

Incorporating Ancient Egyptian Rhetoric Into Contemporary Judicial Speech

Kristen K. Tiscione
George Mason University
English – Writing & Rhetoric

Abstract

Scholars and students across a broad range of disciplines continue to challenge the dominance of so-called classical Western rhetoric in privileging the view of the controlling majority and excluding valuable contributions from underrepresented groups. The absence of non-Western rhetorics in the traditional history of Rhetoric is also of growing interest to many scholars and academics. In response to these concerns, this article explores the general principles of ancient Egyptian rhetoric and the emerging and sometimes conflicting histories of rhetoric in ancient Egypt in order to discern the extent to which they differ from traditional Greco-Roman principles widely viewed as canonical. The essay then turns to a discussion of silence and restraint—the defining principles in ancient Egyptian rhetoric—in order to offer additional and potentially useful rhetorical tools for the discipline of Rhetoric generally, and the field legal writing specifically.

Keywords: legal writing, ancient rhetoric, Egyptian rhetoric, silence, restraint

Introduction

By the turn of the twentieth century, neither classical rhetoric nor skills training played a significant role in U.S. legal education (Sonsteng). Although ancient Western rhetoricians considered the study and practice of rhetoric essential for a career in law or politics, rhetorical and skills training had given way to a more “scientific” approach known as the case method (Moskovitz). The object of this method was to read selected judicial opinions on a given legal topic to discover its true principles (Langdell 123-25; La Piana 55-58). In conjunction with the so-called Socratic Method, law professors promote these principles in class discussion and, in turn, seeks to develop students’ analytical skills.

The case method turned out to be better for teaching students to think like lawyers than discovering true principles of law (McManis 633-34) in part because it ignored other sources of law, such as statutes and regulations (McManis 649-50; Stein 449-50). In addition, as the exclusive study of common law, the case method foreclosed a broader legal education in government, politics, ethics, or the social sciences (La Piana 136-37; Stein 450). Moreover, it failed to account for a judge’s persuasive role in drafting opinions (Friedman 602; Stein 454).

Consequently, as a law student in the mid-1980s, I was required to take only one writing course on the creation of legal texts for use in practice (and most of the lawyers I worked for early in my career had taken none). At that time, it was typical for teachers of this first-year, ungraded course to be upper-class students. Neither my textbook nor my student teacher relied explicitly on rhetorical principles, but their influence was significant. As the heart of legal analysis, I learned to engage in rule-based reasoning for taking examinations and drafting legal documents. The complexity of the process was (and largely continues to be) reduced to the acronym IRAC, which represents the quasi-deductive process of identifying the legal *issue*,

stating the relevant *rule* of law, *applying* that rule to the client's facts, and reaching a *conclusion*. Curiously, and although I did not know it at the time, I now realize that the writing genres I learned and used in practice—legal memoranda and briefs— mirror the arrangement of classical speech. That said, I learned little, if anything, about logical fallacies, *pathos*, *ethos*, inartistic appeals, theories of argumentation, style, delivery, or the richness, as well as the limitations, of the rhetorical tradition from which contemporary legal practice is derived.

Soon after I graduated from law school, the American Bar Association began to require first-year legal writing courses for law school accreditation (Hemmens). It soon fell to newly hired legal writing teachers to explore a range of subjects, including education, composition, and rhetoric to build an appropriate legal writing pedagogy. Having left law practice and joined these ranks some twenty-seven years ago, I have spent the better part of my career exploring classical and, to some extent, contemporary rhetoric as the foundational theory of the legal writing discipline and believe that in conjunction with composition theory, rhetoric is the backbone of legal writing.

Yet I find myself at somewhat of a crossroads. I am troubled by and sympathetic to contemporary criticisms of the traditional Western canon: it is derived from an elitist, Eurocentric, male-dominated culture; it silences the voices of women and underrepresented ethnic groups; it perpetuates the view that rhetoric is a uniquely European invention, ignores the contributions of non-western rhetorics, and privileges public over private spaces. As Harrington, Series, and Ruck-Keene (2019) recently put it, classical rhetoric is “gendered, raced, and classed” (309-10). With its focus on truth, albeit probable, classical rhetoric also assumes a universally minded audience that no longer represents contemporary society.

