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Grammatology in America

A Sketch of the Return of Philology in Legal Studies

Deconstruction landed in the United States in 1976. Its reception was marginal, confined, and so in many respects exemplary of the tradition of theoretical translation, of borrowings and importations. It can thus serve well as the emblem of a certain tension or trajectory within the contemporary history of the legal institution in the United States. Deconstruction arrived as a hieroglyph in the form of the English translation of Derrida's treatise on writing systems, *Of Grammatology*. The front cover of the book, appropriately enough, carried an ideogrammatic picture, an emblem from a Japanese scroll. The book was deemed sufficiently opaque by its translator to warrant a ninety page introduction. Even though the text was now in English, slightly over a quarter of the book is composed of an explanatory essay.

The United States, the land of plain English and straight-talking, did not take well to grammatology or the study of the politics of writing systems. The history and theory of 'scribble', of scriptural wars, of battles fought out in libraries over the enigmas of textual meaning, did not seem a natural or politically immediate object of address. Deconstruction, the vaguely menacing or necrophylic name under which grammatology circulated, flared briefly and shockingly in Departments of Literary Criticism and French Studies, but its fascination with texts was soon passed over in favor of media studies, film and video culture. The library and the book seemed follies left over from an earlier age. The politics of writing were of interest primarily to historians, to scholars and other librarians. Except perhaps in law, where the case method still dominates legal training, and recourse to precedent, the conflicting prior inscriptions of legal rules, is still the manner in which disputes are agonistically resolved in the public domain.

Lawyers, however, tend to be fond only of their own hieroglyphs, mottoes, maxims, and other linguistic arcana. The profession in the United States is no exception. Grammatology received neither welcome nor exposition in the legal academy until it was reiterated by Derrida, in a somewhat different form, in a now famous article on deconstruc-

tion as justice, published initially in a law review in 1990. Drawing, in what is now a much emulated yet little understood fashion, upon Lévinas and the theology of the face, Derrida argued that deconstruction marked the possibility of justice. Suddenly, charismatically, and not without a certain radicalism, deconstruction was relevant to law: it marked a space of non-judgement, a moment of suspension of law, the unique instance of undecidability in which prior norms give way to the singular act of deciding.[1] The name of this theoretical space of excess, this beyond of law that deconstruction marked, was simply that of justice.

The nineties came and went. The afterglow of a conference dwindled. The circulation of an article came to a rest on the shelves of the library – next to the law reports, a long way from the humanities, a sleeper. Although the US legal academy had not understood the radicalism of Derrida's thought – "deconstruction makes an offer that you cannot understand" – it did rapidly perceive the work of grammatology as a threat. Deconstruction operated here more as a label than a position: it represented the nihilistic threat of indeterminacy, the danger of multiple and undecidable meanings, in short it augured scholarship not law. These were all inimical to the reproduction of the autonomous doctrines of substantive regulation, and all in some sense threatened the seriousness of law with the levity of literature, with the hedonism, anarchy or play of non-professional disciplines. At the core level of identity, deconstruction was an infantile disorder. It represented a refusal to behave professionally. It was at most an art of the off hours, an extra-curricular agenda, environmental noise on the borders of the legal system.[2]

Clearly there are aspects of Derrida's work that are antithetical to the legal culture of the United States, not least his early anti-humanism, and the correlative critique of the possibility of the subject, the founding category of the liberal representation of law. It was not mad for the legal academy to be resistant to the textual politics of decon-

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[1] The essay, "Force of Law: The Mystical Foundations of Authority" is most accessibly memorialised in DRUCILLA CORNELL/MICHEL ROSENFELD/DAVID GRAY CARLSON (eds.), *Deconstruction and the Possibility of Justice.* New York 1992, a slightly truncated republication of the Conference volume of *Cardozo Law Review* 11 (1990). For a brief analysis of the English language impact of Derrida's essay, see MARGARET DAVIES, *Delimiting the Law: Postmodernism and the Politics of Law*. London 1996.

