

THE KEEPERS OF TRADITIONS *THE ENGLISH COMMON LAWYERS AND THE PRESENCE OF LAW*

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*Time present and time past
Are both perhaps present in time future,
And time future contained in time past*
T.S. Eliot, *Burnt Norton*

This paper investigates the subtle frame of the legal traditions, looking for the structural relationship that indissolubly binds history, law and narrative. The core of the Author's thought is that the ontological and epistemological views on the nature of historical past decide the fate of legal discourse and juridical arguments. Rediscovering the centrality of T.S. Eliot's notion of pastness as a meaningful concept that claims to be investigated when cultural heritage is at stake, this essay brings to the surface the active role played by English Legal Profession in the formulation of a foundational narrative with the structure of a legal tradition. Common Lawyers were the skilful selectors of the means of expression of political power and authority of Law. It is in the narrative and aesthetics moulded by the brotherhood of the common lawyers that we meet a conscious paradigm of political theology.

In my paper I'll try to re-frame the Common Law Tradition moving from P. Goodrich's vivid representation of the English Legal Profession¹ as the custodian² not only of a tradition of rules but also of linguistic forms - as

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¹ P. Goodrich, *Languages of Law. From Logics of Memory to Nonadic Masks*, preface (1st ed. 1990). In the same passage P. Goodrich casts light on the real structure of the authority of law, arguing that it is strictly connected, or, even better, it is deeply constituted by the means of the proper form of its custody, that is of the institutional language of tradition, insofar as the same authority is substantiated and objectified by the repetition of practices that exceed the memory of man.

² Moving from a very schmittian suggestion, I interpret the exclusive role played by the "Custodian" as the historical means deputed to construct the Presence of Law without

substantive power-forms - and techniques of interpretation that unlock the memories of legal language and consequently (I add) unpack the strategies of the legal discourse.

My use of the word 're-frame' is intentional: of course it refers to a conscious project, but, at the same time, it declares my personal hesitancy on a general and all-reaching use of the much more aware expression 'invention of tradition'.³

The question involved is the perception of the historical sense: the past becoming present, the present recall to the past.

What is under judgment is precisely the comprehension of the pastness reality, or, in other terms, the statement of a factual past.

What is under suspicion is the insularity of the historical past, accepted as a dogma, as an unquestionable faith in the concreteness of an irrevocable past.

So the ontological and epistemological options decide the fate of legal discourse and juridical arguments, since, as Robert Cover brilliantly highlights, 'every prescription is insistent in its demand to be located in discourse, to be supplied with history and destiny beginning and end, explanation and purpose'.⁴

Endorsing this assumption, I'd like to emphasize (and to understand) the structural relationship between history, considered as the course of human acts before every kind of interpretative attempt; law, as a means oriented to create a constructive order of the historical reality and narrative, as a means aimed to frame and explain the different looks of the historical existence.

In this perspective I could find an assonance with Duncan Kennedy's thought on the problematic and dialectical relation of law to development.⁵

superseding the structural mystery of accessibility that lays the Kafkaian doorkeeper in front of an ever-open gate. So the Law is "presenced" guarding the normative strength of an original, inexpressible *arcanum*. For literary quotations, I'm referring to C. Schmitt, *Legalität und Legitimität*, (1st ed. 1932); C. Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen*, (1st ed. 1914); F. Kafka, *Before the Law*, in Id., Kafka's "The Metamorphosis" and other Writings, 68 (1st ed. 2002).

³ In the meaning given to this idea by Eric Hobsbawm; E. Hobsbawm, *The invention of tradition*, (1st ed. 1983).

⁴ R. Cover, *Nomos and Narrative*, 5 Harvard Law Review 97 (1983).

⁵ D. Kennedy, *Two Globalizations of Law and Legal Thought: 1850-1968*, Suffolk 36 Univ. L. Rev. 631 (2003).

I also agree with Patrick Glenn on the crucial role assigned to the notion of *pastness*, as a meaningful concept that claims to be investigated when cultural heritage is at stake.⁶

But my consent becomes strained when Patrick Glenn tries to find a substitutive term, asserting that “this is a very odd and cumbersome word, which a poet might normally avoid”.⁷ I think that this is a real wrong done to T. S. Eliot. In fact the attempted research does not reach a satisfactory result: Glenn is persuaded that there is not correspondence between *pastness*, history and age, so these terms could not be used as interchangeable words that define the elements of a tradition.