In response, scholars increasingly study rhetoric from a more global perspective, investigating the rhetorics of different cultures, women, affinity groups, and even private spaces. Relevant to this article, scholars have begun to explore ancient African literary and rhetorical practices, particularly those of Egypt. These practices pre-date those of the Greco-Roman era by at least 1,500 years. In historiographic terms, ancient Egyptian rhetoric might properly be categorized as both Western and *pre-classical* (Blake, 2009, p. 36).

As a lawyer and legal writing teacher, I am interested in the extent to which non-western or unexplored western practices in the context of legal disputes rely on what we refer to as artistic and inartistic appeals. As Kennedy (1998) asked, “Is logical argument in the Western sense a feature of non-Western discourse?” (6). What about appeals to emotion and credibility? Are there modes of persuasion dominant in other cultures with which we are unfamiliar? If so, is it possible to describe these unique practices in familiar terms without doing violence to them? And, perhaps most important, what can we learn from them to add to our collective knowledge?

This article attempts to answer at least some of these questions with regard to ancient Egypt. The first part summarizes emerging and somewhat conflicting histories of ancient Egyptian rhetoric, including the claim that classical rhetoric began in Africa. The article then examines Egyptian rhetorical principles derived from a variety of ancient texts. Despite the nature of Egyptian rule, they suggest that rhetoric was useful in public and private contexts, including legal disputes. The essay then explores the extent to which Egyptian rhetorical practices differed from those of the Greco-Roman tradition. Finally, it concludes with a consideration of *silence* and *restraint*, the defining principles in ancient Egyptian rhetoric, and their potential application to the teaching and practice of legal writing in the twenty-first century.

Conflicting Histories of Ancient Egyptian Rhetoric and Greek Civilization

In the early 1980s, Michael Fox acknowledged that ancient Greece is often credited as the birthplace of rhetoric but sought “to claim for the ancient Egyptians their rightful place” in its history (9). He relied primarily on Egyptian wisdom books (also referred to as instructional texts) from the Middle and New Kingdoms (from roughly 2,200 to 1,500 BCE), as well as lamentations (public poems of complaint) and other literary texts. Based on these texts, he articulated a set of ancient Egyptian rhetorical principles more fully discussed below (9-18). Fox concluded that ancient Egyptians “attained a fair degree of rhetorical consciousness some 1500 years before the golden age of Greek rhetoric” but also noted that their rhetoric differed significantly from that of the Greeks (21). Specifically, he observed that Greek rhetoric introduced a new rationalism of proofs and arguments, the division of speech into parts with distinct functions, new prose styles, and an interest in philology—the study of language (21).

Four years later, Martin Bernal published *Black Athena* (1987), the first of four volumes arguing that contrary to popular belief, western civilization, including classical rhetoric, is rooted not in Greece but in African and near Eastern culture. According to Bernal, Egypt and the Levant (occupied by Phoenicians along the coastal region of the eastern

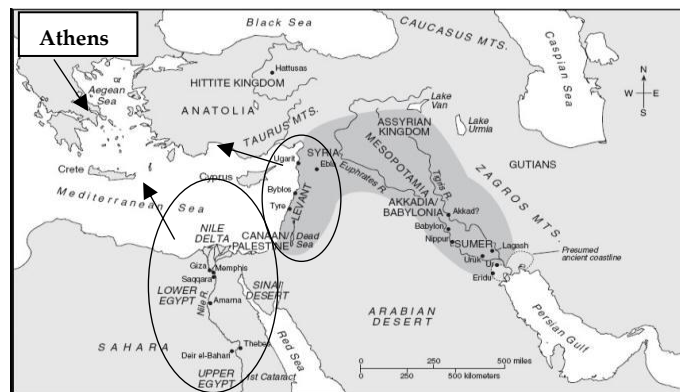


Figure 1. Ancient Period,

<http://web.cocc.edu/cagatucci/classes/hum213/Maps/Maps2HistoryAncient.htm>

Mediterranean from Syria in the north to Egypt in the south, see Figure 1), properly viewed as African, colonized and heavily influenced Greece as early as 1,500 BCE (Bernal 1). As evidence, he cited a strong genetic relationship between Afro-asiatic and Indo-European languages he claimed cannot be explained otherwise; multiple references to Egyptian conquests and culture in

ancient Greek poetry, history, and philosophy; and the influence of Egyptian religion on Greek mythology, Christianity, and other religious sects (Bernal 22-38).

