

Goodrich, P. The Pythagoras Complex : respondeo etsi mutabor - I respond even though I have to change
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~~AD~~

The long-haired Pythagoras is an unlikely figure after whom to name a new complex specific to common lawyers. He left no texts, engaged in no obviously dramatic acts of war, patricide or incest, and has been received obscurely through the often-apocryphal teachings of his followers, the neo-Pythagoreans.² Freud, it is true, mentions Pythagoras as the author of the theory that *déjà vu* is explicable in terms of previous lives but makes no other reference to this particular classical philosopher.³ He comes down to modernity as a fragmentary and shrouded image associated more often with the philosophy of music, a mathematical theorem, and an ascetic lifestyle than with any obvious juridical passion or legal bent.⁴

An absent classical figure, a lost origin or source of teachings, a contested oral tradition, however, should not be unfamiliar figures to common lawyers. They are not continentals, they are not Romanists, or so they claim, and their immemorial truths, their laws founded in a 'time beyond the memory of man', precisely do not rely on codes or texts or even the Christian form of scripture as norm. We will see, in other words, that the pagan Pythagoras and his school could well serve a double function within the politics of the early modern common law tradition to which epoch the complex must be traced. The civilians have their Oedipus complex, a textually specific literary figure of the law of the father, of the 'paternal solution', but common lawyers, the English Gauls, the inhabitants of Anglo-Gallia, have their own distinct and much older fiction of psychic origin and legal form.⁵ It distinguishes our tradition, the Anglophone mode of common law, from the foreign ways, the hotchpot and inkhorn behaviors of the continentals. It also, second function, allows for a different treatment in light of the waning of the figure of the father, the ending of the paternal solution.

The Pythagoras complex is characterized by three distinct traits. First, and most dramatically, the feature from which the complex draws its distinct identity, *metempsychosis* or belief in the transmigration of souls. This quasi-materialist belief asserts that the subject dies but the memory lives on. Specifically, the body decays but the soul departs and is reborn in another body, animal or human according to the different neo-Pythagorean sources. A second and more common characteristic derived from the first, is the belief in one's own law-making power, a delusion of grandeur, a phantasy that the subject has an initiate and unchallengeable access to the esoteric roots of the tradition. This feature of the complex is also sometimes termed *ipse dixit*,⁶ a state in which the subject believes that whatever he or she says is

true and beautiful. This is so apodictically, despite and often contrary to appearances, and simply because he, 'the master', has said it. Finally, and as a somewhat recent discovery in relation to a complex that has in truth been named and around for half a millennium or more, it has been found not uncommon amongst sufferers to believe that the universe and social life are systems of numbers and simply need to be understood and explained according to their numeric characteristics.

Combined, with minor variations and extensions, these three characteristics together constitute the essential features of the Pythagoras complex, named, of course, in honour of the chimerical founder of philosophy, old *absconditus* himself. It is specifically a pre-Christian phenomenon and

The Pythagoras Complex

Respondeo etsi mutabor – I respond even though I have to change.¹

Peter Goodrich

perhaps we might venture not simply anti-Oedipal but pre-Oedipal as well. Ah, and how the common lawyers love their mothers, the certainties of maternity over the uncertainties and digressions of paternity. *Amor matris* is rooted in the mists of the immemorial, in the myth of mother Goddesses, of Boadicea, Elizabeth and Victoria, but that is another avenue of exploration, a separate bud, a different cog in the pagan machine, and the other face to which the Janus of common law is turned.⁷ To test this hypothesis I will begin by examining the history of the complex, the transmission of the Pythagorean doctrines within the common law world

1) The maxim is taken from Eugen Rosenstock-Huussy, *Out of Revolution: Autobiography of Western Man* (Norwich, VT: Argo, 1938) at 741 et seq.

2) For the best of contemporary philological research and for a deeply informed philosophical argument, see Peter Kingsley, *Ancient Philosophy, Mystery, and Magic: Empedocles and the Pythagorean Tradition* (Oxford: OUP, 1995). Also important on the continuance of the Pythagorean tradition is Kathy Eden, *Friends Hold All Things in Common: Tradition, Intellectual Property, and the Adages of*

Erasmus (New Haven: Yale U.P., 2001). For a recent overview, see Christoph Riedweg, *Pythagoras: His Life, Teaching, and Influence* (Ithaca: Cornell U.P., 2005).

3) Sigmund Freud, 'Fausse Reconnaissance (Déjà Raconté) in Psychoanalytic Treatment', in Freud, *Collected Papers* (London: Hogarth, 1943) Vol. 2, p. 336.

4) As for example in Pierre Riffard, *Les Philosophes: Vie intime* (Paris: PUF, 2004).

5) 'La solution paternelle' comes from Michel Tort, *Fin du dogme paternel* (Paris: Aubier, 2005).

6) The English variant on *ipse dixit* was coined by Coleridge. See Desiderius Erasmus, *Adages* [1508] (Toronto: Toronto U.P., 2001).