[2] This position is not confined to the common law legal academy. GUNTHER TEUBNER, "The King's many bodies: The self-deconstruction of law's hierarchy", in: *Law and Society Review* 31 (1997), 763–788, joins the debate in the United States by arguing that deconstruction fails to address the 'hard core' – that is, socio-economic – reality of globalisation. I have limpidly addressed that position in PETER GOODRICH, "Anti-Teubner: autopoiesis, paradox and the theory of law", in: *Social Epistemology* 13 (1999), 197–214.

struction. Ironically, however, what was resisted and vilified was more a fantasm or projection of European theory, the label deconstruction, than the complex return to philology within law that I will suggest it will eventually be seen to have represented. Deconstruction was a popularising notion, it was the adventitious slogan under which a theoretical importation was marketed, it was an emblem that circulated without its proper grounding in the theory of grammatology. The reception of grammatology, in other words, has yet to occur. Its significance far exceeds the antinomy of ethics and law that deconstruction has most often been taken to represent. Grammatology, the study of legal writing systems, is the coming project in the cultural study of law. It is truly an irony that it should be in the United States, at one of the extremities of *ius non scriptum* or common law, in a tentative and largely unwitting form, that this return to the politics of law, and specifically to the politics of law's inscription, should first appear.

Grammatology as the Study of the Material Conditions of Possibility of Law

I still vividly remember picking *Of Grammatology* off the shelf in a bookstore in Scotland in 1976. I have few other such strangely bibliophilic recollections, but this one was somehow both less obvious and more visceral. I was in the second year of my doctoral studies and I was browsing the philosophy section of the store. *Of Grammatology* was a large, clothbound book. It was expensive, I was poor. It had no obvious relevance to the study of law, I had heard no mention of it in the seminars at Old College in legal philosophy or in research methodology. On its cover was an ideogram that seemed somehow to capture the enigmatic spirit of the time. I even remember the smell of expensive American acid-free paper, and the portentous sentence that initially caught my eye:

> "By a slow movement whose necessity is hardly perceptible, everything that for at least twenty centuries tended toward and finally succeeded in being gathered under the name of language is beginning to let itself be transferred to, or at least summarized under, the name of writing."[3]

In sum, the book itself was very much a material object, a multiple set of images, a layered collection of signs. In a minor way, in the elliptic form of an anecdote, the book which began with a chapter on the end of the book enacted a message: the book was also a materiality, a com-

[3] JACQUES DERRIDA, *Of Grammatology*. Baltimore 1976, 6.

modity, a symbolic value that circulated within a political economy of writing systems. The book, this book, *Of Grammatology*, has also to be understood in terms of its historicity and materiality, its 'realpolitik' in the institutional cartography of writings.

Returning to the text and project of grammatology, its concern seems in retrospect, and not without prescience, to have been that of addressing the permeability and so also the politics of all writing systems or modes of inscription. The history of writing systems was the history of the modes of circulation or dissemination of power. The early history of writing was the history of the forms of law – after the army came the grammarians – and should be read and interpreted as such, that is in terms of hierarchies, dependencies and the violences of inclusion and exclusion. Put differently, the ontology of writing systems was that of iteration and reiteration, inscription and reinscription, and so it always returned to law, to the unravelling of an origin, to the tracing of a genealogy or complex history. Grammatology studies the structural form of power, from the tracing of lines in the sands of the African desert discussed by Levi-Strauss, to the book of nature and the study of the universe of significations. The historical study of writing systems, of the methods and theatres of power, was a study of the various forms of what Legendre terms the presencing of law in the conflation of the veridical and the juridical.

I have argued elsewhere, to the tune of roughly a thousand copies sold – still in print, fifty copies less per year – that the study of law is precisely the study of systems of inscription, of the forms of memory and of their social enactment, their staging or reproduction.[4] There is both an internal logic and an external economy to any system of signs. Law is no exception, save that its history has been marked by the continuous claim to the autonomy of its method and the sanctity of its sources. Variously depicted as true philosophy (*vera philosophia*), as knowledge of things divine and human (*rerum divinarum humanarumque scientia*), or simply as written reason (*ratio scripta*), the textual corpora of law embodied not only truth but majesty or the aura of divine, and so in secular or non-professional terms, unknowable sources. The legal text was not simply a transparent medium of literal meanings, it was variously a venerable or antique record, a statement made to posterity, an instrument in which the subject of law had to believe, and so more generally a sign, a mark, a vestige or trace, a writing system bear-

[4] PETER GOODRICH, *Languages of Law: From Logics of Memory to Nomadic Masks*. London 1990, 111–148 ("Legal Writing Systems: Rhetoric, Grammatology and the Linguistic Injuries of Law"). Subsequent references to Renaissance and early modern texts can be found in that work.

ing with it a plenitude of orthographic, gestural, intra-textual and contextual valences and images.