Bernal's most controversial claim was that this "Ancient Model" of Greek civilization persisted until the nineteenth century when "the Aryan Model," which emphasized the contributions of non-African, Indo-European invaders from the North, replaced it (6-10). According to Bernal, a growing European Romanticism, racism, and anti-Semitism caused western scholars as early as the eighteenth century to deny and begin rewriting this history. Bernal concluded that the Ancient Model was not proved wrong; instead,

For 18th- and 19th-century Romantics and racists, it became intolerable for Greece, which was seen not merely as the epitome of Europe but also as its pure childhood, to have been the result of the mixture of native Europeans and colonizing Africans and Semites. (Bernal 2)

He thus urged scholars to replace the Aryan Model with his "Revised Ancient Model," recognizing the contributions of Indo-Europeans to Greek culture in the fourth and third centuries BCE but retaining the significance of the overall contributions by Egyptians and Phoenicians (Bernal 2; Burstein 5).

Bernal's work sparked enormous controversy. In 1996, critics of Bernal's first two volumes published *Black Athena Revisited*, a collection of already published reviews. Mary Lefkowitz, one of the book's editors and Bernal's greatest critics, said Bernal had accused white classicists of being "racists and liars, the perpetrators of a vast intellectual and cultural cover-up, or at the very least, the suppressors of an African past" they supposedly knew nothing about (Lefkowitz & Rogers 4). She argued that classicists had always acknowledged the influence of Egyptian and other cultures on ancient Greece, but that Bernal's specific claims were

exaggerated and unjustified (xi-xii). Ultimately, Lefkowitz concluded that ancient Greek and African cultures were different, divided by both language and genealogy (Lefkowitz & Rogers 6).

Others responded more sympathetically to Bernal, while at the same time noting that African American scholars had been studying Egyptian contributions to western civilization in the nineteenth century (Burstein 4; Earls & Handley-Cousins). Burstein (1996) claimed that Bernal underestimated the extent to which the Ancient Model debated and briefly revived in the early twentieth century with the discovery of a Minoan civilization on Crete (6). He also claimed Bernal ignored the potential influence of Greek culture on Egyptian thought, particularly during the Hellenistic and Roman periods (Burstein 6). In the end, Bernal (2001) claimed victory for at least the partial acceptance of his theory, claiming he had permanently changed how the classic period is taught and understood (17-18).

In 1998, Kennedy published *Comparative Rhetoric*, the first book by a Western scholar to engage in serious study of non-western rhetorical practices for a western audience. Two chapters address rhetorical practices of African cultures, but only one, “Literacy and Rhetoric in the Ancient Near East,” explored ancient writing and rhetorical practices in Mesopotamia and Egypt. According to Kennedy (1998), sometime before 3,000 BCE, the Sumerians in Mesopotamia (see Figure 1) first developed writing in the form of historical, religious, legal, and literary texts on tablets (115). As Ochieng (n.d.) later explained, writing in Egypt followed soon thereafter in the form of wisdom texts; letters; writings on history, religion, law, and autobiography; and literary texts, such as hymns, poems, and prose (1). The Egyptians also inscribed tombs, temple walls, coffins, statues, and monuments of all kinds (Ochieng 1-2).

The oldest texts are funereal inscriptions on stone, consisting of prayers for and accomplishments of the deceased (Kennedy 127). Their rhetorical function was to persuade the gods to grant the deceased immortality and persuade readers to honor the dead. Letters were written on clay or wooden tablets, parchment, or papyrus, making it possible to communicate over distance for the first time (Kennedy 123; Lipson 85). Egyptian kings conducted business in consultation with an advisory court of secular and religious officials headed by a vizier or scribe trained in letter writing (Kennedy 127).

As in Mesopotamia and later in Greece, writing and rhetorical practices were taught in Egyptian schools open to boys who could afford them (Kennedy 128; Sweeney 99). Students were likely training to become scribes, merchants, and civil servants (Kennedy 128). Typically, they learned hieroglyphic writing and a somewhat simpler cursive script by copying and imitating texts (Kennedy 128; Lipson 82). In the process, they learned about grammar, style, history, and religion (Kennedy 128). Egyptian students also learned about laws, regulations, geography, building, transportation, and agriculture (Kennedy 128). Many school exercises from this period have been discovered on papyri (Kennedy 128).

