost of forgetting the restrictions in *Debs*.

### **Cultural Amnesia, Collective Memories, and the Establishment of the Free Speech Legacy**

Today we often take for granted the “tolerance” that seems to be built into our free speech laws, but before the uproar over the *Debs* decision that term had a very restrictive meaning (Rabban, 1981). Almost all Americans during the Great War affirmed their support of “free speech,” but there were various interpretations of just who could assert these rights and when the nation could allow criticism in wartime. As long as a journal either approved of the war or advocated improvements in “American preparation,” they were left alone (Rogers, 1918, p. 770). A person could criticize the Wilson administration—if they did so in a patriotic style, meaning that they did not question the goals of the war. Furthermore, socialists, bolsheviks, and other dissenters were said to be using the cloak of the U.S. Constitution as a way of avoiding criminal prosecutions.

Yet the reconstruction of historical events can be a hazardous and humble undertaking, and scholars who collect the speeches of writers during this period may be unwarily circulating the propaganda of an earlier age. While we may have trouble reconfiguring precisely what Debs said in violation of the Espionage Laws in 1918, there is much evidence that he was convicted for a plethora of reasons. A critical legal rhetorical approach to this case reveals that Debs was in trouble with authorities because of a series of acts and behaviors: he had been a labor agitator for years; he gave countless addresses supporting the infamous St. Louis platform denouncing war; he inflamed the passions of Canton citizens who might be drafted, and he refused to stop presenting speeches even after he was indicted. This pattern appeared to provide government informers and officials sufficient cause to suspect that Debs was guilty of a myriad of Espionage Law provisions, including willfully obstructing recruiting or attempting to cause insubordination. Bundled together, this meant that Debs provided authorities with an excellent exemplar of the “slacker,” the enemy within whose behavior could be shown to have the “tendency” of breaching the peace. As Black (1932) would note fourteen years after the Canton address, “the bad tendency doctrine operating in the *Debs* case” was used at a time when “war psychosis” seemed to envelope “our officialdom during the World War” (p. 165). Prosecutors perhaps thought that under any of the recorded versions of the Canton address, Debs was guilty.

But Debs was not alone in his criticism of the Great War. One contemporary, Rogers (1918), reported that the Department of Justice had made public the fact that “there had been nearly four thousand convictions in cases against individuals charged with attempting to obstruct the government” (p. 770). Rogers went on to



point out that there had been thousands of other *failures* to convict, and millions of Americans in September of 1918 were wondering why there had not been more court-martials in 1917. The nation's super patriots lamented the ways that government officials seemed to be pampering slackers—Congressional statutes were not specific enough, convictions and punishments were slow in coming, and mob violence occurred when the law was not responding to public needs.

In the case of *Debs*, we have a socialist leader who seemed to believe that the United States was on the verge of revolution, and he appeared to court prosecution. Holmes may have represented the majoritarian views of most Americans with his "clear and present danger" standard articulated in *Schenck* and applied in *Debs*, but he later worried about the criticism that he received from jurists and scholars like Hand and Freund. As Kalven (1973) noted decades ago, the "Freund article makes it clear that the outcome in *Debs* was perceived as dangerously unsound by sophisticated legal intelligence of the day" (p. 238). Yet this coterie of intellectuals may have had classical liberal ideas of free expression that differed significantly from the dominant views of the public.

As far as modern free speech doctrines are concerned, cases like *Debs* and *Abrams* would be used as competing precedents for more than half a century. As Siegel (1981) has noted in his discussion of *Schenck*, such decisions allowed states to prohibit any speech which could conceivably produce a "clear and present" danger (p. 70). Anxious moderates who worried about the excesses of the "Red Scare" following the war helped to invent a free speech legacy that would distance itself from the hysteria of earlier times. In the process, *Debs* was transformed from a "failed radical to hero of a liberal society" (Lee & Andrews, 1991, p. 22). Yet altering the more restrictive interpretations of the First Amendment was no easy task. As Meiklejohn (1960) once opined, since 1919, the Supreme Court has "persistently ruled that freedom of speech of the American community may constitutionally be abridged by legislative action. That ruling annuls the most significant purpose of the First Amendment. It destroys the intellectual basis of our plan of self-government" (p. 30).

One could also argue that the *Debs* case shows that it is not just the correct formalistic ruling that preserves our civil liberties, but the rhetorical atmosphere that exists at a particular time. As Sandmann (1994) once explained, the legal "subject" is "both a product of existing social practices" and is a "reflective, functional agent of change," yet rarely do we see how "this is accomplished" (p. 374). In the case of *Debs*, we have an individual who had to cope with a variety of societal and institutional prefigurations, and not all of them were of his own making. Granted, he searched for martyrdom, but he also lived in an age where "bad tendencies" were enough to get a speaker into trouble. In spite of the fact that federal officials had collected conflicting records of what "Saint Gene" had said at Canton, they had little trouble prosecuting him and upholding his conviction. Critics have criticized the way that Holmes treated *Debs* as a criminal rather than a constitutional law critic, but it appears that many American citizens thought that the May 1918 Alien Acts were written to provide the criminal particularity that was missing from former restrictions. Rogers (1918), for example, opined that

The law [May amendments], finally, makes it a crime to encourage or defend



any of the prohibited acts. Whether this will be more effective remains to be seen; it applies to—although it—is not particularly aimed at—the press, but it hardly involves the constitutional amendment guaranteeing freedom of discussion, for it is confined to utterances which recent events have shown to have immediate tendency to cause breaches of the peace or to aid the enemy by hampering American preparation. (p. 770)

Many of these wartime opinions were continually discussing free speech from the standpoint of the interest of society in curbing it (Konefsky, 1974).

