Reclaiming Our Roots: Law and Mythology [Essay]

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INTRODUCTION

Law schools offer an array of courses with that all too frequently uninformative word “and” in their titles: Law and Economics; Law and Accounting; Law and Religion; Law and Literature. I doubt that any common meaning can be found for that little word “and” which would adequately describe the entire menu of courses using it. Instead, it is probable that the meanings concealed in that troublesome word can only be unpacked on a course-by-course basis. For example, does a course in Law and Literature mean that one will be reading in works of literature what has been written about lawyers or does it suggest instead that one will approach the written materials of law through the categories and forms of literary theory and criticism? These are the sorts of matters concealed by that little word “and.” Nevertheless, despite these sorts of difficulties I would propose still another entree for that menu of course offerings: LAW & MYTHOLOGY.

Aware, however, of the problems concealed in that little conjunction, in this article I will attempt to describe and to illustrate those divisions which comprise a course in LAW & MYTHOLOGY and to articulate those objectives which can be achieved in each of its divisions. In short, I will set forth the meaning of the ampersand in the course title, LAW & MYTHOLOGY.

The divisions of LAW & MYTHOLOGY are as follows: 1) law's
evolution and its mythological foundations; 2) an examination of the mythological ambience of the legal profession itself; and 3) a mythological approach to the reading of legal opinions. But before taking up these divisions we need to address the question of why such a course in the first place.

The idea for such a course has been gestating in my mind for well over two decades now, having been conceived after many hours of pastoral counselling with lawyers who were unhappy with lawyering as a way of life, their unhappiness often even spilling over into their family relationships. Gradually, as many gained courage to come out of their closets of pain, there has been appearing, with increasing frequency, a growing literature among lawyers themselves who desire to understand the many complex roots of their unhappy state of affairs. While the causes of this malaise are complex and sometimes controverted, one of the root causes has, nonetheless, slowly dawned on me; namely, that the participants in the legal system—judges, lawyers, and legal educators—are for the most part cut off from the mythological soil in which culture in general and law in particular have grown. These mythological nutrients are essential both to a healthy psyche and to experiencing in one’s vocation a sense of energizing adventure, instead of banal and debilitating routine.

In short, lawyers are by training and education hyper-rationalists who need to begin their healing and the healing of our legal enterprise by learning to view it and themselves from the right side of the brain, giving their fight side a badly needed rest for a change. A course in LAW & MYTHOLOGY can provide that rest and its refreshing curative effects. In such a course, the vitality of ancient myths start to dance in that gray no-man’s-land (and the sexist language here has a real bite) of empty careerism and the equally hollow pieties of legal-ethical aspirations which are set forth in the Code of Professional Responsibility.

But before looking at each of the divisions of the course LAW & MYTHOLOGY, I want to head off a common and frequent misun-
derstanding about the word “myth.” I shall do so by defining its meaning according to its more careful and knowledgeable users.

Among these savants, the word “myth” is very highly nuanced and refers to the symbolic dimensions of our common human existence. For them, the word is not synonymous with the words “false,” “untrue” or “fairy tale.” Instead, myth points to the work product of the imaginative depth-dimensions of the human psyche and of human culture which springs forth from these depths. Myths are the images, metaphors and symbol systems which comprise the stories or narrative accounts by which we direct our lives, choose our mates, as well as our careers, set our goals, and spend our money. Putting all of this less abstractly, what our dreams are to our personal lives, myths are to our social lives. They are the very matrix of culture which, in all of its facets (religious, philosophical, artistic, scientific, economic, and technological), has been conceived in the mythic womb. It is little wonder then that cultural historians and critics frequently advert to our mythopoetic roots or origins. So myths are what live and dance their way through us; and judging from the response of TV-viewers who watched interviews with the mythologist Joseph Campbell, deep chords within our collective unconscious were plucked, thereby suggesting our unquenchable thirst for the mythic. Bearing this working definition of myth in mind, let us turn now to a consideration of the three parts of the course LAW & MYTHOLOGY.

I. PART ONE: A MYTHOLOGICAL APPROACH TO LAW’S EVOLUTION

There have been a variety of schemes for setting forth the evolution of law in the Western world, for telling law’s story, so to speak. For example, in a well-known scheme, Henry Maine tells of


4. The interviews of Joseph Campbell by Bill Moyers which were aired on PBS took place in 1985-86 and have been transcribed and published in Joseph Campbell, The Power of Myth (Doubleday, 1988).
law's evolution or growth through three stages which he describes as custom, status, and contract. The German sociologist, Max Weber, traces law's development in terms of charismatic, traditional, and bureaucratic-rational phases. But a course in LAW & MYTHOLOGY employs still another developmental approach to set forth the story of law's evolution. It is premised upon the reasonable hypothesis that each of the major cultural revolutions in Western history turned upon different mythological foundations. That is, each of the major epochs—the Paleolithic (with its domestication of fire), the Neolithic (with its domestication of grain and animals), and the Industrial (with its domestication of the machine)—were governed by certain master mythological concepts which, in turn, informed law's self-understanding. The first part of the course LAW & MYTHOLOGY elaborates upon each of these epochs, motifs which I shall briefly describe here.

