
State Building

Donald Trump called ‘Make America Great Again’ his ‘whole theme’.¹ He blazoned the slogan in signal white on his red baseball cap and even trademarked it.² ‘Let’s make America great again’ had been the election slogan of Ronald Reagan’s successful 1980 presidential election campaign. Accepting the Republican Party’s nomination to run as its presidential candidate, Reagan portrayed his party as one with ‘positive programs for solving the nation’s problems, a party ready to build a new consensus with all those across the land who share a community of values embodied in these words: family, work, neighborhood, peace and freedom’. He founded these values in the compact made between the Pilgrim Fathers:

Three-hundred-and-sixty years ago, in 1620, a group of families dared to cross a mighty ocean to build a future for themselves in a new world. When they arrived at Plymouth, Massachusetts, they formed what they called a ‘compact,’ an agreement among themselves to build a community and abide by its laws.

Reagan called for a communal effort to rebuild America on those first foundations, promising to ‘those who’ve abandoned hope’ that his party would ‘welcome them into a great national crusade to make America great again’. Reagan talked of building ‘consensus’ and ‘community’, and of ‘making a commitment to care’. Absent the alliterative ‘crusade’, such language is about as close as a conservative on the political right can come to aligning with the politics of the political left as described in the following terms by one Fabian commentator:

To end citizens’ disillusionment with politics, we need to craft a different idea and practice of political power. Politicians should see themselves as creators not managers, as leaders who build and nurture institutions in which people negotiate and agree a common plan of action for mutual interest.³

¹ David Martosko, ‘Trump Trademarked Slogan “Make America Great Again” . . .’, *Daily Mail*, 12 May 2015.

² *Ibid.*; and see Katherine Kerrick, *(Trade)mark America Great Again: Should Political Slogans Be Able to Receive Trademark Protection?* (2020) 18 UNH L Rev 309–342.

³ Jon Wilson, ‘The Politics of Creation’, in Ed Wallis and Ania Skrzypek-Claassens (eds), *Back to Earth: Reconnecting People and Politics* (London: The Fabian Society, 2014) 1.

Reagan put America first, but he also acknowledged that making a better America was compatible with the project to ‘make a better world for others’.

Making Enemies

There was no such note of consensus building in Donald Trump’s acceptance speech when the Republicans nominated him to run for president.⁴ On the contrary, his references to building and making were invariably framed in opposition to others, whether they be Mexican immigrants, Chinese trade rivals, or Washington political elites. The most blatant example was his notorious promise to ‘build a wall’ on the US-Mexico border: ‘We are going to build a great border wall to stop illegal immigration, to stop the gangs and the violence, and to stop the drugs from pouring into our communities.’ Whenever he talks of building his own people up, he seldom misses the chance to put others down. For example, his promise to ‘outline reforms to add millions of new jobs and trillions in new wealth that can be used to rebuild America’ was immediately followed with the assertion that ‘these reforms that I will outline tonight will be opposed by some of our nation’s most powerful special interests’; and his statement, ‘[w]e are going to start building and making things again’, follows talk of renegotiating ‘horrible trade agreements with China and many others’. Even when expressing the positive belief that his economic plan ‘will improve the quality of life for all Americans – We will build the roads, highways, bridges, tunnels, airports, and the railways of tomorrow [which] in turn, will create millions more jobs’, he posits an enemy to his plan – not a political rival or a foreign power – but hard-working teachers in struggling (and presumably inner-city) schools. That’s the implication of his very next line: ‘We will rescue kids from failing schools by helping their parents send them to a safe school of their choice.’ Likewise, when he promises that ‘[w]e will completely rebuild our depleted military’, the constructive point is immediately followed by criticism of others: ‘and the countries that we protect, at a massive loss, will be asked to pay their fair share’. It is significant that ‘Rebuilding America Now’, which has been identified as the ‘primary’ super PAC (political action committee) backing Donald Trump’s 2016 election campaign,⁵ spent \$17 million attacking Hillary Clinton and less than a quarter of that sum positively supporting Donald Trump.⁶ Even as this book goes to press in February 2023, the tagline on its website under the banner ‘Rebuilding America Now’ is ‘Vote #NeverHillary’.⁷

⁴ Donald Trump, Republican National Convention (21 July 2016).

⁵ Alexander Burns and Maggie Haberman, ‘Electoral Map Gives Donald Trump Few Places to Go’, *New York Times*, 30 July 2016.

⁶ ‘Rebuilding America Now’, *Opensecrets.org*, Outside Spending Summary 2016.

⁷ See: www.rebuildingamericanow.com.

Trump is a property developer by background, and is fond of boasting his credentials as a ‘builder’:

[T]he bottom line is we have to rebuild our country, ’cos the infrastructure . . . and who can do better than me with that . . . the building, nobody can do building like I do building, and even the builders in New York will tell you ‘Trump builds the best’.⁸

The populist brand of building promoted by Trump and his primary supporters, including Rebuilding America Now, is not of the consensus-building sort, but of the demolish and rebuild sort. There is seldom a ‘put it up’ without a corresponding ‘put them down’. With his negative emphasis, Trump departs from standard political wisdom on the use of metaphors, which holds, as Jonathan Charteris-Black summarizes it in his index of metaphors, that ‘Good Governing Is Creating’ and ‘Bad Governing Is Destroying’.⁹ When the Rebuilding America Now website does put across its message in more positive terms, as in its one-minute campaign video ‘America Soaring’, it appeals to the Making Sense. It opens with the negative observation that ‘[s]killed craftsmen and tradespeople and factory workers have seen the jobs they love shoot thousands of miles away’, but promises that it can be turned around:

It will be American steel, just like the American steel that built the Empire State Building, that will fortify America’s crumbling bridges. It will be American steel that rebuilds our inner cities. It will be American steel that sends our skyscrapers soaring. It will be American hands, American workers that remake this country . . . we’re going to Make America Great Again for everyone. Greater than ever before.¹⁰

All this is the standard puff of presidential election campaigns. The reference to building bridges is especially potent metaphorically as a way of combining the virtues of building with the political ideal of connecting people. Hence Bill Clinton’s slogan for his successful 1996 presidential election campaign was ‘Building a Bridge to the 21st Century’. Rebuilding America Now’s reference to ‘[s]killed craftsmen and tradespeople and factory workers’ is also a cliché of campaign advertisements. Indeed, an April Fool’s Day video from 2016 entitled ‘This Is a Generic Presidential Campaign Ad’ contains the line: ‘machines spark in the foreground when I tour the few remaining places where they manufacture things’.¹¹ In the hands of property developer Donald

⁸ ‘Trump: Nobody Can Build Like I Can’, *Morning Joe*, MSNBC, 8 February 2016.

⁹ Jonathan Charteris-Black, *Politicians and Rhetoric: The Persuasive Power of Metaphor* (Basingstoke: Palgrave, 2011) 362.

¹⁰ ‘Rebuilding America Now: America Soaring’ (2 August 2016) <https://youtu.be/NMNZTcGSHlg>.

¹¹ Kendra Eash, ‘This Is a Generic Presidential Campaign Ad, by Dissolve’, Dissolve, 1 April 2016, 0’32 <https://www.youtube.com/watch?v=rouDIzhgVcY>.

Trump, the cliché of building and making had a particularly plausible appeal to his base voters.