There is a lengthy tradition of juristic study of the forms and legality of writing systems. This tradition is largely lost or survives primarily in isolated maxims, yet it bears a certain recollection in an era when computer generated domains render all texts weightless or virtual realities. The legal text was never simply an epistemic prescription: it was heavily encoded, dramatically presented, and arbitrarily executed. Turning, by way of example, to the last great crisis in method or form of transmission of law, the early modern period of common law, what seems striking is that it was the forms of inscription of law much more than the substance or content of laws, that was the object of contention. The crisis of legality – and perhaps one could hypothesise every crisis of legalism – related to a loss of faith in the form or writing systems of law.

For the jurists working and so writing in the Inns of Court between 1550 and 1620, both the critique and the defence of law revolved around the proper formulation or apprehension of its systems of transmission. While the modern jurist might find the critical depiction of the lawyer as an orator the most familiar, and might relate most easily to the debate over the poor quality of oratorical legal representation – the comedy or tragedy of what was then termed a 'bablative art' – that image of the lawyer as public advocate, as barrator or verbal pugilist, was only one of many forms of legal presence in the public sphere. The lawyer was also a notary or, in Coke's language, a scrivener, reliant upon a classical faith in instruments (*de fide instrumentorum*) and their circulation. The lawyer was a writer of symbols and in William West's treatise on *Symbolaeography* all legal writings should begin by addressing the divinity and posterity before inscribing the trans-historical message that only God and law could properly guarantee. So too the lawyer would write and issue or send writs – legal letters that had to be posted, tabled, fined and recorded according to the peculiar rules of circulation of the system of writs.

The first lesson of legal grammatology is historical, a work of memory or recuperation of the density, of the ambivalence and longevity of legal corpora. What I wish initially to draw from that history, however, is a broadly political lesson. Writing systems are dependent not only upon a hierarchy of authorship but also upon the legitimacy of their systems of transmission. The various early modern doctrinal treatises on the writing of instruments, the numerous lexicons of legal words and of entries and writs are all also concerned very directly with the status and legitimacy of legal writing systems within the greater hier-

archy or semiotic of signification. Borrowing from Alciatus' popular *Emblemata*, and also from *De notitia dignitatum,* more than from Ramus' *Logic*, the key legal texts precisely concern the visual representations of legitimacy, the emblematic or heraldic inscriptions of the nobility and the lineage of the legal community. The first discipline to be systematised and popularised through print was that of armory and heraldry, the signification of status and place as the guarantees of the legitimacy of transmission. The first task of the lawyer in an epoch of crisis is to defend the system of symbols, the site of the possibility of law. Works on the encoding or signification of honour, of nobility, and of gentility, the various treatises on devises, blazons, mottoes, hieroglyphs, enigmas, as well as on ensigns and insignia, emblems, notes, arms, and the other forms and offices of heraldic inscription are all concerned with the visual legitimacy, the immediacy or presence of the force of law.

The second lesson of grammatology is epistemic and can be traced to the juristic concern with the hierarchy of writing systems, a concern which Sir Edward Coke well captured in declaring of legal texts that these were "no ordinary scrivenings by any boy in his master's shop". Again using the example of an epochal crisis, the concern with status, with the authentic representations of legitimacy, of the nobility, gentility, arms and dignities of the legal community, reflected an insecurity internal to legal knowledge. It needed, in Foucault's terms, to establish the visible legitimacy of its site of enunciation, it needed to incorporate its authority both in the context of its dissemination, and in the form of its written representations. Writing was law, legal writing was written reason, or to borrow again from Coke, the great ideologue of early modern common law, "if it is not in the books, it is not law" – though it might just, if audible, be part of the common opinion of the Bar and so part of the invisible inscription, or arche-writing, of the book of natural law.