A. The Paleolithic Revolution: The Fire Regime

The Paleolithic Revolution, or what can be called the Fire Regime, commenced when the human species learned to domesticate fire. Accordingly, it is hypothesized that this epoch's master images predominantly derived from and centered around the reality of fire which then, in turn, supplied the subject matter for the development of countless myths. For example, fire, coming as it did from the heavens in the form of lightning, and sometimes igniting forest fires which then burned with flames licking upwards, suggested to the primitive mind the very presence of gods and goddesses coming down to the earth and returning upward to the heavens. In purview of this mythological mindset, fire was reverenced as either divine or as a messenger from the divine. Further-

5. The material in this section concerning the domestication of fire as the first major cultural revolution is derived from an oral presentation given at the International Congress of the Niedersachsen Foundation in Hannover, Germany (May 21-27, 1988) by the Dutch paleosociologist, Johan Goudsblom. Professor Goudsblom's presentation was entitled Die Domestizierung des Feuers: Ein nicht umkehrbarer Prozess. The entire conference, sponsored also in part by the Max Planck Institute, was entitled "Geist und Natur." Top-level scientists (including Nobel laureates) and humanists explored the survival chances of Western civilization as we approach the third millennium.

6. There is evidence that Homo erectus, our predecessor, used fire around 750,000 BCE (Before The Common Era) in the Escale cave near Marseilles, France. See Alexander Hellermans and Bryan Bunch, The Timetables of Science p 5 (Simon and Schuster, 1988). There is further evidence of the domestication of fire about 500,000 BCE in the caves of Choukoutien near Beijing, China. See Jospeh Campbell, The Masks of God: Primitive Mythology p 360 (Viking Press, 1969).
more, since fire changes that which it ignites, it became in addition the symbol of life which transforms itself by feeding upon other life. In correspondence to this, fire was ignited upon sacred altars to transform animal sacrifices and to lift them to the heavens, a ritual which was a miniaturization of the life-death cycle of fire and its processes. Also, fire was the great protector in the dark caves where early man huddled away from winter’s frigid blasts as well as from ferocious animals of the nighttime. And so, each of these transactions with fire provided a potential seed around which mythological stories constellated.

This speculative structure concerning the Fire Regime is employed to encourage students to engage in further speculation as to the sorts of possible embryonic legal agenda that can be constructed from within its context. For example, our *homo sapien* ancestors might have had to confront the following sorts of prototypical legal issues: What should be done to the person who let the life-giving fire die out? Who should be allowed to come close to its salvific heat when it was scarce—the elderly? the sick? the young? the pregnant? Who should be allowed to control its use and distribution? Questions like these perhaps contributed to the development or evolution of the legal mind even when custom would be drawn upon to supply the answers. These paleolithic origins of law in the Fire Regime are also sedimented like fossil artifacts in much later developments; for example, Apollo, the Greek god of law is also the bright god (reminiscent of fire) of light. And does not justice’s blindfold itself perhaps contain a deeper mythological dimension beyond that of justice’s neutrality and impartiality, namely, an unconscious memory of the fire-god’s blinding light? So law, THE ENLIGHTENER, commenced its evolutionary journey through time as the original and primordial fire-gift from the gods—protecting, guiding, and enabling humankind to survive. It is worthy to make note, moreover, of the fact that the opposite of law is often depicted by metaphors involving water which is, of course, fire’s opposite. And so do not courts often speak of their fear of opening dreadful floodgates which will let in death-dealing and chaotic waters? (This idea will be further developed later in this article). Indeed, the memories of these ancient primordial elements were also kept intact by the Pre-Socratic philosophers who sought the key to understanding their surrounding world by positing which element—fire, water, earth, or air—was more fundamental in its construction. Surely an entire book, in which these potent images are unfolded throughout the course of the evolution of the
human species, could be written and their impact upon our con-
sciousness could be clearly seen.