Made in Germany

Like all performers, Trump knows his audience and how to play to them. His talk of 'building and making things again' might be especially appealing to that section of the electorate whose heritage is one of manual craft and industry, and in that respect few sections of American society are as significant as the German-Americans. Per Urlaub and David Huenlic, scholars in the Department of Germanic Studies at the University of Texas at Austin, have written an article which asks in its title: 'Why Are the German-Americans Trump's Most Loyal Supporters?'.¹² It is an important question because, as they note, '46 million Americans claim German ancestry and therefore constitute the largest national heritage group in the United States', and the counties in which they are the largest ethnic group correspond closely to counties that supported Trump in 2016.¹³ In answer to Urlaub and Huenlic's question, we can perhaps dismiss the relatively superficial fact that Trump is himself of German extraction. Some scholars have pointed to race as a significant factor in Trump's support in the northern heartland states where German-Americans are prevalent,¹⁴ but that is hard to square with support for Obama in swing 'German-American counties' in 2008 and 2012.¹⁵ The scholars who posed the question regarding German-Americans being Trump's most loyal supporters answer it by pointing not to race or to Trump's ancestry but to a more complex blend of socio-economic and cultural factors. These factors can be read together, I would argue, to suggest that the root of German-American support for Trump is his appeal to the Making Sense. When German farmers and skilled workers settled in the USA in the nineteenth century, they had a huge hand in the cultivation and industrialization of the mid-west:

¹² Per Urlaub and David Huenlic, 'Why Are the German-Americans Trump's Most Loyal Supporters?', in Darren G. Lilleker et al. (ed.), *US Election Analysis 2016: Media, Voters and the Campaign* (Poole: Centre for the Study of Journalism, Culture and Community, Bournemouth University, 2016) 65.

¹³ Compare the map in the article: 'The Silent Minority: America's Largest Ethnic Group Has Assimilated So Well that People Barely Notice It', *The Economist*, 5 February 2015, with maps of Trump support at state level in the 2016 election and (which is more indicative of his core base) the 2020 election.

¹⁴ Marc Hooghe and Ruth Dassonneville, 'Explaining the Trump Vote: The Effect of Racist Resentment and Anti-immigrant Sentiments' (2018) 51(3) *Political Science & Politics* 528–534; Ann M. Oberhauser, Daniel Krier, and Abdi M. Kusow, 'Political Moderation and Polarization in the Heartland: Economics, Rurality, and Social Identity in the 2016 U.S. Presidential Election' (2019) 60(2) *The Sociological Quarterly* 224–244.

¹⁵ Klara Dentler, Thomas Gschwend, and David Hünlich, 'A Swing Vote from the Ethnic Backstage: The German American Role in Donald Trump's 2016 Victory', Working Paper (University of Mannheim, 2020) 12.

Agriculture and entrepreneurial craftsmanship generated wealth that sustained families and communities for more than a century until globalization undermined the economic sustainability of family farms and domestic manufacturing. . . . the collapse of communal structures, and the loss of a rich cultural heritage that provided a sense of being, made people receptive for Trump's anti-establishment gestures and his xenophobic messages.¹⁶

The slogan 'Make America Great Again' is rhetorically effective because it appeals powerfully to significant topics of rhetorical persuasion. 'America' appeals to nation. 'Great' appeals to power and success. 'Again' appeals to nostalgia. 'Make', though, may be the most actively persuasive word of them all. It is in prime position at the start of the slogan and is the only verb – the only active word – of the four, but most significant is the fact that the type of action it appeals to is the action of making. Insofar as the slogan excites the Making Sense, it will have psychological appeal to voters. For some (including, one suspects, many Native Americans and African Americans) this will be offset by a lack of nostalgia for the ways in which America was made in the first place. For German-Americans, on the other hand, and for descendants of other groups for whom the ideal of America is positively inseparable from their skill in making, crafting, and cultivating with their own hands, the slogan 'Make America Great Again' must sound like an anthem to 'Make America's Makers Great Again' in the face of the twin existential threats of urbanization and globalization.

Washington: America's Chief Architect

Five years before the 'Make America Great Again' motif appeared in US politics, 'Make Britain Great Again' had been the slogan of the far-right party The National Front in their campaign for the UK to answer 'no' in the 1975 national referendum on the question 'Do you think that the United Kingdom should stay in the European Community (the Common Market)?'. The 'Make Great' slogan has a particular relevance to the UK because 'Great Britain' is the traditional label for the territorially largest – that is, the physically 'greatest' – of the British Isles, but despite the slogan's unique suitability to the UK, it is no surprise that it has migrated so effectively into US politics. The idea of building has always been at the heart of the rhetorical performance by which America has sought to form its national identity, right down to the fact that the original performers of the rhetorical texts on which the nation was built were named the 'founding fathers'.

¹⁶ Per Urlaub and David Huenlic, 'Why Are the German-Americans Trump's Most Loyal Supporters?', 65.

The nation's capital, Washington, DC, is named for the keystone of the founding fathers – George Washington. Washington the man has been transformed into Washington the national symbol. In a political system designed to operate by checks and balances, the symbolic fulcrum is the massive stone needle of the Washington Monument – the tallest monumental obelisk in the world. The main architectural sentence in the rhetorical expression of the national polity is the grand articulation of the National Mall. It stretches out, the Lincoln Memorial at one end and the Capitol Building at the other, with the Washington Monument somewhere near the mid-point. The monument is a fitting tribute to a president who was acutely attuned to the architectural construction of his personal and political image, and who – as befits a pragmatic military general and political performer – eschewed architectural theories in favour of a simple respect for structures that ‘please the eye’.¹⁷ George Washington practised as a professional surveyor from his teenage years. He was also a Master Mason – not of the artisan variety, but as a senior member of the fellowship of freemasons which he had joined as a young man. Among the founding fathers, Ben Franklin and John Hancock were also freemasons and it is believed that at least one in six of the signatories of the Declaration of Independence and at least one in three of the signatories of the Constitution of the United States were freemasons. As architects and freemasons, the founding fathers were self-consciously in the business of state building.

Freemasonry was, and largely still is, a principally male affair. The political association between building and political life is also dominated by male politicians, but there are nevertheless significant examples of female politicians leaning on building metaphors. Hillary Clinton's concession speech after the 2016 presidential election featured a call, figured as a rhetorical tricolon, ‘to build that better, stronger, fairer America we seek’ (9 November 2016). In the UK, Prime Minister Theresa May closed her first speech as prime minister with the words: ‘together we will build a better Britain’ (13 July 2016). When accepting the 2020 Democratic Party nomination to run for vice-president, Kamala Harris spoke of ‘building this country back better’ to ‘create millions of jobs . . . so the future is made in America’ and of her vision to ‘build on the Affordable Care Act’ (19 August 2020). She was here echoing a key theme of Joe Biden's presidential campaign, for when accepting the nomination to run for president, Biden said:

Together, we can, and we will, rebuild our economy. And when we do, we'll not only build it back, we'll build it back better. With modern roads, bridges, highways, broadband, ports and airports as a new foundation for economic growth. With pipes that transport clean water to every community. With

¹⁷ Joseph Manca, *George Washington's Eye: Landscape, Architecture, and Design at Mount Vernon* (Baltimore: The Johns Hopkins University Press, 2012) 43.

