

“I have forgotten my umbrella”: On the abdications of style in law and rhetoric

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“But, it must not be forgotten, it is also an umbrella. For example, but it must not be forgotten.”

Derrida¹

“Safe. I wouldn’t have thought it possible for a single word to have such an impact. Safe.”

Lanchester²

Towards the end of Jacques Derrida’s extended meditation on Nietzsche’s styles, he refers to a handwritten fragment from the unpublished manuscripts, containing the phrase “I have forgotten my umbrella”³ (note that in the original manuscript, the phrase was rendered “isolated in quotation marks”⁴). Mooting several possible reading strategies (hermeneutic, psychoanalytic, hermeneutic-psychoanalytic, Heideggerian) that would yield a meaning for the phrase (the umbrella’s “symbolic figure” is, after all, “well-known”⁵), Derrida is ultimately at pains to insist that, because the fragment is “structurally liberated from any living meaning”, we will never know “for sure what Nietzsche wanted to say or do when he noted these words”, that its meaning remains “in principle inaccessible” and, finally, that “it is quite possible” that the fragment “should remain forever secret”.⁶

Yet, the readability of the phrase as the marks of a writing, the traces of the spoken word, remains. It is, in fact, the phrase’s very readability – its *structure* as writing – that ensures the secret of the “possibility that indeed it might have no secret”.⁷ In any case, its secret is not simply demarcated by its structure – it is “confused” with it. And in this way, the unpublished fragment delivers the provoked hermeneut up against the disconcerting limit of “decoding”, of producing meaning (as such).

Thus, reading “which is to relate to writing” remains; and as remains it perforates the “hermeneutic sail”⁸ – in the manner of a stylus that is at once a style amongst others. And yet still, Derrida, in a classically deconstructive *il faut*, writes that “if the structural limit and the remainder of the simulacrum which has been left in writing are going to be taken into account, the process of decoding, because this limit is not of the sort that circumscribes a certain knowledge even as it proclaims a beyond, must be carried to the furthest lengths possible.”⁹ Thus, Derrida ventures: “If Nietzsche had indeed meant to say something, might it not be just that limit to the will

¹ Jacques Derrida, *Spurs: Nietzsche’s Styles / Éperons: les Styles de Nietzsche*, trans. B. Harrow, intro. & preface S. Agosti, (Chicago: The University of Chicago Press, 1978), p. 41.

² John Lanchester, *The Wall*, (London: Faber & Faber, 2019), p. 193.

³ Derrida, *Spurs / Éperons*, p. 123.

⁴ *Ibid.*

⁵ *Ibid.* 129.

⁶ *Ibid.* 133.

⁷ *Ibid.*

⁸ *Ibid.* 127.

⁹ *Ibid.* 133.

to mean, which, much as a necessarily differential will to power, is forever divided; folded and manifolded".¹⁰ Like an umbrella.

For Derrida reading Nietzsche, the simulacrum's eternal division means that it cannot be used "as a weapon in the service of truth or castration" and that to do so "would be in fact to reconstitute religion".¹¹ However, this recognition does not and cannot preclude the question of the *origin* of this originally divided simulacrum which can be used neither in the service of truth nor of castration. What is this origin, phenomenologically speaking, if not the voice (recall that Nietzsche's fragment is "isolated in quotation marks")? And from whence - or from what - issues the injunction to decode its simulacrum "to the furthest lengths possible", without using it in the service of truth or castration, if not from the constitution of rhetoric (the one that rhetoric constitutes as much as rhetoric is constituted by it) in the democratic polis?

To be sure, it is not that the voice is not itself divided at the origin and thus the product of a differential division / *différance*. That much Derrida made clear early on in his project of deconstruction, most notably in *La voix et le phénomène* (1967). And it is certainly not that the constitution of rhetoric and rhetoric's constitution in the democratic polis - and thus as political through and through - are not divided. The political is division through and through, the constitution is division through and through, rhetoric is division through and through. To put it in terms of Derrida's late work, there is prosthesis at the heart of (every) origin.

But if we are to gather our bearings, so to speak, in terms of what takes place when one inserts the "question of style" between law and rhetoric (which authors like James Boyd White had told us, amount to, more or less, the same thing; such that law *is* rhetoric (but is rhetoric *really* law?)¹²), we would perhaps do well to direct our attention, by way of introduction, at these basic rhetorical commonplaces,¹³ which, one may venture, were always meant to function like an umbrella - at once

¹⁰ *Ibid.*

¹¹ *Ibid.* 99. I think that it is precisely this weaponisation of the simulacrum that Alain Badiou aims at in his discussion of "simulacrum and terror" in Alain Badiou, *Ethics: An Essay on the Understanding of Evil* (London: Verso, 2001), pp. 72-74: fidelity to the simulacrum is the "unending construction" of an "abstract set" and this can take place only by way of constantly voiding what surrounds the "closed particularity" of the abstract set. "Hence, fidelity to the simulacrum [...] has as its content war and massacre."

¹² James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life", *The University of Chicago Law Review*, 52(3), 1985, pp. 684-702.

