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BAD WRITING: SOME THOUGHTS ON THE ABUSE OF SCHOLARLY RHETORIC

JETHRO K. LIEBERMAN*

BAD WRITING – PART I**

Law is the universalization of the preference hierarchy of the Other, the instantiation of repressed desire. If this be so, then we can coax the legal syllogism from the couch.

This familiar defamiliarization of the conventional Ordinary problematizes much of the turn to the ornate Interpretive. In this sense, the enactment comes, if at all, with foudroyant force, an irresistible tsunami of hypercathexis toward concretized Law.

In its commencement, in its veritable beginnings, thus, are the erumpent intentionalities, no mere binarities, but authentic intuition, since understanding opens with Subject and only then proceeds to an external dichotomy that spreads outward to the Other, not with fixed declaratives or even “identarian aspirations,” but piecemeal, “instrumentalized to the domain” of the “everyday real.”¹ It is, *faute de mieux*, neoteric nescience, whence come, naturally enough, the pronouncements of the hegemonic and all too common common law.

From this perspective, we may perch on the pitch of the legal imaginary, embrangled by the farouche concinnity of the process theorists. For it was, after all, Justice Felix Frankfurter himself who said:

The faculties of the Due Process Clause may be indefinite and vague, but the mode of their ascertainment is not

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1. Robyn Wiegman, *Feminism's Broken English*, in *JUST BEING DIFFICULT? ACADEMIC WRITING IN THE PUBLIC ARENA* 82-87 (Jonathan Culler & Kevin Lamb eds., 2003) [hereinafter *DIFFICULT*].

self-willed. In each case “due process of law” requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims, on a judgment not *ad hoc* and episodic but duly mindful of reconciling the needs both of continuity and of change in a progressive society.²

This transcends legal bedrock and from its tenebrous promontory derives a perfected albeit aleatory alterity of law’s meaning, even if we must pretermite its larger eschatology.

That bears a lapidary repetition. Hear me out:

This transcends legal bedrock and from its tenebrous promontory derives a perfected albeit aleatory alterity of law’s meaning, even if we must pretermite its larger eschatology.

BAD WRITING – PART II

A. *The Quiz*

Let’s take a quiz. It’s short, and it won’t be graded, so relax. True or false:

1. In the passage above, many of the words you read are not real but invented.
2. No serious writer actually writes like that.
3. No serious writer would argue that it is acceptable to write that way.

To each question the answer is, alas, false.

B. *The Writing “Problem”*

The writing problem has always been with us. By us I mean the species, not the nation, or the decade, the century, or millennium. Sophistry, after all, is not an American invention. A trawler through history can light on almost any place and any time and without much effort locate a lament about the state of writing. It should not surprise us that in the late seventeenth century, when the English poet John Dryden was admitted to the Royal Society, his new colleagues “promptly put him on its committee to teach scien-

2. *Rochin v. California*, 342 U.S. 165, 172 (1952).

tists a simple and direct style for writing English.”³ Or that earlier in the century Francis Bacon demanded that the reports of court cases should be severely edited, “tautologies and impertinences to be cut off.” Or that a century later Henry Fielding put in the mouth of one of his characters that “nothing is more hurtful to a perfect knowledge of the law than reading it.”⁴ And that a century after that Thomas Jefferson instructed a friend how to spice up a plainly-drafted bill to the taste “of my brother lawyers”: say “everything over two or three times, so that nobody but we of the craft can untwist the diction, and find out what it means.”⁵ Or that more than a century later Carl McGowan, a distinguished federal judge, complained that “[m]ost of the time our lights are hidden under literally bushels of words, inexpertly put together.”⁶ So, in other words, what else is new?

In fact, I think, something else *is* new: of late certain academic scholars have sought to justify bad writing. It is *necessary*, the claim runs, to write mysterious, impenetrable, foggy prose, to embed words in a style inaccessible not merely to the lay reader but to most academic readers as well. I wish to demur. In the short time allotted to me, I shall argue that this claim is not only factually wrong but ethically suspect.

