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CHAPTER TWO

Foundations of the State of Dress

*For neither in tailoring nor in legislating does man proceed by mere Accident, but the hand is ever guided on by mysterious operations of the mind. In all his Modes and habilitory endeavours an Architectural Idea will be found lurking; his Body and the Cloth are the site and materials whereon and whereby his beautified edifice, of a Person, is to be built.*¹

This quote from Carlyle prefaces all the major concerns of this chapter. The phrase ‘mysterious operations of the mind’ alludes to the innate human predisposition to dress. More recent writers on dress have concluded, to quote James Laver, that ‘[c]lothes are never a frivolity: they always mean something, and that something is to a large extent outside the control of our conscious minds’.² There is also something mysterious at work in the cultural impulse of the collective mind to form and follow fashion. Simmel wrote of fashion that ‘in countless instances, not the slightest reason can be found for its creations from the standpoint of an objective, aesthetic or other expediency’.³ In this chapter, we will consider the foundations of the mysterious ‘force of habit’ as they are accounted for in the prehistory and antiquity of human culture. Carlyle’s ‘Architectural Idea’ alludes to the possibility that dress, like the architecture of buildings, is designed to bring order to human social life. I will argue that dress is indeed culturally equivalent to architecture and that architecture is culturally equivalent to law, so that we have in the ‘Architectural Idea’ further support for the thesis that dress is culturally equivalent to law. The quote from Carlyle concludes by identifying a significant place in which cultures (of dress, architecture, law)

1 Thomas Carlyle, *Sartor Resartus: The Life and Opinions of Herr Teufelsdröckh* (1833–4) (Boston: James Munroe and Co, 1836), Book I, chapter 5.

2 James Laver, *Modesty in Dress* (London: William Heinemann Ltd, 1969), p.14. Gilles Lipovetsky’s *L’Empire de l’éphémère: la mode et son destin dans les sociétés modernes* (Paris: Gallimard, 1987) concludes: ‘fashion has its reasons that fashion does not know’; (trans. Catherine Porter), *The Empire of Fashion: Dressing Modern Democracy* (Princeton, NJ: Princeton University Press, 2002), p.225.

3 Georg Simmel, ‘Philosophie der Mode’ (1905). English translation: ‘The Philosophy of Fashion’, in David Frisby and Mike Featherstone (eds), *Simmel on Culture* (London: Sage, 1997), p.189.

operate, and a significant purpose of their operation there. The place is the superficial zone of skin and coverings ('Body and the Cloth') and the purpose is to fabricate a public face or *persona*, what Carlyle calls the 'beautified edifice, of a Person'. We will see that the architectural area of the threshold equates to the dressed area of the human surface and that the architectural or dressed surface equates to the zone of legal regulation and judgment. It may seem a truism to say that '[d]ress lies at the margins of the body and marks the boundary between self and other, individual and society',⁴ or as Elizabeth Wilson puts it, that '[d]ress is the frontier between the self and the not-self',⁵ but the significance of such statements can hardly be overstated; for if they are true, then it will be no exaggeration to say that dress occupies the same territory as architecture and law, or to say that dress, no less than architecture and law, makes the social world as we know it.

There is something innate about the urge to dress. An apocryphal tale is told of male academics who were bathing naked on the River Cherwell in Oxford when they were surprised by women coming down the river. All the men instinctively covered themselves below the waist, except one who covered his head, saying 'I don't know about you, gentlemen, but in Oxford I, at least, am known by my face'.⁶ Even the man who pretended to a degree of presence of mind acted instinctively to cover himself. Corresponding to the impulse to dress, there is an equally innate impulse to undress. At the conclusion of Shakespeare's *King Lear*, there is a profoundly pathetic moment when Lear laments the loss of his most beloved daughter Cordelia:

Why should a dog, a horse, a rat have life,
And thou no breath at all? Thou'lt come no more,
Never, never, never, never, never!
Pray you undo this button: thank you, sir.
Do you see this? Look on her, look, her lips,
Look there, look there! (5.3.323–8)⁷

4 Joanne Entwistle, 'The Dressed Body', in Joanne Entwistle and Elizabeth Wilson (eds), *Body Dressing* (Oxford and New York: Berg, 2001), p.37.

5 Elizabeth Wilson, *Adorned in Dreams: Fashion and Modernity* (1985), rev. edn (London: I B Tauris & Co Ltd, 2009), p.3.

6 Wendy Doniger, *The Bedtrick: Tales of Sex and Masquerade* (Chicago: University of Chicago Press, 2000), p.193.

7 All quotations from the works of William Shakespeare are taken from the 'RSC edition' (J. Bate and E. Rasmussen [eds], *The RSC Shakespeare: Complete Works* [London, Macmillan, 2007]) unless otherwise stated.

The gesture to undo a single button is so much significant precisely because it concerns so small a matter. Shakespeare has understood the human instinct to unbutton the artificial forms of polite culture in that moment when all the fabrications of civil order seem undone by death. Literature has testified to this instinct since earliest times. In *The Book of Job*, Job rends his clothes in grief.⁸ In *The Epic of Gilgamesh*, the response of Gilgamesh to the death of his friend is to rip off his finery and cast it away as if it were ‘something taboo’.⁹

As the instinct to undress is seen in moments of primal grief, so it is observable in moments of primitive joy. The rules of Association Football (soccer) prohibit players from removing their shirts during a match, but despite the near certainty of being punished, some players still strip off their tops in the exuberance of scoring an important goal. A classical precedent for this instinct to strip in moments of joy is the story of Archimedes who, having received a scientific revelation upon plunging himself into his bath, proceeded to run naked through the streets of ancient Syracuse shouting ‘eureka!’ (‘I have found it!’). That story is a pleasant illustration of the metaphoric principle that science progresses through discovery, but, just as the metaphor is of doubtful accuracy,¹⁰ so it is doubtful that the event ever really took place. We can, however, be more confident that something very like it occurred one day in 1872 within the polite confines of the British Museum. According to witnesses, George Smith, a researcher in the Assyriology Department of the museum, suddenly ‘jumped up and rushed about the room in a great state of excitement, and, to the astonishment of those present, began to undress himself’.¹¹ Smith’s remarkable disrobing had been triggered by a few lines of Akkadian script that he had just read on a clay tablet unearthed some years earlier at the site of the royal library of ancient Nineveh. ‘I am the first man to read that after two thousand years of oblivion’, Smith rejoiced. This was his *eureka* moment, and, having made the discovery of a lifetime, his instinctive, primal reaction had been to dis-cover himself. The few lines of Akkadian pressed into the surface of that clay tablet constituted a fragment of *The Epic of Gilgamesh*; perhaps the first story

8 Job 1.20.

9 Andrew George, *The Epic of Gilgamesh* (Penguin Classics), rev. edn (London: Penguin Books, 2003), Tablet VIII, line 64. All quotations are from this edition unless otherwise stated.

10 See the discussion in Chapter Three at p.73.

11 E. A. Wallis Budge, *The Rise and Progress of Assyriology* (London: Clay & Sons, 1925), p.153.

ever set down by human hand. Even today, Smith's fragment remains the 'best-preserved manuscript of the story of the Deluge'.¹²

In *The Epic of Gilgamesh* and in other early accounts of human social life, we may hope to find the foundations for the social structures that we nowadays take for granted. We might especially hope to learn more about the nature of the wall of the city State or polis; the wall that establishes the very idea of political society. In his *Ars Poetica*, Horace encourages us to see the civil wall as a fabrication of human art. He describes how Amphion built the wall of Thebes not by brute strength but by the music of his lyre, and he associates the wall with the inscribed threshold of law: 'the wisdom of the olden days' was to 'draw a line between sacred and secular, public and private . . . to build towns and inscribe legal codes on wood'.¹³ It is in the hope that we might unearth the wisdom of old that we now turn to the story that caused such a stir in the British Museum in 1872.

The Epic of Gilgamesh is the ancient Sumerian tale of the warrior king Gilgamesh (or Bilgames). It was first written down some 4,000 years ago and the Babylonian 'standard version' which was inscribed around 3,000 years ago is the most complete version to come down to us. It comprises 11 tablets plus a twelfth that can be considered an appendix to the main story. The 11 tablets are about 300 short lines in length, with a few nearer 200 lines in length. The epic grapples with perennial human concerns – here are love and loss, sex and violence, life and death, and here, most significant for us, are worlds of difference between well-dressed city dwellers and those who wander undressed in the wilderness beyond the city walls. What the ancient authors clearly saw, and what we have largely forgotten, is that to understand dress is to understand the difference between wilderness and civil society.

The 'standard version' of *The Epic of Gilgamesh* is more specifically named after its opening words: 'He who saw the Deep.' That description of King Gilgamesh might indicate any number of signal events in the life of the hero, but it is clear from the first line in full – 'He who saw the Deep, the country's foundation' – that the event which best accounts for the title is the hero's ferry journey to the far side of the Waters of Death and the conference he has there with Úta-napišhti, a Noah-like survivor of the Flood. In the course

12 George, *The Epic of Gilgamesh*, p.xxiii.

13 Horace, *Ars Poetica* (trans. Niall Rudd), rev. edn (London: Penguin, 1987), pp.397–8, 399.

of that quest, Gilgamesh can be said to have delved down to the antediluvian origins of his people.

