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The Controversy Over the Legacy Highway in Utah: An Opportunity for Invitational Rhetoric

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Disagreements over how best to relate to nature and its resources can lead to charged rhetorical exchanges among stakeholders, and Utah has been no exception to this type of conflict. Beginning in the mid-1990s, residents of the state began to argue over the merits of the "Legacy Highway," a large highway that would run near the Great Salt Lake in an attempt to alleviate the clogged commute on Interstate-15, which passes north/south through Salt Lake City. Given the extensive rhetoric in the controversy, this paper suggests invitational rhetoric as an alternative approach to help improve the discourse.

Disagreements over how best to relate to nature and its resources can lead to charged rhetorical exchanges among parties who are concerned primarily either about the environment or about using nature's resources for human benefit (Peterson & Horton 139). Utah has been no exception to this type of conflict. Beginning in the mid-1990s, residents of the state began to argue over the merits of the "Legacy Highway," a large highway that would run near the Great Salt Lake in an attempt to alleviate the clogged commute on Interstate-15, which runs north-south through Salt Lake City, the state's capital. Perhaps not surprisingly, environmental groups were upset with this proposed governmental project, and groups like the Sierra Club, Stop the Legacy Highway, and Utahans for Better Transportation faced off against Advocates for Safe and Efficient Transportation and the Utah Department of Transportation. Generous amounts of rhetoric, including public discussion and litigation, resulted from this controversy. At stake for Utah's residents were both transportation and environmental issues.

In light of the extensive rhetoric in this controversy, this paper suggests invitational rhetoric as an alternative approach to help improve the discourse involved in the ongoing disagreement over the Legacy Highway in Utah. Sonja K. Foss and Cindy L. Griffin define *invitational rhetoric* as "an invitation to understanding as a means to create a relationship rooted in equality, immanent value, and self-determination" (5). One of the benefits of invitational rhetoric is that it can help parties work towards developing ongoing relationships (Mallin & Anderson 130-31), which could be useful in the case of the parties to the Legacy Highway conflict since both major sides have to co-exist with each other in Utah. Hopefully, an invitational approach would allow parties to open doors to new possibilities rather than keeping open the same doors that have led to repeated clash. The paper will advance its thesis via several sections, including a more detailed statement of the conflict, methods employed in the study, discussion of the rhetorics of the two major sides in the conflict, an explanation of invitational rhetoric, and an application of an invitational approach to the environmental conflict at hand. Each section will receive consideration in turn.

Statement of the Conflict

The controversy began with intensity in 1996 when then-Governor Michael O. Leavitt of Utah announced plans for what he called the Legacy Highway ("Legacy Parkway"). The Highway was supposed "to be a four-lane, divided, limited access, state-funded highway" that would run from near Salt Lake City north along the eastern shore of the Great Salt Lake and connect with U.S. 89 (*Utahns for Better Transportation v. U.S. Department of Transportation* 1161). The aim was to alleviate strain on the north-

south commute along Interstate-15, which is the only major north-south corridor that runs through Salt Lake City and the surrounding communities. Estimates were that by 2020, the population and travel demand in that particular area, which consists of five counties, would increase by 60 percent and 69 percent each (*Utahns v. U.S. Depart. Trans.* 1161).

While transportation issues have been one aspect of this conflict, environmental issues have been another aspect. Specifically, the Great Salt Lake, which lies directly west of the proposed site of the Legacy Highway, is home to “a variety of birds, reptiles, amphibians, and mammals, some of which are endangered” (*Utahns v. U.S. Depart. Trans.* 1161). On an annual basis, approximately two to five million birds make use of the Great Salt Lake, almost exclusively on the side where the proposed Legacy Highway would go (*Utahns v. U.S. Depart. Trans.* 1161). This particular area of wetlands makes up three-quarters of all wetlands in Utah, a state in which wetlands comprise under two percent of the surface area (*Utahns v. U.S. Depart. Trans.* 1161).

During the late 1990s and early 2000s, the government and the public considered the wisdom of the proposed project (“Legacy Parkway”). For example, in 1997 the Utah Department of Transportation (UDOT) began an environmental impact study for the project (“Legacy Parkway”). From 1997 until 2000, public meetings in which citizens had the opportunity to speak their minds on the issue took place, and in 2000 UDOT completed the environmental impact study (“Legacy Parkway”). In 2000 and 2001, respectively, the Federal Highway Administration (FHWA) and the U.S. Army Core of Engineers (COE) approved the project (“Legacy Parkway”). Because the proposed Legacy Highway would intersect with the U.S. interstate system and called for filling in wetland areas, both the FHWA and the COE had to issue approval for the project (*Utahns v. U.S. Depart. Trans.* 1161).

The matter took a major legal turn in January 2001 when Utahns for Better Transportation, Mayor Rocky Anderson of Salt Lake City, and the Sierra Club sued to challenge the issued FHWA and COE permits (“Legacy Parkway”). Although limited construction took place throughout 2001, in September 2001 the plaintiffs filed for a federal court injunction, but the next month the trial judge denied the plaintiffs’ request (“Legacy Parkway”). In November 2001, the plaintiffs appealed the denial of the injunction to the Tenth Circuit U.S. Court of Appeals in Denver, and that court granted a temporary injunction on construction (“Legacy Parkway”). In March 2002, the appellate court heard oral arguments on the controversy (“Legacy Parkway”).