¹³ In a magisterial footnote of his magnum opus, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, (New York: Telos Press Publishing, 2003), p. 50, Carl Schmitt recalls that "[t]he Greek word *topos*, in the course of time, has acquired the significance of *locus communis* or 'commonplace'. Today, it serves to designate general and abstract banalities. But even such commonplaces become concrete and extraordinarily vivid if one considers their spatial meaning." Somewhat blithely noting that "[t]he theory of *topoi* was developed by Aristotle as a part of rhetoric" and that "[t]he latter, in turn, is a counterpart, an antistrophe of dialectics", Schmitt nonetheless treats us to a succinct, if now somewhat anachronistic, update of the relationship between space, rhetoric and the common: "Rhetoric is the dialectics of the public square, the *agora*, in contrast to the dialectics of the *lyceum* and the academy. What one person says to another is debatable, plausible, or convincing only in a given context and at a given place. So, even today, we have the still indispensable *topoi* of the chancellery and the lectern, of the judge's bench and the town meeting, of conferences and congresses, of cinema and radio. Any sociological analysis of these various sites must begin with an account of their *topoi*."

“aggressive and apotropaic”, “threatening and / or threatened”. Precisely, like the voice in our “democratic” times.

As for law “and / as” rhetoric, and considered from the point of view (and thus one style) of a discourse of *critical* jurisprudence, one could perhaps be forgiven for rather bluntly concluding that the law today increasingly seems to have forgotten its umbrella. One may even be forgiven for concluding that the umbrella lies forgotten in the opening pages of Aristotle’s *Rhetoric*. As the positivistic militarisation of “democratic” law intensifies in the instance of the factual exception (such that there is no longer any concretely workable distinction between law and fact (writes Agamben)), enacted if not declared in the very heart of democracy, who or what will forgive the law for this forgetting?¹⁴ If what is at stake here is the forgetting of Being, then we must be prepared to ask whose “*salus*” “*esto*” in the Real today? For “*esto*” is Being if it is nothing else. And what does it tell us about the state of the Symbolic Order, about the *suprema lex* of the collectivity that we still refer to as the *populi*?

Those who pick up this volume, thinking that this question is, once again, “merely” rhetorical play, a game which does no more than add up to its own version of the night in which all cows are black; well, they would perhaps do well to put it down, then, and look – like the poets who they are not – out of the window, where, as I write, the early winter rain is pouring down on the townships of Cape Town – Nyanga, Langa, Gugulethu, Khayelitsha; places where the distinction between law / right and fact continues to collapse into Agamben’s “real zone of indistinction”¹⁵ which has been *norm*-alised, named as the “normal emergency”,¹⁶ because it has been, and is, *spatialised as law*. There, there is no umbrella. The other umbrella – the umbrella of the Other – (also) lies long forgotten in the Epilogue of the Interim Constitution – its “need for *ubuntu*”,¹⁷ for instance – which is to say *in the law*. Can this form of forgetting be forgiven? And by whom? By what?

By rhetoric? Rhetoric itself? Another style of rhetoric? For another style of law? Perhaps. Or is it rather the case that, for the sake of (what remains of) the polis today, law and rhetoric (by which I mean, of course, “lawyers” and “rhetoricians” and those who are both), law *and* rhetoric, are once more politically enjoined to affirm and insist, in every possible way, on the plurality at the origin of both: what Hannah Arendt called, precisely, the “*law of the Earth*”,¹⁸ “the fact that men, not Man, live on the Earth and inhabit the world”.¹⁹ There we have a terse rhetorical formulation of the terms

¹⁴ And “[w]ould the forgetting of a being (an umbrella, for example) be incommensurable with the forgetting of Being?” (Derrida, *Spurs*, p. 141). Recall that Derrida is reading Heidegger in this “P.S. II” at the end of *Spurs*, the Heidegger who is warning that in the last phase of nihilism, Being veils itself as a protective concealment and that in such a movement “consists the essence of forgetting”.

¹⁵ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, (Stanford: Stanford University Press, 1998), p. 10.

¹⁶ Adam Sitze, *The Impossible Machine: A Genealogy of South Africa’s Truth and Reconciliation Commission*, (Ann Arbor: University of Michigan Press, 2013), p. 248. Sitze quotes Richard Rive, *Emergency Continued*, (London: Readers International, 1990), p. 8.

¹⁷ It is worth noting, too, that Sitze, *The Impossible Machine*, pp. 215-248 has raised the question of *ubuntu* in the context of the legal history of *salus populi suprema lex esto* in South Africa. In a chapter entitled “Salus or Ubuntu?”, Sitze considers not only the constriction of the *populi* by way of state racism during apartheid, but indeed the question of how *ubuntu* might displace this history in the context of postcolonial neoliberalism.

¹⁸ Hannah Arendt, *The Life of the Mind*, (San Diego / New York / London: Harcourt Inc., 1977), p. 19.

¹⁹ Hannah Arendt, *The Human Condition*, introduction by Margaret Canovan, (Chicago & London: University of Chicago Press, 1998), p. 7.

("man", "men", "Earth", "inhabit", "world") of the entire problematic that is given "our" dark times.