Law did not and does not, in other words, fit easily into the order of public discourses. In terms of grammatology or the history of writing systems, legal discourse had a peculiar status as the form of mediation between an absolute and unknowable law – an excess, violence or divinity – and its various temporal inscriptions. It depended, in other words, upon a source or legitimacy that could not be represented, it fed upon scriptural traces, vestiges or fragments, archaisms and maxims whose very existence and meaning depended upon protocols of disinterment and recuperation that belonged outside of law. As John Selden puts it in his *Historie of Tithes*, "philology is the Queen and mother of all the sciences". Borrowing directly and explicitly from continental humanists, Selden and numerous other antiquarians of the Inns of Court

recognised that if reason was written and if writing was law then philology was the art and method that lawyers applied in writing, interpreting, tabling and sending the letters of law.

Philos-logos, loving words, desiring laws

Philology is a discipline that the US lawyer recognises only or primarily in a negative form. In expanding the antique discipline of philology into grammatology, and in suggesting that the hierarchical relation of law to philology could be deconstructed – that is to say that as a thought experiment the order of ranking could be reversed – Derrida's work posed a double threat to the elegant self-conception of jurists in the not so new world. At a conceptual level, grammatology made explicit the uncomfortable fact that law was always already a host to other disciplines. Studied as a form of inscription, as a writing system, as force or performance – and lawyers cannot give up their claim to these powers – law had to be addressed explicitly as a hybrid or as a heterogeneous collection of languages and of other systems and sites of signification. Historically these were the arcana of law, the enigmas, mottoes and other dark devices of elite inscription and now grammatology wished to question or play with these linguistic and other totems of legality. The menace of deconstruction was not so much that it threatened to reverse the order of meanings or to suspend – to play with – the hierarchy of legal significations, though that was certainly perceived to be threatening, but rather that it claimed that questions of violence and excess, of the arbitrariness of the sign, were intrinsic to all of the practices of law. Law, and here legal studies, was already and intrinsically an interdisciplinary endeavour and, especially at the level of interpretation, necessarily engaged in conversation with its peers.

It seems strange in retrospect that grammatology, admittedly under the truncated label of deconstruction, should be perceived as nihilist but there is a sense in which it did challenge the roots of the doctrinal tradition.[5] In studying the origins of forms of inscription, grammatology radically challenged the Christian conception of a law based in nature, in time immemorial or an antiquity older than, and inaccessible to either history or method. In part, Derrida's project was to introduce a

[5] The most notorious or at least explicit early assertion of this position was in PAUL CARRINGTON, "Of Law and the River", in: *Journal of Legal Education* 34 (1984), 222. I address that debate in PETER GOODRICH, "Law and Modernity", in: *Modern Law Review* 50 (1986). There is also discussion of this theme in MATTHEW KRAMER, *Legal Theory, Political Theory and Deconstruction: Against Rhadamanthus*. Bloomington 1991.

judaic conception of text and method into the Christian world of legal infallibility, of *traditio* or esoteric oral truth. It bears mention, even though it may not be popular, that there is a dimension of conflict of traditions and faiths, of ethnicities and cultural identities, to the exercises in labelling that often pass for theoretical reflection within the legal periodical literature. The dismissal of deconstruction, the claim that it is nihilist or faithless, and the implicit or not so tacit assertion that the talmudic conception of an infinitely layered text and meaning is mere play, unreal and unrevealing, all carry with them both political and theological significances.[6]

The other aspect of the perceived threat of grammatology to the legal institution lies in a curious feature of its temporality. In *Of Grammatology* and in later works such as *The Post Card*, Derrida was concerned to address the question of the historicity of writing as a question of its transitivity. Writing systems were not only forms of inscription, they were also systems of sending, postal relays whose letters also circulated between the dead and the living, between absent as well as co-existent comrades or, in humanist terms, friends. The radicalism of grammatology, and here I risk repeating myself, lay in its philological bent, in its anti-humanistic humanism, in its determination to suspend judgement for the length of time necessary to disinter the various levels of meaning that any inscription or writing embodies.[7] Following in the wake of the classical philologists, grammatology is concerned precisely with the historical materiality of signification, and moves from etymology – of which the Renaissance lawyer's maxim dictated *id est veroloquium* – to