As Glenn says, age is not a fine alternative, because although a young age is entirely possible, a young tradition is more problematical. History cannot replace ‘*pastness*’ because it has become a social science and generally a social science seeks to avoid normative statements.

These arguments stir my doubts and make me prey to the devouring maw of skepticism.

Firstly because, in my opinion, they compare the formation of a tradition with the problem of *pastness*, that is something more and different, implying the individual perception of the flow of time that builds the collective consciousness of past and present.

Secondly because the definition of history in terms of social science is not so obvious and consequently the proposed corollary is not so sure.

Therefore even Patrick Glenn has to ascertain that the empty throne, after the dead of the omnipotent *pastness*, cannot be occupied by other authority.⁸

This is a story that involves the language of legitimation and illusory usurpation.

Now, if we read Eliot’s splendid work, *Tradition and the Individual Talent*, not contenting ourselves with easy quotations, we can catch the profundity of his thought and we can also understand the inevitable link that connects law with literature as different forms of social drama.

Here *pastness* is a precise qualification of the past which moves from its sensory and emotional perception.

⁶ P. Glenn, *Legal Traditions of the World: Sustainable Diversity of Law*, 4 (1st ed. 2000).

⁷ P. Glenn, *ibidem*.

⁸ In conclusion Glenn makes use of the word *pastness* in different passages of his book: I have counted 5 relevant passages where the disputed word of *pastness* recurs without any other explanation than its intrinsic, evocative meaning.

Pastness is other than past. It is a very heideggerian depiction of the ontology of the perceived past, and in this perspective I'd like to say that pastness gives expression to the consciousness of the past, as Da-sein gives expression to the consciousness which belongs to Being.⁹

Inevitably, as the result of a human perception, pastness contains the implicit recall to the present and it compels and becomes part of a narrative, which lays beyond the records of the past.

Both of these elements are specified by Eliot where he says: "This historical sense, which is a sense of the timeless as well as of the temporal and of the timeless and of the temporal together, is what makes a writer traditional. And it is at the same time what makes a writer most acutely conscious of his place in time, of his contemporaneity".¹⁰

As P.G. Ellis brilliantly has highlighted, there is a train of thought which links Eliot with some of the critical ideas of the eighties and nineties to a greater extent than he was aware or perhaps would admit: there is a common vocabulary concerning history, development, memory and tradition traceable from Pater and Wilde, through Yeats to Eliot.¹¹

In my view, the aforesaid literary quotations are pivotal for the matter we're discussing and they acquired a further evocative meaning when we are dealing with the Common Law Tradition.

They introduce the centrality of narrative in the constitutive process of a tradition, as a means deputed to form a structure of memory with a specific language and rhetoric devices that conjugate the speech of law in the present according to a distinctive appearance of the past. And then the different forms of collective memories offer a complex bulk of practices (of repetition,

⁹ I'm referring to the heideggerian question of Being, and my specific purpose is to emphasize that Heidegger's concern is ontological and existential. This casts light on a much more underlying structure of historical time and consciousness. M. Heidegger, *Being and Time – A Translation of Sein und Zeit*, (1st ed. 1996).

¹⁰ T.S. Eliot, *Tradition and Individual Talent*, in Id., *Selected Prose*, 38 (1st ed. 1975).

¹¹ P.G. Ellis, *The Development of T.S. Eliot's Historical Sense*, 21 *The Review of English Studies* 291 (1972). Here P.G. Ellis points out that "That Eliot's theory of tradition is one becoming rather than of moments of classical *stasis* is perhaps the greatest point of connection between him and other figures, but the points of detail reveal a closer similarity in their ways of thinking. All use the terminology of the biological sciences, of organic growth and development, to describe the process by which tradition is formed and a language deriving from Platonism to describe the relationship between the present and the past, between the individual and tradition".

inscription and representation) as a justificatory argument now for a scriptural law, now for a discourse of precedent.

In this perspective, as P. Goodrich clearly remarks, a tradition is a language of transmission that allows law to be *living* and *lived*. But, as every other kind of language, even tradition matches with the question of the legitimacy of reference of faith in the linguistic encoding of reality.¹²

On the basis of these premises I'd like to investigate the active role played by the legal profession in the formulation of a foundational narrative with the structure of a legal tradition.

At this aim my arguments are comparative and historical; my approach is of political theology and my attention is attracted by the possibility of an aesthetics of law.