C. *Bad Writing*

“Bad writing” is an omnibus term. Because it embraces a multitude of sins, it will be well to disentangle its constituents, since not every piece of hopeless writing is necessarily morally suspect — unless you are of the mind, as I sometimes am, that incompetence itself is a moral failing. Speaking roughly, we can understand bad writing to be arrayed along a continuum. At one end is incompetence, itself a potpourri of simple mistakes committed through carelessness and haste or more complicated errors bred of ignorance and laziness. At the other extreme is dishonesty, which also

3. J. BRONOWSKI & BRUCE MAZLISH, *THE WESTERN INTELLECTUAL TRADITION* 186 (1962).

4. BACON & FIELDING, *quoted in* DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* 193 (Little, Brown 1963).

5. Letter to Joseph C. Cabell, Sept. 9, 1817, *in* 17 *THE WRITINGS OF THOMAS JEFFERSON* 417-18 (Lipscomb ed. 1905), *quoted in* MELLINKOFF, *supra* note 4, at 253.

6. Carl McGowan, *Law and the Use of Language*, 47 *A.B.A. J.* 897, 900 (1961).

has many parts: misrepresentation, falsification, polemical distortion, and plagiarism. Though I do not mean to be measuring or quantifying — the continuum is, after all, a common metaphor that makes a useful point as long as it is not taken literally — somewhere in the middle lies the problem of difficult writing.

Let me turn briefly to the simplest aspect of bad writing: ineptness. Every teacher has favorite examples of the blooper committed in haste or ignorance. Here are my favorites, taken from final examinations and papers:

- In an answer to a question on a constitutional law final about abortion: “Scientists do not yet know whether life begins at contraception.”
- From a paper discussing the potentially useful evidence that might emerge from a rape victim’s viewing her attacker’s genitals: “She could look to see if he was circumscribed.”
- And from a paper reported to me by one of our writing professors: “The plaintiff may not convalesce for fraud.” That one is mystifying, until you realize that the hapless student obliged his professor by using a thesaurus to discover that “convalesce” is a synonym for “recover.”

Word confusions are, of course, simple mistakes. They are never intentional, and an editor can correct them, though they may not be so easily fixed by the tin-eared writer who does not comprehend the error. More difficult to understand, from both the writer’s and the reader’s perspective, are the orotund sentences that lie in fields of syntax so capacious it is a miracle when the writer manages to finish and the reader to escape. I offer two examples: first, an orotundity; then a syntactical monstrosity, stretched beyond the snapping point:

Contemporary corporate succession to predecessor compensatory obligations underscores the relationship of the identity of successor entities to the legal construction of the compensation regime.⁷

7. Don’t ask me to identify the author.

This pretentious sentence manages to depress us by the weight of its noun-laden phrases. The syntactical monstrosity simply wears us out:

To the contrary, precisely because of the *contextural* (i.e., complexural) relatedness among selves, *selves are immanently* (i.e., *reflexively*) *presenced to one another* by way of their mutuality, their enabling/enabled relationships — i.e., “*spirit*” as “*empowering*” of self by the other self is the very texture of the “*self-relatedness*” of the relation that relates itself to its own self and by so relating relates itself to the empowering other self, and, of course, conversely.⁸

These examples, and the countless thousands of other examples that could be culled from writing this year alone, suffice to guarantee jobs for editors. More I need not say.

Nor need I tarry at the other extreme of the bad writing continuum. Dishonesty will no doubt always be with us and we can deplore it, condemn it, and cluck over it to our hearts' content, unhappily acknowledging that for every instance of a sin uncovered, many more are simply lying about, so many unrecognized pebbles washed ashore by the ocean of prose that engulfs us. Dishonesty takes many forms. It manifests as plagiarism in the works of some prominent writers; recently, for example, in the books of Steven Ambrose and Doris Kearns Goodwin.⁹ Dishonesty is also sometimes unearthed in fakery: falsified accounts that have recently plagued journalism (e.g., Jayson Blair of *The New York Times*) and the academy (e.g., Joseph Ellis).¹⁰

8. RICHARD M. ZANER, *THE CONTEXT OF SELF: A PHENOMENOLOGICAL INQUIRY USING MEDICINE AS A CLUE* 218 (1981) (italics in the original).

9. David D. Kirkpatrick, *2 Say Stephen Ambrose, Popular Historian, Copied Passages*, N.Y. TIMES, Jan. 5, 2002, at A8; Goodwin: David D. Kirkpatrick, *Historian Says Publisher Quickly Settled Copying Dispute*, N.Y. TIMES, Jan. 23, 2002, at A10; David D. Kirkpatrick, *Historian Says Borrowing Was Wider Than Known*, N.Y. TIMES, Feb. 23, 2002, at A10; David D. Kirkpatrick, *Author Goodwin Resigns from Pulitzer Board*, N.Y. TIMES, June 1, 2002, at A9. See also Emily Eakin, *Think Tank; Stop Historians! Don't Copy That Passage! Computers Are Watching*, N.Y. TIMES, Jan. 26, 2002, at B9. For some famous examples of plagiarism, see THOMAS MALLON, *STOLEN WORDS, FORAYS INTO THE ORIGINS AND RAVAGES OF PLAGIARISM* (1989). For a very recent discussion of plagiarism by less-well known academics, see *Professor Copycat*, THE CHRONICLE OF HIGHER EDUCATION, Dec. 17, 2004, at A8-A23.