It seems, then, not so much that "if there is going to be style, there can only be more than one",²⁰ as Derrida puts it at the end of *Spurs*, but rather that there can be the more than one of this plurality only if there is going to be style, a differential style, no doubt, "another style of the master-signifier"²¹ (which is to say, of the law), says Lacan in the seminar on the discourses, having opened the *Écrits* only a few years earlier with Buffon's definition of style: "Style is the man himself"²² (the "man" again) - and then immediately alters the definition in order to "comply with the principle [...] that in language our message comes to us from the Other": style is "the man one addresses".²³ Thus, plurality, again, even if, or precisely because, "man is no longer so secure a reference".²⁴ But Lacan goes further than that when he writes that "it is the object that (cor)responds to the question about style". This "object" is, of course, the famous *objet petit a*, the object-cause of human desire.

In her reading of Lacan's "Overture" to the *Écrits*, Judith Miller returns to Buffon's statement and argues that Buffon gives to style the main function of assigning to someone his "differential identity"²⁵ and that Lacan's addition of "the man one addresses" in no way alters that function, for we locate our differential identities in the Other: "[f]rom the moment that style refers to another, the one who is defined by his style is defined by his relation to the other."²⁶ Identity thus is divided between "what style represents and the one before whom it is represented",²⁷ who himself is someone who addresses another, and so on. Difference *as* style, then, and style *as* difference. Why? Because it is in the Other that man locates his desire (which is to say his lack) as a self that is at once other - and that is why the question of style "(cor)responds" to the *objet petit a*. Here it is also worth noting that when Julia Kristeva turned to the question of psychoanalysis and the polis, she turned to style (specifically, Céline's style of "'spoken' writing"²⁸) to show that the "subject of enunciation" is born in a fundamentally "binomial" way.

Surely, this is the very *esto* which the rhetorician's voice in the opening of this issue of the African Yearbook of Rhetoric resolutely calls forth, alongside the *esto* of Alain Badiou's intervention which opens this volume. *Esto*, "it must not be forgotten", "is also an umbrella". Opened, closed, threatening, threatened - styling and styled. In order to be thought again - not "now and again" - but again, re-membered, from the start, now, now-again. That seems to be precisely what Badiou calls for below in his searing critique of the *Gilets jaunes* movement.

²⁰ Derrida, *Spurs / Éperons*, p. 139.

²¹ Jacques Lacan, *The Seminar of Jacques Lacan: The Other Side of Psychoanalysis: Book XVII*, trans. R. Grigg, (New York / London: W.W. Norton & Company, 2007), p. 176.

²² Jacques Lacan, *Écrits: The First Complete Edition in English*, trans. B. Fink, (New York / London: W.W. Norton & Company), p. 3.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Judith Miller, "Style is the Man Himself", in Ellie Ragland-Sullivan and Mark Bracher (eds.), *Lacan and the Subject of Language*, (New York: Routledge, 1991), p. 143, p. 147.

²⁶ *Ibid.* 147.

²⁷ *Ibid.*

²⁸ Julia Kristeva, "Psychoanalysis and the Polis", in Toril Moi (ed.), *The Kristeva Reader*, (New York: Columbia University Press, 1986), p. 301, p. 316.

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Miller also mentions that to “reach a point of view that allows one to obtain ideas that are productive and gather the main threads of the subject at hand”²⁹ is, for Buffon, homologous with style as the assignation of differential identity. Each contribution in this volume testifies to this function of style as reaching (for) a differential point of view: an authored disposition, addressed to the Other, suggesting, at times imploring, a point from which to view. At the same time, these contributions are each concerned to state their own point of view in relation to something at once general and specific – the *esto* of the *salus populi* as *suprema lex*. In this way, each of the contributions collected here can be said and be seen to open the umbrella of style over the question of the *salus populi*, its *suprema lex* and, ultimately, its *esto*, in new and provocative ways. Yet, the maxim *salus populi suprema lex esto* itself functions as an umbrella in this issue of *AYOR*, uniting as it does divergent styles of law and rhetoric.

However, and as several essays in this volume show, the present political moment / the *esto* of the *salus populi*, is marked and re-marked by what Timothy Barouch calls an “abdication of law” in his essay for this volume. This is the case in several senses of the phrase. Perhaps these essays simply recount the latest instalment in the general decline of the Interdiction that thinkers like Pierre Legendre have diagnosed as characteristic of “ultramodern culture”.³⁰ In 1995, Legendre proclaimed that:

“[a] generalized Economism and Managerialism is in the process of impairing the symbolic capital of humanity. This works to remove from the domain of thought the question attached to the reproduction of the animal that speaks: the problem of rendering the discourse of the Interdiction habitable by each human being.”³¹

Judith Butler writes, à propos “the psychic field we call ‘Trump’”,³² that we have “wandered into a psychoanalytic wonderland”.³³ Thus, in reading these essays, one cannot but wonder whether, in our relentless attempts finally to sever the head of the King, we have only guaranteed the ascent of “His Majesty, the Baby”.³⁴ As I write, the leader of the opposition in the United Kingdom is on television calling the Prime Minister’s attitude to the Benn Act³⁵ “childlike”).

If, then, as Carl Schmitt lamented, the new *nomos* of the Earth will be “no more *nomos*”,³⁶ then the irrevocable impact on the *salus populi* of what can only be called this

²⁹ *Ibid.* 145.

³⁰ Pierre Legendre, “The Other Dimension of Law”, *Cardozo Law Review*, 16(3-4), 1995, p. 954.

