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Not Without Honor?

Review of CATHLEEN KAVENY, PROPHECY WITHOUT CONTEMPT: RELIGIOUS DISCOURSE IN THE PUBLIC SQUARE

Andrew Forsyth*

Then Jesus said to them, "Prophets are not without honor, except in their hometown, and among their own kin, and in their own house" (Mark 6:4).

Hear the word of the LORD, O people of Israel; for the LORD has an indictment against the inhabitants of the land (Hosea 4:1a).

Unsurprisingly, perhaps, presidential elections prompt Americans to take stock of the state of the nation, and, in particular, the state of democracy: the institutions, conventions, and habits, that is, which allow for representative government, and which—in principal, at least—ground and ensure equal rights and fair treatment. Countless books will be written about the 2016 election, no doubt, and whether it was an aberration or the beginning of a new politics. Among them will be titles that struggle with the nature of American political speech: After Donald Trump’s victory, can we have coherent debate in the public square or must we now engage in “post-truth” politics? And after an election revealing deep-seated racial, class, gender, and regional differences, even animus, what can our politicians say to unify the nation or restore trust in American democracy? Cathleen Kaveny’s Prophecy Without Contempt offers a long view of American political speech. Published in early 2016, its analysis begins

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2. CATHLEEN KAVENY, PROPHECY WITHOUT CONTEMPT: RELIGIOUS DISCOURSE IN THE PUBLIC SQUARE (Harvard Univ. Press 2016).
with the Puritans and ends with the 2004 election. Americans speak in the public square in different ways, she says, but too often we uniformly understand and judge their political speech as deliberative discourse. We too readily assume, that is, that participants in the public square exchange reasons—working from stated premises to conclusions—when, in fact, they also speak to condemn or disrupt. And that too is political speech. Kaveny shows that such prophetic discourse, indeed, has a long history in American politics, and is not—as we might be tempted to suspect—merely deliberative discourse gone wrong.

Kaveny’s book spans over three-hundred and seventy years. It would be churlish, were it not for the 2016 election, to complain that it does not treat the last twelve years. As it is, this gap is either a profound liability—although Kaveny never suggests that her analysis exhausts all political speech—or a surprising boon: giving us a touchstone against which to judge this peculiar moment. After reading Prophecy Without Contempt, we can ask, for instance: if, how, when, and why Bernie Sanders and Donald Trump, or their supporters, spoke prophetically. Making sense of prophetic discourse, then, adds a new richness to our analysis of American political speech. What Kaveny could not anticipate is that deliberation and prophecy would not together explain the political speech of the 2016 election. We need to add analysis of a further register of rhetoric. Call this, perhaps, populist discourse—sometimes nativist, sometimes socialistic—that works not, as deliberation, through reasons, or, as prophecy, through values, but instead through appeal to interests.

I. AN INITIAL WORD ON PROPHECY

Prophecy Without Contempt works with a particular understanding of “prophecy.” To be clear: “prophecy,” as Kaveny uses the term, is not “the action of foretelling or predicting the future.” Kaveny’s prophets do not gaze into crystal balls. Instead, they follow in a tradition of political and religious speech—embraced by the Puritans and modified by their

3. Although Kaveny does turn to the 2008 Jeremiah Wright controversy for an example of how prophetic rhetoric can be wrongly interpreted. Id. at 359-63. See infra p. 126.

4. Populism is a form of mass politics—of both the left and the right—that claims to represent the common people against elite interests or “outsiders.” To call for an analysis of peculiarly populist rhetoric is not to suggest that populist movements do not employ deliberative or prophetic discourse. There is an extensive literature on populism in Europe and South America. Prominent recent work that treats contemporary populism as a trans-national phenomenon or the specific experience of the United States, includes: ALAIN BADIOU, PIERRE BOURDIEU, JUDITH BUTLER, GEORGES DIDI-HUBERMAN, SADRI KHIARI, & JACQUES RANCiÈRE, WHAT IS A PEOPLE? (2016); LAURA GRATTON, POPULISM’S POWER: RADICAL GRASSROOTS DEMOCRACY IN AMERICA (2016); JOHN JUDIS, THE POPULIST EXPLOSION: HOW THE GREAT RECESSION TRANSFORMED AMERICAN AND EUROPEAN POLITICS (2016); BENJAMIN MOFFITT, THE GLOBAL RISE OF POPULISM: PERFORMANCE, POLITICAL STYLE, AND REPRESENTATION (2016); and JAN-WERNER MÜLLER, WHAT IS POPULISM? (2016).