There really was an ancient city State of Uruk in the Mesopotamian region of Sumer. It was at its zenith around 5,000 years ago and might well have been the largest city on earth at the time. The earliest entry in James Laver's illustrated history of *Costume in Antiquity*,¹⁴ is an illustration of the carved marble head of a woman of Uruk which is in the collection of the Iraq Museum, Baghdad. Dating to around 3000 BC, the head is now just a 'dressed' marble block, but it would originally have been dressed in more than stone. Recesses in the brow and the top of the skull indicate where the head would have been decorated with inlaid eyebrows and a wig. The artefact makes for interesting comparison with the carved head of a male figure (complete with a beard set in orderly, formal rows of tightly groomed hair), which is in the same museum collection and may be a depiction of a king of Uruk.¹⁵ According to the Sumerian King List, an historical King Gilgamesh reigned for more than a hundred years sometime around 2500–2700 BC. Within two or three centuries of his reign, he appears to have been elevated to the status of deity and after a similar period of time he became the subject of a cult and shortly thereafter the hero of an oral poetic tradition. The earliest surviving written elements of a Sumerian Gilgamesh poem were set down around 4,000 years ago; about a thousand years before the Babylonian scholar-priest Sîn-liqe-uninni compiled *He Who Saw the Deep* in the standard Babylonian dialect of the Akkadian language. Like the vast majority of ancient cities, Uruk, which the epic describes as being the 'centre' of political power,¹⁶ was enclosed within a high defensive wall.¹⁷ In *He Who Saw the Deep*, the city is named 'Uruk-the-Sheepfold', which might be an allusion to the original function of the Uruk site but which no doubt became a symbolic denomination denoting sanctuary, domesticity and the essence of civilization. There is a tantalizing line at the start of the fourth stanza of the epic that presents the image of 'its wall like a strand of wool'.

14 (London: Thames and Hudson, 1964).

15 Compare, also, the orderly, architectural form of the judicial periwig described in Chapter Four.

16 Dominique Charpin, 'Rebîtum "centre"' *Nouvelles Assyriologiques Brèves et Utilitaires* 4.84 (1991), §112.

17 On the iconicity of the wall and other material features of the *Epic of Gilgamesh*, see Keith Dickson, 'The Wall of Uruk: Iconicities in *Gilgamesh*' *Journal of Ancient Near Eastern Religions* 9.1 (2009), pp. 25–50; and, Keith Dickson, 'The Jeweled Trees: Alterity in *Gilgamesh*' *Comparative Literature* 59.3 (2007), pp.193–208.

According to scholars of cuneiform, it is not certain that the word 'wool' has been accurately deciphered, but it certainly fits well with a close association that is drawn, throughout the epic, between clothes and the threshold of civil life in the city.

There is no more potent illustration of the close association between clothes and the threshold of civil life than the episode in which Shamhat, a high-class harlot or temple devotee of Uruk, is sent by Gilgamesh to ensnare the wild man Enkidu. King Gilgamesh, potent and unopposed, had grown tyrannical within the enclosure of the city State. Just one of his offences was to exercise the terrible power which, disguised in the politeness of the French language, we call *droit du seigneur*; namely, the formal 'right' of an overlord to have sex with his subjects' brides before the consummation of their marriage.¹⁸ The so-called shepherd of Uruk-the Sheepfold was clearly interfering with his flock in ways quite opposed to his ordained role as its protector. According to the epic, this compelled the king's subjects to appeal to the god Anu, and his response was to commission the goddess Aruru, creator of human beings, to fashion a man, the equal of Gilgamesh in strength, to oppose the tyrannical king.

The man whom Aruru created from a pinch of clay was Enkidu, the archetypal man of nature; a man who delights in the company of wild animals. He is described as one who 'knows not a people, nor even a country' (I.108).¹⁹ He is utterly wild; the epitome of the uncivil and the impolite. Crucially, therefore, he is also quite unadorned by any dress or artificial decoration. We are told that 'his body is matted with hair, / he bears long tresses like those of a woman' and that '[c]oated in hair like the god of the animals, / with the gazelles he grazes on grasses' (I.105–6, 109–10). Here is a man who is uncivilized by the standards of city life but one who has the spirit of a good shepherd. Here is one who can challenge the power of the tyrant who lords it over Uruk-the-Sheepfold. King Gilgamesh knows this, for he has seen Enkidu in his dreams. So when the king is presented with a plan to trap Enkidu, he does not hesitate to put it into action. The plan was laid out to the king by an unnamed 'hunter, a trapper-man' (I.113). The hunter blames Enkidu for filling in his trap pits and freeing animals from his snares and generally for stopping him from 'doing the work of the wild'

18 Tablet II, lines 159–62.

19 The reference is to Tablet I, line 108.

(I.160). He has seen Enkidu drinking with his herd at the waterhole, but the wild man is so mighty in strength that the hunter has not dared to approach him. It is the hunter's wise father who invents a scheme to trap Enkidu, and it is this scheme that the hunter presents to the king. These are the terms in which Gilgamesh commanded the hunter to implement the plan:

Go, hunter, take with you Shamhat the harlot!
 When the herd comes down to the water-hole,
 she should strip off her raiment to reveal her charms.
 He will see her, and will approach her,
 his herd will spurn him, though he grew up amongst it. (I.162–6)

Thus commanded, the hunter took Shamhat down to the waterhole to wait for Enkidu, and when 'Shamhat saw him, the child of nature', the hunter instructed her thus:

This is he, Shamhat! Uncradle your bosom,
 bare your sex, let him take in your charms!
 Do not recoil, but take in his scent:
 he will see you, and will approach you.

 Spread your clothing so he may lie on you,
 do for the man the work of a woman!
 Let his passion caress and embrace you,
 his herd will spurn him, though he grew up amongst it. (I.180–7)

Shamhat duly 'unfastened the cloth of her loins', 'spread her clothing' and Enkidu 'lay upon her' (I.188, 191). Here, then, is a potent image of the hierarchy on which political power is founded. The king commands a man and he in turn commands a woman who, being a prostitute or a temple devotee, lies both within and without the political realm of the city State. Are there echoes of the same power operating today when a Crown-appointed magistrate, sitting beneath the royal crest in an English courtroom, exerts authority over a veiled woman who, being a devout Muslim, stands both within and without the modern idea of a secular State?²⁰ Alev Çınar argues in this vein that 'during the founding years' of the 1920s and the 1930s

20 See the discussion in Chapter Five at p.143.

when Turkey reinvented itself as a post-Ottoman secular State, ‘the secular state used the medium of the female body and women’s public visibility as a strategic means’ in order to institutionalize its new identity so as to satisfy ‘global audiences’.²¹ Nevertheless, if there is a ‘masculine’ agency of power at work, there is good reason to suppose that males are equally subject to it. After all, in the Turkish context it was the male fez and turban rather than the female ‘veil’ that was targeted by The Hat Law of 1925.²² In *The Epic of Gilgamesh*, it is Enkidu, the male outsider, who is brought under the regulatory power of the State of dress. The distinctive quality of the female body in the epic is that it is enlisted to perform the role of portal between the civil State and the state of nature. John A. Armstrong has observed that ‘peculiar architecture, dress, and manners’, as well as ‘words’, can all operate as ‘symbolic border guards’ of a particular culture.²³ For Çınar, women in Turkey became ‘symbolic border guards’ of the new secular State.²⁴

The image of the naked Shamhat, spread out upon her clothing, is a potent symbol of the city limit; of the threshold between the civilized and the uncivilized. She is liminal. She makes herself a living portal to the world of men. And she does *make herself* the portal. She might be a trap set by men, but she is also complicit. She exercises her own power within the confines of her role. She seeks to tempt Enkidu to return to Uruk and King Gilgamesh by using every seductive art of sex and speech. (Conveniently, Enkidu had been created fully conversant in the local language.) Once she has succeeded in seducing him sexually, she undertakes the task of civilizing him, and her first act in that endeavour is to clothe him in part of her own garment (II.70*).²⁵ Then, before taking him to Uruk-the-Sheepfold, she accompanies him to a humble ‘shepherd’s camp, the site of the sheep-pen’ (II.37). There she teaches him the rudiments of social dining and he receives his first experience of (and surely the earliest recorded instance

21 Alev Çınar, *Modernity, Islam, and Secularism in Turkey: Bodies, Places, and Time* (Minneapolis: University of Minnesota Press, 2005), pp.59–60.

22 See, generally, Camilla T. Nereid, ‘Kemalism on the Catwalk: The Turkish Hat Law of 1925’ *Journal of Social History* 44.3 (2011), pp.707–28.

23 John A. Armstrong, *Nations before Nationalism* (Chapel Hill: University of North Carolina, 1982), pp.6–8.

24 Çınar, *Modernity, Islam, and Secularism in Turkey*, p.60.

25 The asterisk indicates that the script was missing from the main source tablet of the Standard Version and has been interpolated from another tablet source (in this case, the Old Babylonian ‘Pennsylvania’ tablet).

of) what nowadays is termed ‘male grooming’. He also receives his first garment:

The barber groomed his body so hairy,
 Anointed with oil he turned into a man.
 He put on a garment, became like a warrior . . . (II.108–10*)

One part of Shamhat’s persuasive plea especially confirms the strong connection between dress and the *demos*. It is the line: ‘Go, Enkidu, to Uruk-the-Sheepfold, / where young men are girt with waistbands!’ (I.226–7). Consider how closely the idea of a fold for sheep mirrors the concept of a gird for a young man’s waist. Shamhat is telling (the then still naked) Enkidu that there is a place where wild animals have been domesticated and contained within an enclosure and in this place the wildness of young men is ‘girt’, which is to say that the young men have been domesticated and enclosed in clothes. The etymology of the English words ‘girt’ and ‘gird’ is highly apposite, for it directly ties clothing to our idea of domestic settlement. According to Mallory and Adams, the reconstructed PIE lexicon contains ‘a series of words for some form of enclosure’. One of those words is **ghórdhos*, derived from **gherdh-* (‘to gird’). The root **ghórdhos* became *chórtus* (farmyard) in Greek and *hortus* (enclosed garden) in Latin. The same word later became ‘court’ in French and English, so we can see that the writers of Shamhat’s lines have hit upon a connection between clothing, the architectural domain of regulated domestic settlement and law. William Shakespeare might have seen a corresponding connection between the girt waist and regulated life when, in *Macbeth* (c.1606), he referred to ‘the Belt of Rule’ (5.2.17–18).²⁶ To gird and to rule also combine in the office of the *Evzones* (Εὐζώνες), the elite soldiers who guard the Presidential Mansion in Athens and who can therefore be considered in ceremonial terms to be the guardians of the polis. (Their name, which has antecedents going back at least as far back as Homer, roughly translates as ‘the well-belted ones’.²⁷) In all this talk of etymology, I do not overlook the fact that ‘gird’ is not the actual word used in the original Akkadian language and the fact that the

26 Or he might simply have been alluding to the fact that in England in the early seventeenth century, a plain black girdle was a regular feature of judicial costume (John H. Baker, ‘A History of English Judges’ Robes’ *Costume* 12 [1978], pp.27–39, 29).