Six months later, the federal appellate court in Denver ordered the federal agencies to review some of their findings. Although it accepted most of the agencies’ findings, the court had problems with implications for two federal laws: (1) the National Environmental Policy Act (NEPA), which requires that federal agencies prepare environmental impact studies before taking large-scale federal action and (2) the Clean Water Act (CWA), which prohibits filling wetlands without a permit from the COE (42 U.S.C. §§ 4321-4370(d); 33 U.S.C. § 1344(a),(d)). In terms of the final environmental impact statement, the court took issue with the elimination of an alternative possibility to the Highway, failure to consider alternative sequencing of the overall plan to remedy transportation, lack of consideration of integration of the Highway with other forms of transportation, and failure to address impacts on wildlife (*Utahns v. U.S. Depart. Trans.* 1192). In terms of the COE permit, the court expressed concern with insufficient consideration of several items, including alternatives to the Highway, a narrow median on the Highway, a right of way matter, and impacts to wildlife (*Utahns v. U.S. Depart. Trans.* 1192).

Upon remand of the case to the lower court, the injunction remained in effect pending consideration of the areas with which the appellate court had taken issue (*Utahns v. U.S. Depart. Trans.* 1192). In December 2004, a draft version of a supplemental environmental study came out, and governmental authorities requested public comments before submitting a final version of the environmental study for court review (“Details about the Legacy Parkway Dispute” B06).

Methods Employed in the Study

As suggested above, this study considers some of the rhetoric that has surrounded the Legacy Highway. To do so, the study will address the rhetoric of several of the major players in the lawsuit that went to the 10th Circuit U.S. Court of Appeals. In the written decision for that case, the names of several different groups that have opposed and supported the project appear as parties to the case or as amici curiae. Amici curiae are non-parties to a legal case but have interests in the case at hand and so file briefs with the court (“Amicus Curiae” 83). The parties and amici include groups such as the Sierra Club, Utahans for Better

Transportation, Advocates for Safe and Efficient Transportation, and the Utah Department of Transportation.

Indeed, an examination of the available web pages of the groups in interest, as posted in fall 2004, will reveal how those major players in the legal conflict have seen the Legacy Highway matter. One major advantage of studying web pages over other sources of rhetoric like television news reports is that web pages offer uninterrupted instances of groups' rhetoric. Much like a national political convention, a group's web page is about as pure an instance of a group's message as possible because no outside party like a news editor cuts up the message and juxtaposes the message next to an opposing group's message. Thus, a web page gives a group one of its best chances to make its case in a relatively extensive, direct manner. As such, by studying web pages a critic readily can get to the heart of a group's message.

Another possibility that will not receive attention here is the public response to the controversy. For example, the *Deseret Morning News*, a major newspaper in Salt Lake City, contains a search engine that would no doubt locate many letters to the editor. Because members of the public can impact public policy through public outcry, a much larger project might want to consider the rhetoric of the public. However, the public was not a party or an amicus to the legal suit. Rather, the parties named above and others were. Since this particular project is limited in scope, consideration of the rhetoric will remain limited to the rhetoric of the groups that were either parties to the lawsuit or amici curiae in that suit. The rationale is that parties before a court with the power to evaluate public policy action for compliance with federal law can have a more direct impact on the outcome of the lawsuit and thus public policy.

The Rhetorics of the Parties to the Conflict

As noted above, various groups have argued over the merits or lack thereof of the Legacy Highway. Based on a study of the web pages of the respective organizations, this section will look at the rhetorics of several groups on the two major sides of the Legacy Highway conflict. These groups, among others, include Advocates for Safe and Efficient Transportation, the Utah Department of Transportation, the Sierra Club, Stop the Legacy Highway, and Utahns for Better Transportation. The discussion begins with proponents' rhetoric and proceeds to opponents' rhetoric.

In terms of proponents of the Highway, although the Federal Highway Administration and the Army Core of Engineers had allowed the Legacy Highway to proceed, the web pages of these two groups did not specifically advocate the building of the Highway. Rather, each web page merely posted bureaucratic paperwork that federal agencies tend to produce during the normal course of operations. For example, one document on the FHWA web page explained that a public meeting had taken place on October 28, 1998 ("FHWA Utah Division Project Activities"). Also, a document on the COE web page explained that a public comment meeting regarding the Highway had taken place on April 17, 2003 ("Public Comment"). Because the web pages did not place emphasis on advocating for the Highway, these two web pages will not receive further consideration in this paper.

FHWA and COE aside, proponents of the Highway have offered rhetoric that makes at least three major arguments in favor of the Highway. The first argument is that the Legacy Highway will be a great benefit to residents of Utah. The American Road & Transportation Builders group, through the construction industry and organized labor legal alliance known as the Advocates for Safe and Efficient Transportation, has argued for "needed road improvement projects" in the greater Salt Lake area ("Construction Industry Litigation"). This approach would "promote public health and safety, reduce traffic congestion and improve air quality" ("Construction Industry Litigation").

Along these lines, UDOT has maintained that the Highway "is a critical part of a long-term 'shared solution' to serious transportation issues in northern Utah" ("Frequently Asked Questions"). Unlike mass transit alone, a combination of the Highway, mass transit, widening of I-15, and other approaches would be greatly effective ("Frequently Asked Questions"). In short, the project is necessary "to alleviate congestion in one of Utah's most heavily traveled freeway corridors" ("Legacy Parkway Project: History").