5. This is the second definition of “prophecy” in THE OXFORD ENGLISH DICTIONARY (3d ed. 2007). From the opening pages, Kaveny introduces and uses the concept of prophecy-as-indictment. But an explicit rejection of the relevance of prophecy-as-prediction comes only, in passing, at 142-43, and explicitly, at 244-48.
successors—that is modeled on the social indictments of the prophets of the Hebrew Bible, the Christian Old Testament. The paradigmatic form of this prophecy is the *jeremiad*, named for the genre’s gloomiest practitioner. In a classic jeremiad, a prophet chastens her own people for a fundamental violation of the basic social compact. She issues an *indictment*. The prophet’s speech, accordingly, is *forensic*, not deliberative: She states the moral law. She charges that the people’s past behavior violates this law. And she calls—unlike many prosecutors, perhaps—for repentance and reform.

Kaveny’s focus is American practitioners of the *discourse* of prophetic indictment. *Prophecy Without Contempt* is not the story of those who believed themselves called by God to deliver a particular religious message. Joseph Smith and Mary Baker Eddy make no appearance. Its concern, instead, is those American political practitioners who step into the shoes of prophets. These would-be prophets do not claim to speak directly to, or for, God, but rather from within a tradition of moral reflection. Accordingly, they *choose* to speak with prophetic cadences, and can be judged accordingly.

I suspect many readers will not find Kaveny’s definition of prophecy immediately intuitive. This is not solely because, in our popular culture, at least, prophecy as prediction is the commonplace meaning. Kaveny’s “prophecy” also does not include other ways we tend to speak of political prophets. It does not include American political figures, for instance, who believed themselves to be God’s instruments. John Brown was one. More disconcertingly, it seems that, on Kaveny’s account, “prophetic discourse” can, in principal, properly characterize multiple opposing views, as long as certain rhetorical criteria are met.

Prophets, of course, are inspired by *someone* or *something*, and the subtitle of *Prophecy Without Contempt* is *Religious Discourse in the Public Square*. For much of the book, however, this is too modest. Religio-political speech is ubiquitous in America. Whether we accept his approbation or not, Tocqueville was right: American civilization is “the product . . . of two perfectly distinct elements that elsewhere are often at odds. But in America, these two have been successfully blended, in a way, and marvelously combined. I mean the spirit of religion and the spirit of

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6. Joseph Smith (1805-44) founded the Church of Jesus Christ of Latter-day Saints (or Mormon Church). Mary Baker Eddy (1821-1910) founded the Church of Christ, Scientist.
7. And not just in “secular” speech. For many Christian groups prophecy is understood primarily as prediction: the Old Testament is understood as predicting Jesus, and certain books of the Bible (notably Revelation) predict “the End Times.”
9. It seems, then, that false prophets in Kaveny’s account are those who fail to meet the rhetorical conventions of the prophetic form (and not, as in our standard speech, those who lack a divine mandate or spout the wrong message).
liberty.”  

With Kaveny’s “prophecy” thus understood as social indictment, we can turn to the substance of her recasting of the history and nature of American political speech. In what follows: Part I considers Prophecy Without Contempt’s refutation of current explanations of the state of public discourse (15-121). These fail to explain non-deliberative political speech, says Kaveny, and they thereby exclude or pervert core examples of American political speech, from the abolitionists to Martin Luther King, Jr. Part II considers Kaveny’s treatment of the core example of such non-deliberative political speech, the jeremiad, and its shifting rhetorical form (125-235). Condemning their hearers for failing to adhere to agreed community standards, Puritan jeremiads fostered societal unity. However, through the Revolution, Civil War, and beyond, jeremiads were increasingly invoked to demand social change. For good and ill, they wrought contention. Part III considers the differing rhetorical distinctions Kaveny attributes to prophetic and deliberative discourse (239-316). Their differing argumentative conventions explain, she argues, why adherents of the same religious and moral traditions can sharply differ over political issues. Part IV considers Kaveny’s suggested ethic for prophetic discourse (319-427). We can look to American and international law, she argues, for inspiration for procedural and substantive restraints to prophetic speech. And the source biblical texts of the jeremiad suggest rhetorical constraints. However, to be effective today, prophecy needs suitably ironized, says Kaveny. The ever-increasing pluralism of American discourse explodes open, scrutinizes, and revises prophetic indictments, even as would-be prophets’ core commitments remain.