More recently, Blake (2009) has written about ancient African rhetoric but for different reasons. An African studies scholar and native of Sierra Leone, Blake was interested in African rhetorical practices in order to restore them to developing African countries and teach them self-governance (Blake 5). Like Bernal, Blake (2009) was troubled by the absence of Africa in the history of rhetoric and sought to place rhetoric “in the service of interrogating those societies that have been marginalized by deliberate acts of oppression in various forms” (6). He too traces the origin of rhetoric to Egypt but, like Fox, cautioned that persuasion based on rational proofs was not the central goal of Egyptian rhetoric. Instead, it sought to promote harmony and balance

through obedience in a society that revered responsible hierarchy (Blake 26-27). To the objection that truly rhetorical practices can only be a function of democratic societies, Blake (2009) argued that even in so-called “despotic” societies, persuasion takes place, “grounded in value systems that place reverence for authority and hierarchy, coupled with the centrality of obeisance as driving political forces that dictate communication and rhetorical practices” (30).

Ancient Egyptian Rhetorical Principles

Egyptian rhetorical principles are grounded in *Maat*, an ancient goddess and concept that dates back to c. 2,200 BCE (Lipson 80). As a goddess, *Maat* is the daughter of the Sun God Ra and the wife of Thoth, the God of Wisdom and Truth, often represented as a tall slender figure with a feather headdress (80). *Maat* was thought to pass judgment on the dead; if people lived their lives in a blameless manner, helped them pass to the afterlife (81). As a concept, *Maat* embodies truth, justice, and order (81). The concept of *Maat* is also tied to a sense of natural order, requiring that humans respect the balanced state of creation and live in accordance with it (Lipson 81). The concept is “a fundamentally conservative one, bent on preservation rather than change (Lipson 81). As Hutto (2002) explained, *Maat* was essentially an “injunction not to innovate, but to repeat things just as they were received” (227).

The bulk of current Egyptian rhetorical theory comes from wisdom texts, tomb autobiographies, and letters. The wisdom texts, containing principles of ethics, etiquette, and interpersonal relations were used to train scribes and officials (Fox 10),. Usually framed as advice from a notable figure to a son (and likely fictitious), wisdom texts “promise divine favor and professional success” to those who adhere to their advice (Fox 10). Of the fifty or sixty wisdom books known to exist, roughly ten are nearly intact (10). The oldest of the complete wisdom books, *The Instruction of Ptah-Hotep*, may have been written as early as the twenty-

fourth century BCE but is more likely from the twenty-first to twentieth century BCE (10).

Supposedly written by the vizier Ptah-Hotep, it instructs his successor, perhaps his son, on how to prosper in the court of Pharaoh as a high official (10). According to Fox (1983), “rhetoric” in English roughly equates to the Egyptian phrase “the principle of fine speech,” and Ptah-Hotep’s instructions indicate that “fine speech” is their main subject (12).

Fox (1983) identified five canons of speech in wisdom instructions such as *Ptah-Hotep*’s: silence, knowing when to speak, restraint, fluency, and truthfulness (12-18). Blake (2009) referred to these principles as “elements” and articulated them slightly differently as respect for hierarchy, truth, obedience/righteousness, humility, and rightness/justice (51-58). Silence was used as both a moral posture and a rhetorical strategy; it functioned not only to gain advantage but also to put opponents at a disadvantage (Fox 12). For example, when arguing with a superior, Ptah-Hotep instructed to “bow your back and be silent; he will confound himself and be thought a fool,” but when arguing with an equal, “show your virtue by your silence, and you will make a strong positive reputation among the magistrates” (12). Finally, when arguing with an inferior, he instructed the speaker to resist the temptation to bully him: “Be silent and he will confound himself. You will thereby defeat him by means of the disapproval of the magistrates” (13).

As rhetoric cannot consist solely of silence, the second canon is knowing when to speak: “It is only when you have discovered your solution that you should speak. It is only a craftsman who can speak in council, for speech is the most difficult labor” (Fox 14). In some ways, knowing the right moment to speak mirrors the concept of *kairos* (Fox 14; Kennedy n130). The next canon, restraint, referred to holding back and controlling your anger: “Conceal your heart, restrain your mouth. Then your counsel will be (heard) among the magistrates” (Fox 14). A powerful man thus succeeds through gentle speech: “If you are mighty, you should gain respect

through knowledge and through gentleness of speech” (14). The speech itself should be fluent to create the impression of competence and knowledge (15). Most important was the final canon, truthfulness, which in and of itself was considered persuasive (15).

