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P. Christopher Smith

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THE USES OF ARISTOTLE IN GADAMER'S RECOVERY OF
CONSULTATIVE REASONING: *SUNESIS*, *SUNGNÔMÊ*,
EPIEIKEIA, AND *SUMBOULEUESTHAI*

P. CHRISTOPHER SMITH*

INTRODUCTION

In what follows, Gadamer's appropriation of *bouleuesthai* (deliberation or taking counsel with oneself) from Aristotle's *Nicomachean Ethics* will be used to retrieve an even earlier, communal understanding of reasoning, which is evident in Homer but which has been increasingly covered over in argumentation theory beginning with Plato.¹ Significantly for us in the English speaking world, this concealment and distortion continues through Hobbes and Locke and, into present times, with MacIntyre, Toulmin, and analytic philosophy generally. For in the Western and, more specifically, Anglo-American tradition of reasoning, what was in the beginning consultation taken *with* others, what was originally *sumbouleuesthai* based on hearing what others have to say as we take counsel *with* them in councils (*boulai*), has changed into each individual's attempt to show, or even impose upon, others what he or she has seen for him or herself. *Sumbouleuesthai* has become *apodeixis*; consultation has become demonstration.

What is more, in the hands of English speaking thinkers, this conversion of consultative reasoning into demonstration has led to the devolution of reasoning into the argumentative form of what C.B. MacPherson has aptly called "possessive individualism."² The

* Professor of Philosophy, University of Massachusetts Lowell. In 1966, Professor Smith completed his Ph.D. at Heidelberg University after five years of study under Hans-Georg Gadamer, who mentored Professor Smith for his dissertation, *Das Sein des Du: Buber's Philosophie im Lichte des Heidegger'schen Denkens an das Sein*. Professor Smith's books include three extensively commented translations of Gadamer's works and his own *Hermeneutics and Human Finitude* (1991) and *The Hermeneutics of Original Argument* (1998).

1. Gadamer's word for *bouleuesthai* is *Mitsichzurategehen*. See HANS-GEORG GADAMER, *WAHRHEIT UND METHODE* 304 (Tübingen 1965). Translations from the German and Greek are my own except where otherwise noted.

2. C.B. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* (1962); see also P. CHRISTOPHER SMITH, *THE HERMENEUTICS OF ORIGINAL ARGUMENT: DEMONSTRATION, DIALECTIC, RHETORIC* 5-6, 312 n.4 (1998).

individual reasoner, as Toulmin puts it, now states—or should we say, “stakes”—a “claim” and then defends it against other individuals, who in seeking to secure their own “turf,” would call it into question.³ For once the original community of reasoning is suppressed, as occurs with the Anglo-American hypostasis of the private individual or “self,” “communication” becomes at best the self-interested, community-less exchange of one “person’s” information or intellectual property for another’s and at worst the sophistical attempt to vanquish and dominate the other in verbal conflict.⁴ Consultative reasoning now degenerates into “argument” in the current sense of litigious, adversarial contention. No wonder, then, that MacIntyre speaks of “interminable” debate between “rival” points of view.⁵

First, we will investigate Plato’s abstraction from Homer’s oral/aural, dialogical understanding of reasoning, and the turn to reasoning as monological demonstration of an individual’s insight.⁶ Second, we will trace, albeit succinctly, the perpetuation and intensification of this abstraction and turn in the English-language understanding of argument provided by Hobbes and Locke. Third, and in conclusion, we will turn to Aristotle and the uses Gadamer makes of him, as well as of the dialogical Plato, in recovering the

3. For Toulmin’s original reformulation of the pattern of argument along the lines of forensic or judicial reasoning, see STEPHEN EDELSTON TOULMIN, *THE USES OF ARGUMENT* (1958). For our purposes, however, the text-book version of this reformulation, see STEPHEN TOULMIN ET AL., *AN INTRODUCTION TO REASONING* (1984), will prove more indicative of the devolution of communal reasoning to self-interested “transactions” between private individuals. See, e.g., *id.* at 9-11 (“Reasoning as a Critical Transaction”).

4. *Personae et res* are, we note, empty legal abstractions from what people are and from what people possess originally in the web of their particular roles and relationships in their community—as parents, children, neighbors, “doctors, lawyers, merchants, chiefs,” etc. See P. CHRISTOPHER SMITH, *HERMENEUTICS AND HUMAN FINITUDE: TOWARD A THEORY OF ETHICAL UNDERSTANDING* 30-38 (1991) (discussing Hegel and the displacement of the original “ethical community” (*sittliche Gemeinschaft*) by the “condition of right” (*Rechtszustand*) and its correlate, the commercial “system of need satisfaction” (*System der Bedürfnisbefriedigung*)).

5. See ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 6 (1981).

6. Actually, there are two contradictory strands in Plato, the Pythagorean mathematical and the dialogical. The tension between them reflects the similar tension in Pythagoreanism between the *mathēmata* (mathematical) teachings transmitted in writing and the *akousmata* (auditory) ethical doctrines transmitted only in speech. As Plato’s *Phaedo* underscores, Socrates’s Pythagorean auditors, Cebes and Simmias, who are familiar with only the *mathēmata* of their Pythagorean teacher, Philolaus, are at a loss when confronted with ethical, existential questions of how one should live one’s life toward death. In regard to suicide, Cebes submits, “About these matters I have never heard (*akêkoa*) anything clear from anyone.” To which Socrates responds, “You have only to take heart. For perhaps then you too will hear (*akousais*).” PLATO, *PHAEDO* 61d-e. Clearly, the early and middle dialogues remain suspended somewhere between the old orality and the new literacy and mathematics. For Gadamer’s response to this tension, see P. Christopher Smith, *Plato As Impulse and Obstacle in Gadamer’s Development of a Hermeneutical Theory*, in *GADAMER AND HERMENEUTICS* 23-41 (Hugh J. Silverman ed., 1991).

original Homeric idea of reasoning as consultation. Here we will consider the challenge Gadamer's appropriation of Aristotle poses for our own, Anglo-American adversarial, "legal" paradigm for reasoning.⁷