27 Homer, *Iliad* 1.429; 6.467.

Akkadian language is not part of the PIE family of languages. Nevertheless, the Babylonians and their Indo-European contemporaries lived similar lives of strife and settlement, of hunting and farming, of wilderness and civilization. The cultural connection between the enfolding of sheep and the girding of men within the civil 'wall of wool' would have been as obvious and undeniable to the authors of *The Epic of Gilgamesh* as it has been, until now, obscure and undiscovered by us.

It has been observed that the tale of Shamhat and Enkidu has some resemblance with the story of Adam and Eve. There are indeed points in common, the most obvious being that the tempting agency of the woman lures the man from his state of innocent, native bliss into a state characterized by knowledge or reason. We are told that after 'Enkidu had defiled his body so pure', he was 'weakened, could not run as before, but now he had *reason*, and wide understanding' (I.199, 201–2).²⁸ There are, on the other hand, important differences between the two accounts, many of which hardly need spelling out. The major difference, so far as law and dress is concerned, is that whereas the story of Adam and Eve looks to a prelapsian era before humans ever fabricated clothes or law, *The Epic of Gilgamesh* demonstrates how dress and law were synonymous in the early city civilizations of postdiluvian Mesopotamia. On the other hand, something that both accounts have in common is that they connect clothing to the moral reason that distinguishes humans from the rest of the animal world. According to the biblical tale of Adam and Eve, the first human infringement of a divine command, the eating of the forbidden fruit of the tree of the knowledge of good and evil, had three immediate and related consequences. The first was that humans acquired knowledge of good and evil; the second was that humans donned dress; the third was that humans were physically excluded from paradise. There are many differences in detail between the biblical tale and *The Epic of Gilgamesh*, but in both accounts, the loss of animal innocence and the acquisition of human reason is accompanied by dress that marks humans out from the rest of zoological nature. In the biblical narrative, the gird of the loin became a memento and vestige of the garden of God:

The LORD God made garments of skin for Adam and his wife and clothed them. And the LORD God said, 'The man has now become like one of us,

28 The word '*reason*' is italicized because the decipher is insecure.

knowing good and evil. He must not be allowed to reach out his hand and take also from the tree of life and eat, and live forever.' So the LORD God banished him from the Garden of Eden to work the ground from which he had been taken. After he drove the man out, he placed on the east side of the Garden of Eden cherubim and a flaming sword flashing back and forth to guard the way to the tree of life. (Gen. 3.21–24)

Whether or not we take the story of Adam and Eve literally, we should take it seriously. Its meaning may be metaphorical, but we have observed that in matters of culture (not least in the matter of the foundations of civil culture) metaphor can be meaningful.²⁹ The story of Adam and Eve is the product of the collective cultural endeavour of an early people group to understand the nature of humanity and its place in the world. Bearing that in mind, it is of prime significance that, for some reason, they concluded that humans are not the same as other animals and they concluded that dress is a key feature that distinguishes humans from the rest of zoological nature. The early Semitic people asked themselves the question: 'why on earth do we go dressed?' It must have struck them as most peculiar to observe that mankind, uniquely among the animals, feels an imperative to dress by artificial means quite regardless of the weather.³⁰ The story of Adam and Eve provides their account of the reason why we dress. In the following extract, we join the tale after Eve has been tempted by the serpent (a creature which, given its ability to shed its skin, is a fitting choice for an account of the origins of dress):

When the woman saw that the fruit of the tree was good for food and pleasing to the eye, and also desirable for gaining wisdom, she took some and ate it. She also gave some to her husband, who was with her, and he ate it. Then the eyes of both of them were opened, and they realized they were naked; so they sewed fig leaves together and made coverings for themselves. Then the man and his wife heard the sound of the LORD God as he was walking in the garden in the cool of the day, and they hid from the LORD God among the trees of the garden. But the LORD God

29 See the discussion in the Author's Preface at pp.xv–xvi.

30 As people in hot climates wear clothes despite the heat, so people in colder climes follow fashion despite the chill: 'it is by no means an uncommon occurrence, in an inclement climate, for people to go ill clad in order to appear well dressed' (Thorstein Veblen, *The Theory of the Leisure Class*, Oxford World's Classics [1899] [Oxford: OUP, 2007], p.111).

called to the man, 'Where are you?' He answered, 'I heard you in the garden, and I was afraid because I was naked; so I hid.' And he said, 'Who told you that you were naked? Have you eaten from the tree from which I commanded you not to eat?' (Gen. 3.6–11)

The only reference to shame in the biblical account is a reference to the *absence* of any feeling of shame in the naked state as God created it.³¹ It follows that, even if shame was their motive for dressing after the fall, there is no reason to suppose that Adam and Eve regarded their naked human form as the cause of their shame. Such a reading would make no sense according to the internal logic of the Genesis text. The text implies that Adam and Eve have been in the habit of walking naked in paradise, in the company of their God and his creatures. On acquiring knowledge of good and evil, they instantly desired to hide their nakedness, but this cannot be because of any newfound knowledge that the naked body is somehow inherently shameful or 'evil'. On the contrary, they would have known that God is happy for them to live a naked existence. Their newfound knowledge could not have revealed that to be naked is evil, but it might have revealed that to be dressed is somehow superior. Where could they have got that idea from? One answer that presents itself from the biblical account is that their newfound knowledge of good and evil had revealed to them the significance of a difference that they had observed between God and his creatures, namely that God is dressed and his creatures are not. According to this reading, Adam and Eve hid themselves because they had encountered the truth that to dress is to be God-like. They hid themselves from God because they were embarrassed when their attempts to imitate divine dress (by putting on 'fig leaves') fell woefully short of what they had witnessed of the raiment of God. This reading of the Eden story fits with Lawrence Langner's psychoanalytical account of the reasons for the dress imperative. Applying Alfred Adler's theory of the so-called inferiority complex (the theory that 'psyche has as its objective the goal of superiority'),³² Langner argued that '[m]an from the earliest times has worn clothes to overcome his feeling of inferiority and to achieve a conviction of his superiority to the rest of creation . . .'.³³ Were

31 Gen. 2.25.

32 *Über den nervösen Charakter* ('The Neurotic Character') (Wiesbaden: Verlag Bergmann, 1912).

33 Lawrence Langner, *The Importance of Wearing Clothes* (New York: Hastings House Publishers, 1959), p.12.

the writers of Genesis somehow inspired to see a connection between dress and human civil ambition? The translators of the King James version were certainly inspired, for in their rendition the naked Adam is described as having been placed in the Garden of Eden ‘to dress it’ (Gen. 2.15).

Returning to *The Epic of Gilgamesh*, we can note that the intended effect of Enkidu’s induction into the city life of Uruk was to introduce a check or counterweight to the king’s tyrannical force. Enkidu had declared in advance that he would ‘change the way things are ordered’ (I.222), and his resolve to do so was confirmed with righteous anger when he heard that King Gilgamesh intended yet again to exercise *droit du seigneur* at a forthcoming wedding. The threat of impending abuse was reported to Enkidu in the familiar metaphorical language of nuptial dress: ‘for Gilgamesh, the king of Uruk, the centre of political power, / the veil will be parted . . .’ (II.156–7*). Enkidu was true to his destiny and true to his word. His first action following his entry into Uruk was to step forward in the street to block the path of Gilgamesh. Then ‘Enkidu with his foot blocked the door of the wedding house, / not allowing Gilgamesh to enter’ (II.111–12). Enkidu, straddling the threshold to prevent the unveiling of the virgin, effectively performs the perfect symbolic counterpart to Shamhat’s threshold activity. She had stripped away her city clothes to entice Enkidu in from the wild; now the man of the wilderness, newly invested in the law and order of the city, keeps the king out.

The notion that the invested authority of a citizen might form a barrier even to the invested authority of the king must strike us as a remarkably modern feature of such an ancient tale. The threshold of the *domus* is crucial to the modern English notion of a subject’s legal liberty from interference by the monarch, which we see expressed in the saying ‘an Englishman’s home is his castle’. The legal origin of this saying is *Semayne’s Case* (1604),³⁴ which was decided early in the reign of James I of England. In one of his many judicial efforts to curtail the royal prerogative, Sir Edward Coke, chief justice of the King’s Bench, held in that case that the owner of a private home has the right to defend his house even against search and entry by the king’s sheriffs, for ‘the house of every one is to him as his Castle’.³⁵ The homeowner has the right ‘to shut the door of his own house’.³⁶

34 (1604) 5 Coke Rep 91a.