5 million new manufacturing and technology jobs so the future is made in America. (20 August 2020)

In his first address to the nation as president elect, Biden reasserted his building theme:

I sought this office to restore the soul of America. To rebuild the backbone of the nation – the middle class. To make America respected around the world again and to unite us here at home . . . And now the work of making this vision real is the task of our time. (7 November 2020)

In his inaugural presidential address, Biden sought to galvanize the nation to undertake the shared challenge, and to take the shared opportunity, of having ‘much to do . . . Much to repair . . . Much to restore . . . Much to heal . . . Much to build . . . And much to gain.’ Combining making and building, he went on to replace the ‘great’ of Trump’s slogan with an idea of the common ‘good’:

We can reward work, rebuild the middle class, and make health care secure for all. We can deliver racial justice. We can make America, once again, the leading force for good in the world. (20 January 2021)

Boris the Builder

Joe Biden’s 2020 alliterative tricolon ‘build it back better’ was published shortly after then UK Prime Minister Boris Johnson’s press release ‘Build, Build, Build’, in which Johnson committed his government to ‘build back better’ in response to the Covid-19 pandemic.¹⁸ Johnson’s government also used the motto as the slogan for the G7 summit hosted by the UK in 2021, where the main agenda item was global recovery from the Covid-19 pandemic. In Johnson’s case, the phrase was used not only metaphorically but also literally. The policy advertised in the press release was concerned with ‘making it easier to build better homes where people want to live’. A further policy announced in 2022, which aimed, with a typical alliterative flourish, to turn ‘benefits to bricks’, promised to help working people in receipt of housing benefits to save for their own homes. Johnson seems to enjoy playing the role of ‘Boris the Builder’. Like the animated television character ‘Bob the Builder’, he is frequently to be seen wearing a builder’s yellow hard hat and on one memorable occasion his party published a video of him driving a JCB digger emblazoned with the British flag and the slogan ‘Get Brexit Done’ through a polystyrene wall bearing the word ‘Gridlock’.¹⁹ Johnson likes a big building venture. He eagerly adopted and promoted the UK’s HS2 (High Speed Rail 2) project even though it was running massively over budget, would cause

¹⁸ ‘Build, Build, Build’, Press Release, Prime Minister’s Office (30 June 2020).

¹⁹ General election campaign visit to JCB, Uttoxeter, UK (10 December 2019).

environmental damage to the rural heartlands of Conservative Party support, and had originally been proposed by the opposition Labour Party. When he was London Mayor, Johnson put his name to the London Olympics and to the construction of London's new Crossrail development, as well as being a prime mover in a project to build a new London airport on an artificial island in the Thames, a project almost as impractical as his talk of building a bridge joining Northern Ireland to Scotland. The cynic might say that Johnson deliberately initiates or adopts huge infrastructural projects not only to grab headlines and to appear to be productive, but also to distract the public from the finer details of his political performance. He undoubtedly appreciates the rhetorically performative benefits of being seen to build. As Tom McTague summarizes: 'He loves infrastructure, mobile infrastructure especially – planes, trains, bicycles, trams, even bridges to Ireland and airports floating in the sea. And he loves photo ops.'²⁰ 'Mobile infrastructure' is an apt phrase, for it tells us that projects of this sort achieve the rhetorical ideal of performing political change in tandem with political stability.

Building up the House Down Under

The building trope is also favoured in political performance elsewhere across the globe. In Australia, male politicians in particular have been at the forefront of notable building performances. As befits the more informal tone of Antipodean politics, we more than once find prime ministers embedding their performances in the context of a casual trip to Australia's popular hardware store Bunnings (shorthand for Bunnings Warehouse). Interestingly, and perhaps to offset the traditionally macho associations of building work, female family members have on these occasions been cast in supporting roles. So we have the example of Scott Morrison, the then prime minister of Australia, who uploaded a video to his Facebook account with the following tagline:

In honour of Father's Day, I thought I'd share a quick video of one of my best dad moments from this year – building a cubby house with my daughter Lily for her school project. It's not perfect, but doing it together was. (Facebook, 6 September 2020)

Within the first ten seconds of the video, he announces: 'we've been to Bunnings'. By enlisting his daughter's help in the construction, she becomes a sort of representative figure for the viewing public – encouraging Australians to imagine themselves as co-Producers participating in the prime minister's political project.

On 1 September 2013, the then Australian prime minister, Kevin Rudd, launched his party's campaign for the Australian federal election with the

²⁰ Tom McTague, 'The Minister of Chaos: Boris Johnson Knows Exactly What He's Doing', *The Atlantic*, July–August 2021.

motto 'building for the future'. This time his wife, businesswoman Thérèse Rein, played the supporting role, introducing him to the stage with an amusing account of when her husband visited Bunnings and came back with all manner of goods (step ladder, extension cable, etc.) but not the one thing she'd asked him to buy – a single 'mozzie candle'. The anecdote neatly framed the ensuing speech in which the prime minister exploited the building trope to the full, saying:

We are in the business of building the house up. We have been building this vision – brick-by-brick over the last five years ... we, for all our faults, are always having a go at building a better Australia.

Chinese Walls

The popularity of building slogans with politicians is also observable in China. When Chinese artist Zhang Dali produced his photographic artwork *The Slogan Series*, which was based on political slogans placed on state-sponsored billboards across Beijing in 2007 and 2008, nearly all of the artist's chosen slogans featured at least one theme relating to making, building, construction, or development. In Professor Maurizio Marinelli's English translation, they were:

- 'Effortlessly build up a saving society. Implement a sustainable development.'
- 'Seek the truth and be pragmatic. Open up to innovation. Promote the balanced development of the three cultures.'
- 'Study ceremony and propriety and you will make yourself more cultivated. Behave according to ceremony and propriety and you will make (your) life more beautiful.'
- 'Enhance an advanced culture. Promote the social development.'
- 'Take to heart the study, the implementation, and the fulfilment of the spirit of the Party's Seventeenth Congress. Push forward the construction of the harmonious socialist society.'
- 'Strengthen the construction of morality in the way of thinking. Elevate the cultural quality of the citizens.'²¹

The predominance of themes of cultural construction in this selected list of slogans might be down in part to the artist's bias – he was, after all, using them in the construction of his own cultural contribution – but it is more likely attributable to the dominance of the building theme in Chinese political ideology. The state's national goal is summed up as 'building up a socialist political civilization'.²² The authors of an article on building metaphors in

²¹ Maurizio Marinelli, 'Civilising the Citizens: Political Slogans and the Right to the City' (2012) 9 (3) *PORTAL* 1–27.

²² Xia Nianxi, 'Political Slogans and Logic' (2009) 56(1) *Diogenes* 109–116, 115.