In sum, the *Debs* case illustrates the dangers that come from depending on the Supreme Court to protect free speech principles in the face of public intolerance. Shiffrin (1990) insightfully points out that

There is a large lesson in the line of cases from *Schenck* to *Brandenburg*, and that lesson has to do with the limitations of legal doctrine. Law can play a role in shaping culture, but legal doctrine is a part of the culture and is frequently hostage to it. Censorship becomes unthinkable only insofar as the collective conscience of a culture has placed it beyond the bounds. (p. 74)

Haiman (1981) similarly observed that the “difficulty” comes from the fact that although we have a “theoretical commitment” to freedom of expression as “a near absolute,” reality “forces us to recognize many competing rights and interests that tempt us, sometimes with good reason, in the direction of restraints on our systems of interpersonal and public communication” (p. 4). Unfortunately, there are times when these restraints manifest themselves in arbitrary forms of censorship.

In 1973, Kalven confidently asserted that *Debs* is “not likely to become law again” (p. 234). However, the existence of press restrictions during the Iraqi war illustrates the fragile nature of speech and press rights (Jazayerli, 1997). Perhaps the memories of the *Debs* trial will remind us of the need to constantly bolster our delicate First Amendment traditions.

### Endnotes

<sup>1</sup> A notable exception is Darsey’s (1988; 1997) excellent analyses of the “legend” of *Debs* and his “prophetic ethos.” While Darsey is not that interested in the legal ramifications of *Debs*’ work, he does provide some interesting analysis of the “mythological reconstruction” (p. 95) of *Debs* within American populist discourse. Darsey (1997) situates *Debs*’ search for martyrdom within the long tradition of “prophetic discourse” (p. 99). I argue in this essay that *Debs* has also played a role in other morality plays—in the classical liberal free speech tales he is the radical in need of moderate civil rights protections.

<sup>2</sup> My research indicates that there were several different templates being circulated in the 1910s and 1920s detailing what *Debs* “said” at Canton. One set of documents follows the official reported version accepted into court records, while several others were based on socialist recordings of the same address. The templates differ on the tone, audience reaction, and the specific words that were used in addressing the Wilson administration handling of the war.

<sup>3</sup> Part of the abstractness of traditional free speech theorizing comes from the search for transcendent normative standards. Such an anti-rhetorical



perspective treats our “rules of law” as non-ideological constructs. This is inherently problematic. The First Amendment,” remarked Shiffrin (1990), “is not only elaborations of principle,” but also part of the “complexity and fluidity of social reality” (p. 3).

<sup>4</sup> For a detailed discussion of the differences between formalistic and critical approaches to the law, see Unger (1986, pp. 1-14).

<sup>5</sup> For an elaboration of the importance of critical legal studies for rhetorical theorists, see Sandmann (1994). In that essay, Sandmann argues that the normative power of the law involves a “performance of symbolic power” (p. 381), and in the *Debs* case we see how the supposed “extra” judicial aspects of the law influenced the liberal reception of Holmes’ opinion.

<sup>6</sup> For an excellent overview of some of the nineteenth century restrictions on free speech (including the Civil War), see the collection of essays in Smith (1996).

<sup>7</sup> Legal discussions of the kind of “intent” that was needed for indictment could get quite complicated. One of the most controversial and liberal interpretations during the period came from Learned Hand’s (1918) discussion of the *Masses* test:

The test as laid down in that case [*The Masses*] was, I think, this: That though in the form of public discussion words, which might not themselves amount to advice or counsel to violate the law, would nevertheless make their author criminally responsible if they were in fact the cause of the results forbidden and if they were uttered with the specific intent of producing those results. (*U.S. v. Nearing*, p. 229)

<sup>8</sup> Ruthenberg would later leave his prison cell so that he could testify for the prosecution in the *Debs* trial. Eastman (1918) reported in *The Liberator* that he thought that Ruthenberg’s appearance served several prosecutorial purposes. First, it allowed the prosecutors to present the socialist platform crafted in St. Louis. Second, Ruthenberg’s appearance “was designed to impress the jury” with “an ideal that all socialists out to be in jail” (p. 6).

<sup>9</sup> See (Morais & Cahn, 1948, p. 100). I have come to the conclusion that in 1918 and 1919, authorities treated socialist defense of the St. Louis platform as evidence that speakers intended to circulate public falsehoods against the war because the words used in the platform were directly contradictory to what Wilson had said at the time of America’s entry into World War I. At the time, the ratification of the platform looked like an objective way of showing that the speaker knew about the possible consequences of his act. This *de facto* interpretation sufficed when authorities had trouble proving that words caused obstruction itself.

<sup>10</sup> We have only shards left of what each witness was supposed to have said at the Canton trial. Eastman (1918), a socialist editor of *The Liberator*, claimed that

One other stranger, a dark young man, a professional, although not very cute, detective was introduced by the prosecution. He recited three sentences that he had heard *Debs* utter at a conference of Socialist state secretaries in Chicago. After the recitation Seymour Stedman, the chief counsel for *Debs*,



asked him to pull them out of his pocket and see if he recited them right. He did, and he didn't. But it didn't matter much. (p. 6)

I have not been able to specifically identify this prosecution witness. It could have been Miller.

<sup>11</sup> Darsey (1988) noted that Debs did not raise much of a defense at trial, but he does not elaborate on any of the legal issues that were involved in the case. Obviously the claim that Debs did not raise a defense offered socialists and other government critics political ammunition, creating the appearance of socialist nonviolence in the face of Wilsonian plutocracy. One of Debs's friends, O'Neal, would contend in 1926 that Debs had met him in Terre Haute a few weeks before the Canton address and that his violation of the Espionage Law had been "deliberate" ("Eugene v. Debs," 1926, p. 44).