³¹ *Ibid.* Here, Legendre is prognosticating what Bernard Stiegler would, almost twenty years later, come to diagnose as “symbolic misery”. See Bernard Stiegler, *Symbolic Misery Volume 1: The Hyperindustrial Epoch*, trans. B. Norman, (Cambridge: Polity, 2014).

³² Judith Butler, “Genius or Suicide”, *London Review of Books*, 41(20), 2019. Retrieved from: https://www.lrb.co.uk/v41/n20/judith-butler/genius-or-suicide?utm_source=newsletter&utm_medium=email&utm_campaign=4120&utm_content=aunz_no_nsubs [Accessed 17 October 2019].

³³ *Ibid.*

³⁴ Sigmund Freud, “On Narcissism: An Introduction”, in Sigmund Freud, *The Standard Edition of the Complete Psychological Works of Sigmund Freud Vol XIV*, trans. and ed. J. Strachey, (London: The Hogarth Press and The Institute of Psychoanalysis, 1957), p. 91.

³⁵ European Union (Withdrawal) (No. 2) Act 2019.

³⁶ Carl Schmitt, *Glossarium: Aufzeichnungen der Jahre 1947–1951*, (Berlin: Duncker and Humblot, 1991), p. 179.

catastrophic regression surely does not deserve to pass us by. And that is what each of the essays in this volume of *AYOR* is at pains to underscore. If style is the Other whom we address, if it is the object that corresponds to the question of style, then these essays do not track the abdication simply of law, but in fact bear witness to the abdication of style itself. Sarah Burgess's essay on the United States Supreme Court's decision in *Matal v. Tam* is perhaps most explicit about this insistence on / persistence of forgetting the umbrella, but it is the rhetorical thread that runs throughout the volume.

In an intervention as unflinching as it is pointed, Alain Badiou analyses a certain abdication of style in the *Gilets jaunes*, whose yellow vests have functioned both as individual umbrellas and as the collective umbrella of a protest movement that Badiou does not hesitate to describe as undeniably a product of the "middle class". In several ways, the lineage of the Yellow Vests can be traced back to Hong Kong's Umbrella Movement of 2014. For one thing, it was the Umbrella Movement which brought yellow back as the colour of its pro-democracy protests. In many ways, it could be argued that the *Gilets jaunes* represent an intensified derivation – a sort of heightened style – of the Umbrella Movement. Yet, in arguing that the subjectivity of the movement could be called "individual populism", Badiou is tracking its abdication of style.

The Yellow Vests' confusion of individualism with democracy resonates remarkably with the experience of the Fallist student protests in South African universities between 2015 and 2017, in which Achille Mbembe first detected a deeply narcissistic form of aggressivity (perhaps most prominent in the movement's disposition towards women / "womxn" and queer positionalities).³⁷ For Badiou, the protest movements of contemporary history have in fact all followed the same catastrophic trajectory, because they seem wholly to have ignored the "implacable and stark rules that govern the world today". The abdication of style thus includes this wilful ignorance, resulting in an organisation "only around what is negative"; or, to stay with the South African resonance, only around what "must fall". In remembering their umbrellas, these movements have thus also forgotten them. Yet, there is for Badiou in the Yellow Vests movement (as there was in the Fallist movement) nonetheless the potential of a future communist mo(ve)ment that would lend its support, "in the first place" and precisely, to education about the laws of contemporary capitalism. In this regard, Mbembe insists – and Badiou strongly implies – that an "anticipatory politics"³⁸ cannot be organised in the individualist mode of self-enclosure that has characterised so many of the social movements of our time.

Ian Hill's essay on the drone warfare of the United States provides a stark illumination of the militaristic aspects of what Badiou in conclusion calls the "laws of

³⁷ Achille Mbembe, "Achille Mbembe on the State of South African Political Life" in Sean Jacobs (ed.), *Africa is a Country*. Retrieved from: <https://africasacountry.com/2015/09/achille-mbembe-on-the-state-of-south-african-politics> [Accessed 15 October 2019]. On the narcissistic aggressivity of the movement in relation to non-hegemonic categories of identification, see Sandy Ndelu, Simamkele Dlakavu & Barbara Boswell "Womxn's and nonbinary activists' contribution to the RhodesMustFall and FeesMustFall student movements: 2015 and 2016", *Agenda*, 31(3-4), 2017, 2: "sexism, heterosexism, homophobia and transphobia have emerged as characteristics that marred these movements, albeit unevenly, across various institutions"