Taiwanese presidential speeches note how Chinese nationalist Kuomintang presidents of Taiwan have promoted the Chinese communist ideal of building through their use of building metaphors, whereas presidents opposed to Chinese rule have preferred metaphors that convey the idea that ‘Communists are Destroyers’ and ‘The Communist Takeover is Destruction’.²³ Of course, the important thing with all political propaganda is to treat with prudent suspicion any suggestion that the ideals behind the metaphor are sincerely held and sincerely pursued by the propagandist. After all, even Vladimir Putin, whose name is nowadays a byword for wanton destruction, is apparently an ardent enthusiast for metaphors of building.²⁴

The Universality of Linguistic Construction

One reason for the global appeal of the building metaphor, despite great regional differences in language, is the basic fact that the formation of linguistic sentences is itself a constructive activity. Raymond W. Gibbs, Jr. observes that ‘people automatically construct imaginative understandings of metaphors that are closely tied to their mental simulating . . . Metaphorical simulations are not abstract, or amodal, but are created in terms of “as if” bodily action.’²⁵ For example, when we talk metaphorically of ‘grasping a concept’ we really do think about the motor function of ‘grasping’, and for this reason the seemingly abstract metaphor is cognitively realized and made real. This finding flows from cognitive or conceptual metaphor theory as pioneered by such scholars as George Lakoff and Mark Johnson.²⁶ They argue that the cognitive basis for metaphor usage entails that in certain contexts, including the context of law, ‘metaphor is made real’.²⁷ Andrew Ortony acknowledges that this ‘constructivist approach . . . tends to undermine the distinction between the metaphorical and literal’, but that it establishes ‘an important role for metaphor in both language and thought.’²⁸

The rhetoricians of antiquity appreciated in their own way the essential cognitive connection between language and thought. When the Roman rhetorician Quintilian wrote that in the construction of a sentence each word ‘has

²³ Louis Wei-Lun Lu and Kathleen Ahrens, ‘Ideological Influence on BUILDING Metaphors in Taiwanese Presidential Speeches’ (2008) 19(3) *Discourse & Society* 383–408.

²⁴ Nelya Kotevko and Lara Ryazanova-Clarke, ‘The Path and Building Metaphors in the Speeches of Vladimir Putin: Back to the Future?’ (2009) 15(2) *Slavonica* 112–127.

²⁵ Raymond W. Gibbs, Jr and Teenie Matlock, ‘Metaphor, Imagination, and Simulation’, in Raymond W. Gibbs, Jr (ed.), *The Cambridge Handbook of Metaphor and Thought* (Cambridge: Cambridge University Press, 2008) 161–176, 165.

²⁶ See, for example, the section ‘An Argument Is a Building’, in George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago: Chicago University Press, 1980), chapter 17.

²⁷ George Lakoff, ‘Contemporary Theory of Metaphor’, in Andrew Ortony (ed.) *Metaphor and Thought*, 2nd ed. (Cambridge: Cambridge University Press, 1993) 202–251, 243.

²⁸ Andrew Ortony (ed.) *Metaphor and Thought*, 2nd ed. (Cambridge: Cambridge University Press, 1993), 2.

to be placed in its proper position, as in a structure of unshaped stones. We cannot cut or polish words to make them fit together',²⁹ he was talking metaphorically but also in a way that expressed and revealed the cognitive reality of the art of crafting a sentence. The idea of language as practice in rhetorical craft, and specifically of the builder's or mason's craft, continued into the medieval period³⁰ and still survives today. James Boyd White pursues a similar thought in his chapter on 'Making Meaning in the Sentence', where he observes that 'in our writing and talk we do not in fact produce a series of unconnected clauses but fashion them into what we call sentences, built up by a process of subordination and coordination'.³¹ Use of the words 'produce', 'fashion', and 'built up' reveals that he has a material process in mind. More prosaically, we are accustomed to talk of a 'well-constructed' sentence. It is the feel, the shape, the sound, the solidity, and the form of the sentence that makes the matter and makes it matter. In criminal convictions we even talk of judges 'passing down' or 'handing down' sentences as if they were material things. Judicial and juristic sentences are indeed made things – whether 'made' is here understood to refer to Invention through the choice of linguistic fragments, or to Creation of a material expression out of the grain of an idea, or to the public Production of an utterance to be handled by the hearer or reader as co-Producer. To utter a sentence, says White, is to 'engage in creation'.³² Not surprisingly, it is to Ralph Waldo Emerson, who coined the idea of 'creative reading', that White turns for support.³³ Emerson brings in the audience's role as co-Producer of a sentence when he observes that:

The maker of a sentence like the other artist, launches out into the infinite and builds a road into chaos and old Night, and is followed by those who hear him with something of wild, creative delight.³⁴

As with all language, 'metaphor . . . is not a mere reflection of a pre-existing objective reality but a construction of reality',³⁵ and metaphors are especially constructive, for they present a puzzle (e.g. 'hope is a rose bud') which prompts the mind to erect a cognitive bridge between an abstract concept

²⁹ Quintilian, *The Orator's Education (Institutio Oratoria)*, Donald A. Russell (ed. and trans.), Loeb Classical Library (Cambridge, MA: Harvard University Press, 2001) 8.6.63. See Leland M. Griffin, 'The Edifice Metaphor in Rhetorical Theory' (1960) 27(5) *Communications Monographs* 279–292, 284. Griffin argues that 'rhetoric is in some sense the counterpart of architecture' (279).

³⁰ Mary Carruthers, *The Craft of Thought: Meditation, Rhetoric, and the Making of Images, 400–1200* (Cambridge: Cambridge University Press, 2000) 20–21.

³¹ James Boyd White, *The Edge of Meaning* (Chicago: University of Chicago Press, 2001) 106.

³² *Ibid.*, 129.

³³ *Ibid.* On Emerson's idea of 'creative reading', see the discussion in Chapter 10 of the present study.

³⁴ Emerson, *Journals*, 19 December 1834, quoted in James Boyd White, *The Edge of Meaning* (Chicago: University of Chicago Press, 2001) 129.

³⁵ Andrew Goatly, *The Language of Metaphors*. London: Routledge. 1997) 155.

(hope) and a concrete image (rose bud).³⁶ Where metaphor – which is a constructor – uses the imagery of building, its power of construction is amplified, for in a building metaphor the builder builds. No wonder, then, that Charteris-Black's analysis of fifty years of British party-political election manifestos reveals that building imagery accounted for 'nearly a quarter of all metaphors' used;³⁷ although how many of these were 'building as completed edifice' and how many 'building as process' is not said. That distinction matters, because whereas the former speaks of stability, the latter conjures the equally significant but very different political value of change. Charteris-Black does make the important point that the popular political metaphor 'we have laid the foundations' expresses both present stability and the potential for future change.

Building, Not Building

It is important to clarify that the most effective rhetorical performances are not those that present 'building' as a noun (the product as completed construct) but those that present 'building' as a verb (the thing in the course of construction). Presenting the building process opens up the possibility, or at least the perception, of public participation in the co-Production of the national commonwealth. Building as activity encourages the Making Sense of communal building and of building community in a way that presenting 'a building' as completed edifice does not. I am drawn back to a beautiful passage in Horace's *Ars Poetica* in which he represents art's ability to build society through persuasive influence:

Amphion too, the builder of the Theban wall, was said to give the stones motion with the sound of his lyre, and to lead them whithersoever he would, by engaging persuasion.³⁸

Music is symbolic here of all the lyrical arts inspired by the muses – what the Greeks called *mousiké* – among which we can certainly include the rhetorical art of performed speech, which in ancient times was inseparable from law and statecraft.³⁹ A key feature of what makes this passage in Horace so persuasive and engaging is that it does not present a picture of the built wall but instead

³⁶ Gary Watt, *Equity Stirring: The Story of Justice beyond Law* (Oxford: Hart, 2007) 56–57.