35 Ibid., 91b.

36 Ibid., 93a.

The threshold to civic architecture frequently seeks to articulate the individual's connection to the social collective and the individual's separation from it. In so doing, it can be said to mimic the threshold function of the private *domus*. Legal precincts speak particularly powerfully of the liminal quality of being both within and without the civil domain. 'Liminal' can be understood here in the anthropological sense in which Victor Turner employed it to describe the threshold place in a rite of passage which places the initiate neither fully outside the initiated state but not yet fully within it. David Evans employs Turner's concept of liminality to situate London's Inns of Court³⁷ 'within the medieval context of symbol and ritual'.³⁸ In a passage 'On the Threshold of the Law', Evans describes the liminal experience of entering and exploring the labyrinthine network of the Inns:

The visitor is perpetually 'on edge' . . . for throughout each interior, an endless succession of bifurcating thresholds and passages produces a vertiginous sensation of being at once inside and out. (4)

Evans argues that 'the architecture of the Inns of Court stages the deferral of bodily interiority through which the Law simultaneously derives its infinite remove and its authority' (1). In other words, the precincts of the Inns of Court perform the law's ideal of being at once always open and perpetually inaccessible. Evans suggests that the effect is to entice the visitor to quest for the inner sanctum of law's truth while simultaneously keeping its secret concealed. This anticipation and deferral creates a 'remove' that enhances the law's authority: 'The Law is the "not yet" of an encounter that builds its reality out of the infinite anticipation of the revelation that will disclose its hidden truth' (25). The end of all this is finally to conceal the 'radiant secret' of the law (25). Thus far I would agree with Evans, but I disagree when he concludes that the secret of the law is 'nothingness' (25). As I see it, the secret of the law is utterly material. The law creates the enticing illusion of an inner sanctum not to disguise the fact that its interior is empty, which it may be, but to distract the inquirer from the truth that what matters is the

37 The halls and associated tenements in which the barristers' branch of the legal profession of England and Wales has passed on its traditions since at least as far back as the fourteenth century.

38 David Evans, 'Theatre of Deferral: The Image of the Law and the Architecture of the Inns of Court' *Law & Critique* 10.1 (1999), pp.1–25. Numbers in parentheses denote page numbers.

materiality of the threshold itself. The door is the law's domain. The face is the law's domain. Dress is the law's domain.

Washington, DC, is surely the most architecturally eloquent city on earth. The rhetoric of its many constructions has persuaded a disparate people that they are a unified nation. From the Capitol Building at its head to the monuments of the founding fathers – Jefferson and Washington – at its feet, the architecture of Washington, DC, dressed in flags and symbolic ornament, incorporates the tangible form of a united body politic without which there would be only an intangible idea of a State. In the monumental myth of Washington, DC, no architectural feature is more persuasive and articulate than the main doors to the US Supreme Court. The creator of the doors understood their significance: 'Out of all of our monumental projects, spread over two lifetimes, the Supreme Court doors are the only work that we ever signed – that's how important they were.'³⁹ The photograph of the bronze doors (Figure 2.1) cannot convey their impressive scale. Together they measure 17 feet high by 9 1/2 feet wide and weigh around 13 tons. They are decorated with bas-relief panels depicting celebrated landmarks in the history of the rule of law, and by the same token celebrated landmarks in the history of dress. The panels range from the trial scene that was said to have been represented in the embellishment of The Shield of Achilles,⁴⁰ in which two lawyers are depicted, each draped in a Greek *himation*,⁴¹ through a series of togate Romans and medieval and early modern Englishmen until the final panel in which Chief Justice Marshall and Justice Story of the US Supreme Court, dressed in fashionable cravats tailcoats and breeches, are shown conversing the momentous case of *Marbury v. Madison* (1803).⁴² The photograph reproduced as Figure 2.2 shows in detail the second panel from the top of the right-hand door. It depicts Lord Chief Justice Coke barring King James I from the Court of the King's Bench, recalling such judgments as that in *Semayne's Case*, mentioned earlier, and *The Case of Proclamations*,⁴³ in which Coke affirmed that the king was subject to the law

39 John Donnelly Jnr (sculptor) quoted in David Mason, 'The Supreme Court's Bronze Doors' *American Bar Assn Jnl* 63 (1977), p.1395.

40 Homer, *Iliad* 18.490–508. See Raymond Westbrook, 'The Trial Scene in the Iliad' *Harvard Studies in Classical Philology* 94 (1992), pp.53–76.

41 'A properly arranged himation reflected good breeding and proper order' (Mireille M. Lee, 'Clothing' in Gagarin and Fantham, *The Oxford Encyclopedia of Ancient Greece & Rome*, Vol. 2, pp.228–32, 230.

42 5 US 137 (1803). This case established the independence of the US judiciary from the legislative and executive branches of government.

43 (1610) EWHC KB J22.

Figure 2.1 Entrance doors to the United States Supreme Court (exterior). Designed by Cass Gilbert and John Donnelly Snr. Sculpted by John Donnelly Jnr.

Source: Image © Gary Watt 2011.

Figure 2.2 Entrance doors to the United States Supreme Court (exterior, detail: second panel top right, Lord Chief Justice Coke and King James I). Designed by Cass Gilbert and John Donnelly Snr. Sculpted by John Donnelly Jnr.

Source: Image © Gary Watt 2011.

and not master over it. Coke standing at the threshold of the court, barring the king's access, also evokes Enkidu standing at the domestic threshold and barring access to King Gilgamesh. Enkidu, dressed in civil form, is the incarnation of the ordered layer of law. The same office is performed by Coke, dressed in his judicial robes and invested with legal authority.

It is appropriate that the doors to the US Supreme Court should depict the law barring access to a monarch, for the decoration on the doors is only visible when the doors of the court are closed. What is less appropriate is that even when the doors are open, they are no longer open to visitors. Not even the parties to cases being heard in the Supreme Court can enter by the main doors, and neither can their attorneys. Presumably only the Justices themselves, and other securely vetted employees of the US Supreme Court, can now enter the court through the main doors. Since 4 May 2010, visitors may leave by the main door but they are required to enter through a new side entrance. The Supreme Court Justices all appreciated the seriousness of the security concerns that prompted this change, but two were firmly of the view that security concerns should not override the semiotic importance of the public having access through the symbolically significant main doors. Justice Breyer, with the concurrence of Justice Ginsburg, issued a memorandum objecting to the closure. He observed that to his knowledge 'no other Supreme Court in the world . . . has closed its main entrance to the public' and argued that '[t]o many members of the public, this Court's main entrance and front steps are not only a means to, but also a metaphor for, access to the Court itself'.⁴⁴ One commentator adds that the closure of the doors represents a threat to Americans' 'basic architectural literacy'.⁴⁵

To close the front doors to a courthouse during operational hours represents a political failure; a failure of the ideal of a persuasively performed political State. Franz Kafka critiqued this species of failure in his short story 'Vor dem Gesetz' ('Before the Law').⁴⁶ It tells of 'a man from the country' who is denied access to the law. The following brief extract will give an impression of what is at stake. The reader will note that within the few lines in which

44 'Statement Concerning the Supreme Court's Front Entrance', 3 May 2010 (*Journal of the Supreme Court of the United States* [2009], pp.831–2).

45 Philip Kennicott, 'Closing Main Doors to the Supreme Court Sends Troubling Message', *Washington Post*, 4 May 2010.

46 *Almanach dem Neuer Dichtung* (Leipzig: Kurt Wolff Verlag, 1916). The story is retold in Franz Kafka, *Der Prozess* ('The Trial') (Berlin: Verlag Die Schmiede, 1925).

the visitor from the country describes the doorkeeper, Kafka dwells on some significant features of the doorkeeper's dress:

[T]he law is supposed to be accessible to everyone and at all times, he thinks, but as he now looks more closely at the door-keeper in his coat of fur, at his great pointed nose and his long and straggly black Tartar beard, he decides it would be better to wait until he gets permission to enter. The door-keeper gives him a stool and lets him sit to one side of the door. There he sits for days and years.⁴⁷

The man from the country eventually dies waiting. Richard Carstone, the tragic young man of Dickens's *Bleak House* is also gradually worn to death waiting for his cause to come to a final resolution in court. In an advanced stage of his demise, he was discovered in his room '... half dressed – in plain clothes ... not in uniform – and his hair was unbrushed' (45).⁴⁸ Carstone died in limbo. Not only did he die before the final hearing of his cause (the assets at issue were all consumed in legal costs before the cause could be heard), but he died when still a law student. The description 'half dressed' efficiently depicts the fact that he was not yet a fully fledged lawyer. In Kafka's story, in contrast, the doorkeeper is completely dressed, being covered even to the extent of a beard and fur coat. Perhaps Kafka chose the fur coat to symbolize the power and status of judges and others who administer the law. Perhaps he was merely informing us that here is a man who is dressed to bear all weathers. The man from the country is duly warned that he will be worn down long before the doorkeeper's coat wears thin. The doorkeeper's dress performs a promise of access and openness: the beard frames the mouth for speech and the coat, curtain-like, conceals the hope of human appearance and humane action. In short, the dress performs as the door performs (and as the Inns of Court perform in Evans's analysis): by summoning a spectator, by fostering the anticipation of access and by determinedly delaying admission. The lesson of the story may be that there is no truth and justice behind the door of the law and that one had better adjust one's expectations to appreciate what truth and justice there might be in the door itself. The superficial procedures and

47 Franz Kafka, *The Trial*, Penguin Classics (trans. Idris Parry, 1994) (London: Penguin, 2000), p.166.

48 Quotations are taken from Charles Dickens, *Bleak House* (serialized 1852–3) (Harmondsworth: Penguin English Classics, 1971). The figure in parenthesis following the quotation refers to the relevant chapter of the novel.

externalities of law furnish a form of truth and justice if we are prepared to see it as such. If we are not prepared to see it as such, we might be in for a long wait before we see something better.