³⁸ *Ibid.*

Big Capital". Writing in 1950, Schmitt ventured that the future *nomos* of the Earth will be neither terrestrial, nor maritime – it will consist, and was to an ever greater extent already consisting in, the appropriation of the air.³⁹ It was in this context that he started questioning the future of *nomos*. For Hill, drones are configured by way of a style of rhetoric, as "the contemporary iteration of the [generic] archetype of airborne power". The striking feature of the United States' version of this airborne power is that it has – and there are no surprises here – little to no regard for the existing *lex* of the *populi*. As Hill notes, the style of its military drone programme "has broken or stretched multiple domestic and international laws". Hill's essay, then, reveals a profound contemporary tension between *lex* and *nomos* – and especially how easily *lex* is jettisoned in the rhetorical consolidation of a new *nomos* of the atmosphere, which effectively turns out to be "no more *nomos*". Because here it is as if the drone both creates for itself and then operates within its own state of exception "with a novel, automated, and remote police brutality" that does not abandon law altogether, but rather transforms "bureaucratic legal rhetoric into ambiguous drone pseudo-law" (an Agambenian "real zone of indistinction") which, however "lawlike or "lawlite" it may be, does not hesitate to consider itself the *suprema lex* of the *salus populi*. "The vagueness of drone metonymy", Hill writes, is used to "legalize drone warfare with the assertion that the goal of national security justifies any lethal exercising of American sovereignty". That this state of the air amounts to a profound abdication of style, Hill makes abundantly clear when he writes that this vague/opaque drone metonymy is nonetheless well understood by "foreign populations" as "the entire meaning of the US as a country".

In Sarah Burgess's close reading of the American Supreme Court's decision in *Matal v. Tam*, the abdication of style is formulated as the question of "what happens to law when it revokes its own power to limit speech (in the name of freedom)". Here illuminated stands the withdrawal of law in the name / for the sake of what a Court believes the *salus populi* and its *esto* to be, or *must* be, in the age of neoliberal governmentality. Such a retreat, as Burgess illustrates, has everything to do with an ignorance of style and "an absence of rhetorical sensibility". Showing that the Court in *Tam* "refuses to address how speech operates, while claiming to uphold and honor liberal principles", Burgess argues that this is nothing if it is not the American judiciary undermining "its own foundations (in liberalism)" and implicitly authorising a "neoliberalization of speech". The essay concludes with a demonstration of the fundamental importance of style – which Burgess defines as "how the performative works", as the "turn of the trope" – for a more appropriately liberal protection of "free" speech in which the law might well have to confront its own scandalisation, a "challenge to the norms that the law (as a scene) provides".

In Peter Goodrich's essay, the law (as a scene) is confronted, by way of style, with just such a challenge to the norms that it provides. Goodrich tracks the form, across two continents, of what he calls an "arbitral modality" in recent judicial rhetoric. This arbitral modality is styled by way of what one could call the advance of the image in court judgments. Goodrich argues that the incorporation of the image into the textual terrain of the judicial word blurs the distinction between the two and constitutes a "third site of signification" – another style of (judicial) rhetoric – the viserbal.

³⁹ Schmitt, *Nomos*, pp. 49 and 347.

The most immediate effect of the insertion of an image into the text of the *Housecanary* judgment that Goodrich analyses, is that the image thereby "acquires a precedential status and weight" – it will perform, in other words, the function of forensic rhetoric in judgments to come. At first glance, the image, as a style, is *meant* to strengthen the rhetorical force of the text, playing as it does on the affective dimension of both rhetoric and judgment, indeed relaying another set of motivations that engages the senses, the embodied nature of the jurist. Yet, at the same time and precisely because of its affective (and affected, even comical) style, the viserbal image also undermines the pretended textual structure of unchanging norms in which a court / the law is said to deal. The viserbal, in other words, re-introduces the law to novelty.

The point, in both Burgess and Goodrich's essays, is that in the face of its critique, the summary abdication of style in law's rhetoric is by no means warranted; on the contrary, its responsibility for the *salus populi* is heightened and newly dispersed (as much as the *Housecanary* Court, for instance, wants it to be otherwise). Goodrich believes – and it is hard to disagree – that in an age as preoccupied with the image as is ours, "retinal justice" will undoubtedly have its day. Yet a reader of Burgess's essay cannot fail to recall her conclusion here: the force of law "comes from the recognition of the contingency of any speech act, including its own". In Goodrich's essay, we can thus observe how the image in judicial rhetoric is today not only made to "speak", but made to say – at this third, viserbal, sight of signification – something other than, and other to, the law's unitary speech.

Tim Barouch considers how what at first appears as the abdication of law is really the abdication of style before Badiou's "laws" of contemporary capitalism. Barouch's focus is the role of the private corporation and of private contractors in the delivery of the war on terror. Arguing that the controversy surrounding the legal liability of private contractors for detainee abuses at Abu-Ghraib "highlights crucial elements of Western legal style in the era of twenty first century empire", Barouch considers the case of *Saleh v. Titan Corp* as a "significant expression of legal style that paved the way for imperial expansion".

Barouch's argument resonates well beyond the specificities of American imperialism. The imperious style of legal discourse that he describes reveals the critical role that it plays in masking imperialism as liberal constitutional tradition. And so the discourse of the Interdiction becomes more and more uninhabitable – *salus populi* is no longer *suprema lex*.

South African legal theorists who have criticised the collapse of transformative constitutionalism into liberal constitutional *doxa* under the weight of a conservative legal culture, while at the same time holding out the trope of "decolonisation" like a flashing beacon in the long interpretive night, may well discover in Barouch's analysis how it is that transformative constitutionalism and decolonisation continue to face a common enemy that has long been masquerading as a *salus populi* of "democratic political process" and "democratic tradition".

