John Quincy Adams's Amistad Argument: The Problem of Outrage; Or, the Constraints of Decorum

Author(s): Patricia Roberts-Miller

Source: *Rhetoric Society Quarterly*, Vol. 32, No. 2 (Spring, 2002), pp. 5-25
Published by: Taylor & Francis, Ltd.
Stable URL: http://www.jstor.org/stable/3885974

Patricia Roberts-Miller

John Quincy Adams's Amistad Argument: The Problem of Outrage; Or, the Constraints of Decorum

Abstract. *John Quincy Adams's speech on behalf of the kidnapped Africans aboard the slave ship* Amistad *points to a troubling dilemma in rhetoric: that the power of rhetoric is limited by the audience's perception of what is plausible, and that can, as in the case of the* Amistad *argument, mean that outrageously unjust but intransigent and powerful interests set the limits of discourse. If rhetorical theory promotes decorum, what is the place of principled dissent and sincere outrage?*

John Quincy Adams has been largely ignored in the history of rhetoric, and not without reason. Although he was the first to hold Harvard's Boylston Chair in Rhetoric and Belles-Lettres, he did so only briefly (three years), and with minimal commitment. He negotiated a special agreement with the university, for instance, so that he was at Harvard only one day a week, with most of his time spent on his duties as a US Senator (Nagel 165). His lectures did not have any significant impact on the history of rhetorical education in America, so much so that they have been taken as representing the end of one tradition rather than the beginning of another (Ried). They never approached the popularity of Witherspoon or Blair, their general approach is so conventional that they might be seen as little more than Adams's gloss on traditional advice on rhetoric, and they have attracted minimal interest even among Adams's biographers because they only imperfectly describe Adams's own practice. Lyon Rathbun has summarized scholars' treatment of the *Lectures*:

> Because Adams only taught at Harvard for three years, scholars have tended to dismiss his Boylston Professorship as a negligible hiatus in his career as a diplomat, President, and congressman. Furthermore, at first glance, *Lectures on Rhetoric and Oratory* hardly appears to be a seminal statement of John Quincy Adams's core beliefs. (185)

Rathbun goes on to argue, quite persuasively, that the *Lectures* (despite their absence in scholarship) are important for understanding certain puzzles in Adams's political career, such as his tendency to shift positions, and his continued commitment to public life (making him the only President to run for a lesser elected office after leaving the Presidency). My interest in the

Rhetoric Society Quarterly
Volume 32, Number 2 Spring 2002

Lectures is slightly different. I am perfectly willing to take them as more or less conventional, and even grant their tenuous relation to Adams's own practice in instances such as his opposition to the gag rule, in which his rhetoric became vituperative in the extreme (see Nagel 355-356, Miller 229, 236, 349-50, 421). But, the connection between theory and practice is quite clear in Adams's address to the Supreme Court in regard to the *Amistad* case. And that speech is interesting precisely because it does follow Adams's relatively conventional advice.

For instance, Adams's emphasis on decorum, on remaining calm, on avoiding attacking one's audience, and on maintaining a reputation for honesty, are conventional not only for rhetorical treatises of his own era, but for ours. Because Adams's advice *is* conventional—because it is, in many ways, not tremendously different from what we tell our students now—the problems he faced in enacting his theory in the practice of the *Amistad* speech are ones that confront the discipline of rhetoric. Adams's *Amistad* speech points to the ways that rhetorical theory and practice are limited by institutional injustice, specifically the problem of how to speak for people whose very identity can be falsely constructed by obviously fraudulent documents and testimony.

> But that which now absorbs great part of my time and all my good feelings is the case of fifty-three African negroes taken at sea, off Montauk Point, by Lieutenant Gedney, in a vessel of the United States employed upon the survey of the coast, and brought into the port of New London (Adams, *Memoirs* X: 133)

By 1839, various international agreements had, at least in theory, outlawed the international slave trade and made the kidnapping and selling of Africans a kind of piracy. Many countries, Spain included, permitted slavery within colonies such as Cuba (the United States had made the same compromise at the time of the consitution, so that in 1839 intra-national but not international trading in slavery was permitted). The international slave trade continued despite these agreements, especially to provide Cuba and Brazil with slaves, even after Queen Isabella of Spain had issued a royal decree forbidding it. The typical practice in Cuba was to forge documents saying that these kidnapped Africans were Cuban-born slaves, called "ladinos";[1] the inability of Africans to speak Spanish meant that they could not refute the biographies and identities fraudulently given them (see Thomas 637-648, Jones 16-17).

The *Amistad* carried several dozen Africans who had been subjected to this enslavement and subsequent fraud. After having been given falsified ladino passports in Cuba, they were being taken to Honduras. They rebelled,

however, and took control of the ship. They left two slave owners alive (Pedro Montes and Jose Ruiz) in order to steer the ship back to Africa, but, expecting a friendly reception in the United States, the slavers instead sailed it north along the US coast. In August of 1839 the ship was boarded by Lieutenant Richard Meade, who took the ship and Africans to New London, Connecticut, probably expecting to be able to claim the slaves and property aboard the ship as salvage (he and his commander quickly filed a claim to that effect). The slavers claimed that the Africans were murderers and mutineers, and the Africans, being unable to speak English or Spanish, could claim nothing and were jailed. Immediately, it was clear that the notion that these were Cuban slaves was an impolite fiction that was not even vigorously maintained (Ruiz apparently told at least one person that he had bought the Africans from a foreign slave trader). Connecticut abolitionists organized quickly, finding an attorney to represent the Africans and trying to find someone who could translate their language—it is striking that no one, not even the judge who jailed them, seemed to think that worth doing. That the Africans would have no voice does not seem to have troubled anyone other than the abolitionists.