Peter Goodrich tells another tale of a doorkeeper of the law who kept his spectators enthralled with anticipation. Lord Robert Goff, now retired, is one of the most distinguished judges to have sat, in recent memory, in the highest court in the jurisdiction of England and Wales. Some years ago, he turned up 30 minutes late to deliver a talk to students. There is nothing especially noteworthy in that, except for what turned out to be the cause of the delay. Goodrich reports that when he enquired of a colleague why his lordship had turned up late, his colleague gave the following explanation:

[T]hat after partaking of some tea in the common room and just five minutes before the lecture was to begin, Lord Goff announced that he needed to change his trousers. There was nothing visibly wrong with his trousers but his request was acceded to and the noble Lord and learned brother was directed to the bathroom where he apparently and at length changed. The new trousers were as grey and non-descript as the previous ones. What was important was the rhetoric of delaying appearance, of keeping the audience waiting. It marked a special space, a build up, an aura of importance, a deference that was viscerally incorporated in the students' silent attentiveness, their willingness to wait in reverence of the eminence to come.⁴⁹

Professor Goodrich interprets the episode in a way that makes plain the shared liminal location of dress and law. He suggests that Lord Goff (whom he likens to a 'Gownman' in the same order as a 'Chief Druid') 'brought his ritual status with him in the form a trouser-changing routine'.⁵⁰

In ancient city States, the threshold was often not merely the entrance to the law court, but the very site of judicial judgment. In the Old Testament, Job associates the invested nature of legal authority with the architectural location of the gate:

When I went to the gate of the city and took my seat in the public square
... I rescued the poor who cried for help, and the fatherless who had none

49 Peter Goodrich, 'Druids and Common Lawyers: Notes on the Pythagoras Complex and Legal Education' *Law and Humanities* 1.1 (2007), pp.1–30, 29.

50 *Ibid.*, p.30.

to assist him . . . I put on righteousness as my clothing; justice was my robe and my turban.⁵¹

References to judgment at the gate are widespread in ancient literature. For example, in Deuteronomy it is said that parents will take a rebellious son 'to the elders at the gate of his town' (21.19); a law report from ancient Babylon describes how a judge sent a land dispute to be determined at 'the gate of Marduk', because that was where the disputed land transfer had been witnessed.⁵² The 'trial' of Jesus of Nazareth before Pontius Pilate concluded at the judge's seat outside of Pilate's palace, at the place known as the 'Stone Pavement'.⁵³ In the gospel account, as in *The Book of Job*, the liminal location of the judgment seat is closely associated with dress as a locus of law. It seems that Pilate and Jesus both wore seamless garments at the 'trial'. Jesus was made to wear a robe of royal purple, and this was presumably placed over an undergarment. The gospel narrative states that at his crucifixion, when Jesus' overgarment was removed and divided between the Roman soldiers, he was left wearing an undergarment that was 'seamless, woven in one piece from top to bottom'.⁵⁴ This description is intended to identify Jesus with the Jewish Temple in Jerusalem, where the inner sanctum – 'the holy of holies' – separated God's presence from the world by means of a curtain or veil. As Jesus' undergarment was woven from top to bottom (from heaven to earth), so the curtain spontaneously split from top to bottom at the moment of his death.⁵⁵ This signified the removal of the fabricated cloth of formal law that had separated humans from the divine presence since the fall.

Pilate was dressed in a toga. Jesus was born in the reign of Caesar Augustus, the first Emperor of Rome, and Augustus insisted that all Romans should wear the toga in public meetings. Virgil's Jupiter describes the Romans as 'the masters of the material world and the people of the toga'.⁵⁶ It is said that Augustus quoted this on an occasion when he was outraged to see Romans improperly attired in a public assembly, whereupon he forbade any Roman

51 Job 29.7,12,14. See also 1 Sam. 1.9; Jer. 38.7.

52 Henry W. F. Saggs, *The Babylonians* (1962) (London: The Folio Society, 2002), p.178. Compare Gen. 23.17–18.

53 Jn 19.13.

54 Jn 19.23.

55 Mt. 27.51.

56 'Romanos, rerum dominos gentemque togatam' (*Aeneid* 1.286).

to enter the forum without their toga.⁵⁷ The newly invested Caesar Augustus was represented in statuary 'as the togate citizen, often with his toga pulled reverently over his head (*capite velato*)'.⁵⁸ So much was the toga the defining mark of Roman civilization, that the toga was removed from any citizen banished from Rome.⁵⁹ It is true that the highest-ranking Romans were keen to shed the heavy, hot toga as soon as they were able when out of the public eye at home or at holiday,⁶⁰ but it is certain that Pilate would have worn one when sitting in judgment at the threshold to his palace.

The toga was awkward to arrange and burdensome to wear, but in many respects it was functionally perfect. Suppose you are a tribe in the ancient world that wishes to spread your idea of civilization abroad. How will you communicate the message of your political life to nations to whom your speech is alien and whose speech appears to you to be mere babbling? You will want something that communicates with what Shakespeare calls a 'speechless dialect'.⁶¹ It must speak silently but eloquently of the settled life of the sheepfold, it must tell of legal and architectural order and it must demonstrate your wealth in clear and conspicuous terms. The Roman toga is perfectly suited to the task. Within the considerable weight and precisely ordered arrangement of the white woollen folds of the Roman toga, one can plainly see the security of the sheepfold and the architectural and legal order of the political structures that grew out of the idea of the primitive polis. In the weight and whiteness of the toga, even more so in the purple-edged or full-purple toga, one can also see the wealth and power that flows from established political stability. The fact that the toga virtually disables the left arm from manual labour tells the world that Roman citizens enjoy a superior style of life. No wonder that ambitious barbarians were pleased to adopt the toga as a mark of civilization, even after the fall of Rome. Around the year 510, the Gothic king Theoderic appealed to residents in the Gallic provinces to adopt Roman attire:

Now that you are restored to your ancient liberty through God's favour,
clothe yourselves in the customs of the toga (*moribus togatis*), divest

57 C. Suetonius Tranquillus, *Divus Augustus* (Alexander Thomson [ed.] *Suetonius: The Lives of the Twelve Caesars; An English Translation* [Philadelphia: Gebbie & Co, 1889], chapter 40).

58 Jonathan Edmondson, 'Public Dress and Social Control in Late Republican and Early Imperial Rome', in Jonathan Edmondson and Alison Keith (eds), *Roman Dress and the Fabrics of Roman Culture* (Toronto: University of Toronto Press, 2008), p.23.

59 Pliny the Younger, *Epistulae* 4.11.3.

60 Tertullian, *De pallio* 5.1–2.

61 *Measure for Measure* 1.3.66.

yourselves of barbarity, cast aside savagery of the mind, since it is not fitting for you to live in accordance with alien customs when these times of ours are so fair and equitable.⁶²

The toga was required costume in law courts and its rhetorical dimension could prove useful. Cicero employed it to good effect when he wore the pure-white toga (*toga candida*) for his famous oration against Lucius Sergius Catilina ('Catiline').⁶³ Related to its rhetorical dimension, the toga also had theatrical or performative potential. Jonathan Edmondson argues that *tragoedia* or stagecraft was enhanced by 'the elaborate nature of Roman public dress, which created a sense of civic uniformity across the citizen body, while at the same time marking difference and rank'.⁶⁴ The magistracy, for instance, were marked out by a purple stripe along the border of their toga, and, even higher up, the censors wore entirely purple togas.⁶⁵ The toga, wherever it was and whatever form it took, was a gateway to Rome; a portable portal to the eternal polis.

Strange as it may seem, the dress that formed the door to Rome is in one sense still open, for the Byzantine branch of the Roman Empire retained a vestige of the toga in the uniform of their magistrates and other officials. The Byzantine *loros* (or '*lorum*'), that was derived from the decorated *toga picta* worn by Roman consuls, was a long embroidered scarf which, like the toga, was worn draped and wrapped in an orderly fashion. The *loros* survived, in turn, in vestigial form as the *armelausa* which was the mantle worn by judges throughout the Middle Ages and into the early modern period. The mantle is still retained in modern form as the judicial gown in many jurisdictions (the jurisdiction of England and Wales included) down to the present day.⁶⁶ The legal historian J. H. Baker notes that until sometime between 1615 and 1625, the mantle was fastened over the right shoulder and fell over the left arm, so that it had to be folded back to make the left arm useful.⁶⁷ The left arm was therefore occupied with supporting the mantle in much the same way that it had formerly been occupied with supporting the folds of the toga. Crucially, the *armelausa*, as vestige of the toga, still leads to the greatest edifice that

62 Cassiodorus, *Variae* 3.17.1, quoted in Edmondson, 'Public Dress and Social Control', p.39.

63 64 BC.

64 Edmondson, 'Public Dress and Social Control', p.38.

65 Ibid., p.29.

66 William Norman Hargreaves-Mawdsley, *A History of Legal Dress in Europe Until the End of the Eighteenth Century* (Oxford: Clarendon Press, 1963), p.49.

67 Baker, 'A History of English Judges' Robes', p.28.

remains of Rome, for it is judges who wear the *armelausa* and it is judges who preside over laws that still owe a great deal to the laws of Rome. Some modern jurisdictions remain, in essence, Roman Law jurisdictions; but even in the jurisdiction of England and Wales and in other Common Law jurisdictions which pay no great tribute to Roman Law, there remains some vestige of the Roman scheme.⁶⁸ The survival of Roman Law is attributable to the consolidation of Roman Law into the *Corpus Juris Civilis* under the Byzantine Emperor Justinian I; so we can say that the Byzantine branch of the Roman Empire not only transformed the toga into the *loros* and thereby assured the survival of the sartorial door to Rome, but it also ensured that the door would continue to lead to Rome's greatest edifice of civil thought: its law.