Dennis Davis's analysis of the South African Constitutional Court's decision in *Volks v. Robinson* not only confirms the above, but also highlights another dimension of imperious legal style. For Louis Althusser, it was "an irrefutable fact that the Family is the most powerful ideological State apparatus",⁴⁰ and in Davis's analysis it becomes

⁴⁰ Louis Althusser, *The Future Lasts a Long Time*, (London: Vintage, 1994), p. 105.

clear how judicial rhetoric produced by conservative legal culture works to hold the ideological, indeed imperial, boundaries of “marriage” in place, at a time when transformation is the law.

Once again, Davis illustrates that the style of the judgment amounts to an abdication of style, with the Court steadfastly rejecting any enquiry into the *populi*, let alone its *salus* in this context, which would lead it to stray from what Davis calls “the pigeonhole dictated by *logos*”. Davis illustrates the critical role that *ethos* plays in the fashioning of what may be called the Court’s discursive self and how it co-determines the pigeonhole of *logos* in the first place. In other words, if there is dictation by *logos*, this does not come from some external, reified source of Reason eternally embodied in precedent - it is the Court dictating to itself.

Romain Laufer’s essay on the rhetoric of management and marketing comes against the backdrop of Barouch and Davis’s essays critically to remind us that marketing is the paradigmatic contemporary form of sophistry. At the same time, Laufer recalls Legendre’s topological description of management as a word “without a homeland”, gesturing at the ease with which the term seems to migrate into other fields (the critical difference, however, being that when it so migrates, it also tends to colonise the field in which it arrives).

The emergence of “management in the field of legal normativity”, Laufer writes, subverts both the principle of law (ignorance is no excuse) as well as the monopoly on legitimate violence on which that principle relies for its force. Laufer, then, is echoing Legendre when he describes a crisis of law’s legitimacy as a result of its infiltration by management and marketing. Like Barouch, he is attributing the abdication of style in law and rhetoric to assassins that are masking as allies of the *salus populi*. Their “styles” have perforated both the hermeneutic and the institutional sail, allowing the storm of “Big Capital” mercilessly to blow in.

In his essay, Laufer writes that everything opposes Ancient Greece from the modern world, “except for what can be called the ideological situation”, and it is as if Sergio Alloggio’s essay on Book I of the *Republic* takes its cue from these words. Alloggio also takes up the concern with class voiced in Badiou’s essay, and he does so in resonant style, carefully illustrating how the *politeia* of the *populi* in the *Republic* is rhetorically constructed by way of class-based repression. In this regard, Alloggio unearths a formidable term for this sort of repression: *katabasis* - and, as he goes on to reveal, it is fundamental both to Plato’s style and to his project of ideological utopian construction in the *Republic*.

This style of rhetoric, then, could be read as the arch-template of the imperious judicial style that Barouch’s essay describes - and so Alloggio adds to the analysis the dimension of a *longue durée* when it comes to the abdications of style. Alloggio relates the rhetoric of class-based repression in the *Republic* back to current problematics in South African philosophy, characterisable as it is by “the persistence of white supremacy in discourses of decolonisation and transformation”. In this reading of decolonisation rhetoric, Alloggio mirrors a style similar to the one that concerns Barouch in judicial rhetoric and Laufer in management rhetoric. Again, it turns on a strategy of masking that is grounded in a *jouissance* no less indulgent than Plato’s in the *Republic*. In short, it is a style before which style is made to bend the knee.

Nathaniel Greenberg turns our attentions to a different kind of arbitral supremacy - the rhetoric of Libya’s Khalifa Hifter, whose style nonetheless vividly reiterates the style described in other papers. Arguing that Hifter has positioned himself

as a pragmatic "technocratic" leader, Greenberg reveals the highly technologically sophisticated "communicative aesthetics" of Hifter's campaign and how its own propaganda, through the exploitation of the media and especially of social media, reinforces its "permutative" aspect, namely how it is "automatically tied to, and ironically reliant upon, the very material" it seeks to supplant.

Greenberg shows how this style of rhetoric is fundamentally bounded up with a (cynical) invocation of the law and of legality, with Hifter positioning himself as the supreme purveyor of Libya's "struggle for stabilisation", its return to Law and Order. What emerges here is "stability" or "securitisation" as itself "permutative", thus, as a signifier that no longer communicates just one aspect of the *salus* of the *populi*, but indeed as a signifier that would communicate the *suprema lex* itself. In other words, it would occupy the position of master-signifier and as such, as Lacan had it, "represent the subject" for all the other signifiers; its style – *how* it communicates, to resort to Burgess's formulation for the moment – is, ironically, firmly rooted in the very technics of hyper-reality to which it is seemingly opposed.

In the other contribution that concerns itself in this issue of *AYOR* with what Salazar has called "paroles de leaders",⁴¹ Sifiso Ngesi focuses on an instance of presidential rhetoric that could be read in contradistinction to the utterances of the "leader" who concerns Greenberg. In his analysis of the rhetoric of the early stages of the Ramaphosa presidency in South Africa, Ngesi raises the rhetorical stakes of an apparently sincere, if desperate, attempt to return to style by way of the rhetorical appeal to the rule of law: the *lex* which (de)limits, or is supposed to delimit, the *esto* of the *salus populi*, and constitutively so – at least in modern democracy as we know it. Ngesi illustrates that a renewed commitment to the rule of law has consistently been styling the rhetoric of the new, post-Zuma presidency – and here in the sense of the rule of law not simply as *lex* but indeed as *nomos*, as the "wall of law"⁴² which arises deliberately to stabilise, secure and lend a degree of permanence to the always fragile *polis*.⁴³

However laudable this attempt to return style to post-apartheid sovereignty may be, it may also not be enough. At the end of his consideration of *ubuntu* and the *salus populi*, Adam Sitze warns that the rule of law is, in its neoliberal and (neo-)colonial declension "a juridical form that is unlikely to address or redress the problem of the 'normal emergency'". The return to style by way of the rule of law thus faces the challenge of overcoming the mere repetition of "business as usual".