³⁷ Jonathan Charteris-Black, *Corpus Approaches to Critical Metaphor Analysis* (Basingstoke: Palgrave, 2004) 70.

³⁸ Horace, *Ars Poetica*, §394, C. Smart (trans.), *The Works of Horace*, Theodore Alois Buckley revised (New York: Harper & Brothers, 1863). Here I prefer Smart's choice of 'engaging persuasion' to H. Rushton Fairclough's Loeb translation 'supplicating spell' (Cambridge, MA: Harvard University Press, 1926).

³⁹ Penelope Murray and Peter Wilson (eds), *Music and the Muses: The Culture of Mousike in the Classical Athenian City* (Oxford: Oxford University Press, 2010); M. Paola Mittica, 'When the World Was *Mousiké*: On the Origins of the Relationship between Law and Music' (2015) 9(1) *Law and Humanities* 29–54.

draws the audience into the activity of building. It evokes the Making Sense. Present the public with the chance to participate in making, and you make friends. Present the public with a finished product over which they can have no creative influence, and you are likely to make enemies. Former UK Prime Minister Theresa May found this to her cost.

In the final Prime Minister's Questions in the House of Commons before the 2017 UK general election, Theresa May said 'strong' thirty-one times and 'strong and stable' ten times (26 April 2017). This was a rather clumsy attempt to lodge in the public ear the Conservative Party's election slogan 'Strong and Stable Leadership in the National Interest'. She was not presenting a building as such, but she was presenting her leadership and her government as an established and immovable object with the definite sense that it was the finished and firmly founded article – a *fait accompli*. Theresa May's offering came with no inherent sense of flexibility, growth, or capacity to change. As leader of the incumbent government, she was seeking to establish in the public imagination the statue-like stability of the state and the status quo. It seems that the possibility did not occur to her that voters would want to push against the strong and stable stone she presented to them rather than give her a mandate to build upon it. Shakespeare dramatized a historical precedent for the same sort of political blindness when his Julius Caesar boasted right before he was assassinated that he was 'constant as the northern star, / Of whose true-fixed and resting quality / There is no fellow in the firmament' (*Julius Caesar* 3.1.58–62). I have argued elsewhere that Shakespeare's *Julius Caesar* can be read as an extended rhetorical engagement with connotations of the Latin verb *stare* 'to stand' (the foundation of such words as 'state', 'status', 'statue', 'statute', 'constitution') and by the same token as an extended rhetorical study of the dramatic dynamic of overcoming political stubbornness and the stasis of the state.⁴⁰ Making a broadly similar point, the celebrated Shakespearean director Michael Bogdanov notes that Shakespeare often 'poses a status quo against which he pits a protagonist', and that the protagonist 'usually smashes him or herself to pieces against the rock of state'.⁴¹

The supposed stability of any static state, whether it be the state of the nation or the individual playgoer's state of mind, sets a challenge to the dramaturge, for the essential urge of a dramatist is always to move their audience. In the drama of the 2017 general election, Theresa May smashed herself to pieces on the rock of her own stability. Interestingly, her premiership had begun in July 2016 with an appeal to the Making Sense expressed in her hope to 'build a better Britain' and 'forge a new role for ourselves in the world' after departure from the EU. By 2017, the dynamism of that initial message

⁴⁰ Gary Watt, "'Shall I Descend?': Rhetorical Stasis and Moving Will in *Julius Caesar*", in Gary Watt, *Shakespeare's Acts of Will: Law, Testament and Properties of Performance* (London: Bloomsbury, 2016) 109–148.

⁴¹ Michael Bogdanov, *Shakespeare: The Director's Cut* (Edinburgh: Capercaillie Books, 2003) 23.

had become static to the point of stagnancy, having been stymied by parliamentary reluctance to deliver the Brexit outcome called for by the 2016 referendum. Whichever way individuals had voted in the 2016 referendum, few among the electorate at the 2017 general election had any appetite for the status quo, and yet this is precisely what Theresa May's 'strong and stable' mantra was offering them. In the event, the public rejected Theresa May's insistent and stagnant offer of stability. She had called the 2017 general election in the hope of improving her party's parliamentary majority in order to strengthen her government's hand in Brexit negotiations with the EU, but the election wiped out her majority. The electorate likes building but doesn't necessarily like buildings.

Law in the Making

It is in the nature of politics that a government 'must be stable and yet it cannot stand still'. These words, borrowed from American jurist Roscoe Pound, were originally applied to law. He went on to say that 'all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change'.⁴² Judge Benjamin Cardozo once observed similarly that 'the lover of stability, of things as they are [and] the zealot who pants for change. Each is a builder of the Civitas Dei; and so, let us believe in all humility, is every craftsman in this process of ours'.⁴³ To retain popular respect for its processes, the law must somehow exude a sense of reliable stability while at the same time promising responsive plasticity. How can it communicate these two conflicting qualities at one and the same time? Cardozo's words demonstrate that one of the law's successful methods for simultaneously displaying stability and change is the use of metaphors and allegories of building, and particularly those that communicate building as an ongoing process. When the law can demonstrate that it is in the course of erecting a strong edifice it is able to communicate present progress and change even as it performs its belief in permanence and stability. The performance is at its most effective when the law, by which I mean legal actors and the law's human representatives, can demonstrate that it is offering not a *fait accompli* but (in the title of Professor Allen's book) *Law in the Making*.⁴⁴ The balance between stability and change is demonstrated, for example, in an official video about the construction of the permanent premises of the International Criminal Court, for, despite the descriptor 'permanent', the video focuses on the construction stage and the narrator expressly notes that 'it is

⁴² Roscoe Pound, *Interpretations of Legal History* (1923) (Cambridge, MA and London: Harvard University Press, 2013) 1.

⁴³ Tycho Brahe (ed.), *Selected Writings of Benjamin Nathan Cardozo* (New York: Fallon Publications, 1947) 25.

⁴⁴ Carleton K. Allen, *Law in the Making* (Oxford: Oxford University Press, 1927).

important that a formal institution like the ICC does not constitute barriers for people, on the contrary, it must express the very essence of democratic architecture'.⁴⁵ These words have the effect of inviting the public into the making process and of encouraging them to participate and even (given the express aim to produce 'democratic architecture') to have a sense of co-Production in the project. When the French Ministry of Justice embarked on a revision of its courthouses in the late 1980s, it likewise sought to express 'the values of democracy' in the construction of its new court buildings.⁴⁶ Eliza Garnsey makes a similar observation on the Constitutional Court of South Africa when she writes that:

The physical existence of the court building is a realisation of South Africa's transition; this is the site of justice . . . the Court is simultaneously a utopian good place (a site constituting justice) and a utopian no place, a prospect yet to be realised (a sight of justice in the making).⁴⁷

The subtitle of Garnsey's book is *Creative State-Building in Times of Political Transition*. It hints that art – whether it be Amphion's musical art or a politician's rhetorical art – is especially well suited to performing the seemingly paradoxical task of building the state as a stable thing while responding to social movements and transitions through time. The special qualification of musical, rhetorical, and other arts in this regard resides in their dependence upon settled rules and their creative capacity to adapt those rules in new ways to new conditions. There is rhetorical and dramatic genius in any performance that can simultaneously promise stability even as it enacts change, for what most humans desire is to be exposed to conditions in which the twin goods of security and variety exist in harmonious balance.