In addition to the wisdom texts, tomb autobiographies reinforced the importance of acting in accordance with *Maat*. Artifacts such as the *Pyramid Texts* dating from the late Old Kingdom, the *Coffin Texts* from the Middle Kingdom, and *The Book of the Dead* from the New Kingdom assisted the spirit of the dead in transitioning to the afterlife. The *Pyramid Texts*, carved into the walls and sarcophagi of the

pyramids in the ancient Egyptian capital of Memphis, now Saqqara, were reserved for royalty. By the Middle Kingdom, these texts or “spells” were available to anyone who could afford a coffin (Lichtheim). In the New Kingdom, they were written on papyri and placed in the coffin or burial chamber of the deceased. In addition to a list of career titles and accomplishments, the texts detailed the deceased’s adherence to *Maat* and suitability for the afterlife (Lipson 83-84).

Letter writing was a significant form of communication for public and private purposes, such as recording tax payments, corresponding with distant family members or work supervisors, and issuing formal decrees such as official policies or the resolution of legal disputes (Lipson 85-86). Letters were usually written by scribes, even for those who were literate (Lipson 85). Because they were read aloud, the writer was keenly aware that the audience was likely to be larger than the recipient. Letters tended to begin by acknowledging “the hierarchical roles and obligations of societal members,” particularly when sent to those of higher status (Lipson 87).



Figure 2. Timeline of Ancient Egypt.

The letters often referred to prior conversations, including direct quotations, and acknowledged the role of the scribe in the creation of the dialogue (Lipson 86). As Lipson (2004) explained, individual names were rarely used, giving the letters a “highly typified, generic effect” (87). Until the New Kingdom, the use of first person was avoided, which contributed to the letters’ distancing effect (Lipson, 2004, p. 88).

That fine speech or eloquence was highly valued is also evident in lamentations and stories. As Hutto (2002) explained, ancient Egyptians likely believed that language had a magical power, at least in the context of religion (219). A creation myth from Memphis in the Old Kingdom holds: “It is Ptah, the very great, who has given life to all the gods . . . through [his] heart and through [his] tongue” (219). Belief in the power of language was reflected in the tomb autobiographies or spells as well. Three major lamentations (in which the coming of a new king was often hailed) from the Middle to New Kingdom demonstrate what the Egyptians considered fine speech (Fox 11).

In “The Prophecies of Neferti,” from the twentieth century BCE, the king calls for “someone who has done a noble deed, ‘so that he may speak to me some fine words, choice phrases at the hearing of which my majesty may be entertained’” (Fox 11). The reference to “me” and “my majesty” indicated the presence of the scribe. In a story called “The Eloquent Peasant,” dating from c. 2,040-1,650 BCE, a farmer complained to a high steward that a landowner had stolen his goods. The steward contacted Pharaoh and told him, “My Lord, I have found one among those peasants whose speech is truly beautiful” (17). In response, Pharaoh commanded the steward to detain the peasant, remain silent to keep the peasant talking, and then report back purely “for the king’s aesthetic pleasure” (17).

Comparisons to Greco-Roman Rhetoric

Kennedy (1998) and Blake (2009) have warned against or resisted comparing a distinct culture's rhetorical practices to those of classical rhetoric for fear of imposing on them western assumptions and prejudice. Yet comparisons strike me as unavoidable; at the very least, they allow us to grasp the differences. In this context, comparison also helps us understand Egypt's influence on Greece and vice versa. In that sense, to compare these practices is to attempt to discover what Kennedy (1998) described as "the innate or 'deep' rhetorical faculty that we all share but which takes different forms in different cultures" (1). To the extent these two cultures are unique from one another, their discovery expands our knowledge.

Unlike principles of Greco-Roman rhetoric, those of Egyptian rhetoric applied both to public and private discourse, including "social or private exchanges, judicial examinations, religious ceremonies and royal court interactions" (Hutto 219). Rhetorical rules focused on being a good member of society, and they differed, depending on the status of the speaker in relation to the audience: as one's superior, equal, or inferior (219). As in Greco-Roman rhetoric, those who could speak with any degree of influence would have been a relatively small percentage of the population, always men and mostly "of a non-peasant group," who were also educated (218). Sweeney (2004) indicated there were women "of the scribal class" during the New Kingdom (see Figure 2), but they seldom held administrative positions and were likely at a disadvantage in male-dominated public forums (105).