I. PLATO'S ABSTRACTION FROM THE ORIGINAL COMMUNITY OF SPEAKERS

For a better understanding of Plato's transformation of the original understanding of reasoning in Homer, let us turn to a decisive passage in the *Philebus*. In one excursus, Plato's "Socrates" draws an analogy of true and false pleasure with true and false judgment (*doxa*).⁸ For in order to establish that "true" and "false" can be predicated of pleasure too—which is the *prima facie* point of the excursus—this "Socrates" must first clarify these words' usual application to judgment.⁹ The exposition seems to proceed naturally enough from a question one asks oneself ("What is that thing next to the rock which appears to be standing there under a tree?"),¹⁰ to an answer one gives oneself ("It is a human being"), and, lastly, to an assertion (*logos*) "voiced aloud to someone else present."¹¹ It is significant, however, that this later dialogue, the *Philebus*, then abandons this oral-acoustical model altogether and turns to the interior experience of reading writing, which is to say, the "marks" made by memory. As Socrates now puts it:

In coinciding with perceptions and sensations experienced in connection with them, it seems to me almost as if memory at times writes assertions in our minds (*en tais pschuais*), and when this experience writes the truth, then the judgment is true and true assertions come from it and develop in us.¹²

In retrospect, we see that this turn away from communicative, acoustical orality to privately read, interiorized writing was, in fact, foreshadowed by the very starting point for the account of *doxa*,

7. Toulmin's recasting of demonstrative argument on the legal or judicial model is surely a breakthrough and not to be diminished. At the same time, however, his recurrence to this model thwarts any advance beyond the argumentative form of "possessive individualism." See *infra* Part III; see also SMITH, *supra* note 2, at 311 n.3; P. Christopher Smith, *Toward a Discursive Logic: Gadamer and Toulmin on Inquiry and Argument*, in *THE SPECTER OF RELATIVISM: TRUTH, DIALOGUE, AND PHRONESIS IN PHILOSOPHICAL HERMENEUTICS* 159-77 (Lawrence K. Schmidt ed., 1995).

8. See PLATO, *PHILEBUS* 36e-39a.

9. See *id.* at 38c-e.

10. See *id.* at 38d.

11. *Id.* at 38e.

12. *Id.* at 39a.

which is to say, not hearing and learning the word for something from another speaker in one's community, but the individual soul's own *dialogos* with itself *aneu phonês* (without voice).¹³ Importantly, this starting point coincides with the shift in Plato's dramatic writings to the new dialectic and *dialegesthai*, no longer as "talking things through" orally in audible questions and answers, but now as "sorting things out" visually by *genê* and *eidê* (classes and forms of things). Indeed, the original communal experience of hearing word names (*onomata*) for things from others, and thus learning what they are, is now translated entirely into privately viewing perceptions and then, again privately, reading the stationary memorial marks and signs *en tais psuchais* (in our minds and by ourselves). In the original experience of hearing the word, we came to know what something is by hearing and learning the name for it from someone else in our language community. But here it is said, on the contrary, that we first see the form (*eidôs*) of what something is by ourselves, and then we attach a conventional word sign to it in the event that we subsequently and only secondarily might want to communicate our insight.¹⁴

Now quite in contrast to Plato, Homer, whether he does write or not, still *speaks* out of the preliterate, oral, acoustical tradition. Moreover, he gives us striking evidence for the original coincidence of getting to know what or who something or someone is by first hearing the name from someone else, and only then, as is the case in the examples we will take here, hearing it again in one's mind. Thus Homer gives us evidence for the abstraction in any account that reduces the name of something to a memorial sign for a prior mental vision; a sign used only secondarily to record and communicate an insight one first has by oneself.

If we turn to Book XIX of the *Odyssey*,¹⁵ we see that Odysseus's former nurse, the now aged Euracleia, knows who this ragged creature, whose feet she is washing, really is only when, having felt the telltale scar remaining on his leg from a boar's attack in his youth, she recalls his name: "But you *are* Odysseus (*ê mal' Odusseus essi*), dear child! I did not yet *know* you before (*oude s' egô ge prin egnôn*), not until I had touched you all around, my lord."¹⁶ It is not some

13. See PLATO, SOPHIST 263e.

14. See *id.*

15. See HOMER, THE ODYSSEY bk. XIX, 386-475.

16. *Id.* at 474-75.

visual mental record that she correlates with a perception here—after all, this man does not *look* like Odysseus at all—but, conversely, a perception, more tactile than visual, that evokes audibly in her mind the name she has heard and learned long ago from others, and which alone allows her now *to name and know* the real being of the one she has before her, “Odysseus,” “dear child,” “lord.” Only hearing the name, first from others and now in her mind, lets her know who this *is*; hearing the name first brings Odysseus into being for her.

Thus, seeing something for oneself is precisely not equivalent to knowing here. Euracleia does not first see and know who is before her and then proceed to designate this vision with some conventional word sign in order that she might remember her insight and then communicate it to someone else. On the contrary, until she once again hears in her mind the name triggered by the scar, what she sees before her and envisions *is* still only a “beggar.” Similarly, in the grand recognition scene of Book XXIII, Penelope knows for sure who—and what—this stranger *is* only when she can name him “Odysseus.”¹⁷ “Be not angry with me, Odysseus,” she says, having learned from the “sign” of his knowledge of their immovable, tree-trunk bed that this *is* indeed “Odysseus” and calling him by name for the first time.¹⁸

We note the original sense of *sêmeion*, here as *sêmata* in “*sêmat’ anagnousêi*” (she recognized the sign(s)).¹⁹ Significantly, the word name (*onoma*), in this case “Odysseus,” is not at all a sign signifying some preexistent entity she had already envisioned in her own mind. Instead, the sign indicates to her, or better, evokes in her, the audible *onoma* that alone will call something into being for her as who, or what, it is in the first place. As was Odysseus’s scar for Euracleia, here Odysseus’s knowledge of the bridal bed is the sign for Penelope that brings the audible word name to mind again. Only this name from time out of mind and heard long ago from others lets her know the being of the one she has before her, lets her know who he really *is*.²⁰

17. See *id.* bk. XXIII, 173-209.

18. *Id.* at 209.