I'll start with the analysis of the Common Law Tradition, then I'll try to compare my conclusions with the peculiarities of the Civil Law Tradition.

I interpret the history of the English Law, and especially the dialectics between Common Law and Equity, as a form of communication of two

¹² P. Goodrich, *op. cit.*, 17; 7, where we can find a bright analysis of the mutual relationship between 'legal tradition', as a specific form of language, and the sources of legitimacy. Here Goodrich observes that 'the faith attributed to and necessary for the working of any existent language system is a question of its legitimacy; the lawfulness not only of its reference but also of its use is predicated upon its source, its institutional provenance, its badge or other insignia of office. [...] The *legal tradition funds the legitimacy of social speech*; it institutes an *order of lawful discourse* and *prohibits those heterodoxies of speech or writing* that are deemed to threaten the security of legal meaning or the order of legal and political reason' (added emphasis is mine). The definition of law as a function of text and language is the real kernel of Ian Ward's thought, as it has been developed in I. Ward, *Shakespeare and the Legal Imagination*, 1 (1st ed. 1999). Introducing the purposes of his book, Ward points out the structural connection among the proper nature of law, the real form of legal legitimacy and law and literature approach as the better tool for understanding legal imagination. In this perspective Ward suggest that 'if law is indeed a literary expression, then its subjects subjugate themselves as readers and audiences. Subjugation becomes an engagement with texts; we subjugate ourselves to those texts which we accept, whether or not our acceptance is encouraged by our reason, our superstition or merely by fear of punishment. In other words, the legitimacy of law, the extent to which we accept it as valid, whether it be rational, providential or simply effective, rests, in the final analysis, in our collective and individual political imagination. A text is legitimate if an audience, for whatever reason, chooses to grant it that legitimacy. [...] The legitimacy of law rested in the political imagination of its subjects [...] It will be suggested, then, that a legal order or constitution is a product of the imagination, as indeed is a piece of literature such as a Shakespearian play. [...] Literature plays an essential role in fashioning a mutable legal imagination'; I. Ward, *op. cit.*, 1-2.

different languages that shape the political debate: respectively the language of Law and the language of Theology.¹³ My concern is to cast light on the basic structure of political arguments and its codes as they had moulded the forms of communication and transmission of the law.

In this perspective, in another essay, I have described the opposite process that involved the development of Common Law and Equity as an alternative motion towards or against a theological reconstruction of the system of law.¹⁴ The same process implied the elaboration of different aesthetics and the communication of a divergent rhetoric of power.

I think that the history of the Common Law is based on the double, inviolable and unquestionable *Dominium* granted to the common lawyers: the privileged inhabitants of the Inns of Court were the holders of a kind of self-governing influence not only over the sphere of Law, but also on the representative strategies of its rational and historical foundation. They were the skilful selectors of the means of expression of political power and authority of Law. The option for an absence of textual codification compels that the legitimacy of the legal institutions, and of the constitution that it embodies, is established with reference to a system of representations and visual signs. This is the question of the Presence of Law¹⁵, of how Law is *presented* in social life.

¹³ During my investigation on Equity, I became persuaded that Equity represented a kind of reserve (not only residuary) power granted to the King on a political and theological level, a kind of not only institutionalized, but also naturalized power to decide the state of exception at the aim to reassert the sovereignty of the Crown against conflicting powers.

¹⁴ C. Costantini, *The Judicature Acts and the on-fisim of Law and Equity*, in *Practising Equity, Addressing Law: Equity in Law and Literature* (ed. D. Carpi), 91 ff. (1st. ed. 2008).

¹⁵ I'm indebted to Peter Goodrich for the use of this expression as it has been clarified from its proper etymological root. The original perspective, combining Benveniste's and Marin's thought, is closely related to my own attempt to justify the history of law with arguments derived from political theology. Presence is from *prae-sens*, that is something both before and in advance the senses, 'an anticipation and an imminence that negates, suspends both time and space by the virtue of the power of the event, of a sacrament'; P. Goodrich, *op. cit.*, 57. The Author quotes L. Marin, when he says 'if being present (*prae-sens*) does not signify being there, to be in front of, but to be before, ahead of, at the tip of, in anticipation or excess, without any apparent continuity between behind and before [...] being there comes to signify an imminent temporality'; L. Marin, *La Parole mangée at autres essays théologico-politiques*, 210 (1st. ed. 1986). Moving from this evocative quotations, Goodrich argues that presence is indexical, in excess of the immediate, imminent, the bearer of a history, a predefined alchemical being. The following remark is particularly interesting for my perspective of political theology, as the better paradigm fitted to understand the darker side of Law, its complex ontology. In fact Goodrich specifies that 'it is also the law, not simply because it is that presence, that genealogy, that parental power

The enunciation of the rules, that is their formulation by the means of words, is combined with other significant and as much eloquent forms of communication or transmission. These forms are often meta-juridical and use a bulk of symbols to make visible the dark side of the power. Then, speaking of a liturgical, sacramental, ritual nature of the legal discourse in the English legal history, I want to pay attention to the different ways chosen for manifesting the presence of the Law.