The second major argument that proponents of the Legacy Highway make is that the project conforms to relevant legal standards. At one point, UDOT noted that the project "received all necessary legal approvals and permissions before construction work started" ("Legacy Parkway Project"). For example, the FHWA issued a final environmental impact statement in June 2000, and the COE issued a permit for filling wetlands in January 2001 ("Legacy Parkway Project"). Despite what UDOT might describe as a few minor snags, which were the problems the Tenth Circuit U.S. Court of Appeals in Denver had with the

project, UDOT points out that the federal appellate court found favor with “41 of 46 issues” related to the appeal (“Legacy Parkway Project: History”). These items were “limited deficiencies” through which the federal agencies had to work (“Legacy Parkway Project: History”). However, UDOT’s web page suggests that when the federal agencies work out these problems, the highway will be fully compliant with federal law.

The third argument that proponents of the Legacy Highway make is that the project is really environmentally friendly, despite what opponents of the project maintain. For example, UDOT’s web page focuses on the Legacy Nature Preserve. UDOT notes that it “has set aside 2,098 acres of land within the Great Salt Lake ecosystem as environmental mitigation for the 14-mile Legacy Parkway Project from northern Salt Lake City to Farmington” (“Legacy Nature Preserve”). UDOT argues, “[T]his unprecedented mitigation effort is focused on enhancing, restoring and preserving this diverse wildlife habitat” (“Legacy Nature Preserve”). To justify such a statement, UDOT maintains that the “Great Salt Lake ecosystem is a biological treasure” and “[f]or centuries . . . has been home to a wide variety of plant and animal life, including millions of birds from hundreds of different species” (“Legacy Nature Preserve”). UDOT acknowledges that “[d]uring the past century, man’s impact on the Great Salt Lake ecosystem has been significant,” specifically with regard to the industrialization and dumping on the eastern shore of the Great Salt Lake (“Legacy Nature Preserve”).

In light of the importance of the ecosystem and threats to it, UDOT has undertaken the establishment of the Legacy Nature Preserve (“Legacy Nature Preserve”). To do so, UDOT has removed “905 tires,” “3,614 large dump truck loads of trash and debris,” “five abandoned car frames,” and “10,000 feet of existing fence” (“Legacy Nature Preserve”). Naturally, UDOT removed this debris in a proper and legal manner, and UDOT even “crushed and recycled” portions of the removed “concrete and dredge material” (“Legacy Nature Preserve”). In sum, UDOT sees the Legacy Nature Preserve as “[p]erhaps the most enduring legacy of the Legacy Parkway Project” (“Legacy Parkway Project”). The Legacy Nature Preserve, then, goes to show that the Highway will take shape in light of environmental concerns.

Just as proponents of the Legacy Highway have made their arguments on-line, so have opponents of the Highway. Opponents of the Legacy Highway whose web pages received consideration for this study have made at least two major arguments against the Highway. To begin with, opponents have argued that the Legacy Highway will harm Utah’s environment. On its web page, the Sierra Club notes, “The proposed 125-mile-long freeway project would cut across Great Salt lake wetlands and adjacent farmland” (“Court Rules”). In turn, the project would “degrade crucial habitat and promote sprawl” (“Court Rules”).

In a similar manner, the Stop the Legacy Highway group’s web page argues that the Highway would cut “a terrible swath through world renowned wetland and fertile farmlands, contributing to automobile-dependency and sprawl” (“Appeals Court Swats”). The group behind this web page describes the Great Salt Lake Wetlands as “one of the most important inland shorebird breeding grounds in the world,” noting that one-third “of the 10 million ducks of the Central and Pacific flyways and 500 bald eagles utilize these wetlands each year” (“Appeals Court Swats”). In terms of farmland, the group behind the Stop Legacy Highway web page argues that the Highway and its ensuing sprawl “will cause the last remaining farmlands along the Wasatch Front to disappear,” which in turn will impact milk production in the region (“Appeals Court Swats”). Finally, the group notes that the Highway will make Utah’s air “increasingly unhealthy to breathe” (“Appeals Court Swats”).

In addition to the Sierra Club and the Stop the Legacy Highway group, the group Utahns for Better Transportation (UBT) also has argued that the Highway would do great harm to the environment. In an on-line letter to potential supporters, UBT suggests that damage will occur to “internationally significant wetlands and wildlife” because a number of “critical flaws” appeared in the environmental impact statement that the government completed before approving the project (“Support Transit First”). The environmental impact statement was simply inaccurate. In another on-line document, UBT argues that “the wetlands adjacent to Great Salt Lake are among the most important in the entire Western Hemisphere” (“Legacy Parkway Litigation”). On that note, UBT’s web page explains the following: “This wetland ecosystem forms part of the Western Hemisphere Shorebird Reserve Network, ‘a distinction afforded to only five areas in the lower 48 states,’ and has been characterized by the United States Fish and Wildlife Service as ‘an irreplaceable and unmitigable resource due to its size, and ecological features’” (“Legacy Parkway Litigation”). In light of this rhetoric, UBT argues that the relevant government agencies that assessed the environmental impact of the Highway did not do an adequate job of identifying potential harms to the environment (“Legacy Parkway Litigation”).