In fact, the entire first part of the course LAW & MYTHOL-
OGY is used to show the students, through exploring the various
mythological foundations behind our human evolution, that na-
ture—fire, water, earth, sky, animals, etc.—has been our oldest and
wisest teacher. What the students come to see as we focus on the
various revolutions in Western cultural development is that each of
them took shape under the aegis of controlling natural images
fashioned from our primordial experiences with nature. These
images in turn generated the master mythic structures for each of
the revolutionary cultural regimes. To my surprise and delight, the
students do indeed become engaged in trying to unearth the
master images of a given cultural formation, along with their cor-
relative natural phenomena; and then, they commence to speculate
as to their likely impact in shaping the legal consciousness. No
wonder that a French philosopher of science delicately called the
natural marvels—earth, air, water, and fire—the "hormones of the
imagination." Nowhere is this more clearly established than in the
revolution which followed upon the Paleolithic; namely, the Neo-
lithic revolution.

B. The Neolithic Revolution: The Stellar Regime

As our introductory treatment of the Paleolithic or Fire Regime
has suggested, the origin of legal metaphor is antecedently tracea-
ble to mythic metaphors which themselves in turn are rooted in
natural pyrotechnics. This is unquestionably so for the subsequent
cultural epoch, the Neolithic Revolution.

During this revolution, civilizations arose along the alluvial val-
leys—the Yangtze in China, the Ganges in India, the Nile in
Egypt, and the Tigris and Euphrates Rivers of Mesopotamia. In
the Ancient Near East's Fertile Crescent the major building blocks
of civilization were laid: writing, law, mathematics, cities, govern-
ment, and religion, to name but a few. This cultural explosion oc-
curred sometime in the period 20,000 to 10,000 BCE as our ances-
tors moved away from hunting societies and learned to domesticate

7. This phrase is found in Gaston Bachelard, Air and Dreams: An essay on the
Imagination of Movement p 11 (Dallas Institute Publications, 1988). Gaston Bachelard is
that integrated blend of the consciousness of the scientist, philosopher, and poet. For ex-
amples of this highly advanced consciousness see selections from his writings made by Collette
animals and grains, thus bringing into being the agricultural revolution, a revolution which would carry us all the way to the next one (the Industrial) a mere three hundred years ago.

For the Neolithic Revolution, those elements of nature which served as the constellating seed for mythic images and master metaphors were the heavenly stars. The Fire Regime gave way to what we will call the Star Regime. Since what we know of as the Western legal order indeed took its rise in Mesopotamia where astronomy was first practiced, it would be fair to say that the very stars were our first law teachers.8

This state of affairs transpired in the following way: With the rise of planting activity during this revolution in agriculture, time was of the essence. To plant too late or too early could be fatal. Therefore, an accurate measurement of time became mandatory, and such accuracy was achieved by the careful, sustained, and painstaking observation of the skies. Here the great celestial regularities and periodicities were studied and recorded, thus making prediction possible. Along with this gradual accumulation of astronomical data, the idea of cosmic order slowly dawned in human consciousness. As Joseph Campbell tells it in The Mythic Image:

Having remarked a mathematically calculable regularity in the passages of the planets through the constellations of the fixed stars, these first systematic observers of the heavens conceived—in that specific period, in that place, for the first time in human history—the grandiose idea of a mathematically determined cosmic order of greater and lesser, ever-revolving cycles of celestial manifestation, disappearance, and renewal, with which it would be prudent for man to put himself in accord. Hence the relationship even now of religious festivals to astronomically based calendars; also, the notion of laws and mandates handed down from on high. Hence, too, the imitation of heavenly circumstance in the costumes and procedures of royal courts: solar crowns, star-bedecked robes; monarchs and their queens revered as gods and, vice versa, deities revered as kings and queens.8

Therefore, the calendar, which was made possible through observation and understanding of the celestial order, became, in a sense,

8. For a very illuminating presentation of the current work in archeoastronomy, along with a good bibliography, I would direct the reader to Ray A. Williamson's work marvelously entitled Living the Sky: The Cosmos of the American Indian (Houghton Mifflin Company, 1984). Furthermore, the relationships between cosmology, cosmogony, and ethics have been provocatively worked out by Robin W. Lovin and Frank E. Reynolds, eds, in Cosmogony and Ethical Order: New Studies in Comparative Ethics (University of Chicago Press, 1985). Much exciting work remains to be done in the area of cosmology and legal order. I have been doing research in this area for some time now and hope to develop its consequences in future writings which will treat of the general topic of science and law.

the first statutory enactment, the first lawbook or code, legislating
the right time for planting and for harvesting and mandating the
proper time for performing religious rituals associated with these
primary activities. Law then, like its analog the calendar, at-
ttempted to become a reflection upon the earth of the very order
and regularity operative and visible in the heavens. At that mo-
ment in our legal evolution, the great "Unified Field Theory of
Law," so to speak, could be stated something like this: "As above,
so below." By imitating on earth the great periodicities of the
heavens above, survival below was increased or even guaranteed.
Operating in terms of this foundational truth, the priest-astrono-
mer-lawyers, who developed record keeping in order to compile
and preserve their stellar observations, functioned as the designers
and builders of the terrestrial social order, based upon analogies
and imitations of the order which was observed in the heavenly
realm. As advisors to the kings, they attempted to mimic or imitate
below what they saw designed into the heavens above. Even that
portion of the Lord's Prayer which petitions, "Thy will be done on
earth as it is in Heaven," echoes this grand legal principle which
informed the civilizations of the Ancient Near East. It is in this
milieu that the real meaning of natural law must be and can be
reconsidered afresh.