Scholars disagree somewhat on the extent to which Egyptian rhetorical practice amounts to a coherent theory of rhetoric. Fox (1983) concluded that the Egyptians "attained a fair degree of rhetorical consciousness" (21). And Kennedy (1998) suggested that *The Instruction of Ptah-Hotep* "can perhaps be regarded as the oldest known rhetorical handbook" even if incomplete (128). In contrast, Hutto (2002) claimed there are no ancient Egyptian treatises on rhetoric that

because the Egyptians did discuss language “to the extent the Greeks did,” (214). Blake (2009) disagreed with Hutto, claiming the wisdom instructions nevertheless constitute “a treatise on rhetoric, and on preparations for leadership roles in governance” (6, 48). Blake (2009) further argued that they identified “three types of ‘arguers’ at different levels of competency: Superior to us; those at par with ourselves, and those below our level of competency” (52).

To suggest that Ptah-Hotep’s instructions comprise a handbook or treatise on rhetoric seems a stretch. “Handbook” calls to mind the more comprehensive texts by Aristotle, Cicero, and Quintilian, and others, whereas Ptah-Hotep’s instructions are relatively short (roughly forty-three short paragraphs) and not limited to teaching rhetoric. Moreover, the emphasis on the speaker’s status more likely refers to the etiquette required of the speaker, not the speaker’s level of skill. Yet quibbling over the appropriate category for the instructions seems beside the point, causing us to fall into the same trap against which Kennedy warned. That they address principles of speaking that required different responses to different rhetorical situations makes them a collective text “on rhetoric” and significant in the history of western rhetoric. Like classical rhetoricians, the Egyptians viewed eloquence as a natural talent (Kennedy 125; Fox 12), they also believed it could be improved by instruction and incorporated rhetorical principles into their educational system.

In Greco-Roman terms, ancient Egyptian invention drew on both inartistic and artistic proofs. Legal texts from “The Ramesside period” (19th and 20th dynasties, 1,292–1,075 BCE) indicate that courts heard witness testimony, and documents could be submitted as evidence (Sweeney 101). Because of the near fusion between truth and persuasion, reminiscent of Christian rhetoric in medieval Europe, we might say that *ethos* constituted the primary form of artistic proof. As Fox (1983) observed, *ethos* served not as “an adjunct to proof” as in

Aristotelian rhetoric, but was “itself a form of proof” (16). Although akin to Quintilian’s concept of the ideal orator as a good man skilled in speaking (Fox 16), it is also reminiscent of the Aristotelian view that the speech itself evinces one’s character.

Egyptian rhetoric was not based on logical appeals or precedent (Fox 21). Until truth could be perceived as relative, forms of deduction and analogy would not dominate persuasion. Thus, the Greeks were likely the first to separate public from private discourse and truthful from persuasive appeals. Although appeals to *pathos* appear in some literary texts such as “The Eloquent Peasant” and in some inheritance cases from the Ramesside Period (Sweeney 104), there seems to have been no explicit instruction on emotional appeals.

Each major form of writing, particularly the wisdom texts and letters, was a distinct genre with its own writing conventions. Egyptian students training to be scribes would learn these forms through copying and imitation much as Greco-Roman students did. Rhetoric was performative in the sense that most texts were read aloud, but there is no discussion of memory and delivery in the western sense. As for style, certain figures of speech, such as hyperbole, rhetorical questions, hypothetical situations, parallelism, and antithesis appear in literary and legal texts (Sweeney 103-105) but were not explicitly taught (Fox 16).

Silence and Restraint as Rhetorical Tools

Although adherence to truth in ancient Egypt was paramount, it served primarily to preserve the status quo rather than change it. For the same reasons one might object to truth as perceived by the wealthy, elite males who dominated Greek society, *Maatian* truth under Egyptian rule is problematic. As a result, the most interesting and potentially useful principles of Egyptian rhetoric may be *silence* and *restraint*, functioning not as acts of submission but as rhetorical tools. Although silence and restraint exist to some extent in the rhetoric of all cultures

(Kirkpatrick & Yu 21-23), their function in ancient Egypt appears to have been unique, at least in terms of the situations where persuasion was possible. A detailed comparison of silence as a rhetorical tool across cultures could well provide the subject of another article.

