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Peter Goodrich

Benjamin N. Cardozo School of Law, goodrich@yu.edu

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Distrust Quotations in Latin

Peter Goodrich

At the end of what she deemed to have been the worst of years, the English sovereign in her annual address to the nation resorted to Latin. The monarch, titular head of state and of the legal system, announced at the close of 1992 that it had been *annus horribilis*. In the face of tragic events and immediate threats, the impending divorce of her son and heir and the specter of taxation of the monarchy, the queen resorted paradoxically to a dead language, to a heavy signifier, to the weight of Latin. The force of the immediate and the pressure or stress of the political required the distance and gravitas of a language that few any longer either know or understand. It was the appropriate mode in which to signal both authority and grief.

For an American audience, at the risk of a bad pun, *annus horribilis* probably translates as an asshole of a year and might well be thought to be a somewhat quaint example of the antique customs of the English. The apparent aura of civic republicanism in the United States, however, should not lead too quickly to the conclusion that the pinnacle of the U.S. juridical system is free of such rhetorical recourse to the foreign and antique. Faced with a peculiarly politicized and highly charged decision in the 2000 Presidential election, the U.S. Supreme Court also resorted to Latin. The much publicized and eagerly awaited judgment in *Bush v. Gore* was handed down quite literally to waiting journalists and other media representatives on the courthouse steps under the rubric of having been decided *per curiam*.¹

The title is taken from Gustave Flaubert, *Dictionnaire des idées reçues*, in *Oeuvres*, 2 vols. (Paris, 1952), 2:1016, whose entry under Latin reads: "Distrust quotations in Latin: they always hide something dubious." For constructive criticisms—for dubiety—my thanks to Lauren Berlant, Rüdiger Campe, Michèle Lowery, John McGinnis, Linda Mills, Tim Murphy, Uriel Procaccia, Peter Tiersma, and especially Anton Schütz.

1. See *Bush v. Gore* 521 US 98 (2000).

The Supreme Court's recourse to what is now conventionally regarded as a dead language, a foreign idiom, an obscure terminology even within law, in fact performs the same political and rhetorical function as does the queen's invocation of Latin. I will argue that, far from being dead, these examples show that Latin has a continuing and perhaps even augmented role precisely by virtue of its scarcity or at least the highly limited public domain of its actual comprehension. The trajectory of the demise of Latin that is charted and reported by scholars such as Françoise Waquet in fact signals the political premium that can now be placed on Latinity.² The formula can be stated as follows: the less that Latin is known and used—the rarer its comprehension in professional and academic circles, let alone in the rest of the public sphere—the more powerful and persuasive its manipulative or political effects. Latin may be misused, but it is precisely its misuse that marks its rhetorical force and its likely future.

The Perennial Malaise of the Universal

One of the last great treatises on rhetoric and the Latin tradition appeared in 1730 under the title *Histoire des tropes*, which translates either as *History of Tropes* or as *History of the Tropes*.³ In the preface to the second edition of this work, published in 1757, du Marsais recounts how, shortly after the book first appeared, he happened to encounter a wealthy acquaintance who remarked enthusiastically that he had heard many good things said of the *History*. It became clear from what this gentleman said, however, that he thought that the Tropes were a tribe and that the treatise was an account of their origins. The error is not ludicrous. In both Latin and French *trope* (*tropus*) is close to *tropic* (*tropicus*); one refers to a turning of words, the other to the turning of the sun. The title could well conjure an image of some then-distant equatorial tribe, the troprianders perhaps, or some version of Levi-Strauss's *Tristes Tropiques*. The misreading is also, however, a

2. See Françoise Waquet, *Latin, or, the Empire of a Sign: From the Sixteenth to the Twentieth Centuries*, trans. John Howe (London, 2001); hereafter abbreviated L.

3. See M. du Marsais, *Des Tropes, ou des diférens sens dans lesquels on peut prendre un même mot dans une même langue* (Paris, 1757).

PETER GOODRICH is professor of law at the Benjamin N. Cardozo School of Law. His books include *Legal Discourse: Studies in Rhetoric, Linguistics, and Legal Analysis* (1989); *Languages of Law: From Logics of Memory to Nomadic Masks* (1990); *Oedipus Lex: Psychoanalysis, History, Law* (1995); and *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (1996). He is currently at work on a book entitled *Laws of Friendship*.

drastic one, and it led du Marsais to truncate the title of the second edition of his treatise to *Of Tropes*.

A lexical error of the sort that du Marsais recounts could have serious and avoidable consequences. *Trope* is not an invented term, and in the 1750s as much as today anyone "who has completed the ordinary course of studies" in literature or rhetoric would know its meaning.⁴ In law as in other disciplines, lexicon and grammar, the parts of speech, are assumed—presupposed—in professional practice, and for most of the history of Western law, for close to a thousand years—indeed right up until the 1970s—grammar has meant Latin. Just as du Marsais responded to his friend's lack of lexical acumen by changing his title, so too the demise of Latin has had significance and an impact upon a variety of professional practices. What has changed between 1750 and the present day is not that Latin is less understood but that since the 1960s Latin is no longer a part of "the ordinary course of studies." Latin is no longer a requirement for the study of law, medicine, or science. The Catholic Church has also dropped Latin as the language of the liturgy. The second millennium is a changed era, a thoroughly vernacular world. Although all the disciplines are still peppered with dubious Latin quotations, with maxims and words from the Roman tongue, we now belong to what the Bishop of Bourges once termed a *Palatin* (*pas-latin*) generation (see *L*, p. 61).

The history of Latin is also the history of the ignorance of Latin. For much of the history of the West, Latin was a synonym for reason (*ratio studiorum*), for culture (*latinitas*), and for law (*ratio scripta*). To be literate was to be competent in Latin, and it was Latin that distinguished laity from literati, peasantry from nobility and gentility, the unlearned—*imperiti*—from the professions. Clearly the class of those who did not know Latin was always much larger than that of those who had studied it and greater still by no mean measure, as Waquet's recent study suggests, than that of those who were competent to read it. Latin was the great divide; it was the mark of legitimacy, the harbinger of divinity, legality, and scientific truth. Latin gave Western metaphysics its form, and it was as such first and foremost a sign rather than a competence, an emblem of culture rather than an explicit practice of knowing.⁵ The first avenue to explore in addressing the question

4. *Ibid.*, p. vi.

5. For fear that it be said that I am ignoring the Greeks and the Heideggerian hypothesis that we are living out a Greek origin, I will add that the historical relation of Latin to Greek was, for the *longue durée* of hellenistic Rome, broadly that of the vernacular to the Latin. Despite the importance of Greek, however, the European reception of the classics was a Latin reception. It was overwhelmingly through the Latinate framework of the Renaissance that the Greek tradition was recovered and reinterpreted. As for Heidegger, I am minded of James Bramston's aphorism in *The Art of Politicks, in Imitation of Horace's Art of Poetry* (London, 1729): "All Mr. Heydegger's Letters

of the significance of the "exhaustion" or malaise of Latin is thus political. What hierarchy did Latin shore up, and what liberation comes or is coming in the wake of its seeming desuetude? Inversely, what is lost with the decay of Latin as a living pedagogic form? At some point in the future will there be, as history suggests, another Renaissance, another humanism or a return to the classics? Secondly, what is the effect of the loss of Latin upon the discourse of the public sphere? Insofar as law represents the last instance of veridical discourse within the contemporary public sphere—it is at least the most serious form of social self-reflection—what does the decline of Latin mean for the validity of laws?