Furthermore, in connection with the Neolithic Stellar Regime, it
is well to recall here the star-following Magi associated with the
familiar biblical account of the birth of Christ. That very story,
too, contains an historical memory of these ancient astronomical
priest-lawyers. And it is even timely to note now that the great
astronomer Edwin Hubble (for whom the Hubble Space telescope
was named) was himself a lawyer turned astronomer.

I then conclude this portion of LAW & MYTHOLOGY by help-
ing the students to appreciate the meaning of those large and fa-
miliar architectural features of the Mesopotamian world called the
ziggurats. Memory of them is also preserved in the biblical story of the Tower of Babel
recorded in Genesis 11: 1-9.

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10. This principle operates throughout Western history. In the Renaissance it ap-
ppears as the principle that man, the microcosm, is a reflection of the universe, the
macrocosm.
12. Timothy Ferris, Coming of Age in the Milky Way p 172 (William Morrow and
13. Memory of them is also preserved in the biblical story of the Tower of Babel
recorded in Genesis 11: 1-9.
clear observation of the skies. On the top of this man-made mountain joining heaven and earth, there would be re-enacted, at the turn of the calendar year, enthronement rites in which the king was installed into his rule, a king who with his law would keep at bay the threatening chaos by imitating and maintaining the order and regularity of the heavenly cosmos. Thus, according to the Near Eastern mythological mindset, the astronomical priest-lawyers, servants of their king, were all participating in the great activity of cosmic maintenance. Here indeed is an understanding of law in the most grand of manners: LAW AS COSMIC MAINTENANCE. From this profound understanding of law the Western legal order has sprung and the legal consciousness has been born. With this primordial mythological understructure it is quite clear why we so often, to this very day, regard the law as a wall against the veritable chaos which we believe surrounds our civilized world, a chaos which always threatens to undo it and our fragile institutions. The Neolithic Revolution in general, and the Near East in particular, warrant deeper study if we are to unearth the very primordial patterns which underlie the Western legal order. Indeed, the present legal system and its formations in the West, deriving as they do from the Industrial Revolution, are not even understandable apart from its Neolithic substrates, since the Industrial Revolution itself is perhaps but the denouement of its Neolithic predecessor.

C. The Industrial Revolution: The Mechanical Regime

From a mythological perspective, the next revolution, the Industrial, took its rise just about three hundred years ago. This revolution, like its predecessor, is also symbolized by an astronomer (as well as mathematician-physicist), Sir Isaac Newton. He set forth with trenchant mathematical elegance the laws of the solar system which subsequently came to be regarded as a vast celestial machine. As Huston Smith puts it:

For Newton stars became machines. For Descartes animals were machines. For Hobbes society is a machine. For La Mettrie the human body is a machine. For Pavlov and Skinner, human behavior is mechanical.14

The machine metaphors proliferated everywhere in the thought processes of modern industrial society. Corresponding to celestial mechanics, there emerged a terrestrial mechanics symbolized by the clock, along with all its elaborations into the various machines

of our industrial and technological era. Even lawyers, in this mechanical period would come to conceive of themselves as social engineers. They would look upon society as a vast machine able to be designed, regulated, and maintained through the machinations of the proper equilibration of legal and social forces. The Newtonian cosmology, itself resting in turn upon myth, provided abundant models and analogies for many cultural activities and for self-understanding.\textsuperscript{15} This was certainly so in the area of political theory. The political theories of both Thomas Hobbes and John Locke were greatly influenced by Newtonian conceptions.\textsuperscript{16} The very title of a poem written by the Reverend John Theophilus Desaguliers (1683-1744) captures this interplay between the Newtonian world view and the attempt to derive some understanding of the social-political realm by means of this world view. The poem's title reads: "The Newtonian System of the World, the Best Model of Government: An Allegorical Poem."\textsuperscript{17}