Equitable Architecture

The word 'architect' is derived from the Greek *arkhitekton*. It means 'master builder' and, more anciently, 'chief weaver'. The word conveys the sense that an architect is a person whose superior technical skill confers superior social status; a sense that also appears from the Old English counterpart *heahcraeftiga* ('high crafter'). Many a lawyer is content to function as a mere technician,

⁴⁵ 'Video: Permanent Premises of the International Criminal Court', www.icc-cpi.int (April 2013). On similar themes, see 'Law in Concrete: Institutional Architecture in Brussels and the Hague'. On courthouse design generally, see Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Abingdon: Routledge, 2010).

⁴⁶ *A nouvelle architecture judiciaire: des palais de justice modernes pour une nouvelle image de la justice*, Ministère de la Justice, France (2000). English quotation in Judith Resnik, Dennis E. Curtis, and Allison A. Tait, 'Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere', in Anne Wagner and Richard Sherwin (eds), *Law, Culture and Visual Studies* (Dordrecht: Springer, 2014) 515–545, 526.

⁴⁷ Eliza Garnsey, *The Justice of Visual Art: Creative State-Building in Times of Political Transition* (Law in Context) (Cambridge: Cambridge University Press, 2019) 124–125.

when they ought to aspire to the status of ‘high crafter’. As the lawyer Pleydell says in the novel *Guy Mannering* by Scottish author (and sometime legal advocate) Sir Walter Scott, ‘[a] lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect’.⁴⁸ The idea of the architect first became prominent as a description of experts who oversaw the technical design and building of wooden, stone, and brick constructions, but it readily became a metaphor to describe an expert in rhetorical techniques of state building and constructing laws. It was in this metaphorical sense that Martin Luther King Jr referred to America’s founding fathers as ‘the architects of our republic’.⁴⁹

So similar are the architectural crafts of law and building that when Aristotle contemplated the seemingly intractable conflict between law’s rigidity and life’s variability, he found a solution in a building metaphor. In Greek thought, a law properly so-called was an inflexible and unchanging thing to be laid down against the shapes of life to enable a judge to determine where life had fallen short of law. It was Aristotle who identified the need for equity (he called it *epieikeia*, which means something like ‘gentleness’ or the quality of ‘yielding’) to act as ‘a rectification of law where law is defective because of its generality’.⁵⁰ The solution, he said, was not to lay down law in the form of a universal and rigid rule, but to apply discretion through judicial decree in the particular case. He likened this flexible mode of justice to ‘the leaden rule used by Lesbian builders; just as that rule is not rigid but can be bent to the shape of the stone, so a special ordinance is made to fit the circumstances of the case’.⁵¹ The metaphor seems to have been inspired by a curved or leaf-like motif used in architectural decoration on the ancient Greek island of Lesbos. The lesson of the metaphor is that a builder or carpenter wishing to fit material to an irregular (non-rectilinear) support must bend their rule to fit the contours of the context, just as a judge must bend rigid legal rules to fit the organic shapes of human life in the context of a particular case. Law should bend to fit life, rather than life bend to fit law.⁵²

Another Brick in the Law

The activity of equity demonstrates that law at its most imaginative aspires to the difficult task of integrating rules to life, so that laws take on human shape. James Boyd White writes that:

⁴⁸ Sir Walter Scott, *Guy Mannering or The Astrologer* (1815) this quotation is from the Collins Classics edition (London: Collins, 1955) chapter 37, 253.

⁴⁹ Martin Luther King Jr, ‘I have a Dream’ (28 August 1963).

⁵⁰ Aristotle, *Nicomachean Ethics* 5.6, Harris Rackham (trans.), Aristotle Vol. 19, Loeb Classical Library 73 (Cambridge, MA: Harvard University Press, 1926) 317.

⁵¹ *Ibid.*, 5.7.

⁵² See, generally, Gary Watt, *Equity Stirring: The Story of Justice Beyond Law* (Oxford: Hart Publishing, 2009), 156.

The art of the lawyer, like that of the judge, is to put together the prior texts that are the material of law in new compositions, which, while respecting the nature of each item, so order them as to create a new arrangement with a meaning of its own. The art of law is the art of integration.⁵³

Law sets itself the ambition of integrating every section of law, old and new, with every other to produce a whole that is as coherent as possible. This aims to achieve consistency and predictability as necessary features of a just legal process. The American jurist Rosco Pound stresses the importance of ‘the process of adjusting the legal materials handed down from the civilization of the past to the demands of the civilization of the present and of finding or creating new materials and fitting them with the old into a more or less harmonious system’.⁵⁴ The lawyers’ art of integrating law with itself entails the craft of constructing the whole with an eye to the part and construing the part with an eye to the whole. The proper construction of a statutory section or the proper construction of a contractual clause is only achievable through the expert practice of this highly technical – indeed architectural – art. As interpretation of a document is an art of integration, so too is drafting a document so that all the clauses and subclauses fit together to form an impenetrable wall.

Judge-made law is an integrated (if not entirely coherent) whole built out of cases, and cases in turn are formed out of the skilfully assembled fragments we call facts. The basic building blocks of judicial craft are the speech units that constitute the judicial fact and the speech units that constitute the judicial statement of law. The legal maker of a well-formed juristic sentence must have an eye to the construction of the whole edifice. The jurist who does this well may be compared to the high crafter who carefully selects suitable stones to form a dry-stone wall, or else to the artisan who lays down the law brick-by-brick to build the integrated stable wall of the legal edifice.

The word ‘brick’ is a close cousin to ‘break’. A brick is always a fragment of a greater whole. A lone brick is estranged from its intended purpose, which is to be joined with other bricks to make an integrated edifice. A stone, unlike a brick, can be a freestanding thing. The earliest law codes were inscribed in the form of standing stones called steles, and famous examples survive including the Rosetta Stone in the British Museum and the basalt stele in the Musée du Louvre that bears almost the entire Code of Hammurabi. Even in modern English, derived as it is from prehistoric, Proto-Indo European roots, the stone-like stability of inscribed law is clear from the similarity of the related words ‘statue’ and ‘statute’. They are both standing things. The legal image of the brick in the wall fits with the language by which we typically describe

⁵³ James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1990) 214.

⁵⁴ Roscoe Pound, *Interpretations of Legal History* (1923) (Cambridge, MA and London: Harvard University Press, 2013) 116.

infractions of law in the language of 'breaking' and 'breach'. The notion of 'law-breaking' implies fragmentation of a whole, whereas 'law-making' can be conceived as the opposite process of building a whole out of fractions brick-by-brick. Thus law-bricking and law-breaking are processes by which the law is rendered more or less integrated. If the legal drafter leaves holes in the whole, the draft document may prove draughty. When we use the term 'loophole' to describe a weakness in legal drafting, we are using the imagery of medieval warfare. The loophole was the narrow slit or gap in a castle wall from which arrows were fired out, and through which a well-aimed arrow of the enemy might pierce. As always with legal loopholes, the point of vulnerability in the law's edifice is simultaneously one side's weakness and the other side's opportunity. The challenge facing the legal draftsman is to build the law brick-by-brick without a loophole. One brick out of place might produce a dangerous infraction of the integrity of the whole. It is complicated enough in private drafting, but the edifice of the law is also built on a grand scale through the work of Parliament and judges. On the grand scale, the bare passage of time can produce social movements that unsettle the structure. Particular bricks are sometimes eroded by social change. If a judge thinks, for example, that a former case was decided *rebus sic stantibus* ('as things then stood'), the judge might depart from the former decision and in effect remove the brick from the wall of the law. When breaches or loopholes appear in the wall for any reason – whether it be the passage of time, human error, or the vagueness of language⁵⁵ – the law must make good the whole by supplying a new brick to fit the need. In the common law, this work of constant repair and maintenance falls not to the architect of any grand design but to the humble work of the judge as bricklayer in the particular case. The inevitable conclusion is that there is no conclusion. The building (verb) of the legal edifice is continuous. The building (noun) of the law is never complete.