Presences

We are surrounded by Latin, even today. Latin remains the primary language of inscriptions on buildings; it forms the text of the written city. Thus the frieze of the National Archive in Washington reads: *Omnia scrinia habet in pectore sua*—the truth is stored here. The motto of virtually every university is Latin. Harvard's laconic *Veritas* is not only inscribed on all its stationery but also carved on all professorial chairs. There is the popular *rerum cognoscere causas*—to know the cause of things—that appears on the insignia of numerous universities. From the juristically arrogant *fiat jus*, to the rather more appropriately hysterical motto of my preparatory school: *dum spiro spero*—while I breathe I hope (to escape this prison)—Latin rules the idiom of insignia, as of aphorism and epithet. In medicine, the humanities, and law the vocabulary of the disciplines, the terms and maxims of art, remain Latin. We send out our *curriculum vitae*, sing the *Te Deum*, regularly write *nota bene* and *post scriptum*. Even scholars who neither know any Latin, nor ever studied it, use Latin titles for their work and cite cases or aphorisms in the Latin tongue.

Where Latin is not used, proper English usage still depends upon the notion that it is Latin that is being used. It is improper, some grammarians still intone, to split infinitives and the reason for this is simply that it was not done in Latin. Latin, in other words, rules. It was the language of power, of monarchs, and it was also the measure of language, the rule against which signs are valued. If it is dead, it is also possible that like the forms of action it still governs us from the grave. It rules as proper grammatical form; it legitimates as superior knowledge or learning; and in the legal forms of action it structures transactions, rights, and duties. If we get into trouble with the law, we know that pretty soon we will end up having to deal with Latin,

come directed to him from abroad, A Monsieur, Monsieur Heydegger, Surintendant des Plaisirs d'Angleterre" (p. 7).

be it seeking release by means of a writ of *habeas corpus*, justification through *caveat emptor*, or relief by pleading *de minimis non curat lex* (I was only a little in the wrong).

The paradox of Latin, as Waquet's cultural history expounds it, is that from the Renaissance to the present day the power of Latin was surprisingly unconnected to its actual knowledge or use. The passions raised by Latin and the debates over its pedagogical value, its retention and its decline, were "out of all proportion to people's knowledge of the language" (L, p. 2). The most striking feature of Waquet's research—though it is perhaps not wholly surprising and is certainly true of my own experience of Latin—is that the study of Latin was largely unconnected to comprehension of the language or of the purpose of studying the language. The gerund grind, as the Victorian English used to refer to Latin class, took up a huge amount of time. In the mid nineteenth century roughly 85 percent of the teachers at Eton taught Latin, yet under 40 percent of the graduating students had any sound or working grasp of the language (see L, p. 217). Latin class in my day started with Kennedy's *Latin Primer* and began with the declension of *mensa*—*mensa, mensa, mensam, mensae, mensae, mensa*: a table, o table, a table, of a table, to or for a table, by with or from a table, and so on. As Winston Churchill posed it: "What on earth did it mean? Where was the sense in it? It seemed absolute rigmarole to me" (L, p. 140). When, for instance, would one use the vocative and address or invoke "O table"? As to the endless classroom translations, what connection or meaning was a child supposed to bring to the interminable descriptions of Caesar's military maneuvers, to Labienus marching hither and thither across Gaul, or Fabius Maximus Cunctator's endless refusal to engage the Carthaginians? My most vivid memory of the Latin language—even though my research later brought me to working somewhat incompetently with Latin texts—is that of my prep school teacher Mr. Swinburne who would pick me up by the ear every time I got a declension wrong. He managed to instill fear rather than grammar, and boredom or terror seem to have been the principal markers of those who learned Latin in the modern era.

What is less immediately obvious is that what was true of my youthful experience of Latin, that it had neither relevance nor meaning, was true for centuries of students across Europe and beyond. The discovery of the printing press had the effect of introducing the vernacular into the literate world.⁶ Although Latin editions of works tended initially to sell better than

6. Elizabeth Eisenstein makes the point that it was printing and not Protestantism that outmoded the medieval vulgate and equally it was printing that gave the vernacular status and social presence; see Elizabeth Eisenstein, *The Printing Press as an Agent of Change* (Cambridge, 1980), pp. 353–59.

their translations, printing rapidly made the classics available in the vernacular. It was a principal credo of the Reformation that religious texts be available in the vernacular, and not without a certain irony the maxim *sola scriptura*, or the scriptures alone, governed the reformist project. The Reformation was not free of paradoxes: Henry VIII abolished the monasteries and prescribed Lily's Latin *Grammar* for the schools; Luther's catechism was in Latin, but it is clear that by the seventeenth century there was no pragmatic necessity for knowledge of Latin. For almost four centuries more, however, it continued to be taught; it ruled in the Church, the schools, and the professions. Although there was no obvious need for Latin, an enormous amount of school time was devoted to the dead language and to the utopian ideal of a universal tongue.

Long before du Marsais was drawn up short by the linguistic ignorance of his public, minimal competence or perfunctory performance in Latin was the norm rather than the exception. Using the example of France in the early years of the seventeenth century, Waquet evidences that even if a small elite were successful Latinists, "the mass seems to have dragged itself painfully along, eventually arriving after huge effort at a depressingly mediocre level" (*L*, p. 132). Antoine Arnauld, for example, contrasted the eight hours of Latin a day stipulated by the University of Paris with the "extreme ignorance" of undergraduates. At approximately the same time, the philosopher and rhetorician Abraham Fraunce made similar complaints about those who studied law at the Inns of Court at the height of the Renaissance: their Latin was barbarous and their method nonexistent. "Uncunning" and "illogical" lawyers, the "grand little mootmen" of the Inns of Court, learned a few Latin words and then rushed home to destroy their neighbors' prosperity with their ignorance.⁷ The French lawyer Raymond de Varennes complained later that ten years of study of Latin principles led to students coming home "stuffed and bloated with unintelligible Latin and very ignorant of everything else" (*L*, pp. 132–33). The same complaints could be heard regularly across Europe. Roughly 10 percent of students actually learned the tongue; the rest, the vast majority, simply beat their heads against a moribund universal. As the centuries progressed, the ratio of time to competence only worsened. When attempts were made to revive Latin, the reformers clearly admitted its ineradicable decline. The Polish Commission on Education in the 1770s explicitly ruled that "Latin, even if incorrect, is needed for juridical matters and by men of Law." It went on to allow the teaching of an "impure" Latin in the hope of keeping the language alive among its students (*L*, p. 156).

7. Abraham Fraunce, *The Lawiers Logike* (London, 1588), pp. 54–55, 89v.

The paradox of Latin as a universal is not simply that the language was archaic and underused or, even more radically, an artifice; as Rimbaud put it: "Who knows if the Latins existed? Perhaps it is just some forged language" (*L*, p. 144). It was neither dead nor universal. From soon after the beginning of print, written Latin was inaccessible to all but a small pan-European elite, and spoken Latin was so marked by the phonetic differences of different regions that even Latin scholars could not understand each other across the boundaries of regional dialects. For a very long time, and this is Waquet's principal argument, Latin as a competence or practice of translation has been a specialism, an elite competence, the pursuit of a relatively small minority. The paradox she poses most starkly is that Latin, a language without general linguistic significance, was relentlessly taught hour upon hour, year after year, century after century, by a method of rote learning that produced linguistic competence in only a small minority of those who suffered its interminable inscription. Teaching Latin had to be the sign of something else; it was a code, a secret encounter, a politics by other means.