Since the Industrial Revolution is the mythological framework of our own time and place, I spend quite some time in showing that the Newtonian world view which informs the Industrial Revolution is itself mythologically rooted, and that legal derivatives analogous to Newtonian conceptions abound, even in our present understandings and descriptions of law. For example, just as Newton spoke of the \textit{systema mundi} (world system), so too, we today speak of the legal system and even speak of the activation of legal machinery.\textsuperscript{18} The role of the judge in the Federal Rules of Civil Proce-

\begin{footnotesize}
\textsuperscript{15} For the mythological themes which underlay the Newtonian world view see Morris Berman, \textit{The Reenchantment of the World} (Bantam Books, 1981).
\textsuperscript{16} A splendid treatment of the connection posited here between political theory and Newtonian science can be found in the book by Andrzej Rapaczynski, \textit{Nature and Politics} (Cornell University Press, 1987).
\textsuperscript{17} Hoxie Neale Fairchild, \textit{Religious Trends in English Poetry}, vol I, p 357 (Columbia University Press, 1939). The good reverend opines that the government which best approximates the Newtonian is that of parliamentarianism, with the king like the sun at the center of the solar system:
Like Ministers attending ev'ry Glance,
Six Worlds sweep round his Throne in Mystic Dance.
He turns their Motion from its devious Course,
And bends their Orbits by Attractive Force;
His Pow'r coerc'd by Laws, still leaves them free,
Directa, but not Destroys, their Liberty;
Tho' fast and slow, yet regular they move,
(Projectile Force restrain'd by mutual Love,)
And reigning thus with limited Command,
He holds a lasting Sceptre in his Hand.
\textsuperscript{18} For a description of the Uniform Commercial Code in terms of mechanical meta-
\end{footnotesize}
dure is now, also, conceived to be one of management of this legal machinery.19 Furthermore, just as the master concepts of Newtonian physics were matter (understood as reducible to a mathematical point, a mere particle), forces, and motion-through-space, so too, both society and law likewise came to be understood in terms of these very concepts.20 Society was the clash of human beings (matter in motion) perusing their own multifarious purposes along with the resultant vector of forces which emanated therefrom. Rights, then, were understood as lines of force (like gravity) which brought about the arrangement, shape, or pattern of this human matter in motion. Just as present-day physics, under the inspiration of Newton, is looking for the fundamental forces of matter’s ultimate machinery, so too, law is engaged in a quest for the fundamental rights of the social machinery. Lawyers, as social engineers, apply this theoretical Rights Theory to the vast machinery of society. It is interesting to note that under the hegemony of this juridical Newtonianism a new species of law emerged, that of regulation (the “Regs”). With the Regs, there emerged the obsession with description, prediction, and control (the often stated aims of natural science under its Newtonian orchestration), along with the need for absolute certainty.21 Like science, law, wanting itself to be a science, albeit a social one, became hostile to any theological or value remnants embedded in the machinery of the law. As a result of this isolation or legal ghettoism, the materials of legal positivism were being cemented in place. The entire Hohfeldian scheme of law captures the machine logic of Newtonian jurisprudential thinking.

So, the first part of the course LAW & MYTHOLOGY—a look at the evolution of law in terms of its mythological foundations—is given over to an examination of the various mythological sedimentations that have been deposited within legal structures during the law’s long evolution. Two pedagogical advantages result from this

19. Compare the caption of FRCP 16 as amended in 1987. At that time the word “management” appeared in the caption. Under the aegis of the machine metaphor, bureaucracies are becoming more and more machine like and so, also, tragically, is their self-understanding as well as the understanding of their role.


part of the course. First, when the students come to realize that there are mythic codes behind the legal ones, and that these mythic codes, in turn, are founded upon features of the natural world, our ULTIMATE CODE then, the legal positivism of law school, along with its relentless study of law in the isolation of academic ghettoism, is at least partially overcome. Secondly, an additional advantage is that since this perspective is an unexpected one in the law school environment, the implications are not immediately apparent to the students and knee-jerk political and philosophical responses are delayed just long enough so that a space is opened up for more personal insightings by the students.

But of course, we live in an age that has been superseded by the Einsteinian world of Relativity Theory and Quantum Theory, along with the Uncertainty Principle—an age where "Chaos" is becoming a very important and operative concept in the sciences. It is worthwhile to have the students speculate, on the basis of the connections and relationships which they have learned to draw earlier in the course, what parallel implications they think the various elements of the emerging new scientific paradigm might have for our time and place, legally speaking. For example, are not deconstructive jurisprudence and some of the positions of the Critical Legal Studies Movement an example of the powerfully new, and yet ever old, mythic realities which dance in our midst, incarnate as they are in what has been called the New Physics? Further research along these lines could be very provocative and seminal, I would think.

These are some of the components covered in the first part of the course LAW & MYTHOLOGY, which part treats the development of law from a mythological perspective. In short, the sweeping story of law’s grand evolution is told.