Much of the *Amistad* controversy and the legal arguments hinged on the identity of the Africans, one that would not even constitute a problem were they given the ability to communicate (that is, were there anyone who could speak their language) and were their word given authority (that is, were they allowed to narrate their own identities). Of course, the Africans could speak, and even the assertion that they could not be understood is somewhat problematic. They were able, after all, to communicate to Ruiz and Montes that they wanted the ship to be sailed back to Africa, but they could not always make themselves heard. The fact that they could not speak any Spanish was taken by the Connecticut abolitionists as evidence that they were not slaves, but the victims of kidnapping, but it enabled the Cuban authorities to create new identities for them without their being able to object. When the abolitionists did find someone who could understand them (John Ferry, originally of the Kissi tribe), the Africans could make it known that they were Mendi. This dappled communication continued throughout the case (and, in some senses, remains in the scholarship), even to the point that the Africans were (and are) rarely named. A September 7, 1839 copy of the *Niles National Register* lists their African names:

> Cingues, Quash, Faquorna, Quimboo, Maum, Faa, Gabao, Funny, Pana, Llamani, Guana, Sissi, Con, Sua, Zabry, Paulo Dama, Conorno, Jaoni, Pie, Naquai, Cuba, Baa, Berry, Prummuco, Faha, Huebo, Fuerre 1st, Fuerre 2nd, Saa, Faguan, Chockamaw, Fasoma, Panguna, Kinna, Carri, Cuperi, Cane, Ferne, Margra. (Myers 40).

The court documents never refers to them by name, although the report on the case included the Cuban material with their fraudulent Spanish names. For Spain and the Van Buren administration, the Africans' autobiographies did not speak, but the Cuban documents did. Part of the question at issue in the *Amistad* case, then, was who had the power to create the identities for the Africans—would their own narratives of their own lives be granted more authority than the Spanish documents? Could Africans speak for themselves?

Spain protested the US detainment of the Africans, demanding that they be turned over for prosecution and execution as mutineers, and that the owners be indemnified by the US for any loss of property. The then Secretary of State, John Forsyth (a former Congressional representative and governor of Georgia and minister to Spain), replied sympathetically, and promptly made the first of his many political errors. With President Van Buren's approval, he replied to the local District Attorney (who had already written him about the matter) saying "you will take care that no proceeding of your Circuit Court, or of any other judicial tribunal, places the vessel, cargo, or slaves beyond the control of the Federal Executive" (qtd. in Adams, "Argument" 12). This attempt to evade the judiciary more or less typified the Van Buren administration's main strategy (and argument) on the issue, that the Africans should be handed over to Spain as quickly as possible and without the judiciary's involvement. The judiciary, despite the administration's attempts at intimidation, became involved and repeatedly ruled against Spain and the Van Buren administration, deciding that the Africans were not slaves and should be returned to their homes. The administration repeatedly appealed these decisions, so the case reached the Supreme Court in February of 1841. The administration's persistence in this regard can only be explained by considering the perplexity that a northern Democrat like Van Buren—who was not a proponent of slavery—would find himself in with an election approaching. Southern democrats were opposed to anything that threatened slavery, and northern democrats were opposed to anything that alienated southern democrats; thus, a Democrat like Van Buren who hoped for reelection could not be seen as doing anything hostile to slavery; he could not let abolitionists win the *Amistad* case.[2]

> I called at the office of the Attorney-General, Gilpin, who informed me that he had seen the President of the United States concerning the case of the Amistad negroes, and he had concluded that the case could not be dismissed from the Supreme Court without an argument, because the Spanish minister insisted on the delivery up of the men as slaves to be sent to Havannah, and, further, that the motion to dismiss the case was made in the Circuit Court, and there refused (Adams, *Memoirs* X: 372).

Roger Baldwin acted for the Africans throughout their legal cases, but the abolitionists enlisted Adams's aid for the Supreme Court argument (for more on why, see Jones 153-4). There is a significant ambiguity in the formal title the case had when it reached the Supreme Court; it was "The United States, Appellants, v. The Libellants, and Claimants of the Schooner *Amistad*, Her Tackle, Apparel, and Furniture, Together With Her Cargo, And the Africans Mentioned and Described in the Several Libels and Cliams, Appellees." The libellants and claimants of the schooner *Amistad* were Gedney and Meade, who had filed salvage on the ship and the Africans. While mentioned first in the official name of the case, they were, in fact, not even invited to submit a brief, and their attorneys did not speak at the trial. It is possible to read the title one of two ways: first, that it means that Meade and Gedney are the appellees, and that they claim, along with the schooner, her tackle, apparel, furniture, and cargo, the Africans, a title that grants the very issue of the argument; the second is that it means that Meade and Gedney and the Africans were appellees. At best, then, the Africans' identity is second to the identity of Meade and Gedney; at worst, it is entirely obscured.[3]

Henry Gilpin, the US Attorney General, had the advantage of doing both the opening and closing (to the surprise of Adams and Baldwin, see *Memoirs* X: 427). On Friday, February 20, he spoke for three hours, and then for two hours on Monday, February 22. He reduced the argument to two issues: was there "due and sufficient proof" that the Africans were the property of Ruiz and Montes (relying heavily on a 1795 treaty of the US and the precedent set by the case of the *Antelope*), and does the U.S. have the right to restore that property to its rightful owners. In regard to the first, the most important of the two, Gilpin's argument was that there was due and sufficient proof that the Africans were the property of Ruiz and Montes because there were documents to that effect issued by an authority of another country and

> In the intercourse of nations, there is no rule better established than this, that full faith is to be given to such acts—to the authentic evidence of such acts. The question is not whether the act is right or wrong; it is whether the scope of the been done [sic], and whether it is an act within the scope of the authority. We are to inquire only whether the power existed, and whether it was exercised, and how it was exercised; not whether it was rightly or wrongly exercised. ("Argument of the Government" 541)

That is, the court has no right to determine whether or not the Spanish government was correct in issuing documents asserting that the Africans were property, but must simply defer to the existence of those documents. Tbose papers define the identities of the Africans, and not anything the Africans

have to say for themselves.[4] Gilpin's argument is somewhat circular, then—one should only consult anything other than the documents if there is doubt, but doubt can only be created by looking at something other than the documents. In the *Amistad* case, that "something" is a set of human beings, but Gilpin's argument treats them as though they were no more capable of speaking for themselves than a box of smuggled tobacco.