Prophecy Without Contempt convincingly makes the case that American political speech includes prophetic indictment. Historically and conceptually its inclusion renders accounts of political speech more convincing. It seems to me that Kaveny can make her case because—unlike many of her interlocutors—she excludes no arguments or examples ex-ante. She moves freely between descriptive and normative analysis. Consequently, seemingly arcane religious debates are shown relevant where they open up general accounts of political speech, and elegantly wrought theories are dismissed where they fail to capture facts on the ground. Kaveny’s approach opens our eyes to what immediately thereafter seems so obvious: non-deliberative speech is often robustly political.

II. EXPLAINING THE STATE OF PUBLIC DISCOURSE

There are long-standing debates about the state of American public discourse. And Kaveny turns to three “incomplete explanations” to offer

10. ALEXIS DE TOCQUEVILLE, 1 DEMOCRACY IN AMERICA (Eduardo Nolla ed., 2012), 69.
her take: those of Alasdair MacIntyre, John Rawls, and Stephen Carter. All fail to make sense of non-deliberative political speech in Kaveny’s telling. And, for reasons immanent to their own explanations, each cannot simply condemn and excise non-deliberative speech from what counts as public discourse.

Complex connections between descriptive and normative judgments pepper all of Prophecy Without Contempt, not least its engagement of explanations for the state of public discourse. This complexity stems in part from Kaveny’s refreshing choice to dwell little on her own method. Like her primary interlocutors—but unlike many who work on religion and politics from a remove—Kaveny just gets on with making her argument. She does not offer a prolegomena. She pulls widely and deeply from differing bodies of scholarship—from technical language studies of ancient languages to contemporary social science—and undertakes her own primary research, notably offering up details of Puritan sermons. In short, she does not stop to ask whether certain sources or bodies of thought are “legitimate” to consider. Throughout, Kaveny moves fluently between history and ethics, offering detailed examples—particularly from recent Roman Catholic debates—that enrich and complicate standard narratives of religious participation in public life. The result is both description and critique. Kaveny inhabits a productive (if sometimes uneasy) middle where, for instance, idealizations of political speech are to be rejected—“[t]he public square is not a seminar”—but criteria for better non-ideal political speech can be given.

The first “incomplete explanation” is Alasdair MacIntyre’s. He has influentially argued that the shrillness of our contemporary debates stems from our lack of a common framework for moral reasoning. Our political speech today is mere emotivism: the expression of preferences rather than reasons that might convince others. Thus our public debate seems intractable and even manipulative, as our so-called persuasion is, in fact, merely the coopting of others into our own chosen projects.

But MacIntyre’s constructive response—a new traditionalism—does not give us what he thinks it does. MacIntyre concludes that meaningful debate is only possible within thick communities engaged in a tradition of

11. KAVENY, supra note 2, at 13.
12. Id. at 419.
13. We do not share a coherent account of human nature as it is, human nature as it ought to be, and how to move from “is” to “ought,” says MacIntyre. We therefore find ourselves stuck between an individualism based on rights, and bureaucratic organization based on utility. See ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY (3d ed., 2007). Kaveny also engages: Alasdair MacIntyre, Intractable Moral Disagreements, in INTRACTABLE DISPUTES ABOUT THE NATURAL LAW: ALASDAIR MACINTYRE AND HIS CRITICS 1–52 (Lawrence Cunningham, ed. 2009); ALASDAIR MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY? (1988); ALASDAIR MACINTYRE, THREE RIVALS OF MORAL ENQUIRY: ENCYCLOPAEDIA, GENEALOGY, AND TRADITION (1990); and ALASDAIR MACINTYRE, DEPENDENT RATIONAL ANIMALS: WHY HUMAN BEINGS NEED THE VIRTUES (1999).
moral argument, where individuals inhabit well-recognized social roles and share views about the nature of human life, flourishing, and practical rationality. Kaveny responds that even within communities held together by a particular tradition of moral reflection—her example is Roman Catholicism—there nonetheless remain significant foundational disagreements. Shrill debate continues.

In short, MacIntyre does not provide a satisfactory account of why committed Catholics can fundamentally disagree on issues ranging from homosexuality to the use of torture.\(^\text{15}\) Kaveny concludes that the shrillness of public debate, then, is not frustrated deliberation—proffered reasons—but, instead, a mark of prophetic indictment. Would-be prophets simply do not invite others to debate, even their co-religionists. They accuse them. They assume that everyone knows the problem, or should. Their speech is an indictment of perceived wrongdoing, an ad hominem accusation expressing their moral outrage and betrayal.