7) The principal reference here is John Selden, *Jani Anglorum facies altera* [1614] in Selden, *Tracts* (London: Basset, 1683). For commentary on this gynaecotopic treatise, see Goodrich, *Oedipus Lex: History, Psychoanalysis, Law* (Berkeley and L.A., California U.P., 1995).

and then move to address the distinctive characteristics of the condition as well as outlining possible treatments.

Lex Pythagorica

Start then with an etymology. Lord Chief Justice Fortescue, author of a highly influential Latin encomium in praise of the laws of England informs us very early in his treatise that the common lawyers are 'sacerdotes' or priests of the laws.⁸ His point is to refer an older tradition to a more novel and Oedipal Christian form: the Prince should learn that to fear God is the effect of the law: „The fear of the Lord remains for ever Holy. This fear is as a son's for his father", a filial fear by which we avoid pain.⁹ It is this fearful law that conveys the principle of the sacred, and it is this that the lawyer teaches and transmits and in transmitting associates himself with the sacred. The root of *sacerdos* is not however Christian. Its stem refers rather to someone who gives or transmits the *sacra* (*sacra-dare*), literally one who introduces others to sacrifices. The *sacerdotes* were those who officiated at sacrifices and if we pursue this root it is rapidly evident that these lawyers, these Christian ministers with their Christian rites of fear and fleshly communion, take over the place of earlier pagan rites of sacrifice, Druidic ceremonies and customs.

Such an etymological intuition gains rapid support if we turn to the Renaissance antiquaries' accounts of common law's origins and earliest terms. Sir Henry Spelman is the most succinct and refers to „our British [who] judged all controversies by their priests the Druids, and to this end met but once a year".¹⁰ He also, in the same breath as it were, refers to the Greek roots of many law terms, a somewhat dubious lexical reference which is linked to his thesis that the unwritten law stems from Greece and from the Saxons who „were originally a Grecian colony coming out of Lacedaemonia and the territory of Sparta." We can note that Sir Edward Coke too, in the *Reports*, references the use of the Greek tongue, 'Graecis literis utuntur'.¹¹ There is the intimation at least, if not of any genuine or extensive linguistic roots, at least of a casual link between the Druids and the Greeks as co-originators of an esoteric common law tradition.

It is Selden, in two important tracts, who gives us the most explicit and extensive account of the Druidic origins of common law and of „the taste ... of Pythagorean doctrine" which accompanies them and which is my subject here.¹² Selden's account begins with Caesar and with the name of the Druids, „these Gownmen among the Gauls, I and the Britains too, were the Interpreters and Guardians of the Laws". The Druids decided „all controversie, publick and private" and just as the College of Pontiffs in Rome was custodian of the Laws of the Twelve Tables, „the knowledge of cases,

of precedents, of interpreting" was held by the High Priests „our *Druids*".¹³ To this Selden adds that the power of the Druids was spiritual: „If any private person or body of men do not stand to their award, they excommunicate him, that is, forbid him to come to sacrifice, which among them is the most grievous punishment." The Druids were the original *sacerdotes* to whom Fortescue referred. With staff and snake they mediated between the human and the divine and they ordained through the rite of sacrifice who belonged and who was to be excluded from the „benefit of Law".¹⁴

The Druids did not believe in writing but rather, like Empedocles, communicated their doctrines poetically, using the mnemonic of verse to pass their teachings on as oral tradition. This means that when the Druids were driven out of England their teachings were largely lost. There are only a few surviving records, later histories, verses inscribed on stones, a few statues and other plastic remains. What is at issue is an esoteric oral teaching, preserved in a tradition of verse, by memory and community, by embodiment and practice, in fragmentary and essentially unwritten forms. To this Selden adds „that everything they say savours of *Pythagoras*" and a sentence on he comments: „Whether the Druids had their *Metempsychosis* or transmigration of souls, from *Pythagoras*, or he from them, I cannot tell."¹⁵

Selden is nothing if not meticulous in his use of sources and cautious in his interpretation of them. He refuses any easy references to the Greek language or to Pythagorean roots. At the same time we must note that Selden devotes three chapters of this treatise to the Druids and unquestionably gives them pride of place at the origin of common law. They are 'our druids', they are the 'first and origin' of 'philosophy and law' within the common law tradition and by the end of the third chapter on the topic, Selden admits to the Pythagorean roots of the Laws. Following the progression of argument, the accumulation of evidence, Selden next cites Seneca to the effect that „these men ... did not in a Hall of Justice, nor in an Inns of Court, but in that secret and holy retirement of *Pythagoras*, learn those Institutes of Law, which they might propose to *Sicily* and to *Greece*".¹⁶ And he continues: „However the business be, it appears plainly, that the *Druids* were of the oldest standing among the Philosophers of the Gentiles, and the most ancient among their Guardians of Laws."¹⁷ In the end, Selden admits that he must grant that the Druids were „of *Pythagoras* his School" and gathers support for this eventual conclusion from Camden's *Britannia* and other contemporary sources that looked to the myriad indirect clues as to the immemorial roots of the customary law.¹⁸

To summarize and elaborate these primarily philological observations of the neo-Pythagorean sources of common law doctrine and practice we can note the following

8) Sir John Fortescue, *De laudibus legum Angliae* [c. 1460] (Cambridge: Cambridge U.P., 1997) at 5-7.