This harm to the environment stands in sharp contrast to the beauty that opponents of the Highway see along the Wasatch Front. For instance, UBT reflects on “the legacy we inherited” (“What Legacy . . . ?”). The group quotes several early visitors to the Salt Lake Valley who toured the area soon after the arrival of the Mormon pioneers in 1847. One such visitor from Pittsburgh wrote that the Valley would ““remain on my mind as the most beautiful spectacle I ever behold”” (“What Legacy . . . ?”). Another visitor of that era, a journalist from the East Coast, described Salt Lake City as ““a large garden laid out in regular squares”” (“What Legacy . . . ?”). Co-opting the rhetoric of former Governor Michael Leavitt and others, UBT calls this natural beauty “the legacy we inherited” (“What Legacy . . . ?”).

In addition to arguing that the Legacy Highway would lead to great environmental harm, opponents of the project have argued that better alternatives to the Legacy Highway exist. For example, the Sierra Club suggests that “light rail and other forward-thinking transit solutions” would be much preferable to the Legacy Highway (“Court Rules”). The group Stop the Legacy Highway proposes that an alternative to the Highway would include “integrating vastly increased mass transit with bicycle and pedestrian oriented development” (“Appeals Court Swats”). This group posits that alternatives would help to avoid the increased sprawl that the Highway allegedly would bring about (“Appeals Court Swats”).

In the same way, UBT argues that alternatives to the Legacy Highway would allow for better transportation. For example, light rail would allow a student to return from her family home in Farmington to her studies at Brigham Young University, an architect to commute from her home in Ogden to Salt Lake City, and a Bountiful family to attend the semi-annual Latter-Day Saint General Conference in Salt Lake City (“What Legacy . . . ?”). All of these examples from UBT are essentially devoid of traditional automobile transportation and focus on the merits of light rail. With these examples, UBT attempts to make alternative modes of transportation more appealing to residents of Utah who presently may be inclined to prefer automobile transportation in all or most cases.

UBT contrasts its vision of the light rail alternative with the UDOT vision of the Legacy Highway. In this hypothetical future, “[c]ongestion on I-15 and the Legacy Parkway is as bad or worse than it was in 1999 before the widening of I-15,” mass transit is not in place in the North Corridor until 2021, and UDOT has failed to integrate mass transit with the pre-existing highway system (“What Legacy . . . ?”). Additionally, “[f]ull buildout through the North Corridor” will have occurred, destroying “the last vestiges of farmland and rural life in Davis and Weber County,” and “Salt Lake City [will] suffer[] from oppressive congestion” (“What Legacy . . . ?”). Although UBT admits that growth along the Wasatch Front is inevitable, the group refuses to admit that the growth must be as harmful as developing the Legacy Highway allegedly would be (“What Legacy . . . ?”). Like its fellow opponents to the Legacy Highway, this group sees other alternatives to building the Highway.

As the above examples of the rhetoric suggest, the two major sides in this conflict see the situation in sharply distinct ways. Proponents of the Legacy Highway argue that the Highway will be a great benefit to residents of Utah, that the project conforms to relevant legal standards, and that the project is really environmentally friendly. Meanwhile, opponents of the Legacy Highway argue the Highway will harm Utah’s environment and that better alternatives to the Legacy Highway exist. In this type of situation, another genre of rhetoric besides traditional Aristotelian rhetoric may be helpful.

Invitational Rhetoric as a Potential Approach to the Conflict

As a means of helping participants work through their distinct perspectives and towards potential resolution, or at least management, of the Legacy Highway conflict, this project will suggest invitational rhetoric. As noted above, invitational rhetoric can work in situations in which traditional rhetoric has failed or in which parties remain bogged down with their positions, especially since invitational rhetoric can help parties work towards developing rich ongoing relationships (Mallin & Anderson 130-31). However, before a discussion of invitational rhetoric becomes appropriate, it is necessary to have a better understanding of traditional Aristotelian rhetoric and some of its limitations. Such an understanding will help justify why invitational rhetoric may be of value to participants in the Legacy Highway conflict.

Traditionally, rhetoric has involved attempting to persuade an audience to accept an advocate’s position. In his treatise *On Rhetoric*, Aristotle defines the term *rhetoric* as “an ability, in each [particular] case, to see the available means of persuasion” (36). Hence, a skilled advocate endeavors to find multiple modes of persuasion rather than just one (Golden, Berquist, & Coleman 28). Much more recently but still in the Aristotelian vein, Michael Leff has described the term *rhetoric* as an endeavor whose goal is

persuasion (6). As the reference to Aristotle suggests, the study of traditional rhetoric dates back to ancient Athens, where the 5th Century B.C. Greeks began to study and teach rhetoric, and ever since Greek citizens of the ancient world called upon rhetoric in the process of bringing and defending legal suits, debating matters of public policy, and speaking on special occasions, rhetoric has been important (Golden, Berquist, & Coleman 6 & 8).

Such traditional rhetoric involves justifying why a particular position is appropriate and, frequently, why another position is incorrect. Today, for instance, rhetoric manifests itself in political debates and legal trials and appeals (Golden, Berquist, & Coleman vii), as well as in advertising (Larson 5 & 8). Naturally, some rhetorics are more fully supported with evidence than other rhetorics. In many rhetorical situations (Bitzer 6-8), advocates seek to change audiences to serve the advocates' own ends. One can think of politicians who want to gain or retain office, lawyers who want to win large contingency fees, and advertisers who seek to sell a seemingly endless stream of consumer products. Not only do such examples of traditional rhetoric often involve justifying why a particular position is "right" (Makau & Marty 84), but frequently by necessity such examples involve explaining why another position is "wrong."