Thapelo Teele's debut paper for this edition of *AYOR* returns us to the question of forgiving forgetting. Arguing that the dialectical encounter between the rhetoric of self and the rhetoric of space operates as the condition of possibility of forgiveness in Marlene van Niekerk's *Agaat*, Teele's careful reading indeed brings us up against the very limit of the fluid relationship between law and ethics. What is being suggested when the main character – a woman of apartheid's law (she is, after all, Milla *de Wet*) – dies on National Reconciliation Day, which for her would always have been

⁴¹ Philippe-Joseph Salazar, *Paroles de Leaders: Décrypter le discours des puissants*, (Paris: François Bourin Editeur, 2011).

⁴² Arendt, *The Human Condition*, p. 64.

⁴³ This is, at least, the way in which Arendt's version of *nomos* as a "wall of law" has been read in the context of the American liberal constitutional tradition and its numerous emulations. See Hannah Arendt, "The Great Tradition: I. Law and Power", *Social Research*, 74(3), 2007, p. 717. Also see Schmitt, *The Nomos of the Earth*, p. 70.

apartheid's Day of the Vow? Does the excessive quality of forgiveness – the forgiveness that takes place regardless of apology, without spoken remorse – nonetheless insist on the law, and demand that there be law if there is to be style? And, even more, does it demand that such law be “another style of the master-signifier”?

To close this edition of *AYOR* on the occasion of the twenty-fifth anniversary of South Africa's transition from apartheid to constitutional democracy – a transition famously described by Etienne Mureinik as one from a “culture of authority” to a “culture of justification”⁴⁴ – Erik Doxtader returns us to how it all began, in the hastily drafted, hastily appended, postamble / epilogue of the 1993 interim Constitution – an urgent / emergent constitutional expression of the *salus populi suprema lex esto* if ever there was one; rendered, moreover, and as Doxtader does not fail to remind us, in a state of emergency.

Unearthing all the contradictory expression, over the years, about this most provocative and ambiguous of modern constitutional utterances, Doxtader argues that these not only evince “a pervasive and deep curiosity”, but that the extensive and pluralistic catalogue of utterances about the utterance points to a “sufficient consensus” (to echo, in decontextualised style, the important court case to which he refers) – even if more than somewhat tenuous – that the epilogue “is a place to begin” (again) and, specifically, to begin “to understand a beginning”. As such, it is the “corner piece of the puzzle”, the tip of the umbrella (if not, of course, of the iceberg).

And yet, the “compound question” at which the corner piece gestures, has all too often been turned into “a picture puzzle, a problem in which the task is to discern and fit discrete pieces to an apparent and given end”. In taking a history of the many and variegated readings of the epilogue, Doxtader teases out the “hope for certainty” as their common symptom.

In stronger terms, this could indeed be stated as not simply a hope (*spes*), but rather a *compulsion* to render certainty as the umbrella that would shield, unite and defend the fractured and fragile “nation”. It is no coincidence that Doxtader is echoing here Laufer's discussion of certainty and especially his discussion of Mary Douglas's understanding that “certainty is only possible because doubt is blocked institutionally”. “Certainty has sinister aspects” in a liberal democracy, Douglas writes, because it needs authority to control dissent.

Like “*esto*”, “epilogue” is a “strange word”.⁴⁵ For what is it that, here, comes in addition to *logos*? This question passes from the potential of a simple answer in rhetoric to its full complexity when the “*esto*” is, imperatively, normatively, declaimed as the / an epi-logue. *Esto* as epi-logue, epi-logue as *esto* – a strange affair indeed. And what if Being was an epilogue? Should the *pathos* and the *ethos* that is implied, pointed to, by the epi-logue, simply be considered as “certainly” complementary to the *logos* in addition to which it appears? Or, are we here in the territory of the notorious “dangerous supplement” which is, nonetheless, nothing outside the text? Or both? Or none? With faith in the “compound question”, how are we to decide? Even more so if, as Doxtader writes, the bridge metaphor turns the Constitution into a question?

But decide we do, decide we must and decide we did, in the face of this law as *uncertainty*, as if we had taken Jean-Luc Nancy at his word: “Where certainties come

⁴⁴ Etienne Mureinik, “A Bridge to Where? Introducing the Interim Bill of Rights”, *SAJHR*, 10, 1994, p. 32.