There is a significant contradiction in his case. He insisted that the Africans must be seen as the property of Ruiz and Montes, and that the treaty required that the United States hand over property found in such circumstances to the owners, yet he was not arguing for handing the Africans over to Ruiz and Montes, but over to Spain. In the opinion that he gave to Van Buren at the time that the *Amistad* was seized, he also argued that no country has the right to free slaves on a ship, even if the slave trade is outlawed by the ship's own country: "It follows, that a foreign vessel engaged in the African slave trade, captured on the high seas in time of peace, by an American cruiser, and brought in for adjudication, would be restored" (4). He does not say, of course, to whom they would be restored—were his argument consistent, they would be restored to Ruiz and Montes, but that was not what Spain had requested. Gilpin was trying to obscure that the Administration plan was to have the Africans handed over to Spain for execution. Spain had demanded the Africans, on the grounds that they were property *and* that they were people who were guilty of murder. So, bizarrely, Spain would execute the Africans (for resisting kidnapping) and Ruiz and Montes would get restitution for the loss of the slaves. In other words, neither the United States nor Spain was consistently treating the Africans as property, but instead identifying them as subject to the laws regarding property *and* the laws regarding persons. This contradiction was, of course, central to slavery, a notoriously schizophrenic institution that simultaneously describes slaves as people who are property, as property with no agency, and as property whose very potential for agency is threatening. This is the famous "double nature" of persons held as slaves.

That the US was legally bound by statute, precedent, and treaty not to inquire into the correctness of Ruiz' and Montes' papers was the central contention (and strongest argument) in the government's case. The various treaties regarding the slave trade were ambiguous as to the right of search and seizure, and the US Senate, while Adams was a Senator and with his urging, had explicitly rejected such a treaty with England (for more on this, see Thomas 617-619). Contrary to the expectations of people like Jefferson, slavery was not a dying institution in the US, and several states were moving toward the position of refusing to acknowledge that there might be any illegal enslavement of an African (as would eventually happen with Missouri law). Although importation of slaves had, in theory, ended in 1808, the practice continued of smuggling Africans into the US who were then sold as "cap-

tured runaways;" Hugh Thomas says that "the most serious student of statistics of the [international slave] trade suggests that about 50,000 slaves were introduced into the United States between 1807 and 1860" (615). And James McPherson maintains that there was a movement among slave states to reopen the African slave trade, something that would have violated international law. Given that situation, Gilpin's comments that the US would not want anyone treating its ships the way that the *Amistad* had been treated was not a reference to a hard to imagine situation; the general thrust of his argument—that we do not want to look too closely behind the veil created by documents and precedents—typified the institution of slavery itself.

Baldwin spoke after Gilpin in a speech that Adams called "sound and eloquent but exceedingly mild and moderate argument" (*Memoir* X: 429), and, by agreement with Adams, he handled the legal issues. What, then, was Adams's role? And why would it require seven and a half hours to fill it? The eight year history of the case of the *Antelope* partially explains the complexity of Adams's rhetorical task. In 1820, a Treasury revenue cutter had discovered an American captain flying under Jose Artigas' flag whose ship (the *Antelope*) carried 280 people obviously intended to be smuggled into the US, in direct violation of federal law, a law that clearly required that any captives found in such circumstances to be freed. The courts came to a very strange resolution—because some of the captives on board had been held briefly on an American ship, but most had been taken from one of two other ships (one Portuguese and one Spanish, neither of which came from countries that then forbad international trade in slaves), the courts ruled that only those captives taken from the American ship would be freed. The rest would be enslaved. Because there was no reliable evidence as to who came from the American versus the Portuguese or Spanish ships (and, obviously, the word of the captives was not considered reliable), freedom would be determined by lottery. In other words, the identities of the captive Africans was essentially interchangeable (for more on this case, see Noonan). On the face of it, this is a case that should have been easily won by the Africans for at least three reasons (and, in fact, it was appealed to the Supreme Court three times). First, the federal law was fairly clear; second, Francis Scott Key, a man of both rhetorical skill and some fame, argued the case before the Supreme Court in 1828; third, unless one adopted the wishful thinking of one judge that deaths had been perfectly proportional among the different kinds of captives *and* that God would direct the lottery, one could be certain that people with a legal right to be free would be enslaved. This did not trouble the majority of the court. Thus, the case of the *Antelope* did more than simply set a possible legal precedent; it also exemplified the way that the Supreme Court could be forced by political pressure to engage in casuitical reasoning on behalf of slavery.

One of the more bizarre things about the argument that the Civil War was not about slavery is that it is difficult to find *any* issue in antebellum politics that was not about slavery, whose discussion was not tainted by slave states' terror at letting the thin end of the wedge of abolition into federal policy. Slave states' threats to leave the union began at the constitutional convention, and continued until secession. These threats meant that there were two very different kinds of people who found themselves on the same side in regard to anything touching slavery: proponents of slavery, who wanted the institution not simply protected, but actively expanded; proponents of a strong union, who feared that abolitionists would push the slave states to secession (Thomas calls this latter group anti-anti-slavery). Thus, justices who were not pro-slavery, but were anti-anti-slavery, might find themselves ruling on the same side as advocates of slavery. When they did so (like pro-slavery judges and justices) it was often with prefaces and poems about the evils of slavery, as when the Judge of the Circuit Court, while ruling in favor of the slavers in regard to the case of the *Antelope*, says

> That slavery is a national evil no one will deny except him [Adams here inserts "he"] who would maintain that national wealth is the supreme national good. But whatever it be, it was entailed upon by our ancestors, and actually provided for in the constitution first received from the Lords Proprietors (qtd in Adams, "Argument" 109 see also 105 and Noonan 63).