Law is constituted even by a sapiential art that allows its visibility and at the same time represents the ground on which governmentality expresses the aesthetics of law: a specific kind of art “that manipulates the perception of the signs so that the subject of law attaches itself willingly to the authority of the legal institutions”.¹⁶

First of all the exclusive participation to the elite of serjeants at law was accomplished by an elaborate ritual and by a long vocational training that allowed the selected members to master the secret, esoteric and authoritative knowledge of law.

The evocative words of Sir John Fortescue define the sacerdotal role of the English Legal profession, and they closely recall the theological dimension so to understand the jurisprudence as a form of theology, the meaning and content of which could be expounded only by common lawyers.

I'm obviously referring to the following passage of *De Laudibus Legum Angliae* “we, who are the Ministerial Officers who sit and preside in the Court of justice, are therefore not improperly called Sacerdotes The import of the latin word (*sacerdos*) being one who gives or teaches Holy Things”.¹⁷

of the origin that is ingested by each communicant, but more that the *sacrificial memory* draws us back to the continuity of the sacred, to a truth that unites the living Church against all threats of discontinuity’, P. Goodrich, *op. cit.*, 61. Applying these remarks to the specific nature of common law, Goodrich comes to the conclusion – I think pivotal for the discourse which we’re dealing with, insofar as it embraces the peculiar strategy used to construct Common Law Tradition – that the continuity of presence is exemplified precisely through the removal of the discontinuous, through the expulsion – either literal or symbolic – of the transgressor, in each act of judgment, in each affirmation of the law, in each ‘discovery’ or presencing of the immemorial rules. The presence of the law, its memory itself, its ritual of identification is one of repetition: it is monumental because presence is never simply presence, and repetition too is always more than return of the same’; Goodrich, *op. cit.*, 62.

¹⁶ According P. Raffield’s clear statement; P. Raffield, *Images and Cultures of Law in Early Modern England. Justice and Political Power, 1558 – 1660*, 2 (1st ed. 2004).

¹⁷ J. Fortescue, A. Amos, *De Laudibus Legum Angliae: The translation into English published A.D. MDCLXXV and the original Latin text with notes*, 9 (1st. ed. 1825).

This assertion is closely linked to the national consciousness that the English Law consecrates a kind of untouchable inheritance shaped in a particular code, so different from the other systems of law because of its exclusive proximity both to nature and to divine law. This view, as it was suggested not only by Fortescue, but also by Sir Thomas Smith in its *De Republica Anglorum*¹⁸ and by Coke in *The Second Part of the Institutes of the Laws of England*¹⁹, and as it was explicitly affirmed by Dugdale²⁰ and Davies²¹, is essential for the construction of the genealogy of Common Law. In fact, despite its uncertain provenance, Common Law was depicted by its apologists as unimpeachable insofar as it take origin from an absolute, divine original. For its inner and mystical history the English Common Law becomes one of the most vivid embodiments of political-theology discourse, another expression of the 'Word of God' for a 'chosen people', that – in some measure – casts doubt on the uniqueness of Hebrew Law.²²

On these grounds the common lawyers depicted their proper representation as the nobility of Law, claiming to be the cliquish authors of the truthful tradition and the sacralised keepers of the arcane of law, the mouthpieces of a godly rule set apart from the social community.

This remark allows us to connect on the one hand the sphere of Law with the realm of Theology and on the other the plastic elocution of the political sovereignty of the Crown with the iconic portrayal of the masters of the Law.

¹⁸ T. Smith, L. Alston, *De Republica Anglorum: A Discourse on the Commonwealth of England*, (1st. ed. 1906).

¹⁹ E. Coke, *The Second Part of the Institutes of the Lawes of England*, (1st. ed. 1642).