10. Jacques Steinberg, *Times Reporter Resigns After Questions on Article*, N.Y. TIMES, May 1, 2003, at A30; Dan Barry et al. *Correcting the Record: Times Reporter Who Resigned Leaves Long Trail of Deception*, N.Y. TIMES, May 11, 2003, at A1; *Correcting the Record: Wit-*

Of course no one approves these forms of dishonesty. Those who commit them are rebuked as soon as their sins surface. More difficult to parse as forms of dishonesty are the distortions of thought that might result from a number of causes: careless reading of literatures unfamiliar to the writer, the polemicist's desire to slant the record, or even sheer stupidity. Offering examples in this arena is more treacherous, because one person's political or cultural or religious truth is another's trash. Biological evolution as fact is heresy to the religious fundamentalist; "creation science" is tripe and twaddle to the teller of scientific law. So let me stick my neck out and offer in passing as an example of dishonesty prompted by distortions of thought recent scholarly claims that the historical growth of science has been warped by "sexist and misogynistic metaphors," such as rape and torture, and that these metaphors have "excite[d] people's imaginations [and] . . . have apparently energized generations of male science enthusiasts."¹¹

A booklet prepared by the National Academy of Sciences says that "The laws of nature are not apparent in our everyday surroundings, waiting to be plucked like fruit from a tree. They are hidden and unyielding, and the difficulties of grasping them add greatly to the satisfaction of success."¹² These sentences, says one influential feminist writer, Sandra Harding, contain "restrained but clear echoes" of "sexual meaning,"¹³ leading one commentator to suggest that Harding is "like the person who feels squeamish at the sight of uncovered piano legs."¹⁴ Harding goes on to accuse Francis Bacon of arousing three hundred years of male scientists into doing science by quoting (and misquoting) a few lines from his 1623 work *Of the Dignity and Advancement of Learning*:

nesses and Documents Unveil Deceptions in a Reporter's Work, N.Y. TIMES, May 11, 2003, at A26. Ellis: Janny Scott, *Prominent Historian Admits He Misled Students into Believing He Served in Vietnam*, N.Y. TIMES, June 19, 2001, at A19.

11. SANDRA HARDING, *WHOSE SCIENCE? WHOSE KNOWLEDGE?: THINKING FROM WOMEN'S LIVES* 267 (1991).

12. Committee on the Conduct of Science, National Academy of Sciences, *On Being a Scientist* (Washington: National Academy Press, 1989, 1st ed.) at 6, *quoted in* HARDING, *id.*

13. HARDING, *supra* note 11, at 44.

14. See Alan Soble, *In Defense of Bacon, in A HOUSE BUILT ON SAND, EXPOSING POSTMODERNIST MYTHS ABOUT SCIENCE* 202 (Noretta Koertge ed., 1998).

For you have but to hound nature in her wanderings, and you will be able when you like to lead and drive her afterward to the same place again. Neither ought a man to make scruple of entering and penetrating into those holes and corners when the inquisition of truth is his whole object.¹⁵

Of his tens of thousands of sentences, these lines appear to constitute the whole evidence for the claim that Bacon not only reveled in rape metaphors but, if I may, egged male scientists on by eroticizing scientific pursuits. Entire books have been built on this sort of thing. I cannot provide the background here and must refer you elsewhere to a more extended discussion.¹⁶

It may be that the Harding proposition is not a good or fair example of bad writing, only bad thinking, since the prose in which she renders her argument is generally readable. But in its wild interpolations of metaphor and strained readings of texts, hers is the sort of academic essay caught in the net of one of the most notorious exposes of bad writing in recent decades. I refer to the so-called Sokal hoax. Alan D. Sokal is a physicist at New York University. In 1996, a postmodernist cultural-studies journal, *Social Text*, an offshoot of the Duke University Press, published a special issue "devoted to rebutting the criticisms levelled against postmodernism and social constructivism by several distinguished scientists."¹⁷ Sokal had submitted deadpan to *Social Text* a parody of the sort of "scholarship" published by it and by like-minded journals. Sokal called his article "Transgressing the Boundaries: Toward a Transformative Hermeneutics of Quantum Gravity." Sokal's method was to link real but absurd and meaningless quotations, "the silliest quotations [he] could find," from French and American intellectuals, who badly misunderstood modern science and mathematics, and then to "shower" them "with mock praise" through an invented "nonsensical argument" (namely, that physical reality is a linguistic

15. Bacon, quoted in HARDING, *supra* note 11, at 43.

16. See generally Soble, *supra* note 14, at 195-215 (demonstrating that Harding, who took the Bacon quotation from another source, omitted at least one key phrase and elided several sentences).