Scholars, including many feminists who have acted on a developing feminist consciousness in this area of study (Carlson 17-18), have problematized such an understanding of traditional rhetoric. For instance, they maintain that when advocates seek to change the minds of audience members, advocates implicitly, if not explicitly, can seek to dominate audience members (Foss & Griffin 3). In such circumstances, the concern is not for the members of the audience but for achieving the rhetor's goal of influence.

Along the same lines, scholars have observed that traditional rhetoric frequently is steeped in confrontation (Palczewski, "Special Issue" 164). Indeed, traditional rhetoric can be "an adversarial activity governed by war metaphors and infused with a win-lose ideology" (Mallin & Anderson 121). Terms like *attack*, *defend*, and *counterattack* play key roles in the discussion and practice of traditional rhetoric (Palczewski, "Special Issue" 164). Thus, at least one scholar has described rhetoric as the practice of engaging in "verbal conflict" (Zarefsky 288-89). To the alarm of some scholars, the rhetoric-as-war understanding of such discourse has proven prominent (Palczewski, "Argument in an Off Key" 1), especially since the "winner" of such war-like rhetoric often feels accomplished at the expense of the "loser" (Makau & Marty 84). On a relatedly brutal note, one scholar has even drawn an analogy between heated rhetoric and rape (Brockriede 2-3).

Scholars have problematized traditional rhetoric further by noting that traditional rhetoric is not as welcoming of personal testimony or experience as traditional rhetoric is of other forms of evidence like "facts, examples, expert testimony[,] and statistics" (Pickering 1). Within the domain of traditional rhetoric, "facts, examples, expert testimony[,] and statistics" are frequently considered "objective" and thus assume a higher status than personal testimony (Pickering 1, 19). Although not all scholars agree about the value of personal testimony in rhetoric (MacKinnon 535; Elshtain 612), or even how carefully to consider personal experience (Pickering 1), some scholars maintain that personal experience can be "the consciousness that emerges from personal participation in events" or even one's own "experience as [one's] truth" (Foss & Foss, "Personal Experience" 39). Consideration of personal experience is important because it can lead to deeper understanding of discursive participants and can open up the door to multiple truths (Foss & Foss, "Personal Experience" 41). In turn, diversity often flourishes (Foss & Foss "Personal Experience" 41). While individuals can call upon personal experience in private discourse, some scholars have noted that personal experience can play a role in public discourse, too (Pickering 3). Nonetheless, traditional rhetoric has not offered the rhetor's personal experience a prominent place at the rhetorical table.

In various ways, invitational rhetoric is very different from traditional rhetoric. Foss and Griffin define *invitational rhetoric* as "an invitation to understanding as a means to create a relationship rooted in equality, immanent value, and self-determination" (5). Invitational rhetoric offers the audience of the rhetoric a chance "to enter the rhetor's world and to see it as the rhetor does" (Foss & Griffin 5). When communicating, the rhetor refrains from judging the perspectives of audience members, and the audience attempts to refrain from judging the perspectives of the rhetor (Foss & Griffin 5). Rather than seeking to gain assent from an audience, the invitational rhetor seeks to help the audience understand the rhetor's perspective (Foss & Griffin 5). The audience members become empowered because they have a chance to express themselves. The process, which is akin to bilateral dialogue (Bile 62), is about offering perspectives and not about telling others to take a given action or understand that their ideas are flawed (Foss & Griffin 7-10; Mallin & Anderson 130). Because this is a process of rhetoric as inquiry (Faass 220), any change in perspective that takes place occurs when members of the audience choose to make such

change but do so without the influence of a rhetor who presses for that change (Foss & Foss, *Inviting Transformation* 13-14).

Although invitational rhetoric will not succeed in all cases in which advocates employ it, when invitational rhetoric is to succeed, it tends to consist of at least three external conditions: safety, value, and freedom (Foss & Griffin 10). Foss and Griffin define these conditions in the following manner: *safety* as “the creation of a feeling of security and [absence of] danger for the audience”; *value* as “the acknowledgment that audience members have intrinsic or immanent worth”; and *freedom* as “the power to choose or decide” (Foss & Griffin 10-13). To this work, Sonja and Karen Foss have added openness as a fourth condition that helps to foster invitational rhetoric; Foss and Foss define *openness* as the process of “seek[ing] out and consider[ing] as many perspectives as possible” (*Inviting Transformation* 39).

To help foster the conditions of safety, value, freedom, and openness that can lead to invitational rhetoric, Foss and Foss suggest the process of re-sourcement, which is finding a new source of “energy and inspiration” (*Inviting Transformation* 44). Re-sourcement involves disengaging oneself from an interaction frame of conquest or conversion of one’s audience and then engaging that audience from a non-conquest and non-conversion interaction frame (Foss & Foss, *Inviting Transformation* 44-48).

Of note, invitational rhetoric offers several benefits to its participants. This genre of rhetoric is particularly well-suited for fostering “cooperative, nonadversarial, and ethical communication” because invitational rhetoric accepts multiple perspectives as valid (Foss & Griffin 15-16). Also, invitational rhetoric is especially helpful when one is engaged in discourse with another person with whom one has an ongoing relationship (Mallin & Anderson 130-31), although invitational rhetoric is not necessarily limited to this situation. In contrast, when one goes to court and hopes never to see one’s opponent after the trial, then traditional rhetoric may be more appropriate (Mallin & Anderson 130). This, then, is an overview of invitational rhetoric, which is quite different from traditional Aristotelian rhetoric.