19. See *id.* at 206.

20. See SMITH, *supra* note 2, at 72-78 (discussing the significance of the trope *prosopoeia* or “naming” things as one “names” people). Another source for this line of thought is Heidegger’s appropriation of Stephan George’s verse, “*Kein ding sei wo das wort Gebracht*” (There be no thing where the word fails). See MARTIN HEIDEGGER, *UNTERWEGS ZUR SPRACHE* 216, 217-38 (1959) (“*Das Wort*”).

With these instances of the audible name coming to mind, Homer makes clear just why indeed there is no such thing as a private language: he shows us that the names we have for things and people are heard and learned from others in a language community that was always already there before the individual members born to that community began to think for themselves using these word names. In other words, language, audible speech, is not invented by private individuals to signify thoughts they already have but is the gift of the community that allows the individual to think in the first place. Not *cogito ergo sum* is the truth of the matter, rather *loquimur ergo cogito*.²¹

The fact that private thought, as Homer shows, originates in first hearing in a common, public language points up the political abstraction in Plato's reconstruction of *bouleuesthai*, or taking counsel with oneself, as the "voiceless dialogue of the soul with itself."²² We note, for example, that Achilles, who from the Platonic perspective would seem to think and act by himself, is in fact defined in the *Iliad* by his self-imposed exile from the *boulai* (councils of his kinfolk), the Achaeans. Indeed, we find Homer saying in Book I, "And not ever did he frequent the meeting place (*agora*) where honor is won."²³ For his rage at having been dishonored at the hands of Agamemnon, this *mênis*, which is the theme of the *Iliad*, *only now* keeps him away. His isolation, this is to say, is to be understood as the deprivation of his original community, and any such private deliberations as he or anyone else might engage in on their own are but interiorized consultations, the performance of which one first learns in taking counsel with others and listening to what they have to say.

We remark that the centerpiece of Book I, which precedes Achilles' withdrawal, is his and Agamemnon's participation in the open debate, *in the council of the Achaeans*, concerning what should be done to assuage the wrath of Apollo. Moreover, the embassy of Odysseus, Phoenix, and Ajax sent to Achilles in Book IX clearly has as its task not to create a community of heretofore separate

21. Not "I think, therefore I am," but "We speak, therefore I think." We will not consider French Cartesianism here, rather the English-speaking tradition. However, the criticisms of the latter developed in this study can be applied equally to the former even if Descartes takes the subject's private cogitations as his starting point and Hobbes, Locke, et al., take the subject's private sense perceptions as theirs.

22. PLATO, *supra* note 13, at 263e.

23. HOMER, THE ILIAD bk. I, 490-492.

individuals—such as is projected in the contract theory of a Locke or Rawls—but to restore Achilles to the preexistent community and councils of the Achaeans. The very fact that the embassy fails in this task makes obvious what the task was. Here, for instance, is Achilles's response to Odysseus's overtures: "Let him [Agamemnon] not fool with me anymore; he will not convince me. Rather, let him, Odysseus, contrive with you (*sun soi . . . phrazesthō*) and the other kings how to fend off the ravaging fire from the ships";²⁴ "I will contrive together with him (*oi . . . sumphrassomai*) neither any counsel nor action (*oude ti boulas, oude men ergon*)."²⁵

Mark Edwards points out that there are eleven soliloquies in the *Iliad* and that all of them are "introduced by a normal verb of speaking, indicating that they are thought of as uttered aloud rather than as simply the unspoken thoughts of the character."²⁶ This, of course, is completely natural for an oral, preliterate culture where, in sharp contrast to the account of forming a judgment in Plato's *Philebus*, writing as yet plays no role, and where any deliberation about something such as reading writing in the soul without voice, *aneu phônês*, would be inconceivable. Here words, as well as one's own thoughts couched in them, are always heard from, and spoken to, others in one's community; words are never seen, read, or envisioned by oneself.

As evidence for this, let us consider Hector's deliberations over whether to stand and face the onslaught of Achilles.²⁷ For even if Hector's decision to stand his ground is famously overthrown when he eventually cuts and runs, his deliberations display, by sheer contrast, the patent abstraction in Plato's understanding of deliberation as the soul's reading by itself its own writing within itself. They display Plato's abstraction, this is to say, from the origins of *bouleuesthai* in *sumbouleuesthai*, of taking counsel with oneself in first taking counsel with others.

To begin with, we note that Hector's deliberations do not originate, as in the *Philebus*, in the social vacuum of the isolated soul's private and silent dialogue with itself. On the contrary, they are expressly preceded by counsel that Hector *hears* first from next of kin, from his father, then from his mother. "Wailing, lamenting

24. *Id.* at 345-47.

25. *Id.* at 374.

26. MARK EDWARDS, *HOMER, POET OF THE ILIAD* 94 (1987).

27. See HOMER, *supra* note 23, bk. XXII, 99-130.

greatly,” Priam “shouted” to him,²⁸ “Hector, do not just stay, awaiting this man, dear child, alone and apart from the others.”²⁹ And then Hecuba “streaming tears, spoke to him winged words”:³⁰ “For if he kills you I can no longer mourn you on the death-bed, sweet branch, o child of my bearing, nor can your generous wife mourn you, but a big way from us beside the ships of the Argives the running dogs will feed on you.”³¹ “Thus,” Homer concludes, “the two, crying and lamenting greatly, spoke to their dear son . . . but Hector’s heart was not convinced.”³²

Here it is plain that the prerequisite and indispensable rhetorical context for Hector’s own taking counsel with himself, for his own *bouleuesthai*, is *sumbouleuesthai*, namely his taking counsel with *philoï*, with kin dear to him in his community.³³ And thus Hector’s own deliberations are introduced, as is typical for Homer, with Hector speaking aloud to himself as if he were both speaker and listener, each still engaged in taking counsel with someone else: “Anguished,” the story says, “he now spoke to himself in his great heart.”³⁴ We note too that his deliberations are in no way optical, rather they are entirely acoustical.³⁵ Not voiceless viewing things, not silently reading written marks and signs “in the mind itself by itself” are the model, but listening to the voiced word that one first hears from another.³⁶

II. THE ENGLISH PERPETUATION OF PLATO’S ABSTRACTION

Despite an interlude of two millennia, the account Hobbes gives in *Philosophical Rudiments (de Cive)* of “the internal ratiocination of the mind without words”³⁷ remains remarkably like the account of

28. *Id.* at 33-37.