Sanctity and Latinity⁸

The most general answer to the paradox of the apparent malaise of the universal lies in the status that Latin conferred not upon those who were competent in it but upon those who had studied it or could pretend to know it. The medieval distinction between literate and illiterate, between cleric and laity (or, to use the more graphic Latin, *idiotia*) was drawn between those who had studied Latin, whether or not they were competent in it, and those who had not.⁹ In one much later well-known French formulation, "the ruling classes will always remain the ruling classes . . . because they know Latin."¹⁰ That formulation now seems both prescient and inaccurate. The irony is that the ruling class did not know Latin, but they continued to use it anyway. Nietzsche perhaps captured this argument best when he exclaimed to his fellow philologists that one could only understand the classics if one had "a head for the symbolic."¹¹ To put it most starkly, Latin was the

8. The English Renaissance lawyer William Fulbecke formulated this proximity well in claiming, in an enormously successful law textbook, that "religion and law do stand together" (William Fulbecke, *Direction or Preparative to the Study of Law* [1599; London, 1829], p. 3).

9. Michael T. Clanchy, *From Memory to Written Record, England 1066–1307* (Cambridge, Mass., 1993) elaborates this point in detail in the context of England after the Norman conquest. See also, and more broadly, Brian Stock, *The Implications of Literacy* (Princeton, N.J., 1983), pp. 12–15, 27–31.

10. Attributed to M. Dupanloup by A. Proust, *Histoire de l'enseignement en France* (Paris, 1968), pp. 131–32; quoted in *L*, p. 215.

11. "He who has no sense of the symbolic has none for antiquity" (Friedrich Nietzsche, *We Philologists*, in *The Case of Wagner* [Edinburgh, 1911], p. 118).

symbolic. As Latin disappears from the curriculum is it possible that in time the symbolic will collapse? The Nietzschean context of that question provides a clue to the answer: the collapse of the symbolic is a correlate of the death of God. Like the ambivalent and ineffective murder of that other, greater universal, the Christian deity, the demise of Latin is paradoxical in its effects. Put it like this: Nietzsche may have said "God is dead," but we are still talking about the divinity. Similarly, Latin may be a defunct tongue, but Nietzsche insisted that Latin was better than German. Latin retains and may indeed extend its rhetorical power in inverse proportion to any actual competence in the use of the language.

For the post-Justinian tradition in the West that sought to reclaim and promulgate Roman law in the name of a long dead Christian Empire that had been overrun by the Goths, law was the speech of God. What God said was law, and God spoke Latin. The tradition of law in the West was explicitly a dual tradition, a tradition of canon law and civil law, of *utrumque ius* or of one law and the other.¹² Both as language and law, as grammar and what Budé termed the spirit of *latinitas*, Latin was the medium of culture, of political and legal power, throughout the Western world.¹³ As the fifteenth-century humanist Lorenzo Valla formulated it in *Elegantiae*: "We have lost Rome . . . yet nevertheless, by virtue of this even more splendid power, we reign still over a large part of the world. . . . The Roman empire is where the language of Rome reigns" (*L*, p. 258). What reigned was not simply a tradition—a knowledge of antiquities or *veterum sapientia*—but a political network, a mode of staging the social, a theater of power that was lodged firmly in the two forms of Roman law, spiritual and temporal, those of Salem and of Bizance.¹⁴

Latin was the vehicle of a dual law and of the dual polity that it instituted. The staging of the social at the structural level of rituals and ceremonies of

12. An obscure but nonetheless the best study of the reception of the two laws is Pierre Legendre, *La Pénétration du droit romain dans le droit canonique classique de Gratien à Innocent IV (1140–1254)* (Paris, 1964). The essays in Legendre, *Ecrits juridiques du Moyen Âge occidental* (London, 1988) provide further esoteric details and directions. Translations of some of Legendre's work are available in *Law and the Unconscious: A Legendre Reader*, trans. Peter Goodrich, Alain Pottage, and Anton Schütz, ed. Goodrich (New York, 1997). I have addressed this theme in "Salem and Bizance: A Short History of the Two Laws," *Law in the Courts of Love* (London, 1996) among other places.

13. See Guillaume Budé, *De Philologia* (Paris, 1536).

14. Legendre, *Le Désir politique de Dieu: Étude sur les montages de l'état et du droit* (Paris, 1988), pp. 271–89 provides an excellent elaboration of the various forms of delegated divinity, of the *vicarius Christi* or names of the Father, from Emperor to King to Judge to Law. Such a tradition was not, of course, without its critics. At the very beginning of the reception of Roman law, Placentinus, for example, in the *Sermo de legibus*, inveighs against the *ager vetus*, the reliquary field, of Justinian's law and compares the Latinate tradition unfavorably to youthful and vernacular forms of law. The *Sermo* is reproduced with commentary in Hermann Kantorowicz, "The Poetical Sermon of a Medieval Jurist: Placentinus and His *Sermo de legibus*," *Journal of the Warburg Institute* 2 (1938): 22–41.

power was modeled on a monotheistic theory of knowledge as a delegation from God's will. Knowledge was a spiritual truth. What was known was learned by dint of the knower's proximity to the divinity and so was a more or less accurate reflection of a singular universal or, in theological terms, an impossible unity, that of the conjunction of the divine and the human. Europe was spiritually and epistemologically a single empire. Where Latin reigned there was a single norm and a correspondingly singular hierarchy of governance. As the *Institutes* put it, the emperor was armed by force and by laws.¹⁵ The *Digest*, the foundational grammar or Latin source of Western law, explicitly refers to *Deo auctore*, to God as the author of the laws and refers to lawyers as *sacerdotes* or priests of law. The study of law, in its classical definition, was explicitly a knowledge of things divine and human.¹⁶ These are not points to belabor here beyond observing that the link between the theater of the divinity, Latin, and law were explicit and of structural significance. Faith in God and faith in law were expressly Latin endeavors or, for the "vulgar" who spoke no Latin, they were secondary knowledges conveyed by the interpretative—though not necessarily linguistic—skills of priests, judges, doctors, and lawyers. Law instituted a Latinate life, it "nursed" and watched over the subject's soul, and it set up the space of a singular, God-given truth.¹⁷

Before and after the Reformation, the defense of Latin against the vernacular, against the slide towards modernity, was expressly a defense of Western metaphysics, of the architecture of faith. Within the Church, the law, medicine, and science, the language of truth was exclusively Latin. The hierarchy of knowledges means that it was within theology that the defense of Latin was modeled and promulgated. Here, Latin was clearly the language of the sacred. The dignity of the liturgy required Latin; the eternal quality of the sacred could only be reflected in the immutable language of Rome. The proper idiom of sanctity was a language that remained pure by virtue of being pristine. As the mid-fifteenth-century Lord Chief Justice Fortescue put it, the language of law "is oftener writ than spoken" and so does not suffer the fate of the vernacular, which is "altered and depraved by common use."¹⁸ That it was necessary to express the universal in a dead or

15. See Paulus Krueger, dedication to *Justinian's Institutes*, trans. Peter Birks and Grant McLeod (London, 1987), pp. 32–33.