Application of Invitational Rhetoric to the Legacy Highway Controversy

As noted above, this study of web pages of several of the major parties to the conflict points to various main arguments and in turn interests of some of the groups who are stakeholders in the ongoing controversy. Proponents of the Legacy Highway claim that the Highway will be beneficial to Utah residents, is legal in nature, and actually will help the environment. Opponents of the Highway maintain that the project will harm the environment and that other more viable options are available. In terms of the web pages of some of the major parties and amici from the legal case that received consideration in this study, these are the major parameters of the conflict.

To this point, traditional rhetoric has gone only so far. While both sides have presented their cases through traditional rhetoric, neither side has been completely successful. For example, proponents of the Highway have had to address legal concerns, and opponents of the project merely have delayed the project. In this sense, traditional rhetoric has had its impact but has not fostered a mutually satisfying resolution or management of the conflict. Also, while the federal agencies have held public hearings during which groups had the chance to communicate their ideas, public hearings often are problematic for participants because the participants, even if they feel comfortable giving short speeches in front of crowds, which many people do not enjoy doing, frequently complain that government agencies do not listen to groups’ concerns (Daniels & Walker 8-9). Indeed, two-way communication can be missing in such a communication context (Daniels & Walker 9). Nothing at this time suggests that traditional rhetoric will help to provide that sort of mutually satisfying resolution or management of this conflict.

Given this situation, invitational rhetoric is one potentially viable alternative to the traditional rhetoric of the legal proceedings and the web pages. An invitational approach might play out in this manner. Several individuals from the groups on each side of the conflict could spend time together in a removed third-party location in which the individuals would have an opportunity to explain their perspectives to each other. This third-party location would offer a degree of safety because neither side would be on its “home turf.” Since people often relax when food is available, food may help establish the communication climate, too. At some point in time, concerned members of the community who may not belong to one of the parties or amici to the lawsuit may want to meet with the parties or amici, although the logistics could be more complex. Nonetheless, although explanations no doubt took place during public commentary on the proposed project, more than mere explanations can be beneficial, as the individuals from the groups potentially would benefit from the opportunity to begin to understand each other. This is the engaging two-

way communication that some observers believe is missing from public hearings (Daniels & Walker 9). Such understanding is not easy, but it can be possible with appropriate effort and is worth that effort because understanding reinforces the value of discursive participants.

Foss and Griffin offer a helpful example of invitational rhetoric that suggests this type of rhetoric may be productive in the conflict over the Legacy Highway. Encountering each other at an airport in New York, a woman, who favored abortion, and a man, who opposed abortion, began to scream at each other until they almost needed separation (Foss & Griffin 14). One hour later, as the woman boarded a bus, she discovered that the only available seat was next to the man with whom she had just had the verbal altercation (Foss & Griffin 14). Instead of resuming the same type of discourse, the woman began to ask the man about his life, and the man responded in kind (Foss & Griffin 14). While neither changed her or his perspective, over the course of the dialogue each developed a deeper understanding of and appreciation for the other (Foss & Griffin 15). In a case where traditional rhetoric had proven destructive, invitational rhetoric had succeeded in fostering the external conditions of safety, value, freedom (Foss & Griffin 15), and openness. Each speaker promoted safety by respecting a differing perspective on a highly charged issue; each speaker promoted value by legitimizing, although not adopting, a different point of view; each speaker promoted freedom by allowing the other to continue to feel as she or he chose to feel with regard to this subject (Foss & Griffin 15); and each speaker promoted openness by looking at a different perspective.

In Foss and Griffin's real-life example, two individuals engaged in invitational rhetoric over an issue that goes to the heart of some people's personal philosophies on life as much as almost any other issue. If parties can communicate about abortion in a respectful and beneficial manner, communication about transportation and environmental issues should be possible, too. Thus, in theory the potential for explanation and understanding exists within this ongoing conflict in Utah.

In being appropriate for the conflict over the Legacy Highway, invitational rhetoric offers several benefits. No doubt the participants in the Legacy Highway controversy want their perspectives heard because putting a message on a web page is not necessarily the same as being heard. When parties have an opportunity to understand the relevant perspectives in a controversy as opposed to focusing on being "right," the parties can begin to work towards possible resolutions or a possible means of management that will consider all parties' needs. While ultimately the parties retain their freedom to decide what to believe and do, ideally they still are able to open themselves up to new possibilities. For instance, another location for the Highway may be possible, as might some of the alternatives to the Highway. A different combination of alternatives that would not include the Highway could be a possibility, too. The point is that fresh ideas can begin to develop when individuals see each other in a new, and often more positive, light.

Another benefit of adopting invitational rhetoric in the case of the Legacy Highway relates to the ongoing relationship that necessarily has developed among the various groups that are parties to the controversy. For better or worse, parties with environmental and transportation concerns probably will need to deal with each other in the future because, given the belief about the importance of large families that the majority of the state's population holds, Utah's population most likely will continue to grow in the future. More people will lead to more transportation needs and thus more potential concern from environmentalists. Accordingly, invitational rhetoric is one possibility for fostering a positive ongoing relationship in which all parties seek to understand, and hopefully work with, each other. Instead of being about a quick victory or a quick loss, the situation becomes one of long-term vision.