17. ALAN SOKAL & JEAN BRICMONT, FASHIONABLE NONSENSE, POSTMODERN INTELLECTUALS' ABUSE OF SCIENCE 2 (1998).

construct).¹⁸ Unsuspecting, and evidently without checking the article's bona fides, the editors published the article in their special issue. Sokal revealed the hoax three weeks later, "and all hell broke loose."¹⁹ The uproar landed on the front page of *The New York Times*²⁰ and several other newspapers,²¹ and the reverberations continue.²²

In a book-length treatment of the episode, Sokal and his collaborator, Jean Bricmont, demonstrated, to my satisfaction at least, that the intellectuals he parodied are either deranged or flim-flammers.²³ (For the record, they include such noted writers as Jacques Lacan, Julia Kristeva, Luce Irigaray, Bruno Latour, and Jean Baudrillard). For one thing, these authors radically misunderstand (or do not understand at all) the science and mathematics larded through their prose. Whether their readings of science are willful or merely negligent I cannot say. But more to my point the authors whom Sokal and Bricmont quote at length are guilty of a prose so dense and bewildering that it seems kind to describe their style as "bad writing." In fact, so tedious and mystifying is their prose that I will not subject you to a reading but rather will subordinate one example to a footnote in the published version.²⁴

18. *Id.* at 1. Sokal's description of what he was parodying: "an intellectual current characterized by the more-or-less explicit rejection of the rationalist tradition of the Enlightenment, by theoretical discourses disconnected from any empirical test, and by a cognitively and cultural relativism that regards science as nothing more than a 'narration,' a 'myth' or a social construction among many others." *Id.*

19. *Id.*

20. Janny Scott, *Postmodern Gravity Deconstructed*, *Slyly*, N. Y. TIMES, May 18, 1996, at A1.

21. See SOKAL & BRICMONT, *supra* note 17 n.3, at 2. See also Steven Weinberg, *Sokal's Hoax*, N. Y. REV. OF BOOKS, Aug. 8, 1996, at 11-15.

22. See, e.g., EDITORS OF LINGUA FRANCA, THE SOKAL HOAX (2000); Science Fiction: Sokal's Hoax and the "Linguistic Left," in RON ROBIN, SCANDALS AND SCOUNDRELS ch. 7 (2004).

23. These are not their terms; Sokal and Bricmont are much more restrained about their objectives.

24.

After fifteen years I have taught my pupils to count at most up to five which is difficult (four is easier) and they have understood that much. But for tonight permit me to stay at two . . . I propose that you consider the real numerical genesis of the two . . . It is necessary that this two constitute the first integer which is not yet born as a number before the two appears. You have made this possible because the *two* is here to grant existence to the first *one*: put *two* in the place of *one* and consequently in the place of the *two*

you see *three* appear. What we have here is something which I can call the *mark*. You already have something which is marked or something which is not marked. It is with the first mark that we have the status of the thing. It is exactly in this fashion that Frege explains the genesis of the number; the class which is characterized by no elements is the first class; you have one at the place of zero and afterward it is easy to understand how the place of one becomes the second place which makes place for two, three, and so on. The question of the two is for us the question of the subject, and here we reach a fact of psychoanalytical experience in as much as the two does not complete the one to make two, but must repeat the one to permit the one to exist. This first repetition is the only one necessary to explain the genesis of the number, and only one repetition is necessary to constitute the status of the subject. The unconscious subject is something that tends to repeat itself, but only one such repetition is necessary to constitute it. However, let us look more precisely at what is necessary for the second to repeat the first in order that we may have a repetition. This question cannot be answered too quickly. If you answer too quickly, you will answer that it is necessary that they are the same. In this case the principle of the two would be that of twins — and why not triplets or quintuplets? In my day we used to teach children that they must not add, for instance, microphones with dictionaries; but this is absolutely absurd, because we would not have addition if we were not able to add microphones with dictionaries or as Lewis Carroll says, cabbages with kings. The sameness is not in *things* but in the *mark* which makes it possible to add things with no consideration as to their differences. The mark has the effect of rubbing out the difference, and this is the key to what happens to the subject, the unconscious subject in the repetition; because you know that this subject repeats something peculiarly significant, the subject is here, for instance, in this obscure thing that we call in some cases trauma, or exquisite pleasure. What happens? If the 'thing' exists in this symbolic structure, if this unitary trait is decisive, the trait of the sameness is here. In order that the 'thing' which is sought be here in you, it is necessary that the first trait be rubbed out because the trait itself is a modification. It is the taking away of all difference, and in this case, without the trait, the first 'thing' is simply lost. The key to this insistence in repetition is that in its essence repetition as repetition of the symbolical sameness is impossible. In any case, the subject is the effect of this repetition in as much as it necessitates the 'fading,' the obliteration, of the first foundation of the subject, which is why the subject, by status, is always presented as a divided essence. The trait, I insist, is identical, but it assures the difference only of identity — not by effect of sameness or difference but by the difference of identity. This is easy to understand: as we say in French, *je vous numérote*, I give you each a number; and this assures the fact that you are numerically different but nothing more than that.

