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A Rhetorical Analysis of “The Sword and The Robe”

First African-American Supreme Court Justice Thurgood Marshall served on the Court from 1967 until 1991, establishing his reputation in a still segregated America. On the 8th of May in 1981, Marshall stood for his beliefs and gave a historic speech before the Supreme Circuit Judicial Conference entitled “The Sword and The Robe.” In this speech, he publicly opposes the opinion of Nixon-appointed Chief Justice, Warren Burger, who believed that the death penalty should be reinstated in the United States and that criminals should be prosecuted to the full extent of the law. Whereas Marshall weakens his claim by using personalized statements, ultimately his message that Supreme Court Judges must remain impartial to every case is achieved when he unites his audience by citing the Constitution and using the first-person plural.

At a conference established to frame guidelines for the judicial courts, Marshall references his law school experience to remind his peers of their duty to remain impartial. The audience in question are all law school graduates and intellectuals. With this information in mind, Marshall attempts to appeal to his audience’s emotions by using a personal anecdote from his time in law school. After referencing the statements made by Warren Burger, Marshall says: “All of this frightens me, because when I was in law school, I was taught not that judges were there to see the defendant convicted and punished in every case but that they were there to see justice done in every case.” Here Marshall attempts to use pathos and invoke a sense of unity in his judicial audience. As a fellow law school graduate, he uses this commonality to make up for the racial barriers that separate him from his audience. However effective he is in reminding his colleagues of their law-school days, his experience may have differed from theirs. Moreover, his initial five words take power away from his statement as a whole. In saying “All of this frightens me,” Marshall implies that there is importance in his emotions in reference to the judicial system, whereas his speech is meant to persuade his audience to withdraw their emotions from the judicial system. With this oxymoron being one of the early points made in his speech, Marshall may lose some credibility in the eyes of his audience.

However, Marshall’s speech improves, especially when he references the Constitution. He strengthens his claim through the use of logos by pointing to the authority of the document that all present would hold in highest esteem—the Constitution of the United States. Marshall states: “The *Constitution* established a legislative branch to make the laws and an executive branch to enforce them...We merely interpret them through the painstaking process of adjudicating actual ‘cases or controversies’ that come before us.” Here he clearly executes the plan he had in mind with his previous law-school anecdote. Marshall takes a room full of different men with different lifestyles and beliefs and brings them on the same page by referencing the Constitution, the foundation of the American legal system, which every judge in that conference respects, regardless of their race or political party. Naming this important document not only strengthens his argument but it also builds his credibility. Marshall knew that if he were to truly persuade his audience then he must bring them together before presenting difficult ideas. After uniting them, Marshall follows with the claims that may be disputed or objected. He says: “We have seen what happens when the courts have permitted themselves to be moved by prevailing political pressures...Dred Scott, Plessy, Korematsu, and the trial proceedings in Moore v. Dempsey, come readily to mind as unfortunate examples.” Although present day Americans can easily see the racial bias and injustices faced by African Americans in these cases, Marshall understands that there may still be individuals in his audience who disagree with or choose to ignore said racial bias. He intentionally references controversial court cases only after invoking the Constitution with two goals in mind: to build his credibility and to hold their attention while he introduces an idea they may not agree with.

Along with the Constitution, Marshall establishes common group by employing the first-person plural to reinforce the message that Supreme Court judges must remain neutral. The greatest persuasive element in “The Sword and The Robe” lies in his engaging and captivating word choice. Opening his sentence with *we*, Marshall states: “We merely interpret them through the painstaking process of adjudicating actual ‘cases or controversies’ that come before us.” The word *we* appears 41 times in his short speech. This repetition is used to overcome the racial and social constraints he faced. Moreover, in using a word such as *painstaking* when describing the duties of judges, the rhetor acknowledges that all members in the room perform the difficult job of carefully analyzing each case. Marshall skillfully applauds the work of each judge as he emphasizes that they have more in common than they may realize.

“The Sword and The Robe” will forever be one of the great speeches of American history. Thurgood Marshall built his speech around his cogent elements and the knowledge he had of his fellow Justices. The speech would have been far less effective had his audience been a group of average Americans. Justice Warren Burger did not issue a response, perhaps indicating that he was swayed by Marshall’s words. The speech demonstrates Marshall’s literary mastery; there are few others who could face the constraints that he did and still deliver such a powerful speech. His message is one that should be adopted into the hearts and minds of all judges. For they are not meant to be law-makers; a judge must uphold the Constitution by protecting the innocent and punishing the guilty, whoever they may be. Marshall’s speech expresses that it is this burden that makes it an honor to be a part of the judicial system.