16. "Iuris prudentia est divinarum atque humanarum rerum notitia" (*Justinian's Institutes*, §1.1, p. 37).

17. Again, it is Pierre Legendre who has written most extensively about the legal function of *vitam instituere* or institution of life. See, most recently, Legendre, *Sur la question dogmatique en Occident: Aspects théoriques* (Paris, 1999), pp. 106–9. In *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley, 1996), I trace the metaphor of the law as a nursing father in Early Modern common law texts.

18. Sir John Fortescue, *De laudibus legum Angliae* (1470; London, 1737), p. 108.

at least archaic language was not without perceived irony. The defenders of the faith not only linked Latin to the unchanging nature of truth but also believed that the pristine or opaque character of Latin to those who worshipped or otherwise appeared before the *sacerdotes*, the priests or the judges, was a virtue or charm of its usage. That most of those who intoned the creed or sung orisons in Latin did not know or understand the language added to the quality of the ritual and increased the fervor of the devout. Worship conducted in a foreign tongue added an air of vagueness and mystery to the service. The *verba visibilia* of the Sacrament, the signs of the divine, were part of a complex encoding of truth and power, just as the foreign and archaic language of law may have concealed any direct referent while vividly displaying the power or *maiestas* of the interpreter. The solemnity and emotional impact of the ceremony was increased by the reliquary quality of the language in which it was performed.

The other face of the defense of Latin, *apologia pro lingua sua*, was a dismissal of the vernacular or local tongue. Again, in quite explicit terms, those who attacked Latin in the name of accessibility, equality, or contemporaneity were encouraging heresy. The priest, the interpreter, was a being apart, different from other men, a solitary figure who enjoyed the ontological plenitude of spiritual learning. Those who would try to wrest interpretation away from the priest were directly attacking the sanctity—the *hieros*—that supported both the institutional structure of tradition and the truth that it carried. Thus, according to Alfonso de Castro's *Adversus omnes hereses* of 1534, if vernacular translations were allowed “the established order would end by being overturned, with women becoming doctors” (*L*, p. 45).¹⁹ More succinctly, according to the *Repertorium inquisitorum*, a work that was central to the Inquisition, “the translation of the books of the Holy Scriptures into the vulgar is forbidden.”²⁰ The vernacular was viewed as the harbinger of the destruction of religion and a symptom of a general move towards vandalism, decadence, and disbelief. In the mode of the apology, loss of belief was associated with solecism, ignorance, stupidity, and then with femininity, antinature, uncleanness, and barbarism.²¹

The defense of Latin was political in a structural sense. A monotheistic truth is one that is repeated all the way down the hierarchy of social and

19. The reference to women doctors refers to women taking over from the doctors of theology whose responsibility it was to preserve the integrity of the faith. Interestingly, of course, de Castro's prediction was accurate.

20. *Repertorium inquisitorum*, trans. Louis Sala-Molins under the title *Le Dictionnaire des inquisiteurs: Valence, 1494* (Paris, 1980), p. 185.

21. Such is the rhetorical mode of the defense. It is captured well in the figure of *antirrhesis*, which is discussed and elaborated upon in Goodrich, *Oedipus Lex*, chap. 3.

political knowledge from the divine ruler to the lay subject or pauper. Each lesser form of subject is a mirror of its exemplar, its model or prototype, the divine subject. It should not, therefore, be a surprise that the defense of the legal use of Latin took precisely the same form as the theological argument in favor of the dead universal. Using the example of Early Modern common law, the founders of the tradition were explicit advocates of the *vocabula artis* of law. Sir Edward Coke, whose major texts were both in Latin and the vernacular, was very clear that law Latin, the language of record and of the principles and maxims of law, and to a lesser degree law French, the Gallic idiom of local customs, were the intrinsic tools of those learned in the law, of the *iuris peritus*, or legally wise.²² There was no question that law should remain in its own special code for reasons that were both structural and pragmatic. At a structural level, the language of law, the mixed argot of law Latin, law French, and Middle English, was a pristine form reflecting a law that went back not simply to the Romans, the Venetians, and the Spartans but also to Camelot, to the Druids, to Neptune, and thence to nature and God.²³ The foreign quality of legal language reflected an origin in time beyond memory and expressed a formal character of law that was not only artistic but also authorizing in the strongest of senses.

The argument in favor of law Latin was in virtually all respects the same as the theological debate. Faith in law required a language that would reflect the sanctity and opacity of law. Thomas More, for instance, was adamant in his dispute with Christopher Saint German that Latin alone would preserve the tradition of law and the esoteric truths that specialist interpretation alone could provide.²⁴ When Saint German argued for the printing of law books in the vernacular his argument was not that the language of law be changed but only that there be accessible representations of law, translations of statutes, treatises, and institutes so that public awareness of law could be promulgated.²⁵ At the level of structure, the argument for trans-

22. See the preface to Edward Coke, *The Reports of Sir Edward Coke*, ed. George Wilson (London, 1777). For discussion of the languages of law, see David Mellinkoff, *The Language of the Law* (Boston, 1963), and Peter Tiersma, *Legal Language* (Chicago, 1999).

23. Coke, Fortescue, Spelman, Selden, and others all offered wildly differing mythical origins for common law. These are discussed briefly in Goodrich, "Eating Law: Commons, Common Land, Common Law," *Law in the Courts of Love*, pp. 87–90.

24. See Thomas More, *The Apology*, in *The Complete Works of Sir Thomas More*, ed. J. B. Trapp, 15 vols. (New Haven, Conn., 1979), 9:131; interestingly, in *Utopia*, More inverts the argument, referring to "laws which either be in number more than be read or else blinder and darker than that any man can well understand them" (More, *Utopia*, trans. Ralph Robynson [1556; Boston, 1999], p. 173).

25. Christopher Saint German, *Salem and Bizance* (London, 1533), fol. iv r, argues that Latin hides the defects, the "defaults" of the tradition and law in an inaccessible tongue. If the law is for the people then there should be an English version of it. It was this argument more than most that incited More's *The Debellacyon of Salem and Bizance* (London, 1533).

lation and for printing law books was not an attack upon legal faith. Quite the contrary: translation and use of the vernacular would create a second and more popular order of law, but it would remain nevertheless a second tier, a more popular knowledge, a derivative species or shadow of a theocratic order.

The sages and apologists of common law argued consistently for a discipline and method that was rooted in the Latin of Azo and Bracton. For Coke, there was no question that the *vocabula artis* of law be retained. It was necessary to protect the *imperite*, or unlearned, from indulging in legal practice or lawsuits for themselves and thereby losing their property or their fortune. He also believed that the antiquity of common law should necessarily rest in the time-honored language of the profession because it was an ahistorical truth, one which returned time and again to reform ill-considered statutory amendments or the merely human interventions of unlearned politicians. Again resorting to a Latin principle and idiom—even though this work was in the vernacular—Coke observes that *in hominis vitium non professionis*: it is men who err and not the law.²⁶ For Abraham Fraunce, etymology was truth (*id est veriloquium*), and Latin grammar was essential to knowing one's profession.²⁷ Law was a science to be conducted *more geometrico*, in Lambard's usage of a continental axiom, and for later defenders of the faith, such as Maitland, the same position held true; the language of law reflected terms of art that were akin to the Latin of chemists or geometers.²⁸ The Reformation drive to the vernacular, in other words, did not impact directly upon common law. At most, it created a problem of representation, a need to use vernacular translations on the public margins of the profession as a way of allaying the more radical criticisms of lawyers and the law. In Fulbeck's phrase, the terms of the law were "sileni alcibiades," meaning that they were foreign and ugly on the outside but contained gems of truth within.²⁹

For the apologists of common law, the defense of law Latin and law French, of principles, rules, and records that remained exclusively in Latin until the end of the seventeenth century, was rooted in a kind of mysticism.