⁴⁵ See The Editor's Note in this volume.

apart, there too rises the strength that no certainty can match."⁴⁶ Doxtader would position the *esto* of this *salus populi*, on account of the epi-logue as an opening, as both inside and outside the law; it is a jussive that both cannot do without and yet does without the law. As such, the continuity of apartheid has turned the epi-logue "into an open wound". With this, Doxtader delivers us to the "untold suffering" of the body politic (the interim Constitution's diagnosis, as accurate as ever). In other words, here is *esto* as trauma. The *salus populi suprema lex* of apartheid – then and now – folds and unfolds as the *trauma populi suprema lex* of its aftermath.

In a somewhat forgotten part of his oeuvre, Jacques Derrida argues that the founding violence of law in South Africa could not manage "to have itself forgotten":

"In the case of South Africa, certain 'conventions' were not respected, the violence was too great, *visibly too great*, at a moment when this visibility extended to a new international scene, and so on. The white community was *too* much in the minority, the disproportion of wealth too flagrant. From then on this violence remains at once excessive and powerless, insufficient in its result, lost in its own contradiction. It cannot manage to have itself forgotten as in the case of states founded on a genocide or a quasi-extirpation. Here, the violence of the origin must repeat itself indefinitely and act out its rightfulness in a legislative apparatus whose monstrosity fails to pay back: a pathological proliferation of juridical prostheses (laws, acts, amendments) destined to legalize to the slightest detail the effects of fundamental racism, of a state racism, the unique and the last in the world."⁴⁷

The wound, thus, open "long, long, long" (as Doxtader writes), before the epi-logue which finally recognised, *marked*, it *legally*. One could go as far as saying that the wound opens at the origin. Can one, how does one, begin with an open wound, found style and law upon coagulation? Doxtader would retrieve an affirmative critique of violence (including its own violence) from the gape of this open wound. Trauma, then, as critique of violence and precisely, of the traumatic violence of the state of exception at the heart of law, at the heart of apartheid, at the heart of today (the "traumatogenic" institutions of neoliberalism, as Mbembe names them).⁴⁸

To be sure, a very different task than the work it is routinely asked to perform in the canonical version of transitional justice is here imagined for trauma. For Doxtader evokes a way of processing trauma by understanding it as an "open exception, a double exception". It is a way of not so much marking the open wound, as *re-marking* it – without resolving anything. Such a remarking as critique of violence necessarily implies that *the* condition of its possibility is that the performing and performative "we" remains, somehow manages to maintain its dwelling, in the symbolic order of language, but perhaps even more precisely, in the deliberative order of rhetoric.

And so, the remains, the open wound, unfolds as umbrella - at once "aggressive and apotropaic", "threatening and / or threatened": "[t]he rhetorical history of apartheid is a crime against humanity *unfolded* through the 'law' of language and the 'language' of law." The "post"-apartheid cannot unfold other than as this remembrance. It is its *esto*. If, as Augé puts it, "[o]blivion is the life force of memory

⁴⁶ Philippe Lacoue-Labarthe and Jean-Luc Nancy (eds.), *Retreating the Political*, (London: Routledge, 1997), p. 158.

⁴⁷ Jacques Derrida, "The Laws of Reflection: Nelson Mandela, in Admiration", in Mustapha Tlili and Jacques Derrida (eds.), *For Nelson Mandela*, (New York: Sever Books, 1987), p. 18.

⁴⁸ See Jacqueline Rose, "One Long Scream", *London Review of Books*, 41(10), 2019. Retrieved from: <https://www.lrb.co.uk/v41/n10/jacqueline-rose/one-long-scream> [Accessed 18 October 2019].

and remembrance is its product",⁴⁹ then there can be no "surfeit of memory"⁵⁰ here, no forgetting the umbrella, no *esto* without remembrance (the *polis*, for the Greeks, was nothing if it was not "organised remembrance",⁵¹ "physiognomically guaranteed by its laws"⁵²). As Paul Ricoeur once remarked, to fail to remember is to "kill the victims twice".⁵³ What remains, thus? Language remains.

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⁴⁹ Marc Augé, *Oblivion*, trans. M de Jager, foreword J.E. Young, (Minneapolis: University of Minnesota Press, 2004), p. 21. The sentiment is echoed in Laufer's essay for this volume when he writes that "every history is as much about amnesia as it is about anamnesis" (p. 90 *infra*).

⁵⁰ Charles S. Maier, "A Surfeit of Memory? Reflections on History, Melancholy and Denial", *History and Memory*, 5(2), 1993, pp. 136-152. See the powerful rejoinder of this argument in Muldoon, "The Power of Forgetting: Ressentiment, Guilt, and Transformative Politics".

⁵¹ Arendt, *Human Condition*, p. 198. Also see Arendt, *Human Condition*, p. 95: "The whole factual world of human affairs depends for its very reality and its continued existence, first upon the presence of others who have seen and heard and will remember, and, second, on the transformation of the intangible into the tangibility of things. Without remembrance and without the reification which remembrance needs for its own fulfilment and which makes it, indeed, as the Greeks held, *the mother of all arts*, the living activities of action, speech, and thought would lose their reality at the end of each process and disappear as though they never had been" (emphasis added).

⁵² *Ibid.* 198.

⁵³ Paul Ricoeur, *Figuring the Sacred: Religion, Narrative, Imagination*, trans. D. Pellauer, ed. M.I. Wallace, (Minneapolis: Fortress Press, 1995), p. 290.