Jacques Lacan, *Of Structure as an Inmixing of an Otherness Prerequisite to Any Subject Whatever*, in *THE STRUCTURALIST CONTROVERSY: THE LANGUAGES OF CRITICISM AND THE SCIENCES OF MAN 190-92* (Richard Macksey & Eugenio Donato eds., 1970). This sort of prose from these sorts of people is evidently not a new phenomenon. Consider Sir Peter Medawar's savage review of Pierre Teilhard de Chardin's well-known *The Phenomenon of Man*: "It is written in an all but totally unintelligible style, and this is construed as prima facie evidence of profundity. (At present this applies only to works of French

What to make of their writing I do not know, and neither, I suspect, does anyone else. Yet they are far from alone in writing incomprehensibly for presumably sophisticated audiences.

Indeed, two years after the Sokal hoax, the problem of bad writing resurfaced when Judith Butler, a well-known professor of philosophy and literature at the University of California, "won" first place in a Bad Writing contest sponsored by the journal *Philosophy and Literature*. Here is her winning sentence:

The move from a structuralist account in which capital is understood to structure social relations in relatively homologous ways to a view of hegemony in which power relations are subject to repetition, convergence, and rearticulation brought the question of temporality into the thinking of structure, and marked a shift from a form of Althusserian theory that takes structural totalities as theoretical objects to one in which the insights into the contingent possibility of structure inaugurate a renewed conception of hegemony as bound up with the contingent sites and strategies of the rearticulation of power.²⁵

This sort of writing is at the middle of the continuum I set out earlier. It is bad writing because it is "difficult writing," and it has defenders.

D. *Difficult Writing*

Nearly sixty years ago in his classic essay "Politics and the English Language" George Orwell warned of the dangers of murky and obscure writing and of the euphemisms that support it. Our language, he said, "becomes ugly and inaccurate because our thoughts are foolish, but the slovenliness of our language makes it easier for us to have foolish thoughts."²⁶ His bitter examples re-

authorship . . .)" Originally published in 1961, the review is reprinted in P.B. MEDAWAR, *THE ART OF THE SOLUBLE* 91 (1969).

25. Judith P. Butler, *quoted in* Martha C. Nussbaum, *The Professor of Parody*, *THE NEW REPUBLIC*, Feb. 22, 1999, at 39. *Further Reflections on Conversations of Our Time*, 27 *DIACRITICS* 13 (Spring 1997). See also James Miller, *Is Bad Writing Necessary? George Orwell, Theodor Adorno, and the Politics of Language*, *LINGUA FRANCA*, Dec./Jan. 2000, at 33-44. Butler is defended by Jonathan Culler, *Bad Writing and Good Philosophy*, in *DIFFICULT*, *supra* note 1, at 45-47.

26. George Orwell, *Politics and the English Language*, in *IN FRONT OF YOUR NOSE*, *THE COLLECTED ESSAYS* 127 (1968).

main literary staples: "War Is Peace"; "all animals are equal but some animals are more equal than others."²⁷ Every year we are reminded of the continuing utility and subversiveness of the sort of euphemisms he decried. This season's splendid example, still fresh in our minds at this telling (though perhaps not at a later reading), is "wardrobe malfunction," the squeamish (and obviously false) explanation for baring a breast during a nationally televised football game. I suppose a more general term, with which this audience might be more at home, is "halftime malpractice."