If it can be shown that dress is culturally equivalent to architecture and that architecture is culturally equivalent to law, we will have gone a long way towards demonstrating that dress is culturally equivalent to law. What I mean by cultural equivalence is that a culture finds meaning in dress by relating it to law through metaphorical language (and vice versa, that it finds meaning in law by relating it to dress), and that such metaphorical meanings reveal close functional, semiotic and aesthetic similarity between law and dress. It is straightforward enough to demonstrate the cultural equivalence of architecture and law. Both are technical systems built by rule to contain, exclude and accommodate. In the modern world, jurists claim that their modes of thought and practice are 'scientific', science being the modern paradigm of accuracy and truth. In ancient times, the architect was the paragon of the civil ideal, and lawyers would have been pleased to emphasize the correspondence between their skills and those of the *arkhi-tekton* (the 'ruling' or 'master' technician).

A moment's reflection will suggest numerous points in common between the functions of dress and architecture: both frequently operate to cover, protect, beautify, accommodate, glorify, signify and secure. Foucault has famously described the architectural capacity of the built environment to discipline and punish,⁶⁹ but it is surely right to observe that 'many of his terms suggest that this can be extended to the analysis of dress'.⁷⁰ Most

68 Herbert Felix Jolowicz, *Roman Foundations of Modern Law* (Oxford: Clarendon Press, 1957).

69 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Penguin, 1977).

70 Alexandra Warwick and Dani Cavallaro, *Fashioning the Frame: Boundaries, Dress and the Body* (Oxford and New York: Berg, 1998), p.78.

important in fundamental and definitional terms is the fact that both disciplines are concerned to 'order'. Where there seem to be functional differences between them, these often turn out to be differences in degree only. Storage, for example, is rarely a primary aim of dress but it is frequently a primary aim of architecture. The shelter function is clearly something that dress and architecture have in common (the English words 'hall' and 'cell' are derived from the PIE root **kel-*, which means to 'to hide' or 'to enclose'), and it is sometimes hard to decide under which heading a thing should fall. The umbrella, for example, is simultaneously dress-like and shelter-like. One might as well ask if a snail wears its shell or is housed in it.⁷¹

Beyond functional similarities between dress and architecture, there are aesthetic similarities. When it comes to accommodating the human body, neither architecture nor dress is exclusively concerned with mere functionality. Considerations of scale and style apply. Architecture may be functionally ergonomic, but if its proportion is wrong it will fail in aesthetic terms. It is not enough that a building should be technically fit for human habitation; it should also be aesthetically fitting to a humane sense. The architecture of Hitler's Nazi Germany fails because the scale is wrong, and the strictness of the design is wrong.⁷² The rectilinear architecture of Nazi Germany, like the politics of the regime, was too *recht*. Rigorously straight lines are inherently unaccommodating to the curves of the human form. There is more to good order than lines drawn by rule. Consider Anthony Trollope's contemplations on the architecture of a Gothic church in his novel *The Warden*:

The stone work also is beautiful; the mullions of the windows and the thick tracery of the Gothic workmanship is as rich as fancy can desire; 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. (12)⁷³

71 John Carl Flügel, *Psychology of Clothes* (1930) (London: The Hogarth Press, 1950), p.83.

72 The error of excessive scale is especially evident in Hitler's plans for a new Berlin: a *Welthauptstadt Germania* ('World Capital Germany') as drawn up by Hitler's architect Albert Speer (see Albert Speer, *Inside the Third Reich* [New York: Macmillan, 1970]).

73 Anthony Trollope, *The Warden* (London: Longman, Brown, Green and Longmans, 1855). The figure in parenthesis following the quotation refers to the relevant chapter of the novel. All quotations are taken from the Penguin Popular Classics edition (London: Penguin, 1994).

The sense that precise rectilinear order might not be perfectly pleasing applies as well to the human face and the dressed human form as to architecture. Trollope describes the warden's eldest-daughter Eleanor almost as if she were the human equivalent to that Gothic church: she is not 'perfect in every line, true to the rules of symmetry', but she is 'very beautiful when seen aright' and 'you could hardly pass an evening with her and not lose your heart' (11). We admire symmetry, but not when it is too strict. The aesthetic appeal of 'error' in dress is a poetic conceit of long standing. Consider the following lines that appear in the poem 'Delight in Disorder' by Robert Herrick (1591–1674):

A Sweet disorder in the dress
Kindles in clothes a wantonness:
...
A careless shoestring, in whose tie
I see a wild civility:
Do more bewitch me than when art
Is too precise in every part.

An equivalent disposition in matters of dress has been observed by the author of *Watching the English*, who at one point writes that 'we English are at our sartorial best when we have strict, formal rules and traditions to follow – when we are either literally or effectively "in uniform";⁷⁴ before adding that '[w]e are at our best when we are "in uniform" but rebelling just slightly against it'.⁷⁵ This practice of bending rules to fit the human form is not unique to England, but it must have been exceedingly useful to the Anglo-Saxons (who may be considered the originators of English language and English law) as they sought to accommodate wave after wave of alien laws brought into the realm by the Roman Church, the Danes and the Normans. The practice of bending rules without breaking them, features in law and culture by the name of 'equity'.⁷⁶

Architecture and dress share the function and art of articulation in various ways. They articulate in the sense that they join or connect: dress joins the individual to the collective, and articulate architecture – such as doors,

74 Kate Fox, *Watching the English* (London: Hodder & Staughton, 2004), p.269.

75 Ibid., p.294.

76 Gary Watt, *Equity Stirring: The Story of Justice beyond Law* (Oxford: Hart, 2009).

bridges and arches – join parts together to make a whole. They also articulate in the sense that they separate, for to connect things is to acknowledge that they are different to each other. When we talk of ‘articulate’ speech, we are generally referring to the quality of speech that is characterized by the art of connecting words while keeping them distinct. Articulate features of urban architecture have the same quality of separating parts even as they join the parts together. William L. MacDonald makes the following observation on the syntax of urban architecture in the Roman Empire:

arches and way stations established articulative urban frames, marking off segments of passage, of one length here, another there. As a result the whole could be grasped cumulatively . . . the net result was a cognitive system of largely functional units dividing urban texts into chapters and paragraphs.⁷⁷

The threshold of the private home is a significant linguistic component of the urban story. It can be considered the point of articulation; the point that joins the individual to the social collective and which at the same time separates the individual from the political State. Even today, we tend to dress somewhat differently when we are inside our homes to when we are outside. It is acceptable to leave one’s house in dressing gown and slippers, but only as far as the garden gate. To enter the public street dressed that way is considered an infringement of the customary dress code, unless the context (e.g. the emergency context of a fire or such like) excuses unusual dress.⁷⁸

Architectural grammar and syntax can be read not only in the articulation of the urban plan, but it can also be read within individual architectural elements. Architectural ornamentation can be likened to the embroidery or embellishment of clothes. In Roman architecture, following the Greek, even the ornamentation of individual pillars followed rules resembling the

77 William L. MacDonald, *The Architecture of the Roman Empire II: An Urban Appraisal* (New Haven and London: Yale University Press, 1986), p.108.

78 On context-based exceptions to dress codes, see, for example, Erving Goffman, ‘Attitudes and Rationalizations Regarding Body Exposure’, in Mary E. Roach and Joanne B. Eicher (eds), *Dress, Adornment, and the Social Order* (New York and London: John Wiley & Sons, 1965), pp.50–2. Goffman says that a lawyer will be forgiven for wearing a sweater instead of suit if he (or she) is working overtime on a Saturday, because ‘mere presence in the office at an off hour is sign enough of regard for the work world’ (p.52).

laws of language construction. These rules constituted distinct architectural 'orders':

The vocabulary or decorative details of each order are arranged according to an architectural grammar and syntax that makes each one recognizable, yet allows for flexibility of the orders in scale and proportion.⁷⁹

Figure 2.3 shows a diagrammatic epitome of the five orders of classic architecture: Tuscan, Doric, Ionic, Corinthian and Composite. Figure 2.4 shows William Hogarth's satirical rendition of periwigs in terms of five architectural orders of his own invention, each one corresponding to one of the classical orders.⁸⁰ Hogarth's orders are: Episcopal, Old Peerian (or Alder Manic), Lexonic, Queerinthian (or Queue de Renard) and the Composite (or Half Natural). Lexonic refers to the judicial wig, of which more will be said in Chapter Four. Suffice to say at this juncture that in addition to the sense of order they convey, judicial dress and judicial architecture also set the stage for the theatrical performance of law.⁸¹ It has been suggested that the judicial periwig 'acts as a sort of frame for the oratory issuing from the mouth of the lawyer'.⁸² Hogarth's satire on the periwig hits upon the historical fact that architectural orders and styles have been directly reflected in dress throughout human history. The Greek *chiton* came in Doric and Ionic styles that were 'clearly designed to resemble their architectural counterparts',⁸³ and styles of architecture and dress continued to connect into the Middle Ages, most clearly in the similarity between the elongated, pointed style of Gothic architecture and such features as men's elongated, pointed shoes and women's elongated, pointed hats (the conical 'hennin'). A close connection between architecture and dress can also be seen in the eighteenth- and nineteenth-century chimney-like ('stovepipe') top hat and in the streamlined style of the 1920s. A final point to make on the cultural

79 Architecture 'Forms and Terms', in Gagarin and Fantham, *The Oxford Encyclopedia of Ancient Greece & Rome*, Vol. 1, pp.216–20, 216.

80 William Hogarth, *The Five Orders of Periwigs as They Were Worn at the Late Coronation Measured Architectonically* (1761) (etching).

81 For an extensive discussion of law's performative aspect, see Chapter Four.

82 Thomas Woodcock, *Legal Habits: A Brief Sartorial History of Wig, Robe and Gown* (London: Ede and Ravenscroft, 2003), p.25.

83 Marilyn J. Horn and Lois M. Gurel, *The Second Skin: An Interdisciplinary Study of Clothing*, 3rd edn (Boston: Houghton Mifflin & Co, 1981), p.75.

Figure 2.3 ‘Five orders of Architecture’ from Ephraim Chambers (ed.) *Cyclopaedia*, volume 1 (1728).