John Rawls’s famous account of “public reason” likewise fails the empirical test.\(^\text{16}\) Rawls sought to specify the conditions for peaceful and productive conversation in liberal democracy.\(^\text{17}\) To further civic peace and respect, he said, when we debate matters of basic justice and constitutional essentials we must only articulate reasons that all free and equal citizens might reasonably accept. But whatever the normative merit of public reason,\(^\text{18}\) in practice, Kaveny suggests, its strictures shift terminology, rather than change minds. We all suffer as a result. It is frustrating to debate those who do not, and cannot, give their real reasons for acting, and it is an experience of deep civic disrespect to have one’s fundamental convictions putatively excluded from public debate.

Kaveny takes the examples of abortion and same-sex marriage and suggests instead that the public square is enhanced not by the exclusions brought by public reason but by the hard work of explaining one’s point of view. We need to actually convince our neighbors, rather than worry about which reasons should convince them.\(^\text{19}\) We more fruitfully address citizens

\(^{15}\) Catholics, indeed, are a particularly damning example because, more than other traditions, Catholicism possesses an official leadership hierarchy and a body of authoritative teachings.


\(^{17}\) Rawls did not, of course, suggest legal restrictions to political speech, but rather moral and political standards to which we can hold each other to account.


\(^{19}\) This is apt description of Kaveny’s own argumentative approach.
as persons—moved by different reasons and rhetoric—and not, as Rawls insists, citizens as citizens.

There are times, nonetheless, when political speech does not proffer reasons at all, Rawlsian or otherwise. Public speech, instead, is the proclamation of a truth, or the condemnation of perceived wrongdoing: speakers call down God’s judgment (or a secular analogue, like nature). Such proclamations and condemnations are an undoubted fact or American political debate. Indeed, they often serve as models of engagement. To be congruent with this history, in his later writing Rawls sought to include the speeches of Martin Luther King within his account of public reason. Kaveny insists, however, that MLK’s words are not so easily assimilated. He consistently made appeals to controversial sources, such as divine law revealed in Scripture, or specific accounts of human nature.

A final explanation of the state of public discourse proposes civility as the necessary bedrock for public debate. Stephen Carter’s argument is exemplary. This explanation fails too, for Kaveny. For while we can readily identify incivility—demonization, a refusal to engage, a lack of acknowledgement that the speaker might be wrong—it is much harder to suggest what is truly civil. True, moral and religious arguments suggest some answers. Carter, for instance, sees civility as the way to treat fellow citizens with respect. Civility, however, requires self-sacrifice and self-restraint, for its immediate benefits to us are far from obvious. In Carter’s case, such self-sacrifice and self-restraint are justified and supported by a theological anthropology. He employs the traditional language of Imago Dei: human beings are created in God’s image, and thus have dignity and equality in God’s sight. Civility so construed requires a dual compartmentalization. It both separates the form of the message from its content, and the message from the messenger. It presupposes that political messages can be given in civil (non-offensive) ways.

Building off the work of John Murray Caddihy, however, Kaveny finds compartmentalization unsatisfying and unfair. It seems civility is not a neutral concept, but a kind of American civil religion born of protestant
denominationalism. To maintain space for civility, America separates the private and the public, the church and the state. Historically this has been easiest for Calvinists, and their secular successors, who can see self-sacrifice and self-restraint as a form of civic agape (self-giving neighbor love). It was more difficult for Lutheran, Catholic, and Jewish immigrants, however, who viewed life more holistically. To assimilate, to be recognized as Americans, they had to abandon significant aspects of their religious identity in the name of (elite protestant) civility.

Implicit in Kaveny’s argument is that any explanation of political speech must capture what we commonly take to be core examples. If Rawls could not adequately account for MLK; Carter, it seems, struggles with the abolitionists. He can explain their top-level motivations—many were motivated by religious conviction—but he fails to deal with the specifics of their language. The abolitionists condemned their opponents in the most uncivil ways: “inexorable and remorseless tyrants,” cried William Lloyd Garrison, their “hands dripping in blood.” And this uncivil condemnation, says Kaveny, was not a failure of deliberation, but an embrace of prophetic indictment. We do not yet know the extent to which the speeches, or tweets, of President Trump will be recognized as “core examples” of American political speech.

