

## **The law and Derrida's claim that speech has been privileged over writing**

**A quotation.** In an article, Sarah Richmond helps us understand the enigmatic philosopher Jacques Derrida. She tells us:

According to Derrida, Western thought, from at least Plato onwards, has repeatedly propagated a false hierarchy, placing speech above writing. Philosophers have regarded writing with suspicion, as a dangerous repository of thought, in which the speaker's intentions are likely to be betrayed. (p. 39)

**A worry.** An obvious worry is that sometimes written legal documents have been favoured, such as written contracts and constitutions. What does one do if one has this worry? Let us call a reader of Derrida "R." Here are some ways in which R might react.

**1. R writes to a Derridean that their history is stupid but...** they still hope for an explanation from the person of why it is not. But the Derridean does not reply. They conclude that they are going to have to talk to one. But are not Derrida and friends about undermining the hierarchy of speech over writing? Is this some sort of paradox? People who are supposedly about undermining that hierarchy are actually reinforcing it.

**2. R politely writes:** "Surely someone has thought of this before, but what about the preference for written legal documents?"

**3. R publishes a pastiche.** It poses the question of "What about written legal documents?"

**4. R distinguishes claims.** There is the moderate thesis that some, but not all, contributors to Western thought have privileged speech over writing; and there are more extreme theses: most contributors have; and this is somehow the official position of the West. (Is there support for these extreme theses though?)

**5. R interprets this as "deductive" history.** Derrida did not look at many actual claims about writing, rather how, for example, classical empiricism says that knowledge comes from the senses and that language is for thought communication, and he "deduced" that it must prioritize speech, because it must treat speech as more revealing of thought (Wortham p.242).

**6. R interprets this as an attack on flow charts.** One tries to make a flow chart regarding how people will respond to the legal document worry. In this case perhaps it is impossible to make an adequate chart. (The practice reminds me of J.L. Austin, by the way.)

**7. R interprets this as a challenge to interpretative principles.** For example, the principle of charity says that the interpreter should interpret the text so as to maximize how true it is, by the interpreter's lights. But there is a problem composed of the following propositions: (i) Derrida insists that speech has been favoured over writing; (ii) there is an obvious objection – legal documents; (iii) Derrida is surely aware of this objection. What should one do here?

**Etc.** Most obviously, "I am keeping away from this research area."

### **References**

- Richmond, S. 1996. Derrida and Analytical Philosophy: Speech Acts and their Force. *European Journal of Philosophy* 4: 38-62.
- Wortham, S.M. 2010. *The Derrida Dictionary*. London: Continuum.