This was typical in its pairing of moral condemnation of slavery with political acquiescence, an attitude extremely similar to what Brian Dippie called, in regard to nineteenth century policies toward Native Americans, "the rhetoric of doom." The rhetoric of doom, by invoking a tragic and inescapable metanarrative, precludes discussion of practical measures that might very well prevent the tragedy. The judge did not have to rule against slavery itself, nor was he actually doomed to make the decision he did—the rhetoric of doom was nothing more than a red herring—; he could merely have followed the federal law or even the principle laid down by Jefferson, that it is better for ten guilty men to go free than for one innocent man to be imprisoned.

> Mr. Baldwin firmly maintained their right of self-emancipation, but spoke in cautious terms, to avoid exciting Southern passions and prejudices, which it is our policy as much as possible to assuage and pacify (Adams, *Memoirs* X: 430).

As A. Cheree Carlson has said, Adams had two audiences for his speech—

the immediate audience of the eight Supreme Court Justices (John McKinley was absent due to illness), and a larger more general audience. The documentary record has obscured, however, that Adams prepared two different texts for these different audiences—the pamphlet version of his speech (intended for general distribution) contains material that was not included in his oral argument (Swisher 194, *Memoirs* 435). His immediate audience consisted of Henry Baldwin, Philip Barbour, John Catron, John McLean, William Story, Roger Taney, Smith Thompson, and James Wayne, whose political allegiances and attitudes toward slavery would have been well known to Adams.

Baldwin, a Jacksonian appointee, had identified himself as someone who took a middle ground in the controversy between seeing the government as a federal government with subordinate states (often described as the Whig position) and the notion of states' sovereignty (generally called constructionists), but by 1841, Baldwin had for several years had "a reputation for eccentricity, to employ a euphemism" (Friedman and Israel 579), and seemed to dissent simply on principle. Philip Barbour (whose death after the first day of Adams's speech—no connection is assumed—delayed the case for a month) was a constructionist. Another Jacksonian appointee, Barbour's writings typified the contradiction inherent to slavery regarding its very nature. Like many apologists for slavery, he insisted that slavers were kind and that slaves were well-treated at the same time that he obsessed about the danger of slave insurrection, without noticing any implicit contradiction. Catron, another Jacksonian, was also an apologist for slavery who had used this notion that slaves are happy and well-treated to argue that "the negro suffers by manumission" (Fisher's Negroes v. Dobbs, 14 Tenn. 119 (1834)). McLean had been Adams's Postmaster General, but had defected to Jackson's side toward the end of Adams's term, and was rewarded by Jackson with the Supreme Court appointment (see Nagel 317). The sincerity of his devotion to the Jacksonian cause was always under suspicion, and he remained a Presidential aspirant who tended to take the most politically savvy tack (see Friedman and Israel, especially 539). William Story, while one of only two justices not a Jacksonian appointee, was not immune to political pressure (as would later be clear in Prigg v. Pennsylvania, a foreshadowing of the Dred Scott decision), but had already taken the position that any ship involved in the slave trade had violated the law of nations (White 693). Roger Taney, a particularly controversial Jackson appointee, would later become famous as the author of the Dred Scott decision, about which *The Oxford Guide to United States Supreme Court Decisions* says: "American legal and constitutional scholars consider the *Dred Scott* decision to be the worst ever rendered by the Supreme Court....Taney's opinion stands as a model of censurable judicial craft and failed judicial statesmanship" (278). While, obviously, Adams

could not know of the *Dred Scott* decision, he could know that Taney was a party-line Jacksonian, and an ardent advocate of the anti-anti-slavery position. Smith Thompson, a Monroe appointee, had already ruled on behalf of the Africans in a lower court, and could be reasonably counted as Adams's only certain ally. James Wayne was, like Barbour, a Jacksonian appointee and advocate of slavery who, according to Friedman and Israel "best illustrates the difficulties of trying to reconcile a belief in effective, delegated national powers with the concept of state sovereignty" (601). While he wavered on states' rights and may thereby have occasionally irritated slave state politicians, "on the question of the Negro and slavery, Wayne gave no offense. He never entertained the notion that Negroes could or should be allowed citizenship" (608). In short, with the exception of Thompson, Story, and Baldwin, Adams faced an audience whose views on slavery ranged from pro-slavery (Barbour, Catron, and Wayne) to anti-anti-slavery (Taney and McLean). The more that Baldwin and Adams's arguments sounded anti-slavery, the more likely they would lose the case; hence their decision to be conciliatory to an institution they found outrageous.

It would be extremely difficult to attack slavery while still assuaging and pacifying southern passions and prejudices; thus Adams and Baldwin needed different grounds for their arguments. As mentioned above, Baldwin grounded his argument in legal questions; there were various options available for Adams, but one that might not be immediately apparent to a modern audience was the very quality that made his task so daunting: that the court was dominated by Jacksonian democrats.

> How shall the facts be brought out? How shall it be possible to comment upon them with becoming temper—with calmness, with moderation, with firmness, with address, to avoid being silenced, and to escape the imminent danger of giving the adversary the advantage in the argument by overheated zeal? (Adams, *Memoirs* X: 373)

Adams's pairing "passions" with "prejudices" may seem to be an instance of the stereotypical Enlightenment privileging of the rational (Reason) over the irrational (emotions and prejudices). The advice referred to at the beginning of the article—that one not engage in phillippic—may seem to be a similar assumption of the danger and social instability presented by emotions, but Adams's attitude toward emotions, like the Enlightenment in general, was much more complicated than current attacks on logocentrism would seem to suggest. He says of Edmund Burke, for instance, (who is the rhetor par excellence); "The blaze of passion, the bolt of indignation, flash with incessant energy from his controversial speeches and publications" (I: 375). Adams's attack on phillippic is worth quoting in full:

> Let no man dare to undertake the guidance of reason in others, while he suffers anger or vanity, the overflowings of an inflated or an irritated mind, to intermingle with the tide of his eloquence. When the ebullitions of passion burst in peevish crimination of the audience themselves, when a speaker sallies forth, armed with insult and outrage for his instruments of persuasion, you may be assured, that this Quixotism of rhetoric must eventually terminate like all other modern knight errantry and that the fury must always be succeeded by the impotence of the passions. (I: 365.)