Source: Image in the Public Domain.

equivalence of architecture and dress is that ‘[d]esigners and fashion editors frequently talk about the “construction” of clothes’ and that ‘underwear before the 1960s was referred to as “foundation” garments’.⁸⁴

If underwear is the foundation of clothing, then nudity is the bedrock of dress. People who live in societies where the dress code requires clothing are

84 Warwick and Cavallaro, *Fashioning the Frame*, p.79.

Figure 2.4 William Hogarth, “The Five Orders of Periwigs” (includes James Stuart; William Warburton; Samuel Squire; George Bubb Dodington, Baron Melcombe; Charlotte Sophia of Mecklenburg-Strelitz; Elizabeth Percy [née Seymour], Duchess of Northumberland).

Source: © National Portrait Gallery, London.

captured by cladding almost as soon as they are born. They are naked for just a moment at the fleeting threshold of birth: one minute swaddled in their mother's womb, the next minute held in the folds of her arms and the next minute swaddled in the first folds of cloth. How much of our instinct to dress is a desire to replicate the mother's corporal embrace? In Chapter Five, we will consider a range of issues arising from the way in which legal authorities respond to unauthorized nudity within the public spaces of polite society, but here I want to attend to two arguments – the argument for the 'neutral' and the argument for the 'natural' – that are sometimes raised in favour of adult public nudity in cultures where the dress code requires covering by cloth.

An example of the argument for nudity on the ground of neutrality is one that is sometimes put forward by women who claim that they should be free to go topless in public places wherever men are permitted to go topless. US commentators note that this claim usually fails in the courts.⁸⁵ (In the United States, it has been observed across a range of legal contexts that 'when it comes to public nudity, plaintiffs tend to lose';⁸⁶ this can be contrasted with the position in Germany, where it is accepted that the individual has more latitude to exhibit a naked persona in public places.⁸⁷) At the root of women's claim to go topless where men go topless, there is an assumption that the law is unequal because it treats identical cases – the case of the male and the case of the female – differently. The essence of the argument is that the distinction typically observable between the naked torso of an adult man and that of an adult woman should not be a relevant distinction in law. One might be sympathetic with that argument on certain grounds – including the ground of equal opportunity for self-expression – but the argument is unconvincing when it is advanced on the basis of strict neutrality. If there is any context in which gender is not in any meaningful sense a 'neutral' factor, it is in the public perception of the naked adult form. The argument might be made that a law which requires women to cover their upper torsos is a law

85 See Kimberly J. Winbush, 'Regulation of Exposure of Female, But Not Male, Breasts' *A.L.R.* 67:5 (1999), pp.453–57, 431. Winbush cites *People v. Santorelli* 80 NY 2d 875; 600 NE 2d 232 (1992) as one of the rare cases in which the argument succeeded.

86 Gowrie Ramachandran, 'Freedom of Dress: State and Private Regulation of Clothing, Hairstyle, Jewelry, Makeup, Tattoos, and Piercing' *Maryland Law Review* 66 (2006), pp.11–93, 72. See, generally, Pat Marie Maher and Ann C. Slocum, 'Freedom in Dress: Legal Sanctions' *Clothing and Textiles Research Journal* 5.4 (1987), pp.14–22.

87 James Q. Whitman, 'The Two Western Cultures of Privacy: Dignity Versus Liberty' *Yale L Jnl* 113 (2004), pp.1151–221.

made by men for men and that there is a feminist argument for challenging it on that basis alone, but is that argument really convincing? One suspects, on the contrary, that this is a context in which gender distinction in the law will be supported as much by women as by men.

Public nudity is sometimes promoted on the ground that it is natural. Stephen Gough, the so-called naked Rambler, claims that he is doing what comes naturally,⁸⁸ and that the artificial and unnatural thing to do is to cover our naked form with fabrications. Of course in one sense it is perfectly true to say that the naked state really is a state '*au naturel*'. We are born naked and in that literal sense it is our native state to wear no clothes at all. We also know that adults who are native to certain cultures prefer to dress in ways that do not involve covering with cloth. It cannot be denied that nudity is literally native and that to be unclothed can be culturally natural. From this it follows that clothing can certainly be considered unnatural. But what of that? The real question is not whether it is natural to clothe but whether it is natural to dress, and to that question we get a very clear answer. So far as humans are civilized social animals, it appears from all experience that it is in our very nature to dress. We may debate the source of this apparently innate feature of human civil society, but there is no doubt that the habit of dress is a perfectly natural one. It is my argument that the habit of dress is natural in the way that the habit of law is natural. This does not mean that dress and law are not artificial constructs made by human hand and mind, but it does mean that dress and law are natural in the sense that it is in our nature to fabricate such things. J. C. Flügel argues that '[c]lothes . . . though seemingly mere extraneous appendages, have entered into the very core of our existence as social beings'.⁸⁹ I would not limit that observation to clothes: dress, whatever form it takes, occupies the 'core of our existence as social beings'. The centrality of dress to our social self-perception is such that in a dress-dominated society it is practically impossible to go undressed in public. This is precisely because the undressed human form in a domain of dress is not considered on its own terms, but in terms of an absence of dress. It is considered to be in a state of *un*-dress. Indeed, it is as impossible to go dress-free in a domain of dress as it is to pass a law to bring the rule of law to an end. So long as a state of lawlessness is defined in

88 For discussion of Stephen Gough's appearance in court see Chapter Five at pp.127–31.

89 Flügel, *Psychology of Clothes*, p.16.

terms of law, we never truly escape the rule of law. So long as a dress-free state is defined in terms of dress, we never truly escape the domain of dress. On this view, Stephen Gough, the naked rambler, is not truly naked. He is, on the contrary, extremely well covered. When he is not under supervision in the solitary confinement of his prison cell, he attracts the intense gaze of the public eye. Hans Christian Andersen's morality tale of *The Emperor's New Clothes* has this strange thread of truth in it: that a clothes-free person in a clothed domain is the best dressed, and most looked upon, person in town.

If 'naturism' aspires to do 'that which comes naturally to humans', we should inquire as to the notion of 'nature' to which naturism aspires. Without prejudging the merits of naturism, it cannot be assumed that everything that 'comes naturally' to humans is always a good thing. Indeed one reason why our idea of social civilization depends upon law is because we are inclined to be nasty and brutish when we do only that which comes naturally to our selfish instincts. Prejudice ('naked prejudice' as it is sometimes termed) is an entirely natural human trait. If prejudice were not natural in a basic psychological sense, we could hardly function. When one sits on a chair it is because one prejudices that it is there and that it will support one's weight. We are all to a great extent prejudiced to perceive the world in a way that confirms our preconceptions of the world. This is what psychologists call 'confirmation bias'.⁹⁰ It is psychologically natural to presume that people who are 'like me' are more likely to like me and to perceive the 'other' as being more likely to present a threat. Such prejudice is natural and this is precisely why, as social creatures, we naturally need the artifice of law to counter it. There may be reasons that will sufficiently justify adult nudity in public places, but the claim that 'it is natural' is not one of them. Indeed, one of the strongest justifications for adult nudity in public places – nudity 'in the name of art'⁹¹ – is quite opposite to the claim that nudity should be permitted 'in the name of nature'.

An assault upon the requirement 'to clothe' does not reach to the root of the requirement 'to dress'. If 'to dress' is, as I have argued, 'to order', it

90 Jonathan St B. T. Evans, *Bias in Human Reasoning: Causes and Consequences* (Hove: L. Erlbaum Associates, 1989).

91 Individuals have installed themselves naked on the 'fourth plinth' in London's Trafalgar square as part of sculptor Antony Gormley's project *One & Other* (6 July–14 October 2009). Consider, also, the large-scale nude installations by photographer Spencer Tunick.

will follow that law as a universal fact of human civil life is not concerned with covering merely. When the law requires women to cover their breasts when they appear in public, the law is more concerned to maintain the appearance of 'order' than it is to promote the appearance of cloth. The law would not only intervene to restrain someone from diving into a public swimming pool naked, but it would also intervene to restrain someone from diving into the pool wearing a full business suit. Sometimes the law requires individuals to dis-cover themselves for the sake of orderly appearance. We will examine the example of the Islamic 'veil' in depth in Chapter Four, but even a seemingly innocuous instance can be informative. For example, the case of the policemen in the State of Massachusetts who were required to shave off their moustaches even though some of the men had worn them for decades.⁹² This followed the decision of the US Supreme Court in *Kelley v. Johnson*,⁹³ which upheld the uniform dress code of police officers on the ground that 'similarity in appearance of police officers is desirable'.⁹⁴ When we put the case of the topless women immediately alongside the case of the moustachioed police officers, it is apparent that the law's concern is not to require covering up per se but to require orderly public dress. Police officers are contractually committed to accept a degree of uniformity, of course, but what about the woman who is required to cover her breasts before she leaves home? What is the source of her obligation to put on clothes? The law is generally reluctant to impose a duty to perform a positive act in the absence of a particular pre-existing duty. England is especially laissez-faire in this regard. Suppose a topless woman is sitting on a bench in a public park as a small child (a stranger to her) starts to drown in a shallow pond before her eyes. The law will not compel her to rescue the child, but it will compel her to cover up her exposed flesh.

Whether the code of dress requires covering or uncovering by clothes seems to depend entirely upon the prevailing cultural mores in the particular context. In Finland, for example, the sauna was traditionally the threshold zone in which Finnish mothers gave birth and where the sick were tended, thus hygiene determines that all users should be naked. (Nudity is also in keeping with the association between the sauna and the threshold of birth – after all,

92 'Mustaches Are Issue for Police', *The New York Times*, 1 July 1992.

93 425 US 238 (1976).