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[6] I believe it is worth very briefly mentioning that this is also an unresolved dimension of Habermas' critique of the postmodernists, with which he associates deconstruction. When I mentioned that the notion of ideal speech situation was not inclusive of judaic or other diasporic or outsider traditions, Habermas took this as grounds for excommunicating me, explicitly stating that this assertion did not merit response. I am aware that he was perfectly within his rights to do so, but there is also here an intimation of a certain intolerance. See JÜRGEN HABERMAS, "Reply to Symposium Participants", in: MICHEL ROSENFELD/ANDREW ARATO (eds.), *Habermas on Law and Democracy: Critical Exchanges.* Berkeley 1998, 382, footnote 7: "I quit reading Goodrich's essay at the place where, vaguely referring to my *Philosophical Discourse of Modernity,* he accused me of defending modernity 'against the irrationalists, the conservatives, the postmodernists, the heretics, the nomads and the outsiders, the jews'. Anyone who accuses me of antisemitism hardly expects a response." Two observations seem appropriate. First, Habermas is very quick to jump to conclusions and specifically to conclude that arguing against the jewish mode of interpretation – here deconstruction and its 'impotent' commitment to not deciding – is to be antisemitic. He is equally quick to terminate discourse, to excommunicate, and perhaps at precisely that fragile point where discourse is most threatening and most necessary.

[7] DOMINIQUE LECOURT, *The Mediocracy: French Philosophy since the mid-1970s.* London 2001, usefully reminds us of the political and legal significance of anti-humanism.

the history of transmission or the decoding of prior judgements within the array of disciplines and contexts within which a word or other sign has been inscribed and sent on.

The grammatologist was thus devoted to the historical performativity of the sign and was in consequence determined to suspend determination or judgement. Derrida, borrowing from Nietzsche's critique of cursory or rapid readings, puts it in terms of an ethics of patience, of indetermination:

> "In that I am still fond of him, I can foresee the impatience of the bad reader: this is the way I name or accuse the fearful reader, the reader in a hurry to be determined, decided upon deciding (in order to annul, in other words to bring back to oneself, one has to wish to know in advance what to expect, one wishes to expect what has happened, one wishes to expect oneself). Now, it is bad, and I know of no other definition of bad, it is bad to predestine one's reading, it is always bad to foretell. It is bad, reader, no longer to like retracing oneself."[8]

The pragmatic claim or threat of grammatology lay in exposing the poor reading practices of lawyers, their distance from philology, their increasing reliance upon sclerotic formulae and an etiolated and unwitting professional common sense. To the extent that the legal academy in particular had managed to externalise the problematic character of scholarship, the demands of critique and the politics of the disciplines, it had also cocooned itself from taking account of mediatic developments, new trends in the modes and media of administrative and political regulation.[9] If, as Derrida put it,

> "the science of writing should ... look for its object at the roots of scientificity... [and] the history of writing should turn back toward the origin of historicity"[10],

its demand was also, if at first implicitly, that jurisprudence return to the question of the violence or origin of law. More than that, however, and here in a sense lies the apparent menace of deconstruction, grammatology demands both a rupture and a renewal of the discipline of law. The return to the past was also a call for modernisation, an attempt at an accounting, and a necessary reflection upon form and not solely, simply and perhaps stupidly upon the content of laws.

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[8] JACQUES DERRIDA, *The Post Card: From Socrates to Freud and Beyond*. Chicago 1987, 8.

[9] A point made lengthily and well in W. TIMOTHY MURPHY, *The Oldest Social Science? Configurations of Law and Modernity*. Oxford 1998.

[10] JACQUES DERRIDA, Grammatology (Fn. 3), 27.