²⁰ Dugdale, *Origines Juridicales or Historical Memorials of the English Law*, fol. 3 (1st. ed. 1666), 'The Common Laws of England are grounded upon the Law of God and extend themselves to the original law of Nature and the Universal Law of Nations; and that they are not originally *leges scriptae*'.

²¹ J. Davies, *Le Primer Report des cases resolues en les courts del Roy*, fol. 2a (1st. ed. 1615) 'As the law of nature, which the schoolmen do call *ius commune*, and which is also *ius non scriptum* being w ritten only in the hearts of men, is better than all w ritten laws [...] so the customary law of England, which we do likewise call *ius commune* as coming nearest to the law of nature, which is the root and touchstone of all good laws, and which is also *ius non scriptum*, is w ritten only in the memory of man'.

²² On this regard we can remember that Fortescue clarifies the political concept of *dominium politicum et regale* making use of an assertive analogy between the English people and the Israelites, when in his *The Governance of England* he says 'The children of Israell, as saith Seynt Thomas, after that God had chosen thaim in populum peculiarem et regnum sacerdotale, were ruled by hym undir Juges regaliter et politice'; J. Fortescue, S. Lockwood, *On the Laws and Governance of England*, 84 (1st ed. 1997).

There is a metaphysical level of comprehension: the custody of the meaning of signs is a custody of an unseen, unwritten, divine truth entrusted to holy heralds and therefore made visible and available through a living body used as the historical means that testifies the presence of Law.

In this way both the legal and the theological discourse are repositories of an invisible order of truth and consequently they can be spoken only by selected men of virtue.

In this way the dogmatized authority of Common Lawyers became the asserted ground for the authenticity of the English system of law: the mystical body of the lawyers was the embodied maker of English Law and Tradition.

On a juridical level, the exclusive right of enunciating the letter of the Law was combined with an equally clannish power of interpretation, the exercise of which produced a secret, cryptic and even masked hermeneutics.

Then in my view, the language of the inner circle of common lawyers could be re-interpreted as a kind of heideggerian logos²³, a tool fitted to grasp and to exhibit: not only to set out the real entity of a rule *in and for itself*, but also to refer the *appearance* of the truth law. In this perspective, the question of the Presence of Law is strictly related to the ontological issue of the Appearance of the Lawful truth: common lawyer's Logos is *presenced* as the annunciation of the authenticity of Law.

The law-making elite of the Inns of Court declared the unspoken constitution as a fundamental law of inclusion and exclusion, that draws the notorious distinction between 'them and us' differentiating the narrow elite of the sages of Law from the unlearned men. And this had two main consequences: first of all it set a clear contiguity between the only seemingly discrete domains of Law and Politics. Secondly it revealed the oxymoric, intrinsic essence of the Ancient English Constitution, where the magnificent aura of Sovereignty (political and legal sovereignty), the sumptuous and opulent iconicity of power came with the secrecy of its practices, a kind of rite (or liturgy) that requires specific Ministers.

According to Pierre Legendre the liturgical is 'the theatrical staging of the legality of the message consisting of an address to all those who are supposed to have deal with, in one manner or another, the discourse of legitimacy'.²⁴

²³ Of course, I'm referring to the fascinating grammatology built by Heidegger, M. Heidegger, *Sein und Zeit*, (1st ed. 1927).

²⁴ P. Legendre, *L'Inestimable Objet de la transmission: Etude sur le principe généalogique en Occident*, 205 (1st ed. 1985).

Now the commonwealth of lawyers made use of its space, of its dress, and of its rituals to frame the unwritten truth of the Constitution in the framework of a thoughtless time.

I perfectly agree with Paul Raffield when he says that 'common law was manifested and revealed to its disciples through the oral traditions of its exclusive communities, but for those subjects of law who did not have access to these rites legitimacy and authority were communicated through an alternative system of signs'.²⁵

In this perspective I think that even the buildings of the Inns of Court were repositories for the memory of law, and then their architecture contributed to the construction of the Common Law Tradition.

I have noted²⁶ that Temple Bar is the concrete paradigm of Assmann's theory, according which the Temple is the perfect embodiment of a 'monumental discourse' as a means used by the State to show itself and the superior divine order as its ontological archetype. In itself, the Temple is a 'nomos', a chosen place where the Law is fulfilled and ritually acted. It's also a tridimensional version of a Book with all the characteristics of a 'Canon'. This was Temple Bar: the privileged and only one site where Common Law was physically announced by the structures of the Inns as well as God is embodied in His Ecclesia and He's renewed in the Holy Communion: *hoc est corpus meum*.