Euphemism allows us to gloss over the repugnant thought and avoid the evil deed that it masks. More radical are the texts that hide almost all thought, not merely in a word or phrase, but in the syntax of a sentence and the structure of a paragraph. I spoofed that sort of writing in the passage that begins this article. Nor is it only the high cultural and literary theorists who write this way. Let me repeat the passage from Justice Frankfurter and ask whether its ennobling, pretty language makes up for its utter vacuousness:

The faculties of the Due Process Clause may be indefinite and vague, but the mode of their ascertainment is not self-willed. In each case "due process of law" requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims, on a judgment not *ad hoc* and episodic but duly mindful of reconciling the needs both of continuity and of change in a progressive society.²⁸

How can such writing be defended? A recent anthology, *Just Being Difficult?*²⁹ attempts to do so. I state the argument in brief, for our time is short.

The argument begins with the contention of many postmodern critics of rationality that all truth, like all politics, is local: There are no universal or cross-cultural truths. What we be-

27. "War is peace" is from GEORGE ORWELL, 1984 103 (originally published in 1949); "All animals are equal" is from GEORGE ORWELL, ANIMAL FARM (originally published in 1946).

28. *Rochin v. California*, 342 U.S. 165, 172 (1952). This passage is not necessarily difficult writing, but it is bad writing nonetheless; it purports to describe a method of ascertaining due process, but its oracular quality denudes it of meaning.

29. DIFFICULT, *supra* note 1.

lieve, if it is given by our culture, is true for us. Truth is socially constructed, and that is meant literally: nature, as much as human values, depends on what we think. Just as there is no universal truth, there can be no universal language. In the same way, the argument runs, language is not a transparent method to meaning or understanding; its very usage, its performance, forces or dictates meaning. The greater the attempt at transparency, the more likely it is that the writer will cater to the conventions of the times, cave to the cant of the complacent majority, and fail to think deeply about the problem at hand. As one essayist sums up this view: “[T]ransparency, defining clarity as that which communicates widely, has a powerful social effect of normalization. One result is that it will naturally privilege the majority over less-familiar views.”³⁰ Hence the need to “defamiliarize,” to write in ways that stretch and strain and ultimately crack the insulation of conventional wisdom made thick by the conventional speech in which readers ensconce themselves to keep out disquieting thoughts.³¹

At least one strand of this argument is scarcely new. It goes back at least as far as Kant, surely the worst major philosophical writer before our time (unless it was Hegel).³² Closer to our own

30. Michael Warner, *Styles of Intellectual Publics*, in *DIFFICULT*, *supra* note 1, at 113.

31. The essayists put it in different ways — most of them, ironically for a volume that purports to be explaining something to a public that might actually be interested in the justification of this sort of writing, demonstrating their thesis by writing oracularly and obscurely. One relatively clearer example is that of John McCumber, professor of Germanic languages at UCLA: “[W]e see, finally, the terrible price paid by those who, siding with form against matter, would make clarity an indispensable condition of serious thought. Trapped in a misguided effort to obtain immortality for their own current world, they would force us all to remain in ancient and oppressive habits of thought. They set themselves against time itself — and against the creativity and joy that are our privilege, as the mortal creatures that we are.” John McCumber, *The Metaphysics of Clarity and the Freedom of Meaning*, in *DIFFICULT*, *supra* note 1, at 69. Much less clear is Robyn Wiegman, the Margaret Taylor Smith Director of Women’s Studies and associate professor of Women’s Studies and Literature at Duke University: “[C]ommunicability for the humanities is indistinguishable from the belief in the expressibility of human subjectivity, which in turn serves as the internal logic of modern governmentality as an ideology of social perfectibility. From this perspective, to refuse the demand for communicability is to challenge, at least provisionally, the linkages that have rendered the human foundational as both agent and vehicle for the perfectibility of the liberal democratic state.” Robyn Wiegman, *Feminism’s Broken English*, in *DIFFICULT*, *supra* note 1, at 89.