As Fox (1983) suggests, there is no direct analogue to silence and restraint in the Greco-Roman or judicial speech tradition, in part because they represented behavioral norms more than factors for consideration in the Egyptian speaker's creative process. Yet they play an implicit role in western rhetoric and the invention of artistic appeals. Silence, as an indirect rebuttal of an argument deemed unworthy of response, arguably rises to the level of rational proof. The idea that an argument "can fall of its own weight" comes to mind here. When one does decide to speak, restraint is required to control the passions and avoid exaggeration. Knowing when to be silent and when to speak are both relevant to emotional appeals because they help the speaker anticipate the audience's emotional response. Finally, they enhance the speaker's *ethos* in at least two ways: they focus the audience on the speaker's affirmative arguments and convey a sense of confidence that builds credibility (Fox 13-14).

Legal Writing Instruction

Legal writing instruction tends to focus on two forms of legal written discourse: analytical (or advisory) and argumentative (advocacy). Depending on the nature and purpose of the discourse, silence and restraint arguably function differently. Isolating those functions here may be useful in teasing out teachable nuance.

Legal Analysis

The purpose of legal analysis is to inform the audience—most often a supervising attorney, the client, or both—of the rules of law and predict outcome based on a client's

particular facts and circumstances. Although the primary purpose of analysis is to predict, it must also be comprehensive, credible, and strategic. When drafting predictive memoranda or email, novice legal writers often ask how to gauge the scope of their analysis: Should I discuss all potential causes of action arising out of a bundle of facts or just those already discussed? If certain parts of a legal claim are clearly satisfied, do I need to discuss them? A traditional yet unsatisfactory answer to this question is to consider the audience, which provides little guidance. Novices also ask, should I discuss some or all of the cases that address each aspect of a relevant legal issue? If not all, how do I choose? Again, a traditional yet unsatisfactory answer is that it depends on the nature of the cases themselves and the client's unique circumstances.

A better answer might be framed in terms of silence and restraint. For example, when writing to a supervisor, the novice should choose to speak: in most cases, they know more than the supervisor who requested the analysis and preserving that knowledge allows the novice to benefit from the supervisor's expertise. In contrast, when writing to clients, the novice should err on the side of restraint, speaking only to those matters necessary for clients to make an informed decision. Clients often have difficulty understanding the intricacies of detailed legal analysis and may only need to know enough to make a specific decision and why. In terms of how many cases to discuss, the novice should speak to as many different cases as necessary to illustrate the applicable rule of law and may remain silent as to those reasonably understood to be either duplicative or inapplicable.

Legal Argument

In contrast, the primary purpose of legal argument is to persuade; its secondary purpose is to inform. In the United States, lawyers have an ethical duty of diligence that requires them to act with commitment, dedication, and zeal in advocacy (American Bar Association, 2020, Rule 1.3).

In keeping with that duty, legal writers must develop their affirmative arguments and counter their opponent's. As Peter Elbow (1973) would say, lawyers engage in a doubting game borne of traditional western norms that finds truth by discrediting lesser versions of it. As a result, to play the adversarial game is to doubt, discredit, and attack. In short, the instinct is to speak—always.

When drafting legal argument, novice legal writers face a similar dilemma in terms of scope: How much of my argument should be devoted to my affirmative arguments and how much to those of my opponent? Should I provide a counterargument to each and every one of my opponent's arguments? If not, which ones can I ignore? The typical answer is that it depends on the nature of the case and the strength of the arguments. Here too, a better answer might be framed in terms of knowing when to speak and when to remain silent. In ancient Egypt, the best response to a false accusation might well have been silence (Fox 19). To remain silent would demonstrate restraint, composure, and innocence. If forced to speak, the accused's response would have needed to be respectful, fluent, measured, and above all, honest (19). The accused's fluency would have been evident in the statement of the case and the eloquence of the speech, but the truthfulness of the accused would have ultimately persuaded the judges (21). Having demonstrated behavior consistent with *Maat*, the accused's acquittal would have been secured (21). So too, silence and restraint in brief writing—choosing not to respond to each and every argument—may demonstrate restraint, composure, and rectitude.