In the same logic I'd like to make a very short, but I think suggestive reference to the regulation of the image at the Inns of Court. It is generally known that clothes have a representational power: they are concrete signs and emblems through which the societal status of individual subjects (the *status et gradus* to quote the hendiadys we can find in the writs for the call to the Bar) had been identifiable. During Tudor times sumptuary legislation was enacted with the specific purpose to determine the political, social and cultural development of the modern English nation-state, making the Monarch the earth embodiment of divine authority, the perfect *imago Dei*, a secular *imperium* with a preeminent spiritual supremacy.

Even if the community of the Inns of Court was immune from the interference of every kind of external powers and it represented a 'separated jurisdiction' beyond the secular and the ecclesiastic ones, the governing bodies of the Inns enacted their own sumptuary regulation so to clarify the duty of the legal profession to apply a specific theory of the image to its institutional existence. 'Every man of this Society should frame and reform himself for the

²⁵ P. Raffield, *op. cit.*, 43. 1st

²⁶ C. Costantini, *The Literature of Temple Bar*, 1 Polemos, 169 ff. (2007).

manner of his apparel'.²⁷ In these terms the regulation of Gray's Inn, passed in 1574, repropounded the statements of the Inner Temple Parliament legislation: the legal community claimed for its proper role of clarifying the correct use of symbols, so to clearly embody the spiritual and the temporal qualities of the Tudor settlement.

I have tried to propose my interpretation of Common Law as an antique tradition performed in a liturgical language, placed by the narrow brotherhood of common lawyers outside history and beyond memories, and designed as the intimate, incorruptible knowledge of a chosen profession.

Now it is in the common lawyers' narrative that we meet with a conscious paradigm of political theology: as we have seen, the common lawyers represented their Law as the perfect embodiment of God's will so to reveal that Common Law combines two different kinds of sources, both temporal and spiritual.

My aim is to highlight that in this precise historical context we can combine different declensions of political theology as they are proposed respectively by C. Schmitt and Jan Assmann. As it's well known Schmitt claims for the translation into secular and political concepts of the original religious ones.²⁸ On the contrary, Jan Assmann claims for the translation into theological and religious dimension of the originally secular and political dimension.²⁹

I re-frame the Common Law tradition as a continuous path that connects these opposed representations of political theology. Initially the narrow elite of serjeants at law took on theological attributes to legitimate and justify its exclusive dominion on and over the Law, transforming a sacerdotal ritual, that presupposes a sacramental initiation, into a codified administration of rules and remedies and imposing the origins of Law and Politics from the Theological order.

Subsequently, the Monarch, conscious of the perils embedded in these exclusive privileges legitimated the sovereign power by the means of a new kind of theologized authority that laid claim even to the papal prerogatives.

What I have said is an evidence that the Law needs a physical body for its historical existence and even more for its plastic communication in social life. And the boundary line that separates the Common Law Tradition and the

²⁷The legislation is chronicled by Dugdale, *op. cit.*, fo. 282.

²⁸C. Schmitt, *Politische Theologie, vier Kapitel zur Lehre von der Souveränität*, (ed 1922).

²⁹J. Assmann, *Herrschaft und Heil. Politische Theologie zwischen Ägypten und Israel*, (1st ed. 2000).

Civil Law Tradition is precisely the different comprehension of the *body of law*: now it is represented as a living body of lawyers that declares and dictates the rules of law, as the only one holder of the access key to an esoteric knowledge; now it becomes a *corpus iuris*, a text, a book, a canon. In both cases the authority of the law asserts itself by the means of a sacralization (or theologization) of the chosen body.³⁰

This is the history of the narratives that are the common glue of the construction both of Common Law Tradition and of Civil Law Tradition. And this is the issue: the writing of the past, as a form of representation aiming to select memories, to plot a persuasive narrative, to derive an unitary and unbroken tradition from a bulk of different accounts.

What is at stake is an uninterrupted tradition within which the Power becomes, quoting Gadamer, an anonymous authority, a legal tradition, searching for its own Ministries, Interpreters and Actors. The Ministries – I conclude – of a renewed sense of the pastness of the past.

³⁰.As I have suggested in my book, C. Costantini, *La Legge e il Tempio. Storia comparata della giustizia inglese*, 215 ff. (1st ed. 2007).