This is not an unequivocal condemnation of pathos—contrary to its reputation, the Enlightenment was not hostile to emotions—but of a certain set of emotions (passions as opposed to sentiments) and used in a certain way (to attack the audience, rather than appeal to their reason through sentiment). One can try to make one's audience feel outrage, but not by attacking them directly, and generally through appealing to their sympathy.

It is a convention in Enlightenment texts (in philosophy as well as rhetoric) to distinguish between the affects and the passions (e.g., Kant), or the sentiments and passions (e.g., the Scottish school of moral sense), habits and passions (e.g., Adams). Adams attributes the distinction to the Greeks, defining them

> By the passions they understood the keen and forceful affections of the mind. By the habits they meant the mild and orderly emotions. The passions were tumultuous agitations; the habits quiet and peaceable impulses. (I: 377)

Sentiments like benevolence, empathy, and desire for honor are beneficial to society and appropriate bases for persuasion because they are fundamentally social emotions. They depend upon sympathy, and sympathy is a reliable basis for reason: "Mankind are indeed liable to be occasionally led astray and deluded by their passions; but all the lasting sympathies of the human soul are with virtue" (I: 357). Sentiments and habits are univerally good, but passions are unsettling and potentially dangerous, though not inherently bad. The more that a passion is like sentiments, and the more that rhetoric similarly appeals to sympathy (rather than to "the malevolent," "angry or turbulent" (I: 373)), the more appropriate it is. The appeal to passion which Adams considers appropriate is that which has "a tendency to excite our sympathies, with some exhibition of distress" (I: 381).

But certain passions are to be avoided because they "bear[ ], or [are] supposed to bear, an ascendency so uncontroled, that to attempt operating upon [them] is the never failing resource of all those orators, who are desti-

tute of every other" (I:384). Adams says that there is one for each of the three kinds of oratory : for deliberative it is jealousy, for judicial it is avarice, and for the pulpit it is fear. In regard to jealousy, Adams says,

> The ordinary mode of exciting it is by raising suspicions against the person or character of an opponent; by invidious reflections; by insinuations against his integrity, and imputations upon his motives. (I: 384)

His discussion of the role of jealousy in deliberative rhetoric shows the conventional early American horror of factions. He says that "this species of oratory is generally suggested by the virulence of party spirit" and that "it is the natural resort of those, who are unable to support by reason or argument the opinions, to which they adhere" (I: 384). He concludes his discussion of this passion by saying, "It is not to be denied, that these are weapons of formidable power; but a sound understanding will disdain, and a generous heart will abhor the use of them" (I: 385). This is one piece of advice that Adams violates in his *Amistad* speech, but it may be that he does so for the very reason mentioned in the *Lectures*—that reason and argument would not prevail.

Sentiments, such as the desire for honor and approval from one's fellow beings, are socially beneficial because they cause one to hesitate before committing various vices. Implicit in this view of the societal benefits from the desire for honor is that there is no significant difference between manners and morals. In the rhetorical tradition, this means that there is some confusion fundamental to the notion that good rhetoric is "the good man speaking well"—such that decorum and virtue are implicitly causally connected. But, if decorum and virtue are connected, how does one disagree with convention without thereby identifying one self as ill-mannered and immoral? What is the place of dissent? It is a historical fact that Enlightenment discourse is amenable to dissent. *Common Sense* and the *Declaration of Independence* are Enlightenment texts par excellence. But, as Paine's career shows, it has to be dissent within certain parameters, and, as Jefferson's thinking shows, partial dissent can leave one in a very complicated relation to dominant social practices like slavery. Paine and Jefferson each exemplify the constraints created by conflating manners and morals.

Adams is far from the best example of this conflation (Adam Smith being a much better one), and he indicates awareness of the imperfect connection between rhetorical success and personal goodness. A good rhetor, he says, does not always persuade because "persuasion must in a great measure depend upon the will, the temper, and the disposition of the hearer," and some audiences are "adders" (I: 36). And, in one of his many moments of subdued humor, Adams describes what happens if one tries to respond to the

classic argument that eloquence always depends upon fraud, deception, and not on reason:

> If we dispute the correctness of the assertions, our adversaries appeal with confidence to the testimony of historical fact. If we assure them upon the word of Cicero and Quinctilian, that none but a good man can possibly be an orator, they disconcert us by calling for our examples of orators, who have been good men. (I: 63)

Thus, rhetoric should not be held purely to the standard of success; successful speeches and good rhetoric are not synonymous. In place of the criterion of effectiveness, Adams substitutes a long discussion of the character an orator, a list of typical Enlightenment virtues: "the qualities of the heart, the endowments of the understanding, and the dispositions of the temper" (I: 344). The problem is that, when Adams discusses those qualities, he slips back into talking about them as not simply right, but efficacious. He begins his discussion of integrity by, once again, rejecting Quinctilian's maxim

> that none but an honest man could possibly be an orator, was not strictly true. That from a laudable but mistaken intention it strained too far the preeminence of virtue, and supposed a state of moral perfection as extant in the world, which was at best but imaginary. (I: 344)

Yet, he goes on to argue for the various virtues on the grounds of their efficacy, their effect on audience. He says, for instance, that a rhetor must be honest because

> If we assume as a given point, that a man is deficient on the score of integrity, we discard all confidence in his discourse, and all benevolence to his person. (I: 345)

Adams recognizes the logical conclusion of his argument, which is that "the reputation of integrity will answer all the purpose of inspiring confidence, which could be attained by the virtue itself" (I: 346). He concludes, rather weakly, that "the reputation is to be acquired and maintained by the practice of virtue" (I: 346).