29. *Id.* at 38-39.

30. *Id.* at 81.

31. *Id.* at 86-89 (Richmond Lattimore’s translation).

32. *Id.* at 91.

33. A typical example of the priority of *sumbouleuesthai* over *bouleuesthai* is provided by Aeschylus, when Electra calls upon the chorus for advice: “You servant women, who maintain the order of the house . . . be my counselors (*sumbouloï*) in these matters.” AESCHYLUS, LIBATION BEARERS 83-86. “Be sharers, o, dear ones (*philai*), in this counsel (*boulê*).” *Id.* at 100; see also SMITH, *supra* note 4, at 29-31, 154-56 (discussing *philia* as the precondition of community).

34. HOMER, *supra* note 23, bk. XXII, 93.

35. See *id.* at 99-131.

36. See PLATO, *supra* note 6, at 68a, 79d, for the visions of the “mind itself by itself” (*autê kath’ hautên hê psychê*).

37. THOMAS HOBBS, PHILOSOPHICAL RUDIMENTS (DE CIVE) bk. I, ch I, § 3.

forming a judgment (*doxa*) given in the *Philebus* and *Sophist*, and hence it perpetuates and amplifies the very same Platonic abstractions from our original community with others. For in Hobbes too the exposition begins with the thinking of the private individual prior to hearing names for things from someone else: "If therefore," he writes, "a man see something afar off and obscurely, although *no appellation had yet been given to anything*, he will, notwithstanding, have the same idea of that thing for which now, *by imposing a name on it, we call it body*." Coming nearer, "he will have a new idea thereof, namely that for which *we now call such a thing animated*" and, coming nearer still, "he perceives the figure, hears the voice, . . . [and] he has a third idea, *though it have yet no appellation*, namely that for which *we now call anything rational*."³⁸

Even for such abstract names, this is to say, as "body," "animated," and "rational," which are only subsequently compounded in the idea named "man," my distinct idea comes to me first, prior to hearing from someone else the words we use to name these ideas. Only afterwards do I invoke the "appellation" or names we have subsequently convened upon to exchange our individual ideas with each other.³⁹ For I recognize what something is quite apart from knowing the name we have for it. Hence the community's names for things do not, as in Homer, first bring these things into being and presence for me. Rather, in Hobbes these names are mere "marks"—Plato would say "writing" (*graphê*)—that the individual makes for himself primarily to record his reasoning for himself and then, only secondarily, to make his thoughts known to someone else.⁴⁰ "A name," says Hobbes:

is a word taken at pleasure to serve for a mark, which may raise in our mind a thought like to some thought we had before, and which being pronounced to other, may be to them a sign of what thought the speaker had, or not before in his mind.⁴¹

Far from evoking the name, as in Homer, here the sign *is* a name and the name, a sign; a sign, that is, which de-sign-ates an idea in the mind. Precisely as in the *Philebus*, then, speech is thought to begin with what individuals see for themselves, not with what they hear from others in their community: "Words so and so connected,"

38. *Id.* (emphasis added).

39. Just how we would convene upon names for things without previously having any names seems mysterious to say the least. For how, lacking any names, would we communicate our proposals to each other in order that we might convene upon them?

40. See HOBBS, *supra* note 37, bk. I, ch. II, § 1.

41. *Id.*

Hobbes tells us, “signify the cogitations and motions of our mind.”⁴² Here the “sign” does not, as in Homer, bring to mind the audible, communal word name that first endows something with its being for me; rather, as in Plato, the “sign” signifies the idea that I already have privately in my isolated mind, “itself by itself.”

In *An Essay Concerning Human Understanding*, Locke follows Hobbes closely in proposing that words have two uses, “First, one for the recording of our own thoughts,” and “Secondly, the other for the communicating of our thoughts to others.”⁴³ In regard to the first, he maintains, again in full agreement with Hobbes, that “since sounds are voluntary and indifferent signs of any ideas, a man may use what words he pleases to signify his own ideas to himself.”⁴⁴ “As to communication by words,” Locke continues, “that too has a double use,” namely “civil” and “philosophical.”⁴⁵ Locke explains the civil use of words as “communication of thoughts and ideas by words, as may serve for the upholding common conversation and commerce, about the ordinary affairs and conveniences of civil life.”⁴⁶ The philosophical use, he tells us, is such “as may serve to convey the precise notions of things.”⁴⁷ Our concern is with the first, but Locke sees the same problem in both the philosophical and civil uses, even if in the civil use, as he says, “a great deal less exactness will serve.”⁴⁸ For, “[w]ords having naturally no signification, the idea which each stands for must be learned and retained, by those who would exchange thoughts,”⁴⁹ but this does not always happen, and happens least of all with “moral words.”

Let us postpone for a moment consideration of the commercialization of discourse that, with the ideas of “commerce” and “exchange,” has insinuated itself into Locke’s thinking here and establish, first, how he, like Plato and Hobbes before him, has reversed the actual sequence in knowing for oneself what something is and hearing and having a name for it. It is clear that in Locke’s, just as in these other thinkers’ misunderstanding of reasoning, private individuals are assumed to think for themselves without having first

42. *Id.* § 3.

43. JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING bk. III, ch. IX, § 1.

44. *Id.* § 2.

45. *Id.*

46. *Id.* § 3.