<sup>12</sup> Technically, Debs could have ended up in court several more times. In November of 1918, some federal authorities were sending to the Department of Justice copies of speeches that Debs was giving in places like Toledo even after his Dayton conviction ("Debs speech," 1918, p. 18).

<sup>13</sup> Some critics, however, argue that the *Schenck* standard repudiated the Blackstonian doctrines and represented the "high-water mark of liberalism in freedom of speech cases" (Black, 1932, p. 169). In this scenario, the *Debs* case was considered to be a repudiation of the more protective *Schenck* test.

<sup>14</sup> The two counts claimed that on or about June 16, 1918, at Canton, Ohio, the defendant 1) delivered a speech that was intended to caused and incited, and attempted to cause and incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States; 2) obstructed and attempted to obstruct the recruiting and enlistment service of the United States, and to that end and with that intent delivered the same speech (*Debs*, 1919, p. 212).

<sup>15</sup> This summary dismissal of the First Amendment has intrigued many scholars. As Kalven noted in 1973, the majority opinion in *Debs* focusing on the famous socialist's intention and spent only a single clause discussing the defendant's constitutional objections (p. 237).

<sup>16</sup> There were perhaps a great many influences on Holmes' invention of the "clear and present" danger standard. As early as 1907, in *Patterson*, Holmes had used Blackstone's assessment the limitations on freedom of speech and press in a major court case (Ragan, 1971, p. 27). The *Patterson* case was used in the appellate briefs of the prosecution in *Debs* (1919, p. 212).

<sup>17</sup> For examples of the legal impact that these critics had in the formation of a free speech tradition, see Black (1932).

<sup>18</sup> For an insightful discussion of Chafee's contributions to free speech theorizing, see Smith (1986).

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## ***Diabolus in Musica:*** **The Rhetorical Vision Of *Slayer***

**Scott Stroud**

### Introduction

Music has historically been reflective of societal trends and views; in recent American history, the rock genres of "heavy metal" have been a source of expression and criticism. One portion of this aggressive type of music is known as "death metal" because of its overt focus on death, ritualism, Satanism, etc. One of the most widely known death metal bands in America today is Slayer, a band known for its Satanically influenced lyrics and "speed-metal" music. Slayer was one of the first bands to create the genre of death metal, and has been one of the few stable bands in this genre surviving up to the present (Magilow, 1999). Attention has been even more focused on this genre of music since the shooting at Columbine High School in Littleton, Colorado. The two shooters evidently had a large collection of heavy metal and "gothic" compact discs (Anatomy, 1999). Critics must take a close look the messages and persuasive appeals used and constructed in these types of musical genres.

This journal has recently published research involving Judeo-Christian fantasy themes and rhetorical visions (Robertson, 1999); this article extends this line of inquiry to the medium of music. This act of rhetorical criticism will attempt to answer the following two research questions: *What kind of "Satanic" or "Judeo-Christian" based rhetorical vision is available in Slayer's music? If so, how does this rhetorical vision function as a persuasive device?* This paper will review the method of fantasy theme analysis (emphasizing the distillation of rhetorical visions), describe the artifacts, and apply the method of analysis to the artifacts. Following this shall be an explanation and evaluation of this application to the previously mentioned research questions.

### Method

Music has been the object of some important scholarly inquiry. Rasmussen (1994) lays the foundations for rhetorical analysis of classical music in her analysis of Leonard Bernstein's *Kaddish Symphony*. This criticism demonstrates that music itself can be examined in terms of constructed themes, moods, and directionality. In terms of the textual properties of music, Hallstein (1996) focuses on the ideology conveyed by Madonna in her musical enterprises; her act of criticism reveals that Madonna constructs both emancipatory and patriarchal views of herself in her music. Aldridge and Carlin (1993) focus on the textual message encoded by the rapper KRS-One and discover that the audience is invited to a state of empowerment through these non-violent rap lyrics. Rhetorical scholars have closely examined the messages constructed by popular

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music and have found that it can contain messages reifying capitalistic tendencies, patriarchy, and revolts against the contemporary world structure (Davies, 1996; Jhally, 1987). Soukup (2000) closely examines the textual content of Beck's album, *Odelay*, using cluster criticism. In doing so, he finds that Beck exhibits lyrical tendencies that are in line with postmodern theory. All of this research points to two important points: first, music can be rhetorically analyzed with an eye to the important messages being constructed, and second, close textual criticism is necessitated at some point in order to aid the critic in reconstructing the message within a song or piece of music. It is at this point that the method of fantasy theme analysis and rhetorical vision analysis can shed light on the rhetoric of Slayer.

There is the possibility that Slayer's music contains a unified rhetorical vision. To examine the previously mentioned research questions, five Slayer songs have been selected as the artifacts in this criticism. These songs are chosen as representations of major themes from successful albums released in 1983, 1988, 1990, 1994, and 1998. While some songs by Slayer delve into topics of war, mass murder, etc., these selected songs are representative of the religious bent that Slayer obviously espouses. One need only look at the cover of their albums, frequently covered with Goat-headed figures and blood-dripping pentagrams, to acknowledge the representative nature of these selected songs. The rhetorical model that will be used for this criticism is that of fantasy theme analysis, with an immediate focus on the constructed rhetorical visions within the chosen artifacts. While this critical method is usually applied to social movements, it can be effectively used to highlight common themes in Slayer's music and their rhetorical vision as a group of four musicians. Close textual analysis will allow for generalizations concerning the rhetorical visions that these representative songs construct. This, in turn, will allow future studies to evaluate the reception and uses of these visions in a more detailed fantasy theme analysis.