Despite the various benefits that can flow from implementing invitational rhetoric in the Legacy Highway conflict, a few notes of caution are in order, too. First, because invitational rhetoric relies upon the willingness of the parties involved, when the parties are unwilling to engage in invitational rhetoric, invitational rhetoric cannot be helpful. For instance, some environmental groups may be so environmentally-focused that they might refuse to talk with groups that are more industry- or infrastructure-oriented. Unfortunately, one party can ruin the chances of successful invitational rhetoric. If parties are unable to make attempts to understand each other, then invitational rhetoric cannot help them.

Second, invitational rhetoric brings with it the risk that the parties may hurt each other or their relationship in some way. This would be the case if environmental groups and proponents of the Highway were to speak freely with each other and then, due to old feelings of animosity, take advantage of that openness. Hence, risk is an inherent part of invitational rhetoric.

Nonetheless, these risks are not as great as they may be in other circumstances. For example, in a case of invitational rhetoric in an interpersonal context, the parties might be more likely to uncover sensitive or intimate feelings and beliefs, the opening up of which could lead to harm. This could be the situation in a

case of two friends who are experiencing tension in their relationship. However, the case of the Legacy Highway conflict is more of a public rather than private controversy. If the parties in this public controversy are willing to explain themselves to each other and try to understand each other in good faith, then invitational rhetoric can help the parties to push the limits of imagination and open doors to new possibilities. By having the opportunity to see views about environmental and transportation issues through the eyes of individuals who hold those beliefs, the parties on both major sides of the conflict would have the chance to understand each other more completely. While overarching perspectives may not change, means of achieving goals might. This process can get the parties away from focusing on their positions and instead towards considering interests that may need attention (Fisher, Ury, & Patton 40-43). Accordingly, while invitational rhetoric does have some limitations, it has several desirable qualities that could be beneficial to the parties in the conflict at hand.

Conclusion

Without doubt, the Legacy Highway matter in Utah has been controversial. To this point, much of the rhetoric has been about competing priorities, and the usual legal processes have received attention. In some ways, legal decisions can resolve conflicts. In a modernist sense with which the U.S. legal system is very familiar, a problem comes to a conclusion with the end of litigation, which often is the end of the final appeal. While one sort of end, a legal end, has come about, no one really may be satisfied. The "winning" party will have had an expensive and perhaps not entirely pleasing experience, and the "losing" party will not have had its way.

Although perhaps needed in some situations, litigation is not necessarily the best option for groups that will have to relate to each other in the future. Particularly for, but not exclusively for, individuals who are tired of and frustrated with trying more conventional means of discourse like traditional rhetoric, invitational rhetoric can open new doors to understanding and perhaps even major change. When parties seek to build ongoing working relationships through understanding, they can avoid much of the inevitable animosity that comes from legal resolutions to conflicts. The conflict over the Legacy Highway in Utah can be one such situation if the parties are willing to venture into the new terrain of invitational rhetoric and open wide the doors to less familiar, but nonetheless exciting, possibilities.

References

- "Amicus Curiae." *Black's Law Dictionary*. 7th ed. 1999.
- "Appeals Court Swats Legacy." *Stop the Legacy Highway Homepage*. 2 Oct. 2004 <<http://www.stoplegacyhighway.org>>.
- Aristotle. *On Rhetoric: A Theory of Civic Discourse*. Trans. George A. Kennedy. New York: Oxford UP, 1991.
- Bile, Jeffrey Thomas. "Communication, Advocacy, Argumentation, and Feminisms: Toward a Dialectical Partnership." *Speaker and Gavel* 32 (1995): 55-70.
- Bitzer, Lloyd F. "The Rhetorical Situation." *Philosophy and Rhetoric* 1 (1968): 1-14.
- Brockriede, Wayne. "Arguers As Lovers." *Philosophy and Rhetoric* 5 (1972): 1-11.
- Carlson, A. Cheree. "Creative Casuistry and Feminist Consciousness: The Rhetoric of Moral Reform." *Quarterly Journal of Speech* 78 (1992): 16-32.
- Clean Water Act. 33 U.S.C. § 1344(a),(d).
- "Construction Industry Litigation Group to Challenge Sierra Club Lawsuit Aimed at Stopping Salt Lake City Road Projects." *American Road & Transportation Builders Association Homepage*. 7 Oct. 2004 <http://www.artba.org/news/press_releases/2001/04-05-01.htm>.
- "Court Rules against Legacy Highway." *Sierra Club Homepage*. 2 Oct. 2004 <http://www.sierra-club.org/scoop/legacy_hwy.asp>.
- Daniels, Steven E., and Gregg B. Walker. *Working Through Environmental Conflict: The Collaborative Learning Approach*. Westport, CT: Praeger, 2001.
- "Details about the Legacy Parkway Dispute." *Deseret Morning News*. 8 Mar. 2005. 22 June 2005 <<http://deseretnews.com/dn/view/0,1249,600117058,00.html>>.
- Elshtain, Jean Bethke. "Feminism Discourse and Its Discontents: Language, Power, and Meaning." *Signs: Journal of Women in Culture and Society* 7 (1982): 603-21.