III. THE AMERICAN JEREMIAD

A proper explanation of American political speech needs to account for its characteristic rhetorical forms. American political speech without MLK or the abolitionists is not American political speech. A central claim of Prophecy Without Contempt is that we can better understand and critique contemporary American political speech by examining the evolving rhetorical form of the jeremiad, from its appearance in Puritan sermons through the Revolution and the Civil War to the civil rights movement. Kaveny’s argument is most persuasive when she draws typological connections between the past and present, Puritans and contemporary culture warriors. She does not attempt a full genealogy, however, and we are left wondering, perhaps, to what extent today’s would-be prophets truly draw from the sources, despite the evident comparisons to be made.

The jeremiad is a complaint. It is an indictment in form: “a law-like charge that certain actions, already performed, violate a socially binding

25. There are many studies of civility as an ideal, and its socially conditioned content. See e.g. CIVILITY, LEGALITY, AND JUSTICE IN AMERICA (Austin Sarat, ed. 2014).
26. If they are to climb the social ladder: evangelicals have to give up proselytizing Jews; Jews must adopt “Judaism” as a religion (as one among others) and thus give up on being the chosen people; and Catholics must drop an ideal of a fusion of church and state.
28. Quoted in KAVENY, supra note 2, at 83 and 79.
In Puritan New England, its use depended on a deep sense of a covenant—a solemn agreement—between the colonists and God, and thus, while it offered severe critique, it functioned to foster social unity. Stripped of this covenantal context, however, the jeremiad became contentious, even destructive. As years progressed, its backward-looking glance to agreed community standards dissolved into calls for social change. Its "root genre, which is that of a legal indictment or complaint," rhetorically faltered as would-be Jeremiahs purportedly indicted hearers for laws they did not know and would not have accepted.

The Puritan worldview included the developing common law of contracts, of which covenants formed one special type. As with any contract, covenants allow for negotiated voluntary agreements, potentially between vastly unequal parties, which can be relied upon and enforced. In Puritan thought, a covenant could even allow the unknowable and omnipotent God to enter into a relationship with humanity. The idea of the covenant could both maintain God's absolute sovereignty and God's essential unknowability—bedrock principles of their Calvinist theology—while providing an account for how this unknowable sovereign God could choose to limit himself and make himself known through freely entering a binding relationship with humanity.

Like ideas of social contract that would follow, the covenant binding Puritan society embodied the Puritans' collective will. But they thought it divinely willed too. Deeply identifying with the ancient Israel they found in their Scriptures, the Puritans understood themselves to have a national covenant with God. This provided the context for their interwoven church and state. And unlike their salvation, which they believed entirely in God's hands, they thought their virtues and vices had a real effect on the product of their bargain. "God would precisely correlate the temporal prosperity of the new land to the degree to which its inhabitants kept His commandments."

In the Puritan imagination the jeremiad was a "stylized complaint for breach of covenant." The indictment of a jeremiad, then, contained nothing surprising. It assumed that its hearers had freely entered into a covenantal bargain, and that the behavior condemned was straightforwardly objectionable. ("Who could defend decay in godliness, sinful pride, or Sabbath-breaking?") It therefore called for accountability and punishment. While we might balk at their scolding tone and ominous

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29. Id. at 126.
30. Id. at 127.
31. Kaveny explains that in the colloquial use of the time "contract" and "covenant" were used interchangeably. "Covenant," then, does not mean solely the form of action in common law that shares its name. Id. at 167.
32. Id. at 146.
33. Id. at 170.
34. Id. at 179.
threats, jeremiads reassured the Puritans that God had indeed entered into an agreement with New England: Jeremiads nurtured hope about the prosperity that would surely come with virtuous living. They encouraged their hearers to work harder to fulfill the terms of the covenant, yet expiated guilt for failure. And they reinforced social consensus through the ritual of collective self-denunciation.