26. James Osborn's Case 10 Co. Rep. 130. The argument in favor of Latin is given in the preface to Coke, *The First Part of the Institutes of the Lawes of England, or, a Commentarie upon Littleton*, 2d ed. (London, 1629), fol. C b a, and the introduction to Coke, *The Reports of Sir Edward Coke*.

27. See Fraunce, *The Lawiers Logike*, p. 56v.

28. See William Lambard, *Archeion, or Discourse on the High Courts of Justice in England* (London, 1635), and F. W. Maitland, *English Law and the Renaissance* (Cambridge, 1901).

29. Fulbeck, *Direction or Preparative to the Study of Law*, pp. 55–56; see Goodrich, *Languages of Law* (London, 1990), where I argue that Fulbeck falls within a much longer tradition of juristic occlusion of the political functions of law Latin and law French.

The language of law was an esoteric code; it was a mystery enshrining the *arcana imperii* and was defended for its theological value as much as for its practical use. Everything connected to the language of law was sacred, and thus, for Coke, to take an example, the records of law were kept in *thesaurus regiae*, in the king's treasure chest and later in the sacred library (*sacramentorum latibula*) at Westminster.³⁰ At a political level, the arguments in favor of the retention of the foreign languages or *vocabula artis* of law came much closer to promoting codification and latinization of common law than to threatening its vernacularization.³¹ The point is counterintuitive and somewhat paradoxical and so deserves emphasis.

The push for the vernacular in the disciplines was a product of print and of Ramist as well as Lutheran reforms. England resisted most of this continental pressure *descendre en moderne*, and it had a largely superficial effect there. It is true, of course, that the proponents of the vernacular praised England and Englishness as against Rome and the tinctures of Normanism.³² Promotion of the vernacular was presented as a reassertion of an antique Englishness that preceded Rome and the Roman occupation of Britain.³³ Richard Mulcaster, the author of the *The First Part of the Elementary* of 1582, a treatise on the "right writing of the English tongue," thus argued that English was older and better than Latin.³⁴ There was nothing that could not be translated, and many ingenious artistic vocabularies were subsequently devised. In philosophy, for example, Ralph Lever produced an English *Arte of Reason*, with a wholly anglicized vocabulary of terms "compounded of true and ancient English words."³⁵ Lever's lexicon of inholders (substance), inheers (accidents), endsays (conclusions), storehouses (common places or topics), proving terms (invention), and so on was free both of inkhorn or foreign terms and of philosophical significance.³⁶

As in the Church, so in the polity: the linguistic reformers won the battle but lost the war. The Anglican settlement merely passed the power and most of the forms of Rome to the English sovereign and Church of England, while

30. Coke, *The Third Part of the Institutes of the Lawes of England: Concerning High Treason, and Other Pleas of the Crown, and Criminal Causes*, 2d ed. (London, 1648), fol. L ii a.

31. Thomas Starkey, *A Dialogue between Reginald Pole and Thomas Lupset* (1535; London, 1948) is the best example. For a discussion see Goodrich, "Poor Illiterate Reason: History, Nationalism, and Common Law," *Social and Legal Studies* 1 (1992): 7–28.

32. See Thomas Wilson, *The State of England, Anno Domini 1600*, ed. F. J. Fisher (1602; London, 1936), and John Warr, *The Corruption and Deficiency of the Lawes of England Soberly Discovered* (London, 1649).

33. See John Favours, *Antiquitie Triumphant over Noveltie* (London, 1619).

34. See Richard Mulcaster, *The First Part of the Elementary* (London, 1582).

35. Ralph Lever, preface to *The Arte of Reason, Rightly Termed, Witcraft, Teaching a Perfect Way to Argue and Dispute* (London, 1573), n.p.

36. See *ibid.*, and Richard Sherry, *A Treatise of Schemes and Tropes* (London, 1550).

the translation of statutes and law books simply added legitimacy to a Gallic and so thoroughly Latin law.³⁷ The most significant defense of the English Church was John Jewel's *Apologia ecclesiae Anglicanae*, a Latin apology that argued unrepentantly for an English Roman Church and for the continuity of this local form of a Latin religion. Thus Jewel states of the new law that "we have overthrown no kingdom, we have decayed no man's power or right, we have disordered no commonwealth. There continue in their own accustomed state and ancient dignity the kings of our country of England."³⁸ In a similar vein, one of the first English dictionaries, the wonderfully titled *Manipulus vocabulorum*, was a rhyming translation of "original" Latin words.³⁹ In lexico-grammatical and legal terms, Latin preceded and acted as the model for the vernacular use. Translation did not expunge but rather extended the reach of Latinity.

The vernacular created a second stratum of legal language, a more or less rich vein of accessibility for those who could read the national idiom. The movement towards the national language, however, neither reformed the linguistic structure of law nor reversed the hierarchy of legal knowledge. The early law dictionaries were part of a project to institutionalize common law in explicitly Latin form, and Cowell's *Interpreter* even takes its subtitle, *Booke Containing the Signification of Words*, from the fiftieth book of the *Digest*, *De verborum significatione*, a lexicon that was used throughout Europe both as a title for treatises on interpretation and as a dictionary of terms.⁴⁰ Cowell transcribed an intrinsically Latin institutional structure by translating the antique words of the law. As the Ramists were fond of saying—and of course they said it in Latin—the *ars artium*, the art of arts, and *scientia scientiarum*, the science of sciences, was the rule of method inherited through classical scholasticism. Similarly, though this was not his direct meaning, the English civilian Sir Robert Wiseman termed Roman law the *lex legum*, or law of laws, and Latin was the form it took.⁴¹

Within the civil and ecclesiastical polity of England, the political asser-

37. See Goodrich, "Critical Legal Studies in England: Prospective Histories," *Oxford Journal of Legal Studies* 12 (Summer 1992): 195–236.

38. John Jewel, *Apologia ecclesiae Anglicanae*, translated under the title *Apologie or Answere in Defence of the Church of Englande* (1562; London, 1564), fol. G i b.