47. *Id.*

48. *Id.*

49. *Id.* § 5.

heard the words for things from others, and only then do they import audible words into their thinking in order, first, to record the wordless thoughts they have already had and, second, if need be, to “communicate” these to someone else. *But in fact we never think in wordless ideas, but only in the words we have first heard from others and then hear again in our thinking.*

The failure to see this involves Locke in grave difficulties, particularly in regard to “moral words,” for which, Locke says:

[T]he sounds are usually learned first; and then, to know what complex ideas they stand for, they [individuals] are either beholden to the explication of others, or (which happens for the most part) left to their own observation and industry; which being little laid out in the search of the true and precise meaning of names, the moral words are in most men’s mouths little more than bare sounds.⁵⁰

It is remarkable that here, for once, Locke acknowledges the actual priority of hearing the words from others in the community and thereby depending on others for an understanding of their use and meaning. He does so, however, assuming that this sequence of first hearing the words and then understanding what they mean is the wrong, reversed one, and that it leads only to confusion error because the words have no individual’s thoughts to refer to in the first place.

That Locke is mistaken in this assumption can be illustrated easily with a glance at the history of the “moral word” justice. In *Isaiah 5:7*, for instance, we find, at the end of the “Song of the Vineyard,” two words that contribute decisively to the manifold traditions of “justice”: “He looked for *mishpat*, but behold, bloodshed, for *sedaqah*, but behold, a cry.” In the Septuagint this becomes “I waited for it [Israel] to produce *krisis*, but it produced lawlessness, and not *dikaionunê* but a cry”; in the Vulgate, “I expected it to produce *iudicium*, and, see, iniquity, and *justitia*, and see, a cry”; and in the King James Version, “He looked for *judgment*, but behold oppression, for *righteousness*, but behold a cry”; which in the Revised Standard Version has become, “He expected *justice*, but saw bloodshed; *righteousness*, but heard a cry.” Now clearly, and contrary to Locke’s account, there is no single, fixed, and self-identical truth here, no prelingual idea of justice that could ever have been envisioned by some solitary individual ahead of time, and for which all these words would be merely marks and signs. In fact, what we have here is what Aristotle calls *endoxa*, or the received opinions that

50. *Id.*

these words call into being each time they are translated and spoken in a new linguistic context—Greek, Latin, English—and which thereby continue, inexhaustibly, to acquire ever new senses, or what Gadamer calls “an accretion in being” (*Zuwachs an Sein*).⁵¹

It thus turns out that “moral words” lack of a “true and precise meaning,” which Locke both fears and bemoans, is their strength and not their weakness. Nor does their indeterminacy and imprecision imply a dismissal of “truth” altogether. For example, our consultations with each other about “justice” are about what is truly just, save that “truth” here is not the truth of some statically present idea but the ever changing truth “received” from others and unfolding anew each time in the words we hear and say about it. Accordingly, we discern this truth, not in solitary cogitations, but only from within the continuing tradition of our consultations concerning it. Contrary to Locke, I do not first get to *see* the truth in some “dialogue of the mind with itself”; rather, I first get to *hear* the truth in the words someone else says to me, or better, *we* first come to hear it together in consultation with each other.

Locke makes exactly the same mistake in his politics, for there too he assumes that our “original position,” as a latter day Lockean calls it, is not that of a participant in a community but of a solitary, free individual mixing his labor with the things of the earth and thereby making them his property, and who, *only subsequently*, proceeds to enter into social and political relationships, namely contracts governing the exchange of what is his property and labor for what is someone else’s.⁵²

This account is, of course, as phenomenologically inaccurate as was Locke’s account of language, and, we note, for precisely the same reasons. For no more are we originally thinkers without a common language than are we originally private persons without a community that raises us and endows us with the language and material goods that then allow us, secondarily, to think on our own and to appropriate private property for ourselves. In my family of origin, for example, neither my parents nor I “owned” the dining room furniture privately any more than we each had our own language; like our language, the furniture was ours to be used in common practices, in this case, eating meals, celebrating holidays, and the like. The

51. GADAMER, *supra* note 1, at 133.

52. See JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT chs. II, V, VII, & VIII. For “original position,” see JOHN RAWLS, A THEORY OF JUSTICE 17-22 (1971).

furniture was neither their property nor mine. Of course when a family is dissolved by death or divorce, for instance, it must be determined by law which legal “parties” or “persons” are to become the “rightful” owners of it. But to speak with Hegel, that happens only when, and for as long as, the original “*sittliche Gemeinschaft*,” the “ethical community” of parents and children, has been displaced by the derivative and abstract “*Rechtszustand*,” or the legal “condition of right.”⁵³ Thus, just as in his account of language, in his account of political association too, Locke gets the communal and individual in the wrong order.

Most important for us, a correlation of his political theory with his language theory reveals disastrous implications for political and even judicial discourse insofar as the later forfeits its consultative dimension and becomes the adversarial contention of contestants. For the idea of consultative reasoning is inevitably corrupted once the basic idea of public discourse is subsumed under the idea of transactional exchanges of private property in accord with legal contracts.⁵⁴ As Gadamer observes, one can only take counsel with *philoï*, with those, this is to say, with whom one feels kinship, and never with self-interested competitors.⁵⁵ For we must be confident of the counselor’s concern for our own well being rather than his or her own.⁵⁶

III. ARISTOTLE, GADAMER, AND CONSULTATIVE REASONING

Even within his own exposition of demonstrative reasoning in *Posterior Analytics*, we find an important indication that Aristotle does not fully adhere to the later Plato’s projected transformation of all reasoning from the *dialegethai* of “talking things through” with others to monological demonstration or the *dialegethai* of “sorting things out” by genus and species. Aristotle draws, if only in passing, a

53. See *supra* note 4.

54. Commercial metaphors for public reasoning seem to be a special preference of the English, resulting, no doubt, from the increasing influence of a mercantile class in England. In Francis Bacon’s “idols of the marketplace,” for instance, the way is paved—via Adam Smith—to Mill’s “marketplace of ideas.” Plato, at least, saw clearly the havoc commercialization would wreak on any dialogical discourse. See P. Christopher Smith, *Not Doctrine but ‘Placing in Question’: The “Thrasymachus” (Rep. I) As an Erôtês of Commercialization*, in WHO SPEAKS FOR PLATO? STUDIES IN PLATONIC ANONYMITY 113 (Gerald A. Press ed., 2000).