Beginning as a source of communal unity, through the Revolution, Civil War, abolition, and beyond, the jeremiad developed into a source of division. It did so, Kaveny argues, because it lost a “tight hermeneutical connection” to the idea of a national covenant.35 Jeremiads increasingly appealed instead to the vaguer, more contestable language of natural rights and common sense. The wronged party to the agreement was less frequently portrayed as God, and more frequently the speaker. And the logic of the covenant shifted from a return to common values to a demand for social change. The abolitionists, for instance, knew the divisiveness of their interpretation of the nation’s core values. The Constitution, after all, recognized and condoned slave holding. The abolitionists offered prophetic indictments for breaching a contract its hearers did not make. Today, perhaps, we need not try too hard to hear resonances of such division in the complaints of populist critics, who, against the changes wrought by unaccountable elites, want to “interpret the Constitution the way it was meant to be.”36

IV. THE RHETORIC OF PUBLIC DISCOURSE

Prophetic discourse is effective when the primary mode of our political speech is deliberative, says Kaveny. If prophetic language is too common, it loses its power to convince or cajole. Prophetic discourse, accordingly, should be rare: a clarion call in moral crisis; a radical (“to the roots”) challenge to shake up entrenched habits of apathy and injustice. Deliberative discourse, on the other hand, is rightly our default political speech, says Kaveny. In America, deliberative discourse tends to work with a “messy virtue theory.”37 Whether judging policies or personalities, Americans freely invoke concepts from across differing political, moral, and religious traditions: both consequences and duties, for example, but also rights and rules, personal and national character. 38

35. Id. at 184. Not that this idea of covenant was sustainable. Later generations of Puritans worried that the connection between their actions and God’s actions were unclear. The covenant partners changed too, as God, to many, became more Deist, and the human parties more varied and various.
36. Donald Trump made these remarks at the third presidential debate on October 19, 2016.
37. KAVENY, supra note 2, at 252.
38. Kaveny’s preferred norms are Thomistic and Aristotelian: we judge an act, she says, based on its immediate object, its larger purpose or motive, and the broader circumstances within which it takes place. Deliberation, on this account, is a form of practical reasoning, for which its practitioners need...
Prophecy and deliberation, then, have different functions and focuses. Prophetic discourse: focuses on an issue, seeks whole-cloth change, assumes simplicity and clarity, believes political actors must be virtuous, and treats the present moment as critical for action. Deliberative discourse: focuses on a range of issues, seeks change through incremental steps, assumes complexity (a need for nuance and exceptions), believes political actors possess virtues and vices, and treats the particular moment within a longer-term trajectory. Accordingly, even if participants share common moral and religious values, when some choose to speak prophetically and others deliberatively, the result is more heat than light.

The 2004 presidential election—a high point of the “culture wars”—provides Kaveny with case studies of the outworking of these rhetorical distinctions. Debates on abortion and torture divided religious believers, even those American Christians who share a belief that abortion likely involves taking human life, and that torture inflicts unbearable pain on a fellow human being. The abortion debate is more familiar. What Kaveny adds, however, is a convincing explanation of how—by adopting the deliberative mode—the most conservative Catholic can, on the most traditional grounds, vote for a pro-choice political candidate. (A position that is widely rejected, even condemned, in most Catholic prophetic discourse.) To do so, Kaveny turns to the developed casuistry of Catholic moral theology, and its category of “cooperation with evil” (akin to “complicity” in the law). It is permissible for a traditional Catholic to vote for a pro-choice candidate when she does not seek to promote abortion by her vote, and when it is justified by proportionate reasons. For instance: she might assess that the pro-choice candidate better possesses the requisite virtues for public office; and that, given the realities on the ground (the legality of abortion, for one), the causes of abortion, and the proposed policies of the candidates, electing the pro-choice candidate will likely reduce the number of abortions.

Torture was a new issue for 2004. And Kaveny suggests that many American Christians did not apply the same style of discourse to debating torture as they did to abortion. Would-be prophets on torture decried it as a violation of the absolute dignity of human beings created in God’s image, and indicted the nation as betraying its bedrock moral principles. Deliberators saw “torture”—if it did occur—as anomalous, as a breach of rules. They sought detailed distinctions as to the type of combatant involved, and, indeed, on what truly counts as torture.

The so-called “Torture Memos”—from John Yoo and Jay Bybee of the
Office of Legal Counsel to Alberto Gonzales, the Attorney General—are Kaveny's most effective example of the intentional misuse of rhetoric. The Torture Memos used deliberative rhetoric to reduce legal strictures that protected captured Taliban and Al-Qaeda fighters. The analysis offered by the memos, however, is “not an exercise of moral discernment in the cause of practical reasoning; rather, it is the deployment of a powerful set of analytical tools to eliminate what it views as a potential impediment to a morally and politically imperative course of action.”

The Torture Memos are rhetorically disingenuous. They damage American political speech because they wrongly coopt deliberative language when a course of action was already decided. They mislead the people, in other words, by breaking faith with the rhetorical conventions of public speech.