Fantasy theme analysis can be traced back to Robert Bales and his study of small group dynamics. His major work, *Personality and Interpersonal Behavior* (Bales, 1970), indicates the process by which small groups and movements create shared dramas or fantasies that allow them to cope with the pressures of reality. Previously, Bales (1950) argued these groups could be party to "...a new realm of reality—a world of heroes, villains, saints, and enemies—a drama, a work of art"(p. 152). These shared stories function as an escapist form of relief from reality; these "dreams" allow for the positing of heroic roles, villainous enemies, etc. to explain and cope with problems and exigencies (Mohrmann, 1982a; Mohrmann, 1982b). These fantasies are continued and replicated ("chain-ing out"), both within the group and possibly outside of it. The fantasy remains viable as long as it (or some form of it) assists the group in coping with outside pressures.

While Bales intended his theory of "dramatizes" and fantasy-construction for small group interactions, E. G. Bormann (1972) extended it to encompass rhetorical artifacts and constructions. Bormann argues that rhetorical visions and fantasies are evident in all types of group interactions and message construc-



tion (1982a). Thus, the focus shifted from fantasies within relatively small groups to large collectives, such as the U.S. population. Bormann has studied instances in politics to flesh out recurring fantasies within American media (Bormann, 1973; Bormann, 1982a).

Bormann argues that "these moments [of drama construction] happen not only in individual reactions to works of art, or in a small group's chaining out a fantasy theme, but also in larger groups hearing a public speech" (1972, p.397). The group's rhetorical vision "serve[s] to sustain the members' sense of community, to impel them strongly to action...and to provide them with a social reality filled with heroes, villains, emotions, and attitudes" (Bormann, 1972, p. 397). Bormann goes so far as to indicate, "fantasies are shared in all communication contexts" (1982b, p. 289). Further fantasy theme analysis could be undertaken comparing the visions within Slayer's songs to those in the songs of other bands; this study will focus on the textual construction of the rhetorical vision embedded in these artifacts.

Fantasy themes (and the constructed rhetorical visions) work to provide content for the message; glorifying the "heroes" and demonizing the "villains" gives the message direction and persuasive content. The intended receiver of the message will know how to orient themselves toward the characters in the story from the story itself. A rhetorical vision is the most important element in fantasy theme analysis for Bormann. Indeed, it is at this level of textual meaning construction that Bormann supports his claim to social construction of rhetorical (and non-rhetorical) situations (Covino & Jolliffe, 1995).

Bormann's theory of fantasy themes and their influence are based on dramatist assumptions; the primacy of settings, characters, acts, etc. is implicit in any analysis of fantasies and rhetorical visions (Brock & Scott, 1982). The symbols and language that are employed in these fantasies help the views of reality held by individuals converge into a comprehensible whole (Bormann, 1985; Bormann, Cragan, & Shields, 1994). It is assumed that reality and our messages (that eventually construct reality) hold a similar underlying structure that allows for a common critical analysis. Fantasies and rhetorical visions are assumed to all hold similar characteristics, such as the standard roles (heroes and villains) and judgments good versus evil. These fantasies and visions must be both resilient to change and adaptable when they fail to meet situational demands (Bormann, 1982b). These two entities can be discovered in the messages of individuals and groups because of the following two assumptions: "first, the meanings, motives, and emotions of people can be discovered in their rhetoric and that, second, a group of people create a social reality through communication" (Ford, 1989, p. 2).

This criticism will use each individual song as the units of which a rhetorical vision is constructed. The theme(s) of each song will be determined through an examination of particular characters, settings, actions, motives, etc. mentioned in their lyrics; this in turn will enable a description of the rhetorical vision embedded within these acts of communication. The use of language is especially important because it can be assumed that the individuals that form Slayer



chose those types of words for a purpose. A comparison of the visions within these songs will be made, with the outstanding similarities forming the probable rhetorical vision. It is this overall view that will be examined for persuasive messages that are transmitted through Slayer's songs to the audience (i.e. the listeners). These messages are presented for some purpose, and the analysis I have undertaken can be a viable contribution to applied fantasy theme criticism in regard to reconstruction of rhetorical visions.

### Artifact Description

For the purposes of this criticism, the four songs I have chosen are titled "Evil Has No Boundaries," "South of Heaven," "Temptation," "Divine Intervention," "and "Overt Enemy" (Slayer, 1983; Slayer, 1988; Slayer, 1990; Slayer, 1994; Slayer, 1998). These songs function as a representative sample of Slayer's music in that they span the majority of their albums produced over the course of past 15 years. As previously indicated, Slayer's over-riding concern in their music is religious; these songs function as representative of Slayer's "satanic" lyrical antics. The actual artifacts are available at most music stores on tape or compact disc.

A description of the lyrics must note that the content deals exclusively with death, Satanism, religion, pain, and evil. These songs rely on the presupposition that the audience has some familiarity with the Judeo-Christian notion of good and evil as personified in God and Satan, respectively. Common interpretations of Judeo-Christian doctrine include the supremacy of good/God over evil/Satan. The lyrics in these songs are strongly pro-"evil" and pro-Satan, and do not support the typical religious view of Christians in the omnipotence and strength of God.

On the musical level, these songs can be described as "sonically brutal." The music attempts to parallel the lyrical focus on death, pain, and power by heightened dynamics such as changes in speed, volume, etc. These changes are accomplished through aggressive drumbeats, fast, distorted guitars, and harsh vocals (Magilow, 1999). Speed and distortion characterize this type of music; melody and harmony are present, but not emphasized to the point that they detract from the power and ferocity of the music. Screaming guitar solos only add to the aural atmosphere of terror and power created by these songs.