Law's Inscriptions of the Real

Grammatology was not in the first instance a normative enterprise, it was rather a political intervention. It placed law in question, it suspended the norm and inquired instead after a critical self-reflection within the domain of the juridical. Grammatology, I have suggested, examined the material – which is to say scriptural – conditions of possibility of law. It asked, perhaps as Derrida also puts it, 'abnormally', the question "why law?" and not just "why these laws?". Such questions, as Derrida's compatriot Pierre Legendre relentlessly pursues in a Lacanian framework, are both psychically and anthropologically foundational or more prosaically disturbing questions. They are also inquiries that offer theories without product or prospect of resolutions. Particularly in Derrida's case, except perhaps when he is mourning friends, they are inquiries that offer theory as process, as exploration and indetermination, as suspension of judgement and so as a law that is paradoxically or perhaps simply momentarily outside of law. It is not accidental, in this regard that there is an intimate quality to Derrida's writing, that process, embodiment, taking time, are features of his style and features that are infuriating particularly to lawyers, legal academics and others who are bent upon deciding, who are desirous only of products, who are unhappy and yet do not have any time for thinking.[11]

In that the dismissal of deconstruction has often gotten no further than the denunciation of Derrida's style it is perhaps worth reiterating that grammatology is precisely also a question of style, of an *écriture*, of a messy, generative, phenomenological embodiment of thought. The ontology of writing (of law) is that of embodiment, of textual corpora, of orthography, gesture, elocution, tone, figuration and all the other marks of the transitivity of this text, here, now, written and sent.[12] I will confine myself to saying, and without any hope of being thought to be in this regard original, that the concept of *corpus iuris* is a complex one. Grammatology teaches us that analysis of the concept and practice, dis-

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[11] Even Legendre is in this sense a scribe, a stylist, and a feminist. See, particularly, PIERRE LEGENDRE, *Paroles poétiques échappées du texte.* Paris 1982, on text and body, desire and writing. For a wonderful and original divagation on this point, see ANNE BOTTOMLEY, "Theory is a Process and not an End", in: JANICE RICHARDSON/RALPH SANDLAND (eds.), *Feminist Perspectives on Law and Theory.* London 2000.

[12] I will add, just by way of irritating caution or as a corrective to Slavoj Žižek – and why not? – that I do not wish to imply that all letters are sent, or that all missives arrive. I am fondly critical, in this respect, of DARIAN LEADER, *Why Do Women Write more Letters than they Post?* London 1996, an inverted version of SLAVOJ ŽIŽEK'S thesis in *Enjoy your Symptom.* New York 1992 ("Why Does a Letter Always Arrive at Its Destination?").

covery or dissemination, of a *corpus iuris* necessitates a dual inquiry into the origins of the body and of the law, an inquiry that Legendre formulates well in terms of text, terror, and territory.[13] Let us simply say here that the law is always attached to a body, to a territory, or in common law terms the *leges terrae* are tied to a thesaurus, to a system of texts or writs, to the bodies of its subjects but also to the duality of the natural body and the *corpus mysticum* of the sovereign itself.

If both writing and the body lie close to the origin of law, lawyers face not only the question of the complexity and transitivity of the act of inscription or writing of law, but also a more general question relating to the staging and circulation of legal letters. Grammatology necessarily raised those questions and its brief was in an important respect simply that of saying, along with the philologists, that lawyers would do well to understand the tools or media of their trade. This message is also Nietzschean in form and recollects an aphoristic observation that reminded his fellow philologists that one can only understand the classics if one has "a head for the symbolic". It is an irony or paradox that the theory of grammatology that underlies deconstruction is addressed not to the abolition or erasure of law, but to the need to understand the law better. Grammatology offers precisely that possibility and it does so, most paradoxically of all, by returning to the philological roots of the tradition and in a certain respect quite specifically to the etymological root of *philos-logos*, to loving words, and by implication to the intermingling of desire and law.