Prophetic indictment is apposite when arguments are made for torture. Prophetic indictment functions as moral chemotherapy: brutal but sometimes necessary medicine where a perverse growth threatens to corrupt practical reasoning. Prophetic speech seeks to destroy diseased moral reasoning and promote the regrowth of virtuous practical reasoning. If the rise of “fact checking” over the last decade, and notably through the 2016 election season, is a deliberative curb on particular abuses, the form of its prophetic counterpart—a challenge to the wholesale misidentification of opinion for fact—is as yet unclear.

V. AN ETHIC OF PROPHETIC RHETORIC?

Prophetic discourse, then, has a legitimate if limited role in public debate, and Kaveny gamely offers procedural, substantive, and rhetorical criteria for its appropriate use. For these criteria, she turns in part to American law. This is a novel approach. Moralists, of course, may

41. For the primary sources, see: THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB (Karen Greenberg & Joshua Dratel eds., 2005). Kaveny explains that deliberative types can misuse prophecy by placing it on a pedestal—where it speaks only to an ideal world or offers vague moral admonitions—or can wrongly turn to prophecy when deliberative arguments are proving hard to make. Likewise, would-be prophets can misuse deliberation by making it instrumental to their own prophetic ends, dismissing all deliberation as malign rationalization, or subverting deliberation’s tools to make it practically useless.

42. Id. at 298.


44. Id. at 315-16.

illustrate their arguments with legal examples, and theologians and social critics may judge the law, but Kaveny is rare in turning to the law as itself generative of moral conclusions.\textsuperscript{46} Prosecutorial ethics, for instance, is mined for procedural restraints to prophetic indictment.\textsuperscript{48} While the just war tradition of international law becomes a source for substantive restraints: Skillfully adapting its standard criteria of \textit{ius ad bellum}\textsuperscript{49} and \textit{ius in bello},\textsuperscript{50} Kaveny gives us rules for \textit{just prophecy} in the war of words. And, indeed, the very form of the jeremiad imposes rhetorical restraints. In the biblical text, the jeremiad appears either as an "oracle against Israel" or an "oracle against the nations."\textsuperscript{51} It is the former, says Kaveny, that provides the better model for American political speech. Would-be prophets should follow their Hebrew forebears who sorrowfully castigated their own people not to seek their destruction, but rather, within a context of divine mercy, their repentance and reform. Too often, however, contemporary would-be prophets issue "oracles against the nations," aping the Hebrew prophets' condemnation for destruction of an implacable enemy, a Babylon or Assyria.

Notably, the jeremiad, as oracle against Israel, has historically furnished African-Americans with a form of religio-political speech that can at once condemn the sins of America and envision a horizon of hope.\textsuperscript{52} A contemporary Jeremiah, President Obama's sometime Chicago pastor Jeremiah Wright cried "God damn America!" Wright damned America, as the prophet Jeremiah damned Israel: "God damn America for treating our citizens as less than human. God damn America for as long as she acts like she is God and she is supreme."\textsuperscript{53}

Would-be prophets, of course, are rarely honored in their hometowns. And Wright's words, picked apart by the news media, were treated as

\textsuperscript{46} More recent is the work of legal scholars who judge the law from a self-professed religious viewpoint. See, e.g. \textsc{Christian Perspectives on Legal Thought}, (Michael W. McConnell, Robert F. Cochrane, & Angela C. Carmella eds., 2001).

\textsuperscript{47} The law, in this account, incorporates and inculcates a political morality. In her \textit{Law's Virtues}, Kaveny suggests that the law teaches the virtues of autonomy and solidarity. \textsc{Kaveny, supra} note 39, at 15-70.

\textsuperscript{48} For one, prosecutors—whether legal or moral, speaking to a grand jury or the American public—should not engage in vendetta: theirs is a task on behalf of the public. Likewise, the prophet is not a crank. The prophet "maintains a deep social commitment and connection that grounds his or her call for reform." The good would-be prophet-prosecutor, then, exercises discretion as to which cases to bring. She weighs the seriousness of the crime, the likelihood of success, and the deterrence value. And however egregious the crime, she must maintain integrity, for instance by responsibly maintaining a factual basis to her claims. Lies, hoaxes, and manipulation of the public are ruled out. \textsc{Kaveny, supra} note 2, at 323.

\textsuperscript{49} These typically include: just cause, competent authority, comparative justice, right intention, last resort, probability of success, and proportionality.