55. See GADAMER, *supra* note 1, at 306.

56. The same point is emphasized in Aristotle by the role in conviction or *peithein* he assigns to *eunoia* or the good intentions of the speaker, and the communication of *philia* or kinship. See ARISTOTLE, THE RHETORIC II.1.

remarkable distinction: “For demonstration,” he tells us, “is not a matter for outward reasoning, since neither is the [demonstrative] syllogism, but rather for reasoning within the mind (*en tei psychêi*). Indeed, objections can always be stated to outward reasoning (*ho exô logos*) but not always to internal reasoning (*ho esô logos*).”⁵⁷ There are, this is to say, two kinds of reasoning, the one, internal reasoning (*ho esô logos*) within the mind (*en têi psychêi*), and the other outward reasoning (*ho exô logos*). Internal reasoning, we may infer, is monological and silent. It begins and ends with the self unless one wishes to “demonstrate” or “show” its results to others, in which case they, in turn, may raise objections. But external reasoning is dialogical and audible and begins and ends in voiced communication with others, who from the start can object to what a speaker is saying. Granted, it never occurs to Aristotle to say, as we are saying here, that demonstration “within the mind” is a derivative abstraction from “outward reasoning.” However, that Aristotle, in contrast to Plato, can write a *Rhetoric* treating, in particular, consultative rhetoric (*sumbouleutikê rhetorikê*) as a genuine art, makes plain that he never intended to reduce all reasoning to demonstration. Aristotle thus gives us access to the deliberative community of people taking counsel with each other which is lost in Hobbes and Locke and, in fact, in the whole tradition of logical analysis after them.

To be sure, Gadamer does not turn to Aristotle to restore the community of reasoners, but rather to the actual practice of Plato’s dialogues; the practice, namely, of original *dialegesthai* as “talking things through” with partners in conversation.⁵⁸ What attracts Gadamer to Aristotle are the distinctions he makes in his account of the excellences of intellect (*aretai tês dianoias*) in Book VI of *Nicomachean Ethics*; distinctions, that is, among the various ways of “knowing the truth” (*alêtheuein*), in particular, *epistêmê* (scientific knowing), *technê* (knowing how to make something), and *phronêsis* (the knowing that guides deliberation (*bouleuesthai*) to good moral choices).⁵⁹

57. ARISTOTLE, POSTERIOR ANALYTICS 76b24-27.

58. See HANS-GEORG GADAMER, *Das Vorbild der Platonischen Dialektik [The Paradigm of Plato’s Dialectic]*, in GADAMER, *supra* note 1, at 344-351. We note that the actual practice of the dialogues continually contradicts the new, monological *dialegesthai* of “sorting things out” in collection (*sunagôgê*) into one form (*eidôs*) and “taking apart” that form into a number of forms (*dihairesis*), as the dramatic characters—Socrates, the Stranger from Elea—exposit this within a dialogue’s conversations. In this regard, see both of Plato’s *The Phaedrus* and *The Sophist*.

59. See GADAMER, *supra* note 1, at 295-307 (“Die Hermeneutische Aktualität des Aristoteles [The Applicability of Aristotle to Hermeneutics]”).

At first it would appear that all these ways of relating to the truth are forms of reasoning that individuals do by themselves, and hence *phronêsis* is of special interest insofar as it concerns a special kind of knowledge of the truth, and not because of any social dimension to it. It is of interest, this is to say, because the truth it knows and “way with which” (*meth’ hodos*) it reaches this truth differ from *epistêmê*’s and *technê*’s, and thus an exposition of *phronêsis* can shed new light on hermeneutics’ truth and method. For unlike the truth of science, the truth of *phronêsis* is temporal, variable, and contingent, or “susceptible of being otherwise” as Aristotle puts it,⁶⁰ and the way to get to it is interrogative, inconclusive reasoning while still underway within the particular context or “occasion.” These things also hold for *technê*; however, *technê* is concerned with bringing a product into being other than the producer himself or herself, whereas the choices to which *phronêsis* guides deliberations affect and effect the one who makes them. Where, then, does the original *community* of reasoners enter in?

We may take our cue here from the emphasis in Gadamer’s hermeneutical theory on what he calls *Zugehörigkeit*, the individual interpreters’ “belonging to” the tradition of the text they are interpreting.⁶¹ To be sure, when this belonging is mentioned initially, the point would seem to be a Heideggerian one: it refers to the impossibility of objective detachment in any reasoning guided by *phronêsis*. For in *phronêsis*, in contrast to *epistêmê*, individuals have available no perspective above the occasion for their deliberations which would allow them, as impartial onlookers rather than engaged participants, to turn the particular case into an object apart from themselves. Rather, they conduct their individual deliberations entirely from within the finite horizons of the tradition in which they always already find themselves under way, and which has affected and effected them even as their own judgments, decisions, and choices continue to effect it.⁶² To take, as Gadamer does, the example

60. See ARISTOTLE, *supra* note 56, at I.2.

61. See GADAMER, *supra* note 1, at 297.

62. See GADAMER, *supra* note 1, at 284-90 (discussing *Wirkungsgeschichte*, or the interpreter’s both effecting, and having been effected by, the history of a tradition). For his part, Heidegger views the individual’s participation in tradition as the failure to “own oneself authentically,” which is to say, as the forfeiture *Eigentlichkeit* to what “everybody” says, thinks, and does. Accordingly the task, as he sees it, is not at all to restore the individual to his or her original community, but for the individual to recover himself or herself from having “fallen” for the quotidian mediocrity of the public realm (*Öffentlichkeit*). *Phronêsis* thus becomes for him the individual’s *Gewissen* or conscience. This, of course, is not at all the path Gadamer takes, and for this reason Gadamer is much more useful than Heidegger in penetrating behind the

of *dikastê phronêsis* (jurisprudence),⁶³ decisions are not made by individuals from some vantage point outside the tradition of precedent decisions; interpreters of the law cannot remove themselves from their situation and context within the tradition in order to survey it objectively—as if their judgments and decisions were somehow not effected by it and had no effect on it.