### Application

The first song, "Evil Has No Boundaries," uses language to suggest that Satan and evil are more powerful than God and good. Three classes of characters seems to be evident: God/angels, Satan/evil, and the "playing pieces" (the listener, the singer, "we," "our," etc.). The characters in this song connote the classic struggle between good and evil; it seems that the rhetoric used indicates that Slayer ("we") is on the side of evil/Satan ("...our master in evil mayhem..."). The constructed setting begins in "hell," and then proceeds past the boundaries of hell into the normal world at night. Words such as midnight, nothingness, slaughters, and killings all provide an evil or foreboding setting in the mind of the listener. The world isn't a great place, and it appears evil is



making it worse. Described actions include many violent acts such as “blasting,” “fight[ing],” “attacking,” “defy[ing],” “conquer[ing],” and “consuming.” Many of these action themes have negative meanings when their subject and object are considered; “evil” is defying, conquering, and consuming those things that are good in this world (i.e. God’s angels and innocent souls). The theme of this song appears to be the supremacy of the “armies of evil” (of which Slayer seems to be part of) over God and his forces (angels, etc.). Evil appears powerful (“blasting... through the boundaries of hell”), with the goal of consuming all (including good) until there is “nothingness left.”

The song entitled “South of Heaven” has similar themes of death and evil in it. The characters include “victims,” which seem to be the listener (“...you must die”). “Forgotten children,” possibly those lured into evil’s grasp, are also grouped with the “Souls of Damnation.” Fathers, mothers, daughters, and sons are all described in derogatory terms, and all appear to be related to the listener (“...your incestuous fathers.”) Souls are also described as being damned, “engreat,” or black. Settings include the future (involving humans), judgement day, and a reality that is formed by the damned souls. Actions include dying, conforming “a new faith,” controlling “avidity and lust...by hate,” searching for the listener’s sanity, condemnation, sustaining “immoral observance,” and searching for truth.

The vision in this song is the inevitable destruction of the human race with “no warnings, no signs,” which leads to a “hell” that is well deserved by the evil nature of the humans mentioned in this song. With our sanity shattered, those we know turning to evil, and the loss of hope/dignity, we “conform a new faith” which is perpetuated by “immoral observance of a domineering deity” (Satan). We can assume that the “root of all evil” and the “black soul” mentioned in verse 4 refers to Satan, an entity that the song describes as powerful and “domineering.” The vision in this song is that the human race is evil and will move onto a hell or alternate earth controlled by a “domineering” Satan.

The next song is entitled “Temptation,” and has its vision eerily highlighted by the back-ground vocals. The characters involved in this song are the listener (“you”), the singer (“I”), and the “devil.” It seems that the singer is the “devil,” or Satan, based on the words used to describe his actions/powers. The singer talks about “endless life is here [where the singer is] to find,” and “my game.” The main characters seem to be the listener and the evil temptation, the singer. Action themes include leaving the world behind, selling your soul, playing with your insanity, satisfying your greed, crucifixion, dancing with the devil, penning your name in blood, letting possession slowly swallow you, etc. The themes all deal with the listener’s temptation to do that which is evil; this entire song seems to be an attempt to persuade the listener to align themselves with the “dark” side of the singer (Satan?). Settings include the world, the listener’s reality, the past (“time’s sands”), and a “genetic wasteland.” The first two settings indicate that the listener is in the present “world” that we know; the magical changes in setting (the past and a “genetic wasteland”) occur after giving into evil. Thus, this temptation takes place on earth, in the societies with which we are currently familiar.



The rhetorical vision in this song is that evil offers many temptations. It seems that the singer in this song is appealing to the base desires of the listener (greed, lust for power, endless life, attraction to evil) in order to be persuasive. The singer, who can be the devil or Satan, tries to persuade the listener to "sell [his/her] soul" and become a part of evil. This persuasive attempt takes place in the "common world" of the present, but after the listener accepts the singer's deal (by "Reach[ing] out to my hand"), they travel back in time to a damaged and horrible earth ("genetic waste land"). The tone of this song seems to indicate that these evil temptations can't be resisted, and instead, the listener must give in to these base desires.

The next song, "Divine Intervention," departs from the common themes in the other songs, but still has themes that contribute to a possible common rhetorical vision. The characters in this song include the singer ("I," "my," "me," etc.) and God. These appear to be the only characters in this song. The actions are diverse, but all point toward the torturing or tormenting of the singer by God; awakening, haunting, paralyzing, running, screaming, looking, draining, piercing, controlled, judging, etc. All of these are used in the context of God punishing whoever the singer represents; he is controlled and deprived of pleasures, such as looking "at God's face." The main setting is introduced in the first line of the song as "a web like hell." This seems to refer to God's domain, in that God is the only other character and his actions are the punishing factor in the singer's ordeal.

The main vision that emerges from this song is that God is cruel and is punishing the person who is the singer. The actions described in these songs could easily be describing "Satan's army," but instead, they are reflecting what God is doing to an unknowing victim. God is pictured as cruel (not allowing this victim to speak or scream) to this person who knows little of his fate. This "victim" or "specimen" does not know how he "reached this place" or "why they [are] haunting [him]." God is giving "deathless torture" to this victim for "no reason" that the victim can tell. God appears to be worse than Satan and the forces of evil, as depicted in the other songs.