II. PART TWO: THE MYTHIC AMBIENCE OF THE LEGAL PROFESSION

Recently in Europe there appeared in the show window of a bookstore one of those very expensive coffee-table books which contained glossy, colored photos of the art and symbols of the majestic courts of Europe. Our profession, rational as it purports to be, surrounds itself with, and indeed even drapes itself in, mythological symbols. Our courthouses and law firms are temples which house motley collections of mythological art work and statuary artifacts; our judges wear black robes (and in Europe wigs also) while presiding from elevated benches; our law offices often have statuary of mythological figures with scales dangling from bronzed mus-
cular arms. Even the very language used by the profession, words like "prayer for relief," "pleadings," and the word "trial" itself—harking back to trial by fire, trial by ordeal—hint of a mythological past of which our utilitarian and rational mind remains quite oblivious. What indeed is the meaning of this mythological menagerie? Part two of the course is given over to an exploration and discussion of these matters. The mythological river which has been rolling along through the various epochs of our historical and legal evolution has laid down various levels of a rich silt of mythological material. The second part of the course LAW & MYTHOLOGY is used to examine concrete and particular mythic elements which relate to the legal profession itself. Such material is taken from two of the three levels upon which myths are found. The three levels on which myths are found are the macro-, meso (mid)-, and micro-levels of a culture. The macro myths are really mythological systems or totalities (Jewish, Christian, Greek, Roman, and Germanic) which provide comprehensive frameworks for a culture. The macro myths are those chunks of material examined in the first part of the course. In the second part, we limit ourselves to the meso- and the micro-levels on which are found those symbols providing the mythological ambience of the legal profession.

Let me begin with a well-known example from the neolithic past which illustrates how mythic elements from various levels cluster together and thereby convey a powerful mythic message concerning law. This example comes from the sculpted figures sitting atop the famous stele on which is contained Hammurabi's law code. The seated Babylonian god Shamash is shown as handing over to the standing figure of King Hammurabi a disk and rod, the symbols of his rule. Flames shoot from each of Shamash's shoulders and his feet rest on three tiers of little cones. Examples like this one provide students the opportunity to exercise their imaginative skills in order to interpret the mythic parts, to crack the particular "mythic code," so to speak. As they acquire experience in doing this, they are also surprised to recognize some of their own tacit, and thus unexamined, assumptions regarding our profession. Mythic materials, like the one we are discussing here, serve as a kind of Rorschach Projection Test for embryonic lawyers.

It is important to note that the figures atop Hammurabi's stele are really a confluence of mythological symbols from various stages

22. For a picture of this stele see Campbell, Image at 75 (cited in note 9).
of evolutionary development. As we are about to see, even in mythology, ontogeny recapitulates phylogeny. The first feature to note is that Shamash is the Babylonian sun-god. Here is a clear reminder that law was learned from heavenly phenomena, from the stellar objects of the sky. When we focus on the fact that even our own word "disaster" breaks down into the elements "dis" and "aster" (star), we have a potent reminder that when we sever ourselves from nature and its heavenly order we do so at great risk to civilization and to ourselves. Literally, disaster is what results from separation from the stars: a breakdown of cosmic maintenance.

A second feature to note are the wavy lines which radiate from the shoulders of Shamash. This depiction of fire is not only the fire of the sun, but is perhaps a conservation and continuation of the very master image of the preceding Paleolithic Fire Regime. After all, mythological processes are conservative ones due to the fact that a change in the fundamental mythic elements results in a tumultuous change in the foundations of the civilized order. Recall again that in the Neolithic Stellar Regime the lawgiver understood himself to be a cosmic maintenance man and Hammurabi boasted of being the greatest.

Third, consider the three layers of hillocks under the feet of the sun-god. They are symbols of the cosmic mountain or the ziggurats from which observations of the heavens were made. Remember, too, that Moses also receives the law on Mount Sinai and that Jesus' new law, contained in the Sermon on the Mount, is promulgated from a mountain. According to the mythological mind, mountains are the places where one confronts the heavenly astronomical messages of the divine, the places of revelation. And so the Psalmist proclaims, "I lift up my eyes to the hills, from whence comes my help."23 The very elevation of the judge's bench is itself symbolically reminiscent of the mountain ziggurat where law is revealed, promulgated by the god and received by man.