Law is engaged, then, in two simultaneous building processes: one to achieve its own integrity, the other to integrate law to life. The very word 'order', which has come to be associated with the force of rules and commandments, is more properly (i.e. etymologically) associated with the integration of social structures through a positive process of 'joining together'. This should entail not only the joining of law with law to establish its own edifice for its own purposes, but also the joining of law to human social life so that the law remains a thing made by the people for the people. A positive and hopeful way to think of legal utterance – the legal sentence – is to regard it as an example of the art of building order through articulation with a view to producing something harmonious. All those key words – 'art', 'order', 'articulation', and 'harmonious' – are cognate with the conjectured Proto-Indo-European root **ar-* meaning 'to fit together'.

⁵⁵ See Timothy A. O. Endicott, *Vagueness in Law* (Oxford: Oxford University Press, 2000).

The question arises as to the mutual compatibility of the endeavour to join law to law and the endeavour to join law to life. There is potential tension between the need to build the integrity of the law's own edifice and the need to develop integrity between law and society as a whole. That being so, it is surely desirable that priority should be given not to establishing the impenetrability of law's design but to the more difficult craft of making the law fit flexibly with human experience so as to maintain the integrity of the entire social fabric. Milner S. Ball has more than once embarked on similar metaphorical musings. His thoughtful conclusion is that both can be achieved when law promotes the business of building peace:

If law is to be anything other than a bulwark, what transforms the fear, self-protectiveness, and love of power that the bulwark serves? . . . An alternate conceptual metaphor for law . . . depends upon its family connections for its vitality and fullness of expression . . . Within the family, its integrity is maintained. Law is a medium of solidarity where there is a community needing a medium for its mutuality.⁵⁶

Law as Cathedral

If we assume that law is building its edifice brick-by-brick and stone-by-stone, the question is whether we can tell what it is yet. Perhaps it is becoming a defensive castle, or a factory of some sort – maybe something like a cotton mill, or a place where weaving is undertaken on an industrial scale, or perhaps the craft of law is building a terrace of homes in which judges as artisan weavers work by the light of garret windows. There are doubtless as many ways of working law as there are candidate varieties of edifice. I wonder, though, if 'the cathedral' serves best as an image of the sort of structure that the law is working on. I don't mean the pagan temples of the Greeks and Romans that have inspired the neoclassical design of so many courthouses, especially in the United States of America, but the old medieval cathedrals of Europe. The courtroom designed as a neoclassical temple is a clue to the secular religion of modern law, but the classical temples of Greece and Rome were built by slaves. So too were some of the old courthouses still in use in modern America. The medieval cathedrals of Europe were quite another matter.

Richard Schechner identifies the building of the medieval cathedrals as a multi-authored work. The process of building a cathedral is, he says, an

⁵⁶ Milner S. Ball, 'Law Natural: Its Family of Metaphors and Its Theology' (1985) 3 *Journal of Law & Religion* 141–165, 161–162. See, further, Milner S. Ball, *Lying Down Together: Law, Metaphor and Theology – Rhetoric of the Human Sciences* (Madison: University of Wisconsin Press, 1985), in which he identifies the dominance of the metaphor of law as 'bulwark of freedom' (23) and offers as an alternative an idea of law as 'a medium of the human community as community' (34).

example of a production in which the process must take place in public, in something like the way that a theatrical performance must be presented before witnesses.⁵⁷ Perhaps it is the drama inherent in the public construction of these majestic places of worship that has so endeared them to authors and dramatists. Ibsen's play *The Master Builder* (*Bygmester Solness*) concerns the erection of a church spire, and its climactic scene brings the public together to witness the dramatic grand opening at which the architect Solness climbs to the top of the spire only to fall to his death. Referring to Ibsen's play, Frank Kermode observes that '[a] building comes completely into being before it is 'topped out' but architects want the ceremony', adding, '[i]t is not a fact that there are no facts, indeed it is because there are so many that we need our fictions'.⁵⁸ An example like Ibsen's, is Dorothy L. Sayers' 1937 play *The Zeal of Thy House*. Commissioned to celebrate the work of artisans connected to Canterbury Cathedral, it was based upon the real-life master builder William of Sens who died following a fall from scaffolding during a renovation of the cathedral. Sayer's study *The Mind of the Maker*, which we discussed at length in Chapter 2, was developed from a passage in that play.

In the construction of a medieval cathedral, members of the public were not passive onlookers but active co-Producers. Almost the entire witnessing public would have had some hands-on part in the work, from chiselling or hoisting stones to feeding the labourers or donating to the building fund. David Turnbull has observed that:

Gothic cathedrals like Chartres were built in a discontinuous process by groups of masons using their own local knowledge, measures, and techniques. They had neither plans nor knowledge of structural mechanics. The success of the masons in building such large complex innovative structures lies in the use of templates, string, constructive geometry, and social organization to assemble a coherent whole from the messy heterogeneous practices of diverse groups of workers.⁵⁹

How close this sounds to the craft by which common law judges, proceeding without any codified plan, work together across many lifetimes to construct an edifice which, by respecting the humanity of individual lives in particular cases, comes to deserve the reciprocal respect of the public it serves. Schechner adds that in the case of works that span the lifetimes of many authors, such as the Homeric Epics, the Bible, and the medieval cathedral:

[T]he process of making the work has an extra step, that of arriving at a 'finished form' that cannot be known with certainty beforehand. This solidification may

⁵⁷ Richard Schechner, *Performance Theory*, revised ed. (1977) (New York: Routledge, 2003) 204.

⁵⁸ Frank Kermode, 'The Men on the Dump: A Response', in M. Tudeau-Clayton and M. Warner (eds), *Addressing Frank Kermode: Essays in Criticism and Interpretation* (Basingstoke: Macmillan, 1991) 89–108, 101.