The last selected song, "Overt Enemy," possesses many similarities with the preceding songs. The characters in this song include the singer ("I"), the listener ("your"), the public ("masses"), and corrupt rulers ("Pseudo leaders"). The actions revolve around the revenge and empowerment of the singer at the expense of the listener. The theme of good triumphing over evil is portrayed when the singer "breach[es] your life" and "hate[s] your church...[and] burn[s] your state." In a similar fashion to the scheming teenager killers in the Columbine School shootings, the singer is portrayed as calculating "Audacious plans....A new world view I'll re-instate...Don't cross my path or I'll see you burn." The singer appears to be warning the listener to stay clear from his or her path, avoid following the church's "profane architect," and the betraying "pseudo leaders." Failure to heed this warning leads to "Let[ting] bullets rain, from everywhere." In a theme similar to the Columbine School killers, attempts at escape are futile, "No suicide will save you from yourself." The setting of this song appears to be present day earth, albeit with more corruption and church



influence. The public is pictured as “masses [hunted] for game” and receiving “implant[ed] septic thoughts.” The hideous world that is imagined in this song is similar to the portrayals of “judgment day” in the preceding Slayer songs.

The vision in song #5 is the personal empowerment of the individual in the name of “evil” and in the face of “good” agents, such as the church. While Satan is not mentioned as an influencing deity in this song, the lyrics use many elements synonymous with the “evil” influence. The church is slandered, as are corrupt leaders and all other earthly sources of power. Humanity suffers (“enslaving all of mankind”) under the hand of the “profane architect,” presumably the church or God. Similar to the preceding songs, the singer indicates that the only way for humanity to gain its freedom and dignity back is to “Cast out the Demi God, Dethrone the demagogue, [and] Cast out the church God.” It is in the name of “evil” that the individual undertakes any means to this “noble end” (I command your life, and I don’t care, Let bullets rain, from everywhere”).

### Explanation and Evaluation

The visions mentioned above provide an answer my first research question, which deals with the details of a “satanic” or “Judeo-Christian” rhetorical vision across this sample of Slayer’s music. The themes in these four songs illustrate a clear supremacy of evil over good and Satan over God. In “Evil Has No Boundaries,” the power of evil is illustrated as crushing “God’s angels” and all that is good in this world. In “South of Heaven,” the inevitable decline of the world and spiritual standards of humanity appear to be caused by our base nature; the “domineering deity” (Satan) seems to be the only way to order and power in this chaotic, future world. “Temptation” also deals with these base human desires (greed, lust, hate, etc.) in the typical Judeo-Christian way of Satan being the temptation; however, in this song, it appears the listener is inevitably led to evil by these desires, and good can never win. “Divine Intervention” attacks the “goodness” of God; an unknowing “specimen” is tortured and punished for “no reason” at all. The final song, “Overt Enemy,” portrays the empowerment of the individual in achieving the overthrow of God, the church, and the vicious state that are responsible for the preceding state of humanity. The overarching rhetorical vision appears to be the power of evil/Satan and the impotence of good/God, which is diametrically opposed to the Judeo-Christian rhetorical vision of the struggle between good and evil.

These songs use the familiar Judeo-Christian rhetorical vision as a starting point for its “diabolical” scenes, characters, and actions. Of course, even Christians recognize the power of the evil forces, Satan, etc.; the unique angle of the vision constructed within these songs is that Christ and the Christians will not eventually triumph, will not rule heaven or earth, and do not truly stand for the benefit of humans (witness the undue suffering endured in “Divine Intervention”). The answer to this reality posed to the audience is a personal alignment with the forces of evil, individual empowerment in the face of an oppressive society, and the rejection of all things sacred (the church, dogma, etc.). The sharing of the same base for their rhetorical vision with Christians is an interesting source of support for Slayer’s. The audience members share the same



“playing field” (or “battlefield”) as the “enemy;” the primary valence of their allegiance comes down to believing in the eventual supremacy of Christ (“good”) or Satan (“evil”).

The second research question deals with the persuasive nature of this rhetorical vision. I believe this rhetorical vision is persuasive because of two reasons: first, the basis of the vision, and second, the portrayal of inevitability in outcomes. One main basis for this vision is in the Judeo-Christian story involving God and Satan, good and evil. This character “list” gives most listeners a common starting point, with centuries of myth creations behind what these characters stand for. Another basis is the emphasis on human desires; all humans feel such emotions and desires as hate, lust, greed, want of power, etc. These songs appeal to those base desires and offer a solution, evil. The persuasiveness of this vision is also enhanced by the portrayed inevitability in outcomes; the earth and society *will* fall to pieces, Satan’s forces *will* reign supreme, you *will* give into temptation, and God *will* punish you horribly, perhaps for having those desires. If all of these situations are rhetorically determined (Osborn, 1967), the listener might be persuaded that “evil” is not that bad of an option; it satisfies desires/needs, protects you from a vengeful God, and gives order to your life.

Another reason why this message might be persuasive is the nature of Slayer’s audience; the majority of Slayer fans are young, white males. These young adults are often rebellious, and attracted to this type of music because it echoes sentiments of their experience in life so far. Slayer paints an evil picture of life and of human nature; these young adults can readily associate with much of this through the experiences of youth, trying to find a job, betrayal, etc. Additionally, these fans are old enough to have been exposed to the Judeo-Christian themes/characters of good vs. evil, God vs. Satan, but they are not so old as to be indoctrinated by years of religious “teaching” and socialization (church, etc.). Thus, the characters and actions seem coherent with these fans and their experiences, increasing the persuasive impact of this rhetorical vision. Even though many young adults are quite well behaved, the potential remains for Slayer’s lyrics to become incentives to actions the band would never condone, such as violence. In it is this regard that these invitations to audience reconstruction can become pernicious subcurrents within a young adult’s maxims of action; there is the real possibility that certain musical styles *contributed* (the degree of which is extremely arguable) to the motivational and attitudinal structures of the Columbine killers.

