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"Trump; or, The Modern Voldemort

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TRUMP; OR, THE MODERN VOLDEMORT¹

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In J. K. Rowling's Harry Potter books, most of the characters decline to say the name of the arch-villain Voldemort. Some appear to be dissembling: either they are committed supporters of Voldemort or fellow travelers of his movement. Most of the characters in the books, though, are simply afraid of Voldemort and are concerned that invoking his name will somehow conjure him back into being and power. It's one of the hallmarks of the stories' hero, Harry, that he is at all times unafraid to say the name, first because he doesn't know anything about Voldemort and later because of defiance and repudiation of all that Voldemort stands for.

I've noticed recently a similar restraint in using the name of Donald Trump. Friends of mine have taken to using various elisions to replace his name in conversation, and even late-night talk show host Stephen Colbert avoids the use of Trump's name. I haven't yet heard Trump referred to as "he who must not be named," the avoidance technique practiced often in the Harry Potter books, but I suspect that time is not far off.

This decision to avoid using Trump's name flows apparently from the same distaste and concern displayed by most Potter characters; to name Trump is to somehow give him legitimacy and

¹ Apologies to Mary Shelley for the misappropriation of her title "Frankenstein; or, The Modern Prometheus." This sketch of an outline represents a whiff of an idea that might be expanded upon but which would have been the basis of a conference presentation that had to be abandoned in these Covid times. Thanks to the editors for their willingness to let it see the light of day. As always, this is for Julie McKinstry, and is also for TM, who was my sounding board for much of what I've written over the past thirteen years and who was here for the beginning, but not the end, of this piece. She is much missed.

² Ian Gallacher is a Professor of Law at Syracuse University College of Law.

power, to recognize him as a living and powerful entity. By denying him his name, those opposed to him seek to deny him reality.

This essay is not a vehicle for expressing a personal political position, but is instead a contemplation of the power we give to words. This power is not something that words possess inherently. Rather, it is a power that is willingly, and bewilderingly, granted to words by us. In the law, I fear, too often the dominion words have over us is harmful, causing us to misinterpret texts and misunderstand written communications. It is a power we can, and should, resist.

Textualism and the Privileging of the Word

The animating principle behind legal textualism, the disambiguating interpretative move in vogue with many conservative judges in this country³ is that the meaning of texts inheres in the words selected by the text's drafter. One merely looks for the "meaning" of the words in order to understand the meaning of the text and no interpretation of the text that goes beyond the "meaning" of the words is legitimate or permissible.

At the heart of textualism, then, is the fundamental premise that it is the word that controls meaning, not the thought that gave rise to the use of the word as a medium of communication. Textualists will proudly proclaim that they don't want to know what a legislator thought, they want to know what the legislator wrote. So textualism, as its name honestly suggests, privileges text over intent, and word over meaning. And that is the strategy's downfall. If I write that humans are crepuscular beings, because I misunderstand the meaning conveyed by "crepuscular" and mistakenly use it instead of "diurnal," a textualist will say that the sentence conveys my belief that humans only come out at twilight.

³ Let's not get bogged down in a sterile and pointless debate about whether or not textualism is, at its core, a conservative approach to textual interpretation. Of course it is, and conservatives shouldn't shy away from openly celebrating it for what it is.

It doesn't. Rather, the sentence conveys my incomplete understanding of the language. My meaning—as any reasonable person could tell—is that humans are generally active by day and sleep at night, even though the key word I used to convey my meaning was incorrect. But a textualist would fail to apply my intended meaning and would insist on the meaning conveyed by my incorrect use of language. By ignoring intent and focusing only on the words, textualists misunderstand, or ignore, the nature of communication.

Textualism fails as a strategy for discerning meaning for this and any number of additional reasons articulated more cogently elsewhere. But the problem central to textualism's failure is its exclusive reliance on words, but words are only, and can only ever be, proxies for meaning and not meaning itself. To rely exclusively on words to reveal meaning gives them more power than they are due. It is a failing shared by superstitions and religions as well. We know, for example, deep within us, that there are no jinxes in real life—that saying in October 2020 that Joe Biden would win the Presidential election would not “jinx” Biden and “cause” Donald Trump to win it instead. The mere uttering of words does not call the result—desired or feared—into being.

Meaning Making Goes Both Ways

There is a famous riddle about a tree falling in the forest with no one to witness it and whether it makes a sound. The riddle is presented as if this was an impossible-to-solve conundrum, but the answer is easy. “Sound” requires both initiation and reception, and while the tree's falling initiated the activation of sound waves that travelled out from the point of initiation, the lack of a receiver to sense those waves means that they remain potential sound and never become actual sound. The sound waves are information conveyed between the initiation and reception, and without reception they fail to convey the message. Similarly, words convey

meaning between a speaker, or writer, and a listener or reader. Like the sound waves, the words themselves have no meaning but are merely the medium by which meaning is conveyed.

Donald Trump has accomplished something most would have predicted was impossible: he has united the right and left in their reification of the word as meaning. The right shows its devotion to the word by treating it as the embodiment of meaning, while the left shows its fear of the word as the embodiment of someone they despise and fear. Both are wrong. Words are just words, ephemeral aggregations of twenty six letters that combine, separate, and recombine to form words to which we attach definitions in order to convey meaning from one person to another. Just as my saying Donald Trump's name will not summon him into power, as those opposed to Voldemort fear, so the words I write here do not "mean" anything. All they can do, and surely it is enough, is convey my meaning to you. It's time for us to treat words with the respect they deserve, but only that respect and no more.