⁵⁹ David Turnbull, 'The Ad Hoc Collective Work of Building Gothic Cathedrals with Templates, String, and Geometry' (1993) 18(3) *Science, Technology and Human Values* 315–340, 315 (abstract).

take many generations and be ratified historically in structures which, under different circumstances, may have turned out differently. For example, Notre Dame in Paris has only one ‘finished’ tower; but how ‘wrong’ it would be to finish the ‘incomplete’ structure. As an ideal cathedral the building lacks a tower; as Notre Dame it is complete only as it now stands.⁶⁰

It is not apparent to the casual onlooker that one of the two towers of Notre Dame de Paris is unfinished as Schechner observes, but his point about allowing the cathedral to live out its unplanned life according to its own organic nature is well made. One thing that is clear to the naked eye is that the north tower is larger than the south tower. Here, again, the discrepancy does not diminish the beauty of the whole. The narrator of Anthony Trollope’s novel *The Warden* shares this very thought when contemplating the edifice of the parish church at Plumstead Episcopi, Barchester:

[I]t is built in a faulty style: the body of the church is low – so low, that the nearly flat leaden roof would be visible from the churchyard, were it not for the carved parapet with which it is surrounded. It is cruciform, though the transepts are irregular, one being larger than the other; and the tower is much too high in proportion to the church. But the colour of the building is perfect . . . and though in gazing on such a structure one knows by rule that the old priests who built it, built it wrong, one cannot bring oneself to wish that they should have made it other than it is.

Anthony Trollope appreciated, as Aristotle appreciated, that a life built strictly to rule and to the letter of legal rights will be cold, mean, attenuated, and austere. Rules that yield a little to the contours of natural life are far more fitting to the humans who make them and the societies that are subject to them. As John Ruskin wrote in his essay ‘The Nature of Gothic’, in which he advanced the superiority of medieval artisanal building over the architectural techniques of his own time: ‘no architecture can be truly noble which is *not* imperfect’.⁶¹

Arguably, the common law method has an advantage over its civil law codified counterparts when it comes to finding the right ‘fit’, because the common law builds its edifice responsively and organically – its judges working like Trollope’s ‘old priests’ – rather than according to a preordained architectural scheme.⁶² The only question is whether the advantage of working without a master plan outweighs the disadvantage of slight wonkiness and inconsistencies in the resulting structure (these are certainly features of every

⁶⁰ Richard Schechner, *Performance Theory*, revised ed. (1977) (New York: Routledge, 2003) 204–205.

⁶¹ John Ruskin, *On the Nature of Gothic Architecture: And Herein of the True Functions of the Workman in Art* (London: Smith, Elder, & Co, 1854) 13. See also, *The Stones of Venice*, Vol. 2 (London: Smith, Elder & Co, 1853), chapter 6, ‘The Nature of Gothic’ (emphasis in original).

⁶² On the traditional priestly or sacerdotal function of common law judges, see Paul Raffield, *Shakespeare’s Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Oxford: Hart, 2010) 44–45.

common law, case-based system). If there is doubt as to whether the advantages are worth it, they might be offset by adjustments in the next round of building, for the common law, as stated earlier, is always building and is never finally built.

The adversarial nature of common law pleading is another feature of the common law that is illuminated by reference to the analogy of cathedral construction. Conflict in law and drama teaches us that criticism can be constructive where opponents work together to produce a mutually beneficial outcome. In law, legal advocates are professionally opposed, but they are supposed to be united in seeking to produce an outcome that is just and satisfactory not only to their client but to the cause of justice and therefore to society as a whole. Hence, it is said in the legal system of England and Wales, as elsewhere, that an advocate's first duty is not to their client but to the court. In theatrical drama, the parts of protagonist and antagonist are opposed to each other, but the actors' enterprise, like that of the law, is the shared one of working together in a production that gives scope for expression and resolution of conflicting passions and wills. What might modern politics and social debate look like if opponents were more civil in their appreciation that each side needs the other in order to produce a satisfactory and enduring civil society? One answer is that it might resemble the apparent opposition between the exterior wall of a medieval cathedral and the 'flying' buttress that pushes against it from the outside. (In England, the cathedrals of Lincoln and Winchester supply some of the most striking examples.) The formal opposition between wall and buttress is a productive partnership. The buttress supports the very thing that it pushes against. More than this, the wall and buttress are not in partnership for their own sakes, but for the common purpose of reducing the bulk of the wall and thereby to enable the inclusion of larger windows. Through this simple picture, we can see how constructive opposition in law, politics, and other social contexts can operate to let more light into the scene.⁶³

This Insubstantial Pageant

Our procession around the medieval cathedral is complete and we have come full circle. We began by noting the rhetorical power of the ostensibly positive slogan 'Make America Great Again', but also by lamenting the way in which it has not fulfilled Ronald Reagan's expressed hope that it should promote a society for the good of all citizens. It has instead become the mantra of a divisive and nihilistic brand of politics that insists on razing existing structures to the ground before a new work of building can begin. One of those structures is an actual building – the Capitol Building in Washington, DC – which is the

⁶³ On legal architecture as a reflection of values of 'openness and lightness', see David Gurnham, "'Hell Has No Flames, Only Windows that Won't Open': Justice as Escape in Law and Literature' (2019) 13(2) *Law and Humanities* 269–293.

concrete and conceptual home of the legislature of the United States of America. When Donald Trump's supporters stormed the Capitol Building on 6 January 2021, it was an assault not only against governmental institutions and a particular governmental building but against the very idea of building a civil society upon the foundations of the past. So it is with all insurrections, coups, and revolutions – buildings suffer as citizens strike a symbolic blow against the stability of the status quo. In the Russian Revolution of 1917, the Bolsheviks overran the Tsar's Winter Palace in Petrograd, an event commemorated three years later in a mass theatrical spectacle. In the French Revolution of 1789, the equivalent event was the Storming of the Bastille on 14 July.

I suggested early on in this book that the president of the 'brave new world' of the United States is a sort of Prospero figure. He (one day she) is invested with an almost mystical rhetorical power of state building, but when the magic fails the edifice cannot be sustained. In that moment we see that it was all a front – like the fascia of a Wild West saloon thrown up for a Hollywood movie. Without its sustaining mystique, it falls flat on its face. On 6 January 2021, the spell of Trump's performative presidency was broken. It is notable that when Shakespeare's Prospero called time on his own magical statecraft, he did so with the material language of building and specifically of the playhouse. His reference to the 'great globe' is presumably an allusion to the playhouse for which Shakespeare wrote after 1599, and when Prospero confesses that the performance had been all along a 'baseless fabric' and an 'insubstantial pageant', those phrases are also references to early modern theatre spaces (*The Tempest* 4.1.153–155). Today, 'fabric' is associated with woven textiles, but in Shakespeare's day 'fabric' denoted a building or other structure, and to describe it as 'baseless' was to say that the building had no foundations. The phrase 'insubstantial pageant' had practically the same meaning. A pageant was a stage structure erected for the purpose of ostentatious and theatrical public display, and to describe it as 'insubstantial' was a reference to the fact that it was usually pushed about on wheels – like a float at a modern carnival. There was literally nothing stable standing under it (nothing '*sub-sta*') to make it 'substantial'. A theatrical show is judged primarily according to appearances. If the surface pleases, we tend not to worry about the substance. So it has been from the medieval pageant to the fake store front of a Western movie lot. Ronald Reagan, an actor in those classic Westerns, was looking back to the founding fathers when he issued the invitation, 'Let's make America great again'. When Donald Trump issued his mandate, 'Make America great again' he was looking forward to the sort of state building that begins with demolition. The key to understanding what happened on 6 January 2021 is to realize that there was nothing standing under the Trump presidency.⁶⁴

⁶⁴ See in this vein, Jon Herbert, Trevor McCrisken, Andrew Wroe, *The Ordinary Presidency of Donald J. Trump* (London: Palgrave, 2019). The authors argue that Trump was an extraordinary president with an institutionally unremarkable presidency.