While this act of criticism makes no empirical claims specifying actual results or effects of Slayer’s music on youth, critics must examine the message being conveyed to the audience through these texts. Indeed, Leff and Sachs (1990) indicate that rhetorical artifacts involve the audience in an intense psychological experience and offer certain opportunities for the creation of meaning from the text itself. The invitation to a general audience can be reconstructed by the critic to examine the values it espouses. Leff and Sachs argue, Rhetorical meaning, of course, is not autotelic; it is designed to reach



outward to the world beyond the text and to guide the audience's understanding of and behavior within that world. . . . The critical stance, then, retains an audience perspective, but as opposed to neo-Aristotelianism, this perspective does not entail measurement of actual responses. Instead, the critical process seeks to explain how the rhetorical performance invites certain kinds of response. Working from the evidence within the text, the critic proceeds to make inferences about what the work is designed to do, how it is designed to do it, and how well that design functions to structure and transmit meanings within the realm of public experience. (p. 256)

Rhetorical texts make a psychological impact on the audience, through both the format and substance of the text and in relation to the audience's general stance toward the persuasive nature of the text. Thus, the community must be conscious of the rhetorical vision being offered to the audience by these musical texts. Indeed, the emphasis on violence and base nature might be cause for even more critical examination and concern over the invited meanings and visions of these texts.

### Conclusion

This paper has focused on a fantasy theme analysis of five typical Slayer songs, attempting to discern the existence of a rhetorical vision and the persuasive aspects of that vision. Slayer was one of the first death metal bands, and its music does indeed focus on fantasy themes of Satanism religion, evil, etc. to the point that one can identify a definite rhetorical vision of evil being more powerful than good. The persuasive aspects of this vision are enhanced by the inclusion of common bases for this vision and through the portrayal of an inevitable, rhetorically determined triumph of evil over good. Perhaps it is because of this coherent and continuous rhetorical vision that Slayer has been a successful band for over 15 years. The community-centered critic must make it his or her goal to highlight the messages that certain texts invite; in doing so, such rhetorical visions as those within the Slayer songs analyzed can be included in an enlightened discussion concerning the role such musical texts play in our society.

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Editor's Essay

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## Interpretation, Ethics and Education: An Analysis of the AFA-NIET "Ethical Use Of Literature Policy"

Daniel Cronn-Mills

Ethics are the center of coordinated human enterprise. The effective functioning of our social condition relies upon both stated and unstated ethical codes to regulate our conduct. In fact, Merrill and Odell (1983) argue, "ethical principles are necessary preconditions for the existence of a social community. Without ethical principles it would be impossible for human beings to live in harmony and without fear, despair, hopelessness, anxiety, apprehension, and uncertainty" (p. 95).

The forensic community has established a number of ethical codes for the adjudication of conduct in the activity. The American Forensic Association (AFA) has one of the more comprehensive codes covering both debate and individual events activities (AFA, 1982/1988). An additional code concerning the use of literature in events has been established by the American Forensic Association—National Individual Events Tournament (AFA-NIET). I have questioned for some time the applicability and feasibility of the standards established in the Ethical Use Of Literature Policy. I have wondered if competitors—both in my own program and from other schools—could utilize the standards for guiding their interpretation performances. I shall, therefore, conduct a brief analysis of this code.

The AFA-NIET code states:

### ETHICAL USE OF LITERATURE POLICY

- (1) Contestants may not rewrite a prose, a poem, or a dramatic text so that the work differs from the original text.
- (2) Contestants may not add or reassign scenes or lines to the performed cutting. Although an occasional line might be added, especially if a character has been deleted. This practice should be discouraged.
- (3) Contestants may not rewrite the ending of a work.
- (4) Contestants may not rewrite lines to change the gender or person of a character.
- (5) Contestants may not perform a text in a genre for which it has not been written.
- (6) Protests should be filed according to AFA-NIET Charter Bylaws Section X (AFA-NIET)

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An analysis of the policy is justified since as Johannesen (1996) notes, a code of ethics should not be viewed as a static entity, but should rather open the door to further discussion about the code itself, and potentially leading to modification and revision.

My analysis of the Ethical Use Of Literature Policy is predicated on standards set forth by Johannesen (1996) in *Ethics in Human Communication* (4<sup>th</sup> ed). Johannesen provides a sound discussion on the components of a formal code of ethics. A number of the items Johannesen mentions are particularly appropriate to my critique of the NIET code on literature. First, Johannesen argues the code should establish and distinguish between *ideal* goals which may not be fully attained and *minimum conditions* for avoiding punishment. Second, language used "in the code should be clear and specific. Vagueness and ambiguity should be minimized" (p. 199). Key terms, concepts, and issues should be carefully defined and concrete examples provided to illustrate both appropriate and inappropriate conduct. Finally, ethical codes "should be logically coherent. . . . Relationships among provisions should be clear as to sequence, precedence, and scope" (p. 199).

The problem with the NIET code can be illuminated utilizing the three principles outlined above. First, the NIET code lacks a clear philosophical statement articulating the rationale for the policy. The rationale should, at minimum, clearly provide the ideals supporting the policy. The opening statement, for example, of the *AFA Code of Forensics Program and Forensics Tournament Standards for College and Universities* states:

The American Forensics Association, as a professional organization for forensics educators, believes that forensics programs and tournaments are to provide environments where students become intelligent, effective and responsible advocates and communicators. We believe in equality and fair play in all forensics competition, and we therefore promulgate the following *Code of Forensics Program and Forensics Tournament Standards for Colleges and Universities* in the hopes that the guidelines outlined here will serve to govern and regulate effectively the conduct of forensics competition in the United States (AFA, 1982/1988).