Furthermore, because of their inescapable involvement in the practice of precedent decisions, interpreters never have available to them the scientific, epistemic truth given to impartial *theôretes* or onlookers, which would allow interpreters to subsume the particular temporal and local “case” under some transcendent static and eternal “form” of justice they might have envisioned ahead of time. For the only “idea” of justice available to them resides in, and evolves entirely within, the temporal and local history of previous decisions concerning it. Their reasoning must therefore be by precedent and analogy, and not by syllogistic demonstration from self-evident first principles given in thought.⁶⁴

It is already plain, then, that *Zugehörigkeit*, each individual’s belonging to the tradition, makes it impossible for his or her deliberations to begin with his or her “own” insights as these are first found *en têi psychê* (in his or her mind). The starting points for any genuine deliberation are, rather, what Aristotle, in his account of both dialectical and rhetorical reasoning, calls *endoxa*—the received opinions, beliefs, and judgments from *time out of mind* that an individual has already taken over from the community.⁶⁵ And these, obviously, are communicated in *ho exô logos* (in external reasoning and speech) that the individual has, as in Homer, first heard and learned from others. In deliberating according to *phronêsis* and *dikastê phronêsis* (prudence and jurisprudence), my deliberations, even if they are *my own*, are grounded in what *we* have first reasoned together. What is *proprium* was originally *communis* and any *bouleuesthai* was, as we saw in Homer, originally *sumbouleuesthai*.

abstractions not just of French Cartesian subjectivity but also, as is our concern here, the English abstraction of private individuals as owners of “property,” or what is *proprium*, their own, as opposed to *communis*, the community’s. For Gadamer’s differences from Heidegger in this regard, see P. CHRISTOPHER SMITH, *The I-Thou Encounter (Begegnung) in Gadamer’s Reception of Heidegger*, in *THE PHILOSOPHY OF HANS-GEORG GADAMER* 509-525 (Lewis Hahn ed., 1997).

63. See GADAMER, *supra* note 1, at 301.

64. “Precedent and analogy” is, of course, language borrowed from Edmund Burke. For a correlation of Burke with Gadamer, see SMITH, *supra* note 4, at 210-11, 216-17.

65. See ARISTOTLE, TOPICS I.1.

This is made explicit in Gadamer's next reference to *Zugehörigkeit*, when, having followed Aristotle in moving from *phronêsis*, first, to the adjunct intellectual excellence of *euboulia* or being "well-advised" in one's taking counsel with oneself (Gadamer: *Mitsichzurategehen*),⁶⁶ he follows Aristotle to a discussion of *sunesis* and *sungnômê*.⁶⁷

Sunesis, from the Greek verb *sunîemi* or "to set together," generally means "understanding" in the sense of catching on to something or "putting two and two together." But clearly, as Gadamer recognizes, it has an additional, different sense in Aristotle's *Ethics*. In elaborating Gadamer's point we might say that, in the *Ethics*, *sunesis* (understanding), both in the judge and in the one giving counsel, corresponds to *dikastê phronêsis* and *phronêsis*, respectively as, in the *Rhetoric*, *eleos* corresponds to *phobos*, as the pity of the audience, that is, corresponds to the fear of the tragic protagonist.⁶⁸ For in feeling pity, someone who has nothing to fear for himself vicariously feels and experiences fear for someone else who is about to undergo something fearful. Analogously, in deliberations guided by *sunesis*, I am not, as in deliberations guided by *phronêsis*, confronted with a decision or choice I must make myself. My task, instead, is to show "understanding for" someone else who either has now to decide and choose, as is the case in consultative reasoning, or, as is the case in judicial reasoning, has had in the past to decide and choose. Only *sunesis* allows me to judge his or her action and situation justly. The Heideggerian hermeneutical idea of understanding as "*Verstehen*" has modulated here in Gadamer to understanding as "*Verständnis*." "Plainly," Gadamer tells us, "one speaks of understanding (*Verständnis*) at those times when, in passing judgment, one puts oneself into the fully concrete instance, into the situation within which the other person must act."⁶⁹ And for any fair and just understanding, he continues, there is a condition that must be satisfied, namely, that the one showing understanding "wants what is just too and thus, that he is bound to the other in this communality."⁷⁰

To this observation Gadamer appends the following crucial point:

The phenomenon of counsel (*Rat*) in 'matters of conscience' provides the concrete instance of this [communality]. Just as much as the one who asks for counsel, so too the one who gives counsel

66. See GADAMER, *supra* note 1, at 304; ARISTOTLE, NICOMACHEAN ETHICS bk. VI, 9.

67. See GADAMER, *supra* note 1, at 306; ARISTOTLE, *supra* note 66, bk. VI, 10.

68. See ARISTOTLE, *supra* note 56, at II.5.

69. GADAMER, *supra* note 1, at 306.

70. *Id.*

assumes that the other person is bound together with him in friendship. Only friends can counsel one another, and only counsel that is meant in a friendly way makes sense for the one who is counseled. Thus it is evident here too that the one who has understanding (*Verständnis*) neither thinks of himself, nor judges the other from some unaffected and dispassionate stance over against him. Rather, out of a specific allegiance (*aus einer spezifischen Zugehörigkeit*) which binds him together with the other, he is affected and feels along with him, thinks along with him.⁷¹

As we see, in this reading of Aristotle, the *sun* of *sunesis* has acquired overtones of the German *mit* or "along with."⁷²