His discussion of reputation and integrity is troubling in several ways. While he admits the possibility that there may be a rupture between the real and the apparent, he says it is rare, and it is only in terms of someone having an appearance (reputation) for virtue who does not have the reality (a virtuous nature). He does not consider the possibility of someone who may have an undeservedly bad reputation—such as free Africans whose identity (kid-

nap victims) cannot even be seen due to the socially constructed identity (Cuban-born slaves) imposed on them. Adams' failure to consider this possibility, as well as his insistence that it is rare for people to be fooled about someone's integrity, are part and parcel of his general (and typically Enlightenment) assumption that social judgements are usually correct, that social forces like decorum, reputation, and desire for honor work against vice. This is necessarily a problem when the social forces, especially qualities like decorum, reputation, and desire for honor, are arrayed on the side of preserving slavery.

> With increasing agitation of mind, now little short of agony, I rode in a hack to the Capitol, taking with me, in confused order, a number of books which I may have occasion to use (Adams, *Memoirs* X: 430).

A court arrayed of Jacksonians was difficult for Adams for personal as well as professional reasons. He and Jackson and Clay had been in what amounted to a three-way tie for President in 1824, and the House of Representatives had ultimately given the Presidency to Adams, despite Jackson's having had the largest share of the popular vote. His Presidency was, Adams felt, a failure due to the political machinations of Jackson and his followers, who thwarted Adams's policies just to ensure Jackson's election in 1828. Whether or not Adams's perception of Jackson's responsibility for his Presidential problems was accurate (Lewis argues that it was not, but Nagel assumes that it was), there were also genuine issues of principle. Adams was a long-time believer in the need for a strong and efficient federal government, and an Executive who would have a more or less free hand for foreign affairs. Jackson, on the whole, opposed a strong federal government (but he did not support states' rights in its most extreme forms, e.g., nullification). He wanted policies that encouraged land speculation and protected slavery; hence his deep opposition to federal control over banking practices.[5]

Adams's speech begins with an attempt to shift the issue. The legal issue is whether the United States will deem the obviously fraudulent ladino passports to be valid. Gilpin's argument was that it must; Baldwin's was that it must not. While he does assert the fraudulence of the passports, Adams's summary of his own argument is that, as he says, the Executive administration has, "in all their proceedings relating to these unfortumate men, instead of that *Justice*, which they were bound not less than this honorable Court itself to observe, they have substituted *Sympathy*!—sympathy with one of the parties in this conflict of justice, and *Antipathy* to the other" (6). The majority of the speech is a condemnation of the Van Buren's administration's handling of the case from the beginning. The speech has very little legal analysis (the exception being his discussion of the precedent of the *Antelope*,

a section he included in the printed version, but which was not part of his speech before the justices), and is primarily an indictment of the Executive branch for its high- and heavy-handed attempts to get the case decided the way that it wanted. All the points that he makes about the case—the contradictory aspects of the government's stance, the inapplicability of the treaty with Spain, the fraudulence of the ladino passports, the incoherence of seeing the Africans as persons and property—are made in the course of discussing one or another document in the long correspondence. The only time that he mentions the Constitution, for instance, is in the course of discussing the Spanish ambassador's November 26 (1839?) letter to the Secretary of State, and then it is to point out that the Constitution "no where recognizes [slaves] as property. The words slave and slavery are studiously excluded from the Constitution" (39).

There are several recurrent themes in his discussion of these various documents. One is mentioned above—that the government's case rests on a central contradiction by sometimes treating the Africans as persons and sometimes as property. Another is a beautiful play on the use of the word "sympathy" in one of the first communications to Spain. Moving at first from a kind of dramatic irony (that the Secretary of State would have sympathy for Spain rather than for the Africans) it becomes heavily satirical. The most important of his themes—that the administration had attempted to subvert the independence of the judiciary—is similarly enhanced by Adams's play with a word. Adams emphasizes that the Spanish minister's claims were founded on a misperception of the power of the Executive, that the President has to the power to order the Courts to do whatever he pleases: "He [the Spanish minister] evidently supposes the President of the United States to possess what we understand by arbitrary power" (15). The minister at several points uses the term "gubernativamente" which Adams glosses

> Here is a word, used several times in this correspondence, that no American translator has been able to translate into our language. It means, by the simple will or absolute fiat of the Executive, as in the case of *lettres de cachet*—or a warrant for the BASTILE (38, his emphasis).

The King of Spain, Adams says, has this kind of power, but that sort of power on the part of the President would threaten the rights of all people. He notes that the Secretary of State did not try to correct the minister of Spain's misunderstandings of the United States' government until January of 1841, and then in a passage that Adams's (not entirely unfairly) paraphrases as "so it is, and we can't help it, the judiciary is independent" (49). His chronology of events, his description of the Administration's actions (including misrepresenting and even altering of some documents, refusing to hand over others,

and issuing orders to naval officers to grab the Africans before they have a chance to appeal), and his readings from its correspondence so emphasize its attempting to outmaneuver the judiciary that it seems utterly appropriate the moment that Adams applies the term "gubernativamente" to the Van Buren administration. This was a brilliant move with an audience of Jacksonians, a group of people who, according to William Cooper, were always suspicious of Van Buren's commitment to Jacksonian principles, and who suspected him of being too clever by half (see especially 16-20, 143-145).

Carlson praises Adams for that strategy—"he deftly shifted his focus from the Africans to the crimes of the administration. Instead of defending, Adams attacked, thereby saving his clients" (17), but it is somewhat disquieting. The speech appeals to intragovernmental rivalry by making the government case an attempt to subsume the judiciary to the executive; to chauvinism, by emphasizing that the Spanish demands do not apply to how things are done in a democracy; and patriotism, by making it seem that Spain thinks it can dictate to the US. Thus, there is twice over an appeal to what Adams in his *Lectures on Rhetoric* described as the central vicious passion of deliberative oratory—jealousy. Adams tries to make clear that he is not personally attacking Forsyth (the Secretary of State) or Van Buren, he does none of the personal insult or accusation that often characterized political debate of the era, and he does not appeal to party or even regional prejudices. But, still and all, he was stirring the pot of factionalism (albeit, intra-governmental), and the strategy is worrisome for exactly the reason it was most likely to be successful: that, as Carlson says, it took the focus off of the Africans. To the extent that the Africans themselves were present in the speech it was as objects of sympathy, not as agents of citizenship.