The opening statement for the AFA code does not, however, cover the AFA-NIET Ethical Use Of Literature Policy. The literature policy is *not* part of the larger AFA code. The AFA-NIET literature policy should have its own opening statement addressing, as Johannesen notes, the ideal goals of the policy. The policy does set minimum conditions for avoiding punishment, but as we shall soon determine, any attempt to implement the conditions would prove highly problematic.

The second standard for evaluating a code of ethics addresses language usage. The NIET literature policy is riddled with confusing terms and concepts. The first and fifth points in the policy state, "contestants may not rewrite a prose, a poem, or a dramatic text so that the work differs from the original text" and "contestants may not perform a text in a genre for which it has not been written" (AFA-NIET). The NIET policy do not clearly define what shall constitute the genres of a prose, poem or dramatic text. The traditional bound-



aries for these three genres are in flux. The proliferation of performance artists and the texts they perform, for example, has blurred the genres. In fact, one text from a performance artist was recently used by two different students in two different genres/events (prose and poetry). Both students had legitimate arguments why the piece was appropriate in either genre. As long as forensics continues to rely on the standard tripartite genres of prose/poetry/drama, any code of ethics should carefully delineate by both description and example precisely what constitutes (and does not constitute) prose, poetry, and drama.

The second point in the NIET policy adds to the issue of vague and indistinct language. The final line in the second point states, "This practice [adding an occasional line to the text] should be discouraged" (AFA-NIET). Exactly who is supposed to discourage the practice is unclear: Does the prohibition fall to students, coaches, judges, tournament directors?

The fourth point in the NIET policy continues to suffer from language which is neither clear nor specific. The fourth point states, "contestants may not rewrite lines to change the gender or person of a character (AFA-NIET). Kimble (2000) in a posting on the IE-L clearly states one language problem with the fourth point:

perhaps my education in comm[unication] has been atypical, but I've been taught (and now teach) that "sex" and "gender" are different concepts. (If anyone is puzzled, I believe it's that "sex" is the biological or physical difference, while "gender" is the socialized, feminine/masculine difference.)

The distinctions Kimble points out are accurate and commonly accepted in academia. Wood (1994) notes, "there is nothing a person does to acquire her or his sex. It is a classification based on genetic givens . . . . Gender, however, is neither innate nor necessarily stable. It is acquired through interaction in a social world, and it changes over time" (p. 21). Wood later states, "In some cultures, a person's gender is considered changeable (Kessler & McKenna, 1978), so someone born male may choose to live and be regarded as female, and vice versa" (p. 24). Both statements by Wood (1994) clearly establish gender is a malleable concept, yet according to the AFA-NIET Ethical Use Of Literature Policy, such changes may be viewed as a violation of ethics. NIET policy also expressly prohibits changing the "person" of a character in literature. I am not sure what constitutes "person" and the policy provides no definitions or indicators for the term/concept.

Johannesen's final standard for evaluating a code of ethics focuses on the logical consistency of the code. I believe the Ethical Use Of Literature Policy is frequently illogical and contradictory. The first point in the NIET policy states, "contestants may not rewrite a prose, a poem, or a dramatic text so that the work differs from the original text" (AFA-NIET). I have heard various positions on this point of the policy. Some view a "rewrite" as any alteration to the text, whether an addition *or* deletion (this viewpoint would negate the common practice of "cutting" a text to fit within prescribed time limits for competition. A text would have to be performed in its entirety). Others believe a "rewrite" only includes additions to the text, but deletions (cutting) the text is appropriate. According to the latest edition of *Webster's Dictionary*, both perspectives are



potentially justified. We do not know, however, which perspective (if either) the literature policy employs.

The second point in the NIET policy is both internally and externally contradictory. The second point states, "Contestants may not add or reassign scenes or lines to the performed cutting. Although an occasional line might be added, especially if a character has been deleted. This practice should be discouraged" (AFA-NIET). At first glance, the second point seems redundant of the first point—both points state students may not rewrite the literary text. The second line of point two is where the point become inconsistent. The second line *permits* students to add/delete/rewrite the text—behavior expressly prohibited earlier in the code.

The third point in the code is redundant of point one and the first line of point two. A student would have to be highly creative to rewrite the ending of a text while at the same time not rewriting the text (point one), nor adding or reassigning scenes or lines (point two). Kimble (2000) points out an additional logical flaw with point three:

[Point three] seems to confirm that some re-writing is OK when it advises us that "contestants may not rewrite the ending of a work." Since [point one] presumably already covered this problem, perhaps (3) is suggesting that it's OK to rewrite other sections of a work.

I wish to address an interesting aside here: If one subscribes to the notion that rewriting a text does not preclude cutting the text, a student may end the performance and never even reach the end of the text (e.g., end in the middle of a prose), yet the student *could* add an occasional line to the middle of the text at the point where they chose to conclude the performance. Thus, the student may rewrite the end of the performance without rewriting the end of the text (and, therefore, not violating point three of the NIET policy).

The fourth point is also redundant of point one since altering the gender or person of a character would seem to alter the work so it differs from the original text. A second issue with point four is whether a student may alter the gender or person of a character simply by how the character is performed (yet leaving the text intact in its original form).

The AFA-NIET Ethical Use Of Literature Policy is clearly flawed in both design and execution. A student brought up on ethics charges according to the standards established in this policy would have plenty of avenues to argue their use of the text is justified and appropriate. The AFA-NIET clearly needs to address this policy by first passing a resolution dissolving the current Ethical Use Of Literature Policy. Second, the AFA-NIET should start from the basic principles Johannesen provides in constructing a new literature policy, and should make sure the new policy is firmly grounded in interpretation/performance concepts and theories. I do not believe a clarification of the current policy is sufficient to address the number of flaws it contains.

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