32. Consider a recent critique of the late American political philosopher Leo Strauss: “Leo Strauss . . . believed in what you and I would call bad writing. He buttered

day, Professor Paul Freund, the noted Harvard Law School constitutional scholar (who himself was never guilty of incomprehensibility), reminisced about the justification that the philosopher John Dewey offered in a conversation with Justice Oliver Wendell Holmes:

We have learned that clarity is not enough, that it may be purchased at too high a price. Justice Holmes was talking with John Dewey. "Professor Dewey," Holmes said, "I think your early writing was clearer than your later writing." "Yes," said Dewey. "Then I was digging down three inches; now I'm trying to dig three feet." "Ah yes," Holmes said. "When I've stopped thinking I'm very lucid."³³

Freund's remembrance strikes a particular chord in me because of an old family story, also involving Dewey, about the ethics of plain speaking. In 1935, my father took a course with John Dewey at Columbia University. One day a classmate grew particularly incensed at something Dewey had said, not because he believed Dewey had erred but because of how Dewey had framed his point. "Is what you are really trying to say thus and so?" my father said his classmate asserted. Dewey paused for a moment, reflecting on whether the student had accurately translated his notion into simplified, colloquial English, and then agreed that he had. "Then why didn't you

it with the word 'esoteric,' but 'bad' is the right word, unless you prefer 'lousy.' Here was a man who did not want to be understood by any but the few, his disciples. . . . He had no desire to be intelligible; on the contrary, if his work was to have any effect in the world it would be only as his disciples shaped it to fit the time . . . In the only book he wrote in anything close to plain English, *Persecution and the Art of Writing*, Leo Strauss advised his readers not to write in plain English. Strauss followed his own advice. Convoluting, contradictory, arcane, clubfooted writing was his game. He worked at it. He skulked in the dark corners of exposition, making it all but impossible for anyone to discern exactly what he thought. In all the history of the English language there had never been a man — not merely a man, a professor at a great university — who so publicly opposed clarity and so brilliantly demonstrated his talent of obfuscation." Earl Shorris, *Ignoble Liars*, HARPER'S MAGAZINE, June 2004, 66, 68. Strauss wrote obscurely, Shorris claims, to avoid persecution. Strauss, who fled Germany in the 1930s, at least had a reason for his fear, no matter how misplaced it was in the United States. Contemporary obscurantists can make no such claim.

33. Freund's Remarks at a Lunch for Honorary Degree Recipients, Yale, June 12, 1972, *quoted in*, Anthony Lewis, *Paul Freund: A Remembrance*, 106 HARV. L. REV. 16 (1992).

say so!" the student thundered, pounding on the table. "Young man," Dewey always replied in my father's telling, "that's not my job."

I wonder why it is not. The thinker who presents her thought in a cloud has done only half her job. It is laziness to assert that it is only the thinking that matters and that the equally difficult work of explaining can be ignored, as if to say, "lo, I have had an idea — maybe — and what do I care what it means? You figure it out." As in all art, the execution of the work counts. Would we exalt Picasso had he stopped after describing an idea of a misshapen horse on a canvas? Would we marvel at Michaelangelo had he left us merely a tangle of detailed but unreadable instructions on how to carve out of marble a tall naked man with horns on his head?

It remains unproven that clarity forces any writer into a thought rut. Or that incomprehensibility is the antidote to formulaic thinking. Or that there can be no middle ground between conventional idiom and unconventional unintelligibility. Or that deep thought cannot be more rather than less clearly expressed. "[O]ne might object," says one of the essayists, "that the need for unfamiliar thought is not the same as the need for unfamiliar language."³⁴ Just so. Indeed, perhaps in keeping with the supposition that there is no truth, the writers in the anthology *Just Being Difficult?* appear to see no need for proof, so they offer no evidence for their proposition that only the unfamiliar paves new ground or that without dark lenses we cannot glimpse new things.

Moreover, if difficult writing is intended to "defamiliarize" the subject, then why does so much of it begin to seem familiar as one reads through it? The same "unfamiliar" words reappear: "defamiliarize," "alterity," "hypercathexis," "problematize": new jargon decayed into cliché. The defamiliar quickly becomes ritual — like praying in a foreign language that the penitent does not speak or understand — to demonstrate solidarity and to mark the writer as one of us and hence beyond reproach. In the end, this difficult writing becomes conventional in its unconventionality, though no less difficult for all that. If "common sense" language has an embedded view of reality from which the masses cannot escape, it is difficult to understand why the same claim does not apply

34. Michael Warner, *supra* note 30, at 111.

to the tortured language of the elite defenders of the defamiliar, who seem no less captured by their own non-conforming conformism.³⁵

The defenders' criticism of intelligible prose, in short, is self-refuting, just as was the response to Sokal's hoax.³⁶ Stung by his parody, those who believe that there is no truth and that knowledge and standards are "only" socially constructed reviled Sokal for transgressing ethical boundaries. But what boundaries? Are not these antagonists like the anarchist who says there ought to be a law against having laws?