With the important exception of his appeal to jealousy, Adams's speech more or less played out the tenor of the *Lectures on Rhetoric*. He did not attack the judges directly (although several were slave-owners), he played heavily on their sympathy, he behaved with integrity, and he remained within the appropriate norms of decorum (something he did not always do in his speeches in the House). So, does the *Amistad* speech demonstrate the fundamental accuracy of his advice in the *Lectures*?

> Walker, of Mississippi, came to me and said he wondered how any one could ever have thought that the case of the Amistad had anything to do with abolition (Adams, *Memoirs* X: 441).

The answer to the question of the soundness of Adams's rhetorical advice depends upon deciding whether or not Adams's speech was effective. Certainly, the justices ruled in favor of the Africans; the decision, written by Story, dismisses out of hand the fiction that they were slaves (noting that

even the Attorney-General granted in Court that they were African and not Cuban born), and asserts the right of the United States to judge the fraudulence of the passports and to listen to the Africans' in order to do so. It is not absolutely clear, however, that the Supreme Court decision was significantly affected by Adams's rhetoric. Adams says that Gilpin spent most of his time rebutting Baldwin's argument "and very slightly noticing mine" (X: 437), and Peters's Report of the Trial (Supreme Court reports were done by private businesses in that era) says:

> It was the purpose of the Reporter to insert the able and interesting argument of Mr. Adams, for the African appellees; and the publication of the "Reports" has been postponed in the hope of obtaining it, prepared by himself. It has not been received. As many of the points presented by Mr. Adams, in the discussion of the cause, were not considered by the Court essential to its decision: and were not taken notice of in the opinion of the Court, delivered by Mr. Story, the necessary omission of the argument is submitted to with less regret. (566)

It is possible, of course, to reject Gilpin's ignoring Adams's speech and Peters's crack as evidence of ineffectual rhetoric. Gilpin may have found Adams' argument essentially unanswerable—all of Adams's claims of governmental high-handedness were, after all, well-documented—and Peters's comment may be nothing more than sour grapes (an interpretation supported by the very way that Peters begins his discussion of not being able to get Adams's speech). The notion that the speech was important is supported by Story's comment that it was "extraordinary, I say, for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion" (348). But even that evidence is mixed—one might read the latter part of Story's comment as a criticism of Adams for digression. Carlson says that Adams's success is indicated by the Supreme Court decision's echoing of Adams's arguments, but the evidence is problematic. The decision nowhere mentions the central contentions of Adams's arguments—the misbehavior of the Van Buren Administration, the double nature of slaves.

The strongest evidence to the effect that Adams's speech affected the outcome is, first, that the abolitionists asked for his help, and, second, the prior and subsequent decisions of the Supreme Court (and, in the case of *Prigg v. Pennsylvania*, the same justices). While Baldwin's legal arguments were strong, the history of the Supreme Court shows that the better legal argument was easily dismissed when it came to anything touching slavery (as had already been demonstrated in the *Antelope* case). It seems to me most likely that they won the case because Baldwin succeeded in emphasizing the peculiarity of the case, and Adams succeeded in making the issue one of

judicial, rather than African, independence.

Yet, those very Supreme Court decisions are also evidence that, in a certain fundamental sense, Adams and Baldwin both failed. According to Howard Jones, abolitionists hoped that this case "might help erase the color line, inflicting a mortal blow on American slavery by undermining the racial basis of its existence" (8). But Adams and Baldwin succeeded in freeding the kidnapped Africans precisely because they did *not* make it a case about slavery. In fact, Baldwin began his speech by saying:

> In the remarks I shall have occasion to make, it will be my design to appeal to no sectional prejudices, and to assume no positions in which I shall not hope to be sustained by intelligent minds from the south as well as from the north. Although I am in favor of the broadest liberty of inquiry and discussion-happily secured by our constitution to every citizen, subject only to his individual responsibility to the laws for its abuse; I have ever been of the opinion, that the exercise of that liberty, by [40 U.S. 518, 550] citizens of one state, in regard to the institutions of another, should always be guided by discretion, and tempered with kindness (549-50).

While the published version of Adams's speech contains a direct attack on attempts to philosophize slavery, and a scathing dismissal of the reasoning of the pro-slavery judges in the case of the *Antelope*, his *Amistad* speech is passionate but attacks neither slavery nor slave owners. While this may have been a very smart strategy— to make two arguments, one in which he would apply utility and decorum, in which he would mute his sincere outrage, and win freedom for the Africans, and another in which he would express his outrage and condemn slavery for its corruption of American institutions—there was a cost. The subsequent Supreme Court decisions suggest that Adams and Baldwin failed to persuade the justices of the inherent injustice of slavery, or the universal rights of humanity, the right of a state to forbid slavery within its borders, or even that descendents of slaves—whether now free or not—have any rights. It may be that, as Jones has argued, "the popular impression of blacks liberated from slavery spoke more loudly than did the legal limitations of the decision" (220), but it also may be that the impression of Walker, of Mississippi, was equally popular.

To say that Adams's success was limited is not intended as a criticism of Adams (or the abolitionists who worked with him), nor as an argument that he should have used a different rhetoric. It is instead intended as a way of pointing to a terrible dilemma in regard to rhetoric, that effective rhetoric does often necessitate that one mute one's outrage, and assuage and pacify unjust passions and outrageous prejudices. As a result, short-term effective-

ness may be, in an important way, ineffective. As Adams says in his *Lectures*, effective rhetoric depends upon seeming to your audience to have their best interest to heart. It depends, hence, on decorum and sympathy, on remaining practical. The test of deliberation, Adams says, is utility (I: 352). This was deliberative rhetoric, and Adams made deliberative arguments. I am not saying that he should have done anything else.[6] I am saying that, just as politics can be seen as the art of the possible, so rhetoric can be seen as the art of the plausible. The limits of rhetorical power, then, are set by the limits of the audience's perception of what is plausible, and that can, as in the case of the *Amistad* argument, mean that outrageously unjust but intransigent and powerful interests set the limits of discourse. And that seems to me to be a problem. If rhetorical theory promotes decorum, what is the place of principled dissent and sincere outrage?