- Faass, Irene P. "Shades of Gray: Alternative Metaphors for Argumentation." *Arguing Communication and Culture: Selected Papers from the Twelfth NCA/AFA Conference on Argumentation*. Ed. Thomas Goodnight. Washington, D.C.: National Communication Association, 2002. 219-21.
- "FHWA Utah Division Project Activities." *Federal Highway Administration Homepage*. 8 Oct. 2004 <<http://www.fhwa.dot.gov/utdiv/projects/projects.htm>>.
- Fisher, Roger, William Ury, and Bruce Patton. *Getting to Yes: Negotiating Agreement Without Giving In*. New York: Penguin, 1991.
- Foss, Karen A., and Sonja K. Foss. "Personal Experience as Evidence in Feminist Scholarship." *Western Journal of Communication* 58 (1994): 39-43.
- Foss, Sonja K., and Cindy L. Griffin. "Beyond Persuasion: A Proposal for an Invitational Rhetoric." *Communication Monographs* 62 (1995): 2-18.
- Foss, Sonja K., and Karen A. Foss. *Inviting Transformation: Presentational Speaking for a Changing World*. Prospect Heights, IL: Waveland, 2003.
- "Frequently Asked Questions." *Utah Department of Transportation Homepage*. 2 Oct. 2004 <<http://www.udot.utah.gov/legacy-old/FAQ.htm>>.
- Golden, James L., Goodwin F. Berquist, and William E. Coleman. *The Rhetoric of Western Thought*. Dubuque, IA: Kendall, 1997.
- Larson, Charles U. *Persuasion: Reception and Responsibility*. Belmont, CA: Wadsworth, 1995.
- Leff, Michael. "The Habitation of Rhetoric." *Argument and Critical Practices: Proceedings of the Fifth SCA/AFA Conference on Argumentation*. Ed. Joseph W. Wenzel. Annandale, VA: Speech Communication Association, 1987. 1-8.
- "Legacy Nature Preserve." *Utah Department of Transportation Homepage*. 2 Oct. 2004 <http://www.udot.utah.gov/legacy-old/legacy_nature_preserve.htm>.
- "Legacy Parkway Litigation Position Statement." *Utahns for Better Transportation Homepage*. 2 Oct. 2004 <http://www.utahnsforbettertransportation.org/press_positionstatement.html>.
- "Legacy Parkway Project." *Utah Department of Transportation Homepage*. 2 Oct. 2004 <<http://www.udot.utah.gov/legacy-old/default.htm>>.
- "Legacy Parkway Project: History." *Utah Department of Transportation Homepage*. 2 Oct. 2004 <<http://www.udot.utah.gov/legacy-old/Project%20History.htm>>.
- "Legacy Parkway: Timeline." *Utah Department of Transportation Homepage*. 26 Sep. 2004 <http://www.udot.utah.gov/legacy-old/legacy_parkway_timeline.htm>.
- MacKinnon, Catherine A. "Feminism, Marxism, Method and the State: An Agenda for Theory." *Signs: Journal of Women in Culture and Society* 7 (1982): 515-44.
- Makau, Josina M., and Debian L. Marty. *Cooperative Argumentation: A Model for Deliberative Community*. Prospect Heights, IL: Waveland, 2001.
- Mallin, Irwin, and Karrin Vasby Anderson. "Inviting Constructive Argument." *Argumentation and Advocacy* 36 (2000): 120-33.
- National Environmental Policy Act. 42 U.S.C. §§ 4321-4370(d).
- Palczewski, Catherine Helen. "Argument in an Off Key: Playing with the Productive Limits of Argument." *Arguing Communication and Culture: Selected Papers from the Twelfth NCA/AFA Conference on Argumentation*. Ed. Thomas Goodnight. Washington, D.C.: National Communication Association, 2002. 1-23.
- . "Special Issue: Argumentation and Feminisms." *Argumentation and Advocacy* 32 (1996): 161-69.
- Peterson, Tarla Rai, and Cristi Choat Horton. "Rooted in the Soil: How Understanding the Perspectives of Landowners Can Enhance the Management of Environmental Disputes." *Quarterly Journal of Speech* 81 (1995): 139-66.
- Pickering, Barbara A. "Women's Voices as Evidence: Personal Testimony in Pro-Choice Films." *Argumentation and Advocacy* 40 (2003): 1-22.
- "Public Comment April 17 Public Scoping Meeting." *U.S. Army Corps of Engineers Homepage*. 8 Oct. 2004 <<http://www.spk.usace.army.mil/projects/regulatory/legacyparkway/publicmeetings/scopingmeeting04-17-03.doc>>.
- "Support Transit First." *Utahns for Better Transportation Homepage*. 2 Oct. 2004 <<http://www.utahnsforbettertransportation.org/documents/jun1301update.html>>.
- Utahns for Better Transportation v. U.S. Department of Transportation. 305 F.3d 1152. U.S. Ct. Appeals (10th Cir.). 2002.

- “What Legacy Will We Pass On to Future Generations?” *Utahns for Better Transportation Homepage*. 2 Oct. 2004 <http://www.utahnsforbettertransportation.org/press_futuregenerations.html>.
- Zarefsky, David. “Future Directions in Argumentation Theory and Practice.” *Perspectives on Argumentation*. Ed. Robert Trapp and Janice Schuetz. Prospect Heights, IL: Waveland, 1990. 287-97.