Sokal was fiercely attacked by the defenders of obscurity: they say he was "ill-read and half-educated"³⁷ and Sokal agreed.³⁸ But his admission was neither daring nor contrite; Sokal was expressing a merely obvious truth: We would all be lucky to be half educated. Actually, we are all but a millionth educated, for there are too many inquiries, too much speculation, too much knowledge, too many vocabularies, for any of us to keep abreast of more than a tiny frac-

35.

The practice of writing is so common, and the facility for constructing conventional sentences so independent of any ability to conduct one's thoughts in an orderly and consistent manner, that our contemporary literature is very largely composed of verbal reflexes, forms of speech which have been learned through being constantly heard and read, which become vaguely associated with certain general emotional situations but are not linked to any clear idea.

RONALD ENGLEFIELD, *CRITIQUE OF PURE VERBIAGE* 73 (G.A. Wells & D.R. Oppenheimer eds., 1990).

36. The idea of a self-refuting concept is not new. Consider this passage: [T]here is an embracing paradox about the idea that all ideas about human affairs are true only from the point of view of a particular culture or social class. This statement is itself an idea about human affairs. If, like all other such ideas, it is a doctrine which is true for some people but false for others, there is no reason why people who hold a different point of view should pay any attention to it. If, on the other hand, it is not limited in its validity, then it is an exception to the very generalization it utters. It is one example of an idea whose truth transcends the historical circumstances in which it is uttered. And if there is one such idea, it seems arbitrary to suggest that there can be no others. In short, it is not easy to dispense with the traditional notion of objective truth.

20 CHARLES FRANKEL, *THE CASE FOR MODERN MAN* 135-36 (1956).

37. Scott, *supra* note 20, at A22.

38. "Social Text cofounder Stanley Aronowitz was, alas, absolutely right when he called me 'ill-read and half educated.'" Alan D. Sokal, *What the Social Text Affair Does and Does Not Prove*, in Koertge, *supra* note 14, at 9.

tion of it all. No one could seriously have claimed different for a century or two at least.³⁹ So to insist that writing should be difficult is to exclude most of humankind from understanding whatever it is that the difficult writers think the difficult writing purports to be saying. It is to build walls around the purveyors of such prose, not to goad outsiders into thinking anew. It dampens the spirit of inquiry for all except the initiate, and the more difficult the writing the smaller the inner circle. It mocks humanity's hard-fought battle to think its way out of the jungle, to articulate a life worth living, to aspire through language, thought made manifest, to a richer, warmer, fairer life. Writing that is opaque, obscure, tortured — difficult writing — is humbug. Its purveyors condescend toward their audiences and are contemptuous of their readers. These defenders of the difficult for its own sake set back our long climb toward fair dealing, toward articulated thought that champions rules that in turn give us any chance to conquer hate, prejudice, and injustice. The claim that only through incomprehensibility can we create a new world is not merely benighted. When writing passes sloppiness, when thought slides into enigmatic vacuity, when it pretends at profundity but clouds our minds and numbs our critical sense, and when we teach it to our children, it slips past humbug and slides into evil.

39. Lester F. Ward, a late nineteenth-century American sociologist, pretended otherwise. Richard Hofstadter reported that this impoverished "son of an itinerant mechanic and a clergyman's daughter" achieved an education "through enormous sacrifice. He could never carry it lightly. Perhaps as a salve for his acute sensitivity about his humble origins, he developed a fondness for pompous Latin and Greek derivatives and sprinkled his sociology with terms like 'synergy,' 'social Karyokinesis,' 'tocogenesis,' 'anthropoteleology,' and 'collective telesis,' called male sexual selection 'andreclaxis' and romantic love 'ampheclaxis.' One of his courses at Brown University was modestly titled 'A Survey of All Knowledge.'" *SOCIAL DARWINISM IN AMERICA* 68-69 (Beacon Press, revised ed., 1955). Consider also this sentence from Thorstein Veblen, writing in the same era: "If we are getting restless under the taxonomy of a monocotyledonous wage doctrine and a cryptogamic theory of interest, with involute, luculicidal, tomentous, and moniliform variants, what is the cytoplasm, centrosome, or karyokinetic process to which we may turn, and in which we may find surcease from the metaphysics of normality and controlling principles? What are we going to do about it?" Thorstein Veblen, *Why is Economics Not an Evolutionary Science?*, 12 Q. J. OF ECON. 373, 386-87 (1898). Veblen was usually a clear writer, whose mordant phrases, written in ordinary English, still bite nearly a center later. Thanks to Edward A. Purcell for the Veblen reference.