A fourth feature to note is that Shamash is handing over to King Hammurabi a rod and a disk. Could we not have here the ancient memory of the implements used to start fires (the stick and board with a hollowed-out groove on which the stick was rotated between the palms of the hands). It takes no leap of the Freudian imagination to see why such a rod would become identified with the male phallus and the circular groove surrounded by dry grasses would represent the female reproductive organ. So, according to the

mythological imagination, fire was the filiation of the union of the male and female principles. Fire, as was true of all elements of nature, was the result of the interaction of yin and yang, male and female, energy and matter. To this very day, Madison Avenue exploits the sexual, erotic, and passionate connotations which we still associate with fire. To the ancient mind, such interplay of the elements was a reminder that law was a balancing in order to bring about a fruitful union of opposites. He who would rule well would be he who attempted to transcend dualities of all sorts and thus bring about potent unification.24

Fifth, note that Shamash gives the symbols of law and governance with the right hand and that Hammurabi receives them as well with the uplifted right hand. When we add to this our knowledge that, as in Latin, the word for right is dexter and the word for left is sinister, we are reminded of the moral categories of right and wrong which have long attached themselves to law. The very word for law in German, Recht meaning right, connotes thereby the prevalence of right over wrong, of good over evil. The moral and ethical dimensions of law are thus reflected and preserved in these pictorial mythological symbols.

Also, remember here that in ancient cultures law was often declared or promulgated in religious temples. So to the mythological mind, there exists a strong congruence between the Temple of Religion and the Temple of Law.25 Accordingly, judges, like priests, wear robes when performing their rituals. As Joseph Campbell remarked, “For the law to hold authority beyond mere coercion, the power of the judge must be ritualized, mythologized.”26 Thus, mythological structures in turn legitimate structures of power and authority. So the erosion of prevailing myths likewise brings about delegitimation and poses extraordinarily difficult problems for governance and for rule, particularly in our own society where a plurality of mythic traditions compete and clash. “Holding sway over” is always easier in a shared mythological ambience.

Now let us turn from the remote past to a more recent illustra-

24. Recall here the idea of balancing as developed by Mr. Justice Cardozo. See Benjamin N. Cardozo, The Paradoxes of Legal Science at 52ff, 67ff (Columbia University Press, 1928) where he develops the idea of equilibration in those portions of the book which treat “the science of values” and “balancing of interests.” For this example, I am thankful to my colleague, Professor Cornelius F. Murphy, Jr.

25. For an elaboration of this thesis, see Robert D. Taylor, Two Crumbling Pillars of a Common Temple, Juris pp 5-8 (Fall, 1983).

tion of the operative mythological ambience of the legal profession. Vico has said that a metaphor is but a little myth, a mini-myth; what above, I have called a micro-myth. Contemporary examples of these are the fantasies which an individual lawyer or judge carries about as a tacit horizon governing his daily professional activities. For example, the lawyer might be functioning in terms of the mythical images of champion, of gun-slinger, or of healer; the judge may see himself as sage or reconciler or punisher. In fact, such disparities are not uncommon and bring to mind the comment of one of my law students who said of her own experience in law school, "I feel like a peace-worker in an ammunition or weapons factory." The difference in the images from which professionals take their cues for enacting their professional scripts has enormous consequences, social as well as psychological. Take, for example, the rules of discovery in the Federal Rules of Civil Procedure. The drafters may have had one image of the lawyer in mind (say that of truth finder) and the practitioner another (that of obfuscator or trickster)—which disparity accounts for the abuse that surely occurs with the tools for discovery.

In fact, these disparate mythic or metaphorical images of self-understanding are coming to the fore in a local county bar association which has formed a Council on Professionalism. The Council was formed to examine the painfully clear phenomenon of a great and growing gulf between the images of the younger practitioner and the moguls of the older generation.

But be this as it may, both judges and lawyers more frequently function according to the unrecognized mythological inputs communicated by law professors, who themselves teach and operate out of a mythic ambience. So this second part of the course, by virtue of the materials that comprise it, leads the student very nicely into a consideration of the unconscious psychodynamic dimensions which are operating among the profession's self images and self-understanding; it does so by employing the past and present mythic artifacts surrounding our profession as illustrated above. These artifacts abound. Drawing attention to them generates in the students an appreciation of legal tradition which is unusually promising, given this culture's anti-historical bias. In short, this second part of the course concretizes the more theoretical presentation of the first part; but part three of the course LAW &

MYTHOLOGY is the most practical one of all.

III. PART THREE: THE LEGAL OPINION AND MYTHIC CRITICISM

Since so much of law school is given over to reading and analyzing legal opinions, I want to suggest how the course LAW & MYTHOLOGY might be used to practice a kind of mythic-criticism of these legal, literary productions. Such a technique can cause one to be startled by the unexamined mythological premises or mythic imagery which supply the unconscious backdrop of much of our legal thinking. Take, for example, the legal metaphor of the floodgate. Courts often decide to refrain from granting legal relief or adopting a certain principle of law for fear of opening up the floodgates. Such a metaphor bespeaks fear of drowning in raging flood waters. The image of water serves here as a symbol of the breakdown of law's wonted decency and order. The image of floodgates connotes being overwhelmed in a watery surge, while law, by contrast, has to do with restraint and control—everything happening within well-defined boundaries.