\textsuperscript{50} These typically include: Discrimination between combatants and non-combatants, and proportionality.

\textsuperscript{51} \textsc{Kaveny, supra} note 2, at 351-57.


\textsuperscript{53} Quoted in \textsc{Kaveny, supra} note 2, at 360.
bizarre, even dangerous.\textsuperscript{54} But the harsh response to Wright, Kaveny suggests, was the result of rhetorical misinterpretation. The American media, and the public at large, treated Wright’s words as calling for America’s total destruction (an oracle against the nations) rather than America’s reform (an oracle against Israel). I am not so sure. We might worry, \textit{pace} Kaveny, that the jeremiad has diminished rhetorical currency. Outside of particular communities, Americans no longer sufficiently know biblical forms of speech or their political history to properly recognize and interpret the genre.

Kaveny is on surer ground with Martin Luther King’s “I Have a Dream” speech, surely the gold standard for public prophecy. What more can be said of such familiar words? Perhaps that the speech’s form is recognizably jeremiadic: it sets out a violation of covenant (breach of the values of the Declaration of Independence); it illustrates the factual background through vivid imagery; it offers a “legal” conclusion on the basis of this breach of fundamental law and its applications to the facts; and it does all this in response to widespread patterns, with ultimately hope-filled motives, and within an imagined community of “all God’s children.” Again, however, we might worry that, half a century later, MLK’s words mark the apogee of the public use of prophetic speech. Quoting from the prophets Amos and Isaiah, and pulling from the rhetorical traditions of the jeremiad, might disqualify “I Have a Dream” from Rawls’s “public reason,” but many today can and do read the speech as expressing values that are, at least, partially extractable from Judeo-Christian Scripture and the traditions of American political theology.

Kaveny recognizes, of course, that the American tradition of prophetic indictment is ever-changing: Jeremiads, which first called for conservative rededication to founding principles, soon called for revolutions of values. Jeremiads, which once spoke to a self-identified covenant community of co-religionists, today must speak to a political culture pluralistic in its religious and moral concerns, and suspicious of claims to absolute truth.

Kaveny’s final gambit then is to offer the model of the \textit{ironic} prophet. Only humility-chastened prophecy is adequate for today’s politics. “Irony,” like “prophecy,” needs careful specification, of course, and Kaveny’s is a “rhetorical and analytical tool—not [] a metaphorical or moral master.”\textsuperscript{55} Irony of this type is not wholly deconstructive. It has moral value. As Jonathan Lear puts it, such irony is the recognition that in our language radical possibilities can coexist with a dominant non-ironic meaning.\textsuperscript{56} In this ironic light, Kaveny re-reads Lincoln’s Second

\textsuperscript{55} KAVENY, supra note 2, at 377.
\textsuperscript{56} See JONATHAN LEAR, A CASE FOR IRONY (2011). In Lear’s psychoanalytical account, irony exposes a gap between who we pretend to be and the life we actually live.
Inaugural speech and the biblical book of Jonah. Each adds humility to prophecy. Both sides, Lincoln noted, “read the same Bible, and pray to the same God.” “The Almighty,” nonetheless, “has His own purposes.” Lincoln claimed no access to the mind of God. Likewise, the reluctant prophet Jonah—who fled from his divinely-appointed mission—delivers words that, despite himself, turn the hearts of a hated enemy. God’s plans are inscrutable. In Kaveny’s telling, however, the dominant non-ironic meanings remain: America need not cast off the idea of prophetic indictment. Basic commitments against human degradation can survive. (There is no ironic detachment in Lincoln’s call “to care for him who shall have borne the battle and for his widow and his orphan.”)

And even a self-understanding of an American exceptionalism has a chastened place. But irony is a practical virtue that explodes open such claims; prophecy is rightly scrutinized and revised on the basis of other, ironic, possibilities.

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Few would characterize the political speech surrounding the 2016 presidential election as exhibiting the best of deliberative discourse. But were elements honorably prophetic? By giving us a long view, from the Puritans to the near-present, Prophecy Without Contempt offers new insights into how to recognize and judge the harsh and often dangerous words that characterize a continuing strain of American democracy—whether we like it or not. If 2016 was not an aberration, however, our analyses of political speech will need further broadening. To deliberative reasons and, now, prophetic values, we will surely need to add populist interests. If that is true, we will be well served if the history, forms, and cadences of populist rhetoric receive the treatment Cathleen Kaveny affords to prophetic indictment and the American jeremiad.
