

The Editor's note

Sometime in March, I contacted Alain Badiou. An article he had written had been rejected, or shall we say "censored" by a French newspaper of (so-called) record. His essay dealt with the French Yellow Vests (*Gilets jaunes*) movement which, at that stage, had clocked up another record in a country that is supposed to be a benign democracy (and is in reality an illiberal republic): hundreds of injured protesters, and worse; and no result, being outmanoeuvred by managerial politics. I wrote to him, asking whether he would let AYOR publish it. "*Bien entendu*" was his immediate response. I let those who understand French to weigh those two words: "*bien/entendu*".

Aware of Badiou's scepticism about rhetoric I tried to assuage him by ending my entreaty on this aphorism: *salus populi suprema lex esto*. He shot back with a line from Tacitus, that was drilled into us at school as the *suprema lex amoris*: "*Titus Berenicem invitus invitam dimisit*." He added: "*La rhétorique latine m'a toujours impressionné*." In that rhetorical line of thought, nothing has or will ever match the terseness of a Latin prose clausula or the imperious clarity of a Latin judicial apophthegm. Badiou's essay is about the stunning *salus populi suprema lex esto*; and why, *inviti invitos*, *Gilets jaunes* protesters dismissed themselves at the very moment they thought they were embodying *salus populi* and forcing onto government the *esto* of their protests.

Esto? It is a strange word, and while volumes have been written about *salus populi suprema lex*, less attention has been paid to *esto*. Scholars versed in the history of Roman law have shown how the imperative mode was the key rhetorical element to the power of laws, starting with the Twelve Tables. The grammatical imperative became the jussive mode, which is simply lost in translation when paraphrased by "shall" or "shall be". Interestingly, one rhetorical way in which jurisprudence asserted its prudent claim to *interpretatio* of the laws was to mimic, rhetorically, the jussive command inherent in decemviral laws.

If one believes this is not a contemporary issue relevant to law and rhetoric, it suffices to read the Epilogue of the Interim Constitution of South Africa (1993). The Epilogue is jussive: "In order to advance such reconciliation and reconstruction, amnesty shall be granted." This is an *esto*, and with the arresting cadenza of a Latin clausula too. The primordial, sacerdotal *esto* was injected into a constitutional process, thus creating a dual foundation – an ethical foundation through the Truth and Reconciliation Commission (TRC); a political one through the Constitution. This uneasy duality remains the conundrum at the heart of the South African polity. The epilogical *esto* remains jussive, as Desmond Tutu has ceaselessly reminded politicians. The *esto* that grounds reconciliation is supposed to operate continuously, imperatively, modelled on the theological concept of a *creatio continuans*. While the political class considers the TRC to be a semelfactive event, something that happened once, but is now done with and gone, by contrast the jussive concept of reconciliation ought to remain active, if *salus populi* is to be *suprema lex*.

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