In a courtroom setting, where one's adversary is perceived as superior in terms of wealth or status, such as an employer or large corporation, the decision to speak might well make sense because it is necessary to meet the challenge imposed by such a formidable opponent. But in cases where the adversary is perceived to be less well situated, such as an employee or an individual, it might make more sense to remain silent—to hold back the arsenal of potential

arguments so as not to appear to bully the opponent in order to encourage a judge or jury to doubt the opponent's argument.

Whereas legal writers trained in the western tradition are primed to speak, to attack and discredit by crafting a counterargument for each and every argument, ancient Egyptians recognized that less can sometimes be more. As the examples here demonstrate, a decision *not* to speak might well enhance an advocate's position and thus act in furtherance of the client's ultimate goals. Legal writing instruction might do well to incorporate and teach silence and restraint as powerful rhetorical tools. The extent to which they might enhance or improve twenty-first century advocacy remains to be seen.

References

- American Bar Association. House of Delegates, and Center for Professional Responsibility.
- “Model Rules of Professional Conduct.” (Rule 1.3, cmt. [1]). *American Bar Association*, 2020. <https://perma.cc/K5ER-CJBL>.
- Bernal, Martin. *Black Athena: The Afroasiatic Roots of Classical Civilization Volume I: The Fabrication of Ancient Greece 1785-1985*. Rutgers University Press, 2020.
- Blake, Cecil. *The African origins of Rhetoric*. Routledge, 2010.
- Burstein, Stanley M. "The Debate over Black Athena." *Scholia: Studies in Classical Antiquity* 5.1 (1996): 3-16.
- Earls, A. & Handley-Cousins, S. (Producers). (August 13, 2017). *Black Athena controversy: Battle of historians* [Audio podcast]. Dig: A history podcast.
- <https://perma.cc/F5D6-BK2N>.
- Elbow, P. (1973). The doubting game and the believing game—An analysis of the intellectual enterprise. *Writing Without Teachers*. Oxford University Press.
- Fox, Michael V. "Ancient Egyptian Rhetoric." *Rhetorica* 1.1 (1983): 9-22.
- Friedman, L.M. *The legal profession: The training and literature of law* (3rd ed.). Oxford University Press, 2019. <https://doi.org/10.1093/oso/9780190070885.003.0020>.
- Harrington, John, Lucy Series, and Alexander Ruck-Keene. "Law and rhetoric: critical possibilities." *Journal of Law and Society* 46.2 (2019): 302-327.
- Hemmens, Ann. "Advanced legal research courses: A survey of ABA-accredited law schools." *Law Libr. J.* 94 (2002): 209.
- Hutto, David. "Ancient Egyptian rhetoric in the old and middle kingdoms." *Rhetorica* 20.3 (2002): 213-233.

- Kennedy, George Alexander, and George A. Kennedy. *Comparative Rhetoric: An historical and cross-cultural introduction*. Oxford University Press, USA, 1998.
- Kirkpatrick, Andy, and Zhichang Xu. Chinese rhetoric and writing: An introduction for language teachers. *Parlor Press LLC*, 2012.
- La Piana, W.P. *Logic and experience: The origin of modern American legal education*. Oxford University Press, 1994.
- Lefkowitz, M.R. *Not out of Africa: How afrocentrism became an excuse to treat myth as history*. New Republic and Basic Books, 1996.
- Lefkowitz, M.R. & Rogers, G.M. (Eds.). *Black Athena revisited*. The University of North Carolina Press, 1996.
- Lichtheim, M. *Ancient Egyptian literature* (Vol. 1). University of California Press, 1975.
- McManis, C. R. The History of First Century American legal education: a revisionist perspective. *Washington University Law Quarterly*, 59(3), 597-660, 1981.
- Moskovitz, Myron. "Beyond the case method: It's time to teach with problems." *Journal of Legal Education* 42.2 (1992): 241-270.
- Ochieng, O. *African philosophy and rhetoric*. American Society for the History of Rhetoric, (n.d.). <https://perma.cc/YDX2-4ME2>.
- Sonsteng, John O., et al. "A legal Education renaissance: A practical approach for the twenty-first century." *Wm. Mitchell L. Rev.* 34 (2007): 303.
- Stein, Ralph Michael. "The path of legal education from Edward I to Langdell: a history of insular reaction." *Chi.-Kent Law Review* 57 (1981): 429.
- Sweeney, Deborah. "Law, rhetoric, and gender in Ramesside Egypt." *Rhetoric before and beyond the Greeks* (2004): 99-113.