9) Fortescue, *De laudibus*, at 6.

10) Sir Henry Spelman, *Of the Law Terms: A Discourse* [1614] (London: Gillyflower 1684) at 12.

11) Sir Edward Coke, *Reports* (London: Rivington, 1777) Vol 2, Part 3 at fol B1b.

12) Selden, *England's Epinomis* at 5, where he references Hotman and Bodin as sources in accord with the Latin authors – Pliny, Strabo, Marcellinus, Lucan, Tacitus and Caesar whom he cites. The inspiration for the work is François Hotman, *Franco-Gallia or, an Account of the Ancient Free State of France* [1574] (London: T. Goodwin, 1711)

13) Selden, *Janus*, at 12-13.

14) Selden, *Janus* at 13.

15) Selden, *Janus*, at 15.

16) Selden, *Janus*, at 16.

17) Selden, *Janus*, at 16.

18) William Camden, *Britannia sive florentissimum regnorum, Angliae, Scotiae, Hiberniae chorographica descriptio* [1586] (London: Collins, 1695).

distinctly Pythagorean characteristics of Druidic doctrine. First, and most obviously, it offers a distinctively pre-Roman source for common law and so allows for the politically topical differentiation of Anglican law from civilian roots. Common law, going back to the Greeks, is heralded by Fortescue amongst others, as the oldest of all laws: „neither the civil laws of the Romans, so deeply rooted by the usage of so many ages, nor the laws of the Venetians, which are renowned above others for their antiquity – though their island was uninhabited, and Rome unbuilt at the time of the origin of the Britons – nor the laws of any Christian kingdom, are so rooted in antiquity. Hence ... the customs of the English are not only good but the best”.¹⁹

The next significant feature of the Pythagorean is the art of memory, oral tradition, esoteric and secret rites and codes as the keys to a law that is sometimes said to have originated in runes or antique riddles. Metempsychosis or the transmigration of souls is the most obvious coincident of both the antiquity and the encoding of the tradition. What is unwritten is expressly a matter of the invisible, of knowledge transmitted through the Pythagorean ‘air’, via the soul, and across generations or innumerable lives. More than that we can note that the very antiquity of the law, its unwritten obscurity, its antique and encoded opacity gives rise to the necessity of a sect or school that will interpret and apply the mystery of rule, the *arcana imperii*. Thus we would expect initiate colleges, sect like behavior, a tacit code, and prophets or priest like interpreters.

Common law provides all this and more. The priests will pronounce, doctrine will be hermetic, transmission oracular and justice distinctly esoteric. The master will speak, as the Pythagoreans like to say, and the fact of utterance, the speech act, is its own ritual justification. The Pythagorean jurist stands above life – he remembers innumerable former lives – and dictates a *nomos* or Law of Law that precedes and has priority over the political and over merely positive enactments. The figure of the priestly lawyer, the esoteric guardian of the truth will likely be central and an ascetic lifestyle and group or sect practice that preserves the singular verity, the knowledge of the ‘one’ will allow both for pontification as the mode of law, and for numerology, an hieroglyphic wisdom as the mystery and root that invisibly justifies the esotericism of rule. Such are the basic institutions or teachings as embodied into the common law but it should also be remembered that the indefiniteness of origin allows equally for reinterpretation, for a treatment that is not simply Freudian but properly philological. A reinterpretation, a return to a Pythagorean way of life or indeed institution of existence that rather than diminishing the supposed myth, or relying upon common lawyer’s weak memory and weaker interpretations of the philosophical tradition, embraces a complex and profoundly existential practice of life and law.²⁰

Sileni Alcibiadis

Move now to address the belief system of the common law tradition, the implicit Pythagoreanism or failed memory of the roots of the tradition. We start with metempsychosis and specifically its metaphysical support, the doctrine of air. What is composed of air is invisible, amorphous and impossible to circumscribe. Common law tradition made much of this in terms of the invisibility of the origin and Sir John Davies, one time Attorney-General to Queen Elizabeth 1st, wrote a short treatise in verse on the *Immortality of the Soul* which evidences clear knowledge of the Pythagorean principle – „One thinks the *Soul is Air*” – but rejects it ultimately in favor of the Christian theory of the spirit – „She is a Spirit, yet not like *Air*, or *Wind*”.²¹ That Davies should present a Christianized version of the theory is hardly surprising. What is notable is the direct reference to and translation of the Pythagorean into the Christian, and by implication of the pagan into the common law.

Turning to Davies *Discourse of Law and Lawyers* the distinctive role of ‘air’, of the unseen and, in legal jargon, the unwritten law (*ius non scriptum*) becomes most manifest. Note first some general features. Common law is a system of precedent, of judge made law, which operates upon the basis of recurrence. What was done before will be done again. Nothing