This tacit image of watery chaos (as the antithesis of legal order), however, is not idiosyncratic; indeed, it is mythological. Consider, for example, the metaphor of a "landmark" case. What is a landmark case really? What are the landmarks of a landmark case? Contained in this metaphor is the implication that land has been marked (noted? spotted?); that is, what has been unbounded now receives a boundary, the start of a perimeter. It also suggests, though, what is connoted by the cry of sailors after a storm, "Land ho." In either case, watery boundlessness gives way to containment. (The employment of this imagery causes one to wonder whether judges feel like occupants of a ship's crow's-nest, the ship of state perhaps.) "Landmark" suggests an island of solidity and safety in the midst of roaring and chaotic waters. Landmarking is a kind of safe harbor and making known of the boundaries. In short, through this mini-network of mythologically-saturated images one has staked out a miniature cosmos in a boundless chaos.

The underlying metaphors or mythemes operative here are traceable (and it is not surprising, for it is true of so much in the Western legal order) to the Judeo-Christian tradition which has shaped our own Western consciousness. For example, the above motifs emerge from the creation story preserved in the account of

the first chapter of Genesis. The opening words of this sacred text proclaim that

In the beginning God created the heavens and the earth. The earth was without form and void, and darkness was upon the face of the deep; and the spirit of god was moving over the face of the waters. (Gen. 1:1-2)

The Hebrew words, here translated as “the deep,” are tohu vevohu, i.e., a watery chaos or a big watery mess; the very opposite of cosmos or order. As in legal opinion writing, so here we have the metaphorical image of water associated with lawlessness, with lack of order, with the absence of cosmos. Later in the book of Genesis, a flood presages the end of all order, which order is only restored through a covenant (contract or legal agreement), through a legal relationship established between God and Noah. Likewise, the Psalms also play on the mythic theme of the abysmal waters as the opposite of reliable, predictable order. It is worth pondering the fact that the Israelites, unlike their Phoenician neighbors to the north, never became a seafaring peoples, even though they lived on the eastern edge of the Mediterranean Sea. The fear of water is a powerful mythic and psychological experience indeed.

The Genesis example makes apparent that even the modern, utilitarian legal opinion is driven by the play of mythic images, which derive from our ancient mythological past. Note further, though, that God goes to work on the watery chaos and fashions a cosmos. He does so by super-legislation: He decrees and it is so! Here is the idea set forth above, namely, that law in the Ancient Near East was understood as a matter of cosmic maintenance. Still, we must add a caveat here, a caveat that is directed to those who rally around the war cry of “law and order.” The purpose of God’s sovereign-ordering activity is not order for the sake of order; rather, its climax or purpose is the Sabbath of Rest. As Genesis 2:1-3 states it:

Thus the heavens and the earth were finished, and all the host of them. And on the seventh day God finished his work which he had done, and he rested on the seventh day from all his work which he had done. So God blessed the seventh day and hallowed it, because on it God rested from all his work which he had done in creation.

The Hebrew word, here translated as “host,” like all biblical words, is wonderfully polyvalent. Originally, this word referred to the constellations of the stars in the sky. Even in the word “host” we have preserved that ancient remembrance of the order below which reflects the tranquil order above—the stars as our first law
teachers. Subsequently, the word “host” was applied to the priestly personnel who performed the cultic duties in the Temple in Jerusalem. This suggests that the Temple itself was a miniaturization on earth of the heavenly lights above. Interestingly, in Latin the word “templum” refers to a patch of blue sky; so the word “contemplate” means to be in accord with the sky. In short, the purpose of earthly-ordering activity, law activity, is to bring onto earth the peace which was believed to reign in the tranquil and serene nightly sky—a sky whose stars, like good law, guided those on the dangerous and dark oceans, as well as comforted shepards who kept watch over their flocks and heard the message of the heavenly host proclaiming: “Glory to God in the highest, and on earth peace among men with whom he is pleased.”

Other mythologically saturated metaphors can be excavated from legal opinions and, thus, provide to students opportunities for letting their imaginative capacities enter into the mythological play which is at work underneath and within legal opinions. This restores to abstract legal thinking a vital wholeness by reattaching it to the deeper layers and levels of culture and of our psyches. The myths continue to dance through us. When the students comprehend this both intellectually and emotionally, they become aware that law is not merely a product of human cunning and manipulation, but that it has a tradition and roots which reach both into the mythological past and beyond, even into the very earth and universe. Lawyers with this kind of awareness and sensitivity cannot help but practice differently.

30. For example, the present metaphor of the “weighing of interests” can be traced from the attempt to assume a scientific, quantitative comportment all the way back to the weighing of the human heart against a feather in the Egyptian Book of the Dead.