39. See [P. Levins], *Manipulus vocabulorum: A Rhyming Dictionary of the English Language* (London, 1570).

40. See John Cowell, *The Interpreter, or Booke Containing the Signification of Words* (London, 1607).

41. See Robert Wiseman, *The Law of Laws, or the Excellency of the Civil Law above All Humane Law Whatsoever* (London, 1664). The original edition was in Latin, with the title *Lex legum* (London, 1656). On the Ramistic reform of the disciplines, and particularly law, see the introduction to Petrus Ramus, *The Logike* (London, 1574); and, for a discussion, Goodrich, "Ars Bablativa: Ramism, Rhetoric, and the Genealogy of English Jurisprudence," in *Legal Hermeneutics: History, Theory, Practice*, ed. Gregory Leyh (Berkeley, 1991), pp. 43–82.

tion of the national language never disturbed the order of things, the establishment of law, or the way things were done. It might be that the vernacular allowed a greater degree of dialogue over laws and judgments but that novel accessibility was a second order of discourse and neither penetrated nor reversed the onward march of a tradition and hierarchy ensconced in antique forms and their sacral terminologies. Latin remained the master trope of law right up to the twentieth century; the norm was the *gnome* or sentential figure that derived from a virtually seamless tradition of law Latin and, at the local level, of the *ius commune* or common law, the miserable terminologies of law French and Middle English.

Collapsing the Symbolic

A history as expansive and a politics as pervasive as that of the Latin tradition cannot and does not die out; it mutates. It is a history that belongs in the long term to structures, and, to borrow a phrase from Foucault, "we have not yet cut off the head of the King" in grammar.⁴² The architectonic of the political, the "pre-schematisation" of social thought, is predicated upon the language and categories of Roman law.⁴³ Institution and subjectivity alike are structured around the trinity of persons, actions, and things, a Roman law division of categories that we inherit from Gaius through the Christian tradition of civil law. It is possible, therefore, to argue that Latin survived because it was only the expression of a more fundamental law. The longevity of its pedagogy somehow and indirectly signified a deeper or unconscious meaning and affect. Borrowing from Nietzsche, I suggested earlier that Latin was the symbolic—the long-term structure of social life—and this suggests that the demise of Latin should be understood not as a literal death but rather as denial or negation, as an acknowledgement in the form of dismissal, as a negative incorporation. We may continually or episodically be trying to kill Latin, but it is still very much alive and kicking.

The usual explanation for the supposed death of Latin is twofold. First, at a political level, the rise of nationalism destroyed the universal tongue. It was a sectarian or local defeat in which the national idiom and literature sponsored an imagined community that was alike free of Latin biases and universalist pretensions.⁴⁴ This thesis, however, neither fits with the history

42. Michel Foucault, *The History of Sexuality: An Introduction*, trans. Robert Hurley (New York, 1978), pp. 88–89. Nietzsche, in the *Genealogy of Morals*, also makes the point that we cannot claim to have killed God if we still believe in grammar.

43. Hans-Georg Gadamer, *Truth and Method* (London, 1965), p. 494, quoted in W. T. Murphy, "Memorising Politics of Ancient History," *Modern Law Review* 50 (1987): 386. See also Gillian Rose, *Dialectic of Nihilism: Post-Structuralism and Law* (Oxford, 1984).

44. See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, 1984).

of the continued teaching of Latin long after the advent of vernacular literature nor does it explain the chasm that has always separated the assertion of Latin literacy from its practice. The second explanation is cultural. According to Waquet, the long term demise of Latin was a result of exhaustion. It died with a whimper and over several centuries because, as H. G. Wells put it, teachers of Latin were like people endlessly fiddling with the keys to an empty room. The May 1968 slogan *Down with Latin* expressed an unbridgeable gap between the archaic language and contemporary life. By the late twentieth century Latin had become confined to universities and schools and that restriction proved fatal: "The exhaustion of which Latin died in the 1960s was not exhaustion of the language. Latin disappeared because it no longer meant anything to the contemporary world" (*L*, p. 273). This explanation too is unsatisfactory or at least incomplete. Latin never meant very much in any direct sense to the bulk of the population, and its link to the contemporary, to popular literary genres or everyday speech, was always tenuous at best.

If the demise of Latin refers to the death of Latin speakers and so to the demise of a minority dialect or language then its position is ironically not that of extinction but rather of absorption. Latin has been incorporated into the dominant culture and lives on as a fecund paradigm of lexical and legal choices of diction and argument. As far as English is concerned, Latin lives in etymology, in lexicon, and in grammar. The position of contemporaries is arguably not that different from that of those whom Fraunce dismissed as "silly penmen, and illogical lawyers, who think it a fruitless point of superfluous curiosity to understand the words of a man's own profession."⁴⁵ It may be true that legal language no longer depends upon any explicit recognition of Latin, but there is Latin everywhere in law. The Latin that is internal to law, that survives in maxims and words as well as in the derivation of English words, in the rules of grammatical order and reference—in short in what we now call style—is far from insignificant. In this sense Latin lives on; it has a second life as part of the English language and as a primary source of the argot of law. Latin, which was historically the almost exclusive possession of the ruling class, is now a property of, or more accurately a dialect within, the vernacular. It is no longer exclusively an upper-class affectation, but it remains an attribute of professional practice and a weapon in the rhetorical armory of scholars and lawyers.

Just as the iconic archaisms of a culture—its architecture, its monuments, its records and other insignia—continue to depend upon Latin to inscribe and interpret the culture's forms and occasionally its words, so too

45. Fraunce, *The Lawiers Logike*, p. 56v.

law carries within it the scars or long-term inscriptions of the moribund universal. It is here that the careless talk of the exhaustion or death of Latin is most paradoxical and least persuasive. Western metaphysics was, is, and remains Latin. The question, of course, is what such a striking hypothesis actually means. I will suggest that while the supposed death of Latin seems to render it less visible, its political effect is to make it ever more effective as a rhetorical device. Its scarcity enhances its value and credibility; its esotericism renders it rhetorically powerful. Latin titles, quotations in Latin, references to Latinate sources or "originals" sound ever stronger in the contemporary public sphere. The archaism of Latin refers to a metaphysics and a sense of tradition that have strong effects within the scholastic and professional public spheres. It has different effects from those that it had in the past, when the literate had to pretend to know Latin, but those effects remain powerful and persistent. As the example of the Queen of England resorting to Latin evidences, the symbolic still requires Latin, and Latin gives maximum effect.

The exhaustion of Latin suggests sleep rather than death, and it is in that vein that we should try to understand the afterlife of the language in terms of the fate of the symbolic. At the level of "the order of things" the demise of Latin exposes the symbolic roots of our culture and opens them to criticism and renewal. There is, in other words, a liberatory potential to the collapse of the antique idiom that lies principally in the opportunity to assess and reconstruct the conceptual framework of institutions and cultures. One could say that the death of Latin brought on the postmodern condition or that what was unconscious within public culture can now be made conscious, rethought, and either retired or revived. There is, in a sense, a reversal of cause and effect insofar as the Latin that used to rule absolutely as grammar is now disinterred as a substrate of concepts and terms of art that can be appraised and either discarded or put to other uses. Latin remains and poses for us the question of how we should use those remains.

The concept of the death of Latin, as Nietzsche suggested, has its roots in the death of God. It therefore also suffers the ambivalence and complexity of that peculiarly Christian parricide. In metaphysics God lives on not least by virtue of the denial of His existence, the Nietzschean claim that we killed Him. As Nietzsche also would put it, beware of killing your enemy because you thereby immortalize him. Abolishing Latin from the curriculum or from what du Marsais called "the ordinary course of studies" does not and cannot eradicate Latin or erase its significance to the structural, long-term patterns of Western culture. Down with Latin implies laying or throwing Latin down, an iconoclasm that creates initially a problem of method. At one level, the problem is that we cannot know what it means to kill Latin,

to collapse the symbolic, precisely because we do not have the means of knowing. Latin is, in this sense, what separates us from the past. The *Corpus iuris*, to borrow a metaphor, is precisely an embodied law, an unconscious form, a habit or ethic that the modern legal profession, the remnant of scholasticism within the public sphere, enacts with only the vaguest of notions of the categories and principles that make contemporary law possible.