In using the figure of the return to philology as a ruse by means of which to examine the significance of grammatology to law, I have risked seeming to desire a resurrection of the past, a certain nostalgia or claim to privilege the ancients. Grammatology, however, as others have well spelled out, is very much addressed to the contemporary, to limiting instances, to the liminal marks of what is to come. Thus *Of Grammatology* begins by inscribing a trajectory, a *longue durée* of writing, that is concerned precisely with the end of a form, the death of the book, and so with beginnings, with a not yet known, with the future. In more mundane terms, more concretely and so more circuitously, we find the project of grammatology installed through a temporal observation:

> "For some time now, as a matter of fact, here and there, by a gesture and for motives that are profoundly necessary, whose degradation is easier to denounce than it is to disclose their origin, one says 'language' for action, movement, thought, reflection, consciousness, unconsciousness, experience, affectivity, etc. Now we tend to say 'writing' for all that and more: to desig-

[13] Not least because its title captures the thematic so well, see PIERRE LEGENDRE, *Jouir du pouvoir*. Paris 1976.

> nate not only the physical gestures of literal pictographic or ideographic inscription, but also the totality of what makes it possible."[14]

And we (he) goes on to discuss writing in terms of all forms of inscription, of the face and its significations, including cinematography, choreography, music, sculpture, painting, and much, much more.

Slowly, indirectly, starting a long way from any sense or culture of writing, let alone of a return to a medieval past that perhaps paradoxically modern America only had in a displaced form, grammatology has started to take over legal studies. Perhaps because the United States legal academy is somehow closer to its origins or free of certain of the more antique prejudices of scholasticism, it has been curiously open to the paradoxes and the possibilities of novel modes of inscription and transmission of law. For some time now, the cultural study of law has had a hold in the States and the obvious and massive presence of law in video, television, film and other virtual relays has formed a slow moving or slowly augmenting object of legal studies. The *fin de siècle* was marked by a peculiarly global enactment of televisual spectacles of law, of the dramatic representation of social identity, of discipline, authority and rapid returns to normality. One 'trial of the century' was quickly followed by the next: Rodney King, then O. J. Simpson, then the Menendez brothers, one case after another in which a white law was exercised, both as norm and as exception, in relation to ethnic minority defendants.

Modes of inscription and techniques of recording – the video tape of the police baton repeatedly, in slow motion, hitting a supine Rodney King, the pictures of the riots, the freeway chase of O. J. Simpson in his white Ford Bronco, the DNA analysis of blood left at or planted in the crime scene, the dispassionate testimony of the Menendez brothers, the impeachment of President Clinton, *Bush v. Gore* – these were suddenly the immediate and real forms of law.[15] Forensic rhetorical truth – the legal enactment of the real – was now, undeniably, obviously a social staging, a theatre, a performance that challenged both the disciplinary boundaries of the casebook form of legal studies and the borders of any given legal jurisdiction.[16] The image, and rapidly following it the virtual or digital relay of the internet, had suddenly transgressed the nor-

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[14] JACQUES DERRIDA, *Grammatology* (Fn. 3), 9.

[15] CORNELIA VISMANN, "'Rejouer les Crimes': Theater vs Video", in: *Cardozo Studies in Law and Literature* 13 (2001), 119–135, offers significant preliminary observations on the medium and performativity.

[16] This point is made well in relation to the O. J. Simpson trial in SHOSHONA FELMAN, "Forms of Judicial Blindness, or the Evidence of What Cannot be Seen: Traumatic Narratives and Legal Repetitions in the O. J. Simpson Case and in Tolstoy's The Kreutzer Sonata", in: *Critical Inquiry* 23 (1997), 738–807.

mal modes of inscription, of dissemination or transmission, of writing and so of law. Embodiment, enactment, performance and all the other rhetorical and theatrical prerequisites of affective inscription were now visibly, viscerally, attached to and implicated in every dimension of the social presence or political reality of law. The media staging of law was now an undeniable global truth.

I am not here concerned with the details of law's socially visible inscriptions but rather with the ways in which grammatology opened a path to studying and understanding the material significance of new modes of writing. As satellite television is a relatively novel form of medium, grammatology would recommend that the origins of its inscription of real time legal reporting be treated as significant. In this respect I would mark here that it is probably not incidental or without significance for America that the first major trials were ineluctably tied to race wars. The question of race, of body, skin, colour, and the question of law, are here prominently and visibly inscribed at the inception of a novel medium, a new law. That observation can allow for the charting of a final trajectory within the geopolitical history that any account of grammatology in America – specifically in the United States – must trace.