94 *Ibid.*, p.248.

none of us ever came clothed into the world.)⁹⁵ Clothing is no more acceptable in a Finnish sauna than nudity is acceptable on a Finnish street. One must remove clothing before one enters the sauna and one must don clothing before one re-enters the wider public domain. The sauna may therefore be considered an exception to the general dress code that requires covering by clothes, or the general dress code may be considered an exception to the clothes-free code of the sauna. If the sauna is a sort of ‘state within a State’, it provides an interesting point of comparison with schools, where general dress freedoms (such as the freedom to wear the Islamic ‘veil’) may be set aside in order to promote norms that are deemed to be enshrined in school uniform.⁹⁶ The theatrical stage is another zone of exception.⁹⁷ Indeed, even in the public street, theatrical dress or ‘fancy dress’ is less confrontational to the civil authorities than more serious, but ostensibly similar modes of dress. A ghost outfit worn on Halloween or for a party, for example, will be considered an innocuous exception even in States that outlaw public coverings worn for religious or political purposes. The theatrical stage proper is, like the sauna or the school, a genuine zone of exception in which the usual laws of dress may be wholly suspended or repealed. Naked and sexual performance is permitted on the stage, and within the confines of the theatre, which would certainly be deemed criminal outside.⁹⁸

The skin has been described as the ‘symbolic stage upon which the drama of socialization is enacted’.⁹⁹ Foucault also employed the metaphor of theatrical performance in this context, as Judith Butler explains:

Although Foucault writes that the body is not stable and cannot serve as a common identity among individuals cross-culturally or transhistorically,

95 This may be compared to the possibility that the rite of baptism, which symbolizes spiritual ‘new birth’, may have been undertaken naked in some sections of the early Christian church (Gregory Dix, *The Treatise on the Apostolic Tradition of St. Hippolytus of Rome, Bishop and Martyr*, 3rd rev. edn [Abingdon: Routledge, 1992], p.33).

96 *R (on the application of Begum) v. Denbigh High School Governors* [2006] UKHL 15; [2007] 1 AC 100 (House of Lords). Lieve Gies, ‘What Not to Wear: Islamic Dress and School Uniforms’ *Feminist Legal Studies* 14 (2006), pp.377–89.

97 See Edward Ross Dickinson, “‘Must We Dance Naked?’: Art, Beauty, and Law in Munich and Paris, 1911–1913’ *Journal of the History of Sexuality* 20.1 (2011), pp.95–131.

98 An extreme example is *Un peu de tendresse bordel de merde!* (Dave St-Pierre dance company, 2010), which more than fulfilled its promise to breach the ‘fourth wall’ between performers and audience.

99 Terence S. Turner, ‘The Social Skin’, in Catherine B. Burroughs and Jeffrey Ehrenreich (eds), *Reading the Social Body* (Iowa City: University of Iowa Press, 1993), pp.15–39. See, generally, Claudia Benthien, *Skin: On the Cultural Border between Self and World* (trans. Thomas Dunlap) (New York: Columbia University Press, 2002).

he nevertheless points to the constancy of cultural inscription as a 'single drama,' suggesting that this drama of historical 'inscription' enjoys the very universality denied to the body per se.¹⁰⁰

Butler indicates that Foucault sees something in the artificial arrangement of skin that is constant throughout human history. If that is right, then Foucault sees something in the ordering of skin that is akin to the pan-historical constancy that I see in dress generally. One element that is constant in dress, whether it employs the medium of skin or the medium of cloth, is the constant of 'performance'. Both media supply a stretched-out stage for the formal enactment of social regulation. Particularly potent examples of cloth-less dress are the tattoo and other forms of dermal scarification. They are more fleshy and fundamental than text and textile, and since they are sub-textile they are subtle in the most literal and beguiling sense.

Tattoos and other forms of dermal scarification have traditionally marked the civil world from the animal world.¹⁰¹ The anthropologist Claude Lévi-Strauss observed that '[t]he purpose of Maori tattooing is not only to imprint a drawing onto the flesh but also to stamp onto the mind all the traditions and philosophy of the group'.¹⁰² Maoris practice facial tattooing. The same practice is popular among the Ramnami people of central India, who tattoo their skin with the name of the deity Ram (Rama) in Sanskrit – sometimes over almost the entire surface of their bodies. Originally a sign of religious devotion, it became a sign of the sect's defiance of the Hindu-caste system under which, as so-called untouchables, they were required to dress and adorn themselves in a manner that would mark them out from members of supposedly superior castes.¹⁰³ It has been observed that tattoos and body painting have been 'variously used to mark outlaw status and nobility, insiders and outsiders'.¹⁰⁴ The cultural history of marking criminality is truly ancient, for according to the biblical narrative, when Cain killed his brother Abel, God 'set a mark upon Cain, lest any finding him should kill

100 Judith Butler, 'Foucault and the Paradox of Bodily Inscriptions', in Donn Welton (ed.), *The Body* (Oxford: Blackwell Publishers, 1999), pp.307–13, 309 (first published in *The Journal of Philosophy* 86 [1986], pp.601–7).

101 Susan Mullin Vogel, *Aesthetics of African Art: The Carlo Monzino Collection* (Exhibition Catalogue) (New York: The Center for African Art, 1986), p.25.

102 Claude Lévi-Strauss, *Structural Anthropology* (New York: Basic Books, 1963), p.257.

103 Ramdas Lamb, *Rapt in the Name: The Ramnamis, Ramnam, and Untouchable Religion in Central India* (State University of New York Series in Hindu Studies) (Albany: SUNY Press, 2002).

104 Enid Schildkrout, 'Inscribing the Body' *Annu Rev Anthropol* 33 (2004), pp.319–44, 325.

him'.¹⁰⁵ The sense that dermal decoration marks out civil life from animal life suggests new significance to the fact that Cain, the marked-man, is said to have founded the first human city on earth.¹⁰⁶

The story of the mark of Cain relates a clear and present reality. We no longer brand criminals, as once we did, but we uniform them, number them, tag them, photograph them and ink their prints. Giorgio Agamben urges us to resist the means, including fingerprints and retina scans, by which modern States attempt to mark non-criminals as if they were criminals; a process that he refers to as 'biopolitical tattooing':

What is at stake here is none other than the new and 'normal' biopolitical relation between citizens and the State. This relation no longer has to do with free and active participation in the public sphere, but instead concerns the routine inscription and registration of the most private and most incommunicable element of subjectivity – the biopolitical life of the body.¹⁰⁷

The idea of the tattoo as an institutional ideological stamp or imprint (tattoo as brand) is combined with the notion of tattoo as marker of social status (tattoo as boundary) in Franz Kafka's 1914 short story *In Der Strafkolonie* ('In the Penal Colony').¹⁰⁸ This chilling tale relates the final days of a penal colony that houses a machine which dispenses a form of institutionalized justice by executing prisoners and simultaneously inscribing the text of its 'judgment' on the prisoners' skin. Jeanne Gaakeer describes it thus:

Starting as a kind of tattooing, the process soon turns into torture. When the condemned person finally deciphers the sentence, six hours after the infliction of pain has begun, it takes another six hours to bring about death as the needles keep piercing the body more deeply. In short, the machine makes an imprint of the crime of which the condemned person is guilty, and thus executes the sentence.¹⁰⁹

105 Gen. 4.15.

106 Gen. 4.17.

107 Giorgio Agamben, 'No to Biopolitical Tattooing' (trans. Stuart J. Murray) *Communication and Critical/Cultural Studies* 5.2 (2008), pp.201–2, 202.

108 Franz Kafka, *In Der Strafkolonie* (1914) (Berlin: Klaus Wagenbach, 1985).

109 Jeanne Gaakeer, 'The Legal Hermeneutics of Suffering' *Law and Humanities* 3.2 (2009), pp.123–49, 139.

The Austro-Hungarian architect Adolf Loos associated the making of tattoos with criminality and 'degenerate' mentality. It was not the *wearing* of tattoos that Loos considered to be degenerate, but the primitive urge to make the mark (which Loos compared to making markings on walls).¹¹⁰ How telling, then, that the Nazis chose tattooing as a method of marking out concentration camp prisoners. Applying Loos's reasoning, Nazi infliction of tattoos was a sign, not of any fault in their victims, but of their own degeneracy. It is clearly inhuman to tattoo another person against their will as the Nazis did, but it is quite another thing to give or receive a voluntary mark.¹¹¹ A voluntary tattoo might actually be considered a paradigm of dress and a paradigm of law.¹¹² It achieves what laws aspire to achieve: order that is stable and enduring, but sufficiently flexible to accommodate a degree of change and growth. It should be recalled that Magna Carta is a tailored panel of parchment, of skin. As we read in *Sartor Resartus*:

[A]ll Forms whereby Spirit manifests itself to sense, whether outwardly or in the imagination, are Clothes; and thus not only the parchment Magna Charta, which a Tailor was nigh cutting into measures, but the Pomp and Authority of Law, the sacredness of Majesty, and all inferior Worships . . . are properly a Vesture and Raiment.¹¹³

Sometimes the layer of law is only skin-deep. When one looks closely at an original of the Magna Carta, one finds that it is a form of dress as thin as the social mask that Maori tribes folk wear, for over time the black iron-gall ink has impregnated the vellum and become one with the skin. The founding document of our law is a tattoo.

110 Adolf Loos, 'Ornament und Verbrechen' ('Ornament and Crime') (*Trotzdem*, 1908) published in *Die Schriften von Adolf Loos* (Innsbruck: Brenner Verlag, 1931), pp.79–80.

111 On the use of tattoo as a medium for writing a will, see Catherine O. Frank, 'Of Testaments and Tattoos: The Wills Act of 1837 and Rider Haggard's *Mr Meeson's Will* (1888)' *Law & Literature* 3 (2006), pp.323–41.

112 The Bible indicates that the Divine judge is tattooed (Rev. 19.11–16).

113 Carlyle, *Sartor Resartus*, Book III, chapter 9.