It is particularly true of common lawyers that an absence of Latin and a historical resistance to acknowledging the Latin roots of common law have sometimes obscured the meaning of rules. The Ramist reduction of common law to treatises and institutes in the Early Modern period, from Edward Coke to Thomas Wood, was both a scholastic enterprise and a borrowing from Roman law.⁴⁶ The nineteenth-century developments of the common law were almost entirely predicated upon the importation of forgotten Roman law rules.⁴⁷ The much prized contemporary renaissance of equity is nothing other than a return to Latin principles. The equity of restitution, for example, is no more than a Roman return within a forgetful Anglican law.⁴⁸ There is also, however, a certain obscurantism to the claim that one cannot know the past in translation. Virtually all of the treatises and institutes, statutes and judgments upon which Roman law is based are available in the vernacular. The tradition can be studied and pieced together in its modern and local forms. These may depend historically upon Latin, but they are now variant and local, vernacular and revised forms of the antique language and law. What is needed now is not a revival of Latin but an understanding of the anthropology and philology of transmission.

That we disliked Latin—for my generation that meant a dislike of our

46. Coke, *The First Part of the Institutes of the Lawes of England*, is perhaps the least interesting example. The tradition of institutes, modelled on Justinian's, begins with John Cowell, *The Institutes of the Lawes of England, Digested into the Method of the Civill or Imperiall Institutions* (1605; London, 1651), which originally appeared in Latin and was subsequently translated by the author. Fulbeck, *A Parallele or Conference of the Civil Law, the Canon Law, and the Common Law of This Realme of England* (1601; London, 1618) argues that the latter law cannot be separated let alone understood without a knowledge of the former two. Thomas Ridley, *A View of the Civile and Ecclesiastical Law* (Oxford, 1676) argues lengthily for the importance of understanding Roman law to anyone who hopes to understand common law. Thomas Wood, *An Institute of the Laws of England*, 2 vols. (London, 1720) went through several editions, and in his *Some Thoughts Concerning the Study of Laws in England Particularly in the Universities* (London, 1727), pp. 8–9, Wood is adamant that it is with the imperial law of Rome that any understanding of legal forms—of *regulae iuris*—begins.

47. This argument is well made by A. W. B. Simpson, "Innovation in Nineteenth-Century Contract Law," *Law Quarterly Review* 91 (1975): 247–78. See also James Gordley, *The Philosophical Origins of Modern Contract* (Oxford, 1991) on the seventeenth-century Latin tendrils of modern contract rules.

48. See Peter Birks, *An Introduction to the Law of Restitution* (Oxford, 1985), chap. 1; Birks provides a useful account of the civilian roots of quasi contract.

Latin teachers and their violent pedagogy—does not mean that we should ignore it. That Latin is officially—if erroneously—dead, that we feel in some respects murderous and guilty, requires if not a process of mourning at least a careful and unhurried coming to terms with what the disappearance of Latin from the common curriculum means. I would argue that at best it offers an opportunity, an opening onto what has been for some time a sclerotic residue within an uncertain tradition. The decay of Latin allows us to acknowledge this passing on, this skeleton in the closet of law. It makes the demise of Latin explicit and so potentially an object of study, of a renewed humanism, of a new historicism and translation. It allows us to acknowledge, outside of spurious nationalistic sentiments and willful parochialism, that Latin has been and is an important and much ignored register within a polyglot and pluralistic tradition of law. Paradoxically the death of Latin may in this sense remind common lawyers of the European roots and common continental tradition, or *ius commune*, to which Anglo-American statute and precedent belong as a local variation.

The moribund contemporary state of Latin may presage a diminution and fragmentation of the public sphere. That the public sphere is Latin in structure, that lawyers act as if they knew Latin, that the works of scholars and critics devolve around translated Latin forms does not suggest demise so much as mutation or a changing form. To borrow again from Nietzsche's aperçu, those who work with texts need a head for the symbolic and that means at one level that they must understand inherited Latin forms. The symbol is also, however, a coded reference, a sign with a plenitude of connotations. We are probably little less literate in Latin now than during the era of its renaissance. The Renaissance was an age of translation, and then as now literacy in Latin was an elite preserve. Until recently the teaching of Latin was as much about the inscription of a formula as it was about an ability to read Latin texts. In other words, Latin still abounds in translation, and Latin and Latinate texts fill up the libraries. Latin is simply used differently now. It is if anything more esoteric, more arcane, and so also more striking and of greater potential for rhetorical effect. The use of Latin is full of sound and fury.

Being Dubious in *Bush v. Gore*

Writing at the height of the European Renaissance of the sixteenth century, François Hotman remarked that his contemporaries' obsessive and servile concern with reviving Roman law was both uncritical and largely erroneous. Roman law was for him an antique form—*tenebras antiquitatis*—that offered a resource but few answers to contemporary problems. Roman law was in the end no more than the law of a particular time and

place; far from being a universal rule, it was "a particular prerogative invented to maintain bourgeois Romans in a higher degree of dignity and wealth than the other inhabitants of Italy."⁴⁹ Hotman argued for a critical appreciation or resolute use of Roman law where it could properly add to or amend contemporary understanding of local rules. Bearing in mind the virtually coincident jurisdiction of philology and law during the Renaissance, Hotman's argument should be understood as a call for an appreciation of Latin in its historical and cultural context.⁵⁰ Roman law, like any law, was a political project and should be understood as such. Criticism stands in opposition to reverence; erudition lies in understanding Latin as a symbol, as an imperialist language and law that lies at the roots of all the Western juristic traditions. We do not need to love Latin, nor do we need Latin to understand vernacular laws, but without an appreciation of the imperialism and the monotheism that founds the culture of Western law we have a slim grasp of and little access to the symbolic functions of the legal forms that constitute the institution and the public sphere.

I have argued that Latin is not dead, it is unconscious—asleep. The question that persists is therefore that of coming to terms with the recognition of that loss of consciousness, that collapse of the symbolic. Like Nietzsche's ambivalent death of God, the collapse of Latin as a living or conscious register of national languages has important political consequences. We have now to come to terms with the fact that there is no singular grammar, no one truth or substrate of tradition and law. Hotman's shadows of antiquity are precisely that, shades or ghosts, the continuing forms of the past in the present. We can mourn their loss, their death or collapse, the demise of the law of laws. That is a specialist undertaking, a species of erudition, though one that can certainly be translated into vernacular forms. In this vein, Latin represented the myth of a universal culture, the hierarchical dream of an absolute and unitary source of a singular structure of law. That myth or dream lives on in Western culture, but it is not any longer the only or dominant project. It is the hierarchy and specifically the *hieros* or sanctity of Latin that needs to be unraveled and put to other uses. The collapse of the symbolic allows us moderns to invent new and hybrid forms.

The rhetorical significance of modernity's indirect access to Latin texts and traditions should be viewed neither nostalgically nor as a sign of powerlessness. In any proper sense, Latin was always a specialism, and philological erudition—pedantry—inhabited a small corner of the public

49. François Hotman, *AntiTribonian ou discours d'un grand et renommé iuriconsulte de nostre temps sur l'estude des loix* (1567; Paris, 1603), p. 74.