In advancing Gadamer against the Anglo-American understanding of judicial reasoning, we can say that he is surely right to lead Aristotle's initial judicial application of *sunesis* in passing judgment on someone back to its origin in friends giving and taking counsel with each other, and this is confirmed by the development of Aristotle's *Nicomachean Ethics* itself.⁷³ For the discussion of *sunesis* in Book VI issues directly into a discussion of *gnômê*, *sungnômê*, and *epieikeia*.⁷⁴ Gadamer renders these as *Einsicht*,⁷⁵ *Nachsicht*,⁷⁶ and *Billigkeit*,⁷⁷ or, roughly, as insight, leniency, and fairness. We, in sounding out slightly different senses of the Greek, shall call these consideration, forbearance, and clemency. However these are translated, and no one translation will do, the point is clear: just as *sunesis* in Aristotle, and in Gadamer's appropriation of him, does not refer to an understanding of something that I have by myself but rather to the understanding we show for each other, so too *gnômê* does not refer here to an insight I have privately into some subject matter but rather to the insightfulness we share in regard to each other's situation and to the consideration we show for it. Hence *sunesis* issues naturally in *gnômê*, and *gnômê*, in turn, in *sungnômê* as my ability, again, to think along with others and, what is more, to bear

71. *Id.*

72. To be sure, we are taking Gadamer's argument here in a direction different from the one in which it actually moves. His primary point in these passages is that my being bound together with someone else in a concrete situation which we share makes it impossible for me to reason according to some sort of learned, technical know-how. Ethical reasoning, in other words, is no less assimilable to *technê*, or knowing how to make something, than it is to *epistêmê* or scientific demonstration from fixed first principles. See SMITH, *supra* note 4.

73. See ARISTOTLE, *supra* note 66, bk. VI.

74. See *id.* at 10-11

75. GADAMER, *supra* note 1, at 306.

76. *Id.*

77. *Id.* at 301, 303.

with them in their own deliberations and choices, either past or present.

What is more, while *epieikeia* does mean fairness and equity in being flexible rather than rigid and exact in a judge's application of the law to the particular and peculiar case,⁷⁸ underlying and sustaining its judicial application is the original sense of *epieikein*, or what Gadamer calls *Nachlassen*.⁷⁹ *Nachlassen* means the readiness to show clemency, to "ease off" or "let up" from inclement, harsh insistence upon my own point of view, and to join with others in the community of those taking and giving counsel about what we are to do.⁸⁰ Aristotle can thus neatly conjoin *gnômê*, *sungnômê*, and *epieikeia* in the following way:

What is called consideration (*gnômê*), according to which we say we are good judges (*eugnômones*), is right judgment of what is fair (to *epieikes*). Now a sign of this is that we say that the fair person (*ho epieikes*) is the most forbearing (*malista sungnômonikos*) and that what is fair (*epieikes*) is showing forbearance (*sungnômê*) in regard to some matters.⁸¹

We see, then, how the excellences of intellect that we bring to bear in judicial deliberations do indeed have their origin in consultative reasoning and need continually to be tied back into it. For I can be a fair judge of others only insofar as I and they know each other to "belong to" the same community of reasoners, and insofar, therefore, as I can both give and take counsel with them. To reason well judicially, I must first have the excellences of intellect that enable me to reason consultatively and communally. To be a fair judge, this is to say, I must, to begin with, not be a judge at all.

CONCLUSION

From this exposition of the excellences of intellect that guide our right reasoning we may conclude, therefore, that *bouleuesthai* (taking counsel with oneself) and *euboulia* (being well advised in one's taking counsel with oneself) have their origin in *sumbouleuesthai* (taking counsel with others). Reasoning, even judicial reasoning, originates in our belonging together, our *Zugehörigkeit*, in a community of reasoners, a fact we have confirmed with Achilles' self-imposed isolation from the *boulai* or councils of the Achaeans. This has

78. See *id.* at 303; ARISTOTLE, *supra* note 66, bk. VII, 14.

79. See GADAMER, *supra* note 1, at 301.

80. See *id.* at 96-97 (discussing the *Spielverderber* or spoilsport).

81. ARISTOTLE, *supra* note 66, bk. VI, 11.

important, challenging consequences for Anglo-American argumentative and judicial theory.

Toulmin, for example, may be said to have advanced our understanding of reasoning immeasurably by replacing the paradigm of abstract syllogistic demonstration with the paradigm of concrete judicial reasoning with its “claims,” “grounds,” “warrants,” and “backing” in regards to a legal *res* or *causa*, as one legal *persona* advances these “claims” in contest with another.⁸² Toulmin, however, does not see what Gadamer makes plain: that this judicial reasoning is itself a derivative abstraction from the original community of reasoners which must be restored as the true basis of any judicial reasoning if the latter is to be truly fair and just. *Dikanikê rhetorikê*, judicial rhetoric, this is to say, must be restored to its ground and origin in *sumbouletikê rhetorikê*, consultative rhetoric. Indeed, Toulmin only perpetuates the abstractions we have traced, abstractions beginning with Plato and intensified in Hobbes and Locke. As in these last two, so too in Toulmin, *logos* (argument) is assumed to originate privately and wordlessly in my own mind—*en têt psychê*, as Plato and Aristotle would say—and is then to be “exchanged,” that is, asserted and defended in self-interested “transactions” with other private individuals.⁸³ When Toulmin points out that the paradigm of judicial reasoning has become pervasive in all argument, he seems blithely indifferent to the fact that judicial reasoning, in its contemporary derivative and uprooted form, has effectively displaced and buried the original ways we exist and talk with each other in availing ourselves of the words said from time out of mind that we have first heard from others. Gadamer’s retrieval of Aristotle provides a necessary corrective to this fateful oversight and, at the same time, a radical challenge to the assumed bases of the Anglo-American understanding of reasoning.

82. See TOULMIN ET AL., AN INTRODUCTION TO REASONING, *supra* note 3.

83. I am using “abstraction” here in a Hegelian/Marxian sense that is admittedly foreign to anything Gadamer might say. My point is that judicial reasoning, as Toulmin exposts it, belongs to what Hegel calls the condition of right and that this condition of right has “negated” the concrete ethical substance (*Sittliche Substance*) once given by the ethical realm from which it has “abstracted.” Marx superimposes on this Hegelian dialectic his own delineation of the negation of original human community in the ever-increasing dehumanizing abstractions of commercial exchange. From a Marxian perspective, Toulmin’s judicial reasoning would be just one more excrescence of an economy based on the exchange of private property.