The resistance to grammatology within the US legal academy was addressed primarily to a projection, a fantasm of what something termed deconstruction represented. It was foreign, it was 'continental theory', it was European, and these were places that were best kept separate from common law. At another level, it was the language of deconstruction, its refusal to be a commodity, its intransigent lack of product or vernacular marketability, the divagations of questionably translated foreign texts, that was pilloried or resisted. I have suggested also that grammatology was not only foreign, it was also a jewish approach to interpretation and its non-christian roots were also the occasion of hostility. For all the xenophobia that grammatology faced, it gained a limited reception, it endured the negative reception of denunciation or dismissal, but also occasional and perhaps not accidental resonances in critical race theory, in narratives of legal outsiders, of music, fiction, biography and alternative racial experiences and accounts of law.[17] The *fin de siècle* great trials repeated those resonances of challenge to hierarchies of meanings and laws that deconstruction had portended and grammatology had at a conceptual level inscribed.

To recognise law as theatre, to interpret its inscriptions as the drama of justice and truth, is not a novel understanding of the juridical

[17] For ease of reference, see PETER GOODRICH and LINDA MILLS, "The Law of White Spaces: Race, Culture, and Legal Education", in: *Journal of Legal Education* 51 (2001) 15–38.

form, even if its contemporary relays and the racial connotations of its performances are differently embodied. Grammatology addresses origins because systems of inscription are precisely about marking sites of enunciation, places of issuance or promulgation, the first cry. In this regard the legal tradition has at its origins a very similar antinomy or hierarchy between law and alternative forms of dramatic representation of the truth. The *Digest* records a fragment that imposes the penalty of "infamia" or civil death upon any citizen who "appeared upon the stage to act or recite" (D. III. 2.1.). The object of that prohibition was Athenian theatre and its purpose was to keep Rome free of foreign inscriptions and specifically of Greek tragedies that might threaten to compete with the theatre of civil law.[18] Thus, if it is possible to speak of the *longue durée* of law as writing, then it is possible also to chart an origin in which law was at war with theatre, and a trajectory in which, at the end of the writing system of law, it is theatre that signals the demise of law as a singular system of scriptural inscriptions. It is theatre that forces lawyers to account again the repressed, which is to say interior, relation between law and desire.

Envoi

Twenty-seven years after I picked the obtrusively large clothbound *Of Grammatology* off the shelf of James Thin booksellers in Edinburgh, I met Jacques Derrida for the first time. I mean by this that rather than being in the audience – and I had several times been in the auditorium, a listener or voyeur at conferences – we met face to face, hand to hand, over coffee and then at a seminar. While we were waiting for the seminar to begin, appropriately enough it was to be on the death penalty, I relayed a brief anecdote about my favourite of his books.

While visiting socialist Hungary in 1987, not long before the Russians left, I had stayed in Budapest and after delivering a few lectures decided to use my remaining days to travel around the country. It was winter and snowing when I headed to the railway station early one morning en route for a border town named Sopron. It was not a long journey and I planned to return to the capital that evening and so I took some local currency and the book I was then reading, Derrida's *The Post Card*. It did not occur to me that I might need a passport or identification while travelling internally in Hungary. I was wrong.

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[18] I borrow this interpretation from FLORENCE DUPONT, "La scène juridique", in: *Communications* 26 (1977), 62.

Shortly before arriving at the border town of Sopron, the train was boarded by members of the security forces who started checking identity papers and interrogating travellers. When my turn came I had no means of communicating orally – I spoke no Hungarian or German, they spoke no English or French. Nor could I offer any papers. My only document was *The Post Card*. The security guards examined the book at some length, conferred amongst themselves, shook their heads, and arrested me. I was taken to the cells at the next station and held uncomfortably for a few hours until my host in Sopron came and bailed me out.

Jacques listened attentively to the anecdote and then said with his usual animation, touching my shoulder: "I am sorry that my book was of no help."