50. A theme well elaborated in Donald Kelley, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance* (New York, 1970).

sphere. For the various publics that now make up civil and political society, Latin is as much as ever a matter of translation, a matter both of there being an "origin" to translate or betray and an expression of distance and difference. Latin may seem more esoteric, the preserve of the Ivy League, but that purist sense or at least appearance of linguistic use was always archaic, elitist, and specialized. Latin as a conceptual structure, as grammar and law, has been readily accessible in translation for centuries. We do not need to be specialists to use Latin, nor should we feel inadequate or inauthentic for using it without understanding its declensions or moods. We are free to use Latin, and in the contemporary context that means using it as a heavy signifier—big words. Latin was the symbolic; it is also a symbol, and it should be used as such, as a rhetorical effect, as a striking or loud statement in the theater of the public sphere. We share our ignorance of Latin, and we should put our ignorance to work. We can equally share an appreciation of Latin as a rhetorical device, as a form of argument, a reference to the aporia of knowledge. We should not, in other words, be shy of Latin but rather should use it to be critical, to apprehend and unpack both vehemence and doubt. To borrow again from the *Manipulus vocabulorum*, it is necessary to use Latin, to use our handful of surviving Latin words, to be sure, but also to manipulate words, to remember both the history and the doubt that attach to all arguments and all judgments.

The paradoxical consequence of acknowledging the demise of Latin transpires to be that of inaugurating a critical use of the idiom and the structure of Latinity. Latin is an immense reservoir of cultural and legal possibilities, of heavy signifiers and dramatic enactments of argument. These need to be appropriated and, specifically, to be taken away from the elite that claims an exclusive use of such terms. This does not mean a return to Latin but rather a conscious appreciation of the political importance and fragility of the work of translation. To gain access to what Latin literature has to offer means engaging in the work of reviving and inscribing translations of that tradition within our own. It means reversing the hierarchy that used to see Latin as the norm or rule. The vernacular and local law are now the context within which and from which the relics of a putatively universal law are to be appraised and put to use. Within common law, to continue with that example, for five centuries Latin has been treated antagonistically as an ink-horn or hotchpot form. Latin has been reviled and cursed for reasons that range from pedagogy to politics. Such hostility gives Latin too much status, too much power. It leaves it obscure or untranslated. Such an approach is disempowering and politically naive, as can be illustrated vividly by looking to contemporary case law.

What then, to take a final instance, is the meaning of the Latin phrase

used recently and egregiously by the Supreme Court? In *Bush v. Gore*, the majority of a divided Court handed down a judgment prefaced by two Latin words: "per curiam."⁵¹ The technical legal meaning of *per curiam* refers to decisions handed down unanimously on procedural issues or on "demurrers," a law French term that refers to preliminary points of law. The Latin term in *Bush v. Gore* does not have either of these connotations; the case was neither argued nor decided as a procedural issue, and more to the point, it was far from a unanimous determination. The rhetorical significance of the use of Latin, the framing of the decision as *per curiam* lay precisely in Latin as a sign, and any critical account of *Bush v. Gore* would do well to begin by translating that sign.

The usual translation of *per curiam* is "by the court" though it equally means "through the court." The latter meaning conveys more of the force of the legal use of the term. Historically the term *curia* referred to the space or place of law. It was the suite or following of the king whose law an itinerant judiciary would dispense as delegates of both God and the Crown—in the formal and of course Latin designation, the judge was *delegatus maiestatis*.⁵² In this derivation *per curiam* meant in essence that a common law judge's decision was imbued with the sanctity and authority of the divine source of the law. The law spoke through the judge. The Latin term, in other words, implied a Latin metaphysics. It invoked and, as an archaic usage, as a Latin term of art it still invokes the mystical source of law, the *corpus mysticum* of the constitution.⁵³

It seems highly unlikely that the Supreme Court, in labeling its decision *per curiam*, was self-consciously manipulating the etymological meaning of the term. The Court's use of a foreign language nonetheless and somewhat ironically participated in that earlier meaning. In a decision that was bound to face immediate and intensive public scrutiny, the Court used a dead language to summon the majesty and mystery of law to their aid. Their use of Latin was an explicit attempt to obscure the human sources and the political meanings of the judgment. It is not even necessary to address the other possible meanings or plays upon the word *curius*, which include "full of sorrow," to appreciate that the Court's use of the Latin was at best dubious, and being dubious is likely the purpose and certainly the effect of such a

51. See *Bush v. Gore*.

52. On the history of the king's *curia*, see Lambard, *Archeion*, p. 148. On the role of the judge as delegate, see, for example, Cowell, *The Interpreter or Booke Containing the Signification of Words* (Cambridge, 1607), though Fortescue, *De laudibus*, is an earlier and fuller source.

53. On the history of the *corpus mysticum* of state within the common law tradition, the exemplary study is still Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, N.J., 1957).

use of Latin in a vernacular age. The Court used Latin as lawyers have used Latin for hundreds of years, namely, to obscure, solemnize, and sanctify what would otherwise appear to be an all too human and much too political process.

The contemporary function of Latin is rhetorical. It acts as a sign, a figure or trope, the conduit of extremity of emotion. It indicates a charge or condensation around the subject or judgment being delivered. The Supreme Court's use of Latin fits that rhetorical definition. The Latin mode of expression was a persuasive device, an attempt to use a figure of speech that would allay the fears or satisfy the desires of its auditors. The appellation *per curiam* was technically a *catathesis*, the figure that in classical rhetoric depicts the incorrect use of a term, and most specifically an archaism or foreign term that is manipulated for persuasive effect.⁵⁴ Latin has its uses, but such uses should not be allowed to obscure the political nature of legal judgment or the hierarchy that is secreted in the archaism of juristic rules and procedures. Latin, including the decision to use or cite Latin, needs to be translated and critically examined. Latin is not of itself the bearer of a threat; it is no longer a mode of pedagogic punishment nor even necessarily the menacing sign of class superiority or domination. It can and in some contexts does, however, still have those functions, but only to the extent that the reader or audience allows. The availability of translation and indeed the inauthenticity of most legal and political uses of Latin, as with that in *Bush v. Gore*, mean that this sound and fury can be challenged, contested, and exposed. The use of the term *per curiam* in *Bush v. Gore* was the legal equivalent of thinking that du Marsais's *Des Tropes* referred to a tribe. Whereas the latter example may raise a smile, an equivalent blunder on the part of the Supreme Court evokes tears rather than laughter.

54. Du Marsais, *Des Tropes*, pp. 33–44, interestingly treats *catathesis* as the primary trope: erroneous use is the primary form of invention. For a lawyer's definition of the term, see George Puttenham, *The Arte of English Poesie* (1589; London, 1869), p. 191, where *catathesis* is defined as abuse. I am suggesting that the use and misuse of the term *per curiam* was a double abuse, first in the simple resort to Latin to hide the process of determination—its ambiguity or division—and second in that the term has an artistic meaning that is here misrecognised or avoided. For a different (apologetic) view of the usage, see Arthur J. Jacobson, "Ghostwriters," in *The Longest Night: Polemics and Perspectives on Election 2000*, ed. Jacobson and Michel Rosenfeld (Berkeley, 2002).