Department of English
University of Texas-Austin

Notes

[1] There is an inevitable problem in terminology when talking about the legal distinction that resulted from these laws between victims of kidnapping (people enslaved in Africa) and slaves (people born into slavery within Cuba). In point of fact, all slaves are kidnap victims, but some were kidnapped in Africa and some were kidnapped at birth in Cuba or the United States. But, because the Amistad case rested on the question of legal and illegal ways of enslaving, I will (with some grumbling) rely on the distinction of kidnap victim versus slave. This is my grumbling.

[2] One of many ironies in the case is that Van Buren lost the election anyway, possibly even due to his handling of the Amistad case (see Cole 373), and his having fought for the enslavement of the Africans was used against him when he ran as a Free Soil candidate. His realpolitik decision in regard to the Amistad did not even turn out to be politically savvy.

[3] It is interesting to note that Adams retitled the trial in the pamphlet version of his speech, actually naming one of the Africans, and dropping Meade and Gedney.

[4] The decisions that Gilpin cited as precedent for this principle are problematic, with the exception of the *Antelope* (e.g., Ohl v. The Eagle Insurance Company). They are problematic partially because they are not Supreme Court cases and also because they involve cases in which there is no evidence available other than the documents, so that even Gilpin's summary of the decisions include qualifiers like "only in cases of doubt is further testimony to be received."

[5] Slavery was a capital intensive practice, and, associated as it was in many areas with land speculation (as Hofstadter long ago showed, indebtedness forces debtors into agriculturally intensive practices which quickly exhaust the soil, necessitating the acquisition of more land to be cleared and exhausted and, hence, more debt) and with a desire to emulate the leisured classes of English aristocracy (thus Twain's comment that Sir Walter Scott's novels caused the Civil War), was also associated with heavy indebtedness. "Popular" (i.e., state versus national) control of banks typically meant practices that benefitted debtors in the short-term (such as increasing the circu-

lation of paper money), but also caused the boom and bust cycle for which the nineteenth century is so famous.

[6] Nor am I suggesting that Adams' chose the practical over the ethical. On the contrary, there is something ethically troubling about risking the lives and freedom of the African individuals in a possibly "Quixotic" (to use Adams' term) attempt to reach a larger goal.

Works Cited

Adams, John Quincy. *Argument of John Quincy Adams Before the Supreme Court of the United States in the Case of the United States, Appellants, vs. Cinque, and Others, Africans, Captured in the Schooner Amistad, by Lieut. Gedney.* New York: S.W. Benedict, 1841.

—. *Lectures on Rhetoric and Oratory, Delibered to the Classes of Senior and Junior Sophisters in Harvard University.* 2 Vols. Cambridge: Hilliard and Metcalf, 1810.

—. *Memoirs of John Quincy Adams, Comprising Portions of His Diary From 1795-1848.* Charles Francis Adams, Ed. Volume X. Philadelphia: J.B. Lippincott & Co., 1876.

Baldwin, Roger. *Reports of Cases Argued and Adjudged in The Supreme Court of the United States. January Term, 1841.* Richard Peters. Philadelphia: D.B. Canfield & Co., 1854. 549-566.

Carlson, A. Cheree. "John Quincy Adams' 'Amistad Address': Eloquence in a Generic Hybrid." *Western Journal of Speech Communication* 1985 49(1): 14-26.

Cole, Donald B. *Martin Van Buren and the American Political System.* Princeton: Princeton University Press, 1984.

Cooper, William. *The South and the Politics of Slavery, 1828-1856.* Baton Rouge: Louisiana State University Press, 1978.

Dippie, Brian. *The Vanishing American: White Attitudes and US Indian Policy.* Middleton, CT: Wesleyan University Press, 1982.

Gilpin, Henry. "Argument of the Government." *Reports of Cases Argued and Adjudged in The Supreme Court of the United States. January Term, 1841.* Richard Peters. Philadelphia: D.B. Canfield & Co., 1854. 538-549.

Friedman, Leon and Fred Israel, editors. *The Justices of the United States Supreme Court, 1769-1969: Their Lives and Opinions.* New York and London: Chelsea House Publishers, 1969.

Hall, Kermit L., ed. *The Oxford Guide to United States Supreme Court Decisions.* New York: Oxford University Press, 1999.

Hofstadter, Richard. *The Age of Reform: From Bryan to FDR.* New York: Random House, 1960.

Jones, Howard. *Mutiny on the Amistad.* New York: Oxford University Press, 1997.

Lewis, James E., Jr. *John Quincy Adams: Policymaker for the Union.* Wilmington, DE: Scholarly Resources Inc., 2001.

Nagel, Paul C. *John Quincy Adams: A Public Life, a Private Life.* Cambridge: Harvard University Press, 2000.

Noonan, John T. *The Antelope: The Ordeal of the Recaptured Africans in the Admin-*

istrations of James Monroe and John Quincy Adams. Berkeley: University of California Press, 1977.

Rathbun, Lyon. "The Ciceronian Rhetoric of John Quincy Adams." *Rhetorica* 2000 18(2): 175-215.

Ried, Paul E. "The First and Fifth Boylston Professors: A View of Two Worlds." *Quarterly Journal of Speech* 1988 74(2): 229-40.

Story, William, ed. *The Life and Letters of Joseph Story*. Vol II. Boston: C.C. Little and J. Brown, 1851.

Swisher, Carl. *History of the Supreme Court of the United States: The Taney Period, 1836-64*. New York: Macmillan Publishing Co. Inc., 1974.

Thomas, Hugh. *The Slave Trade: The Story of the Atlantic Slave Trade, 1440-1870*. New York: Simon & Schuster, 1997.

White, G. Edward. *History of the Supreme Court of the United States: The Marshall Court and Cultural Change, 1815-35*. New York: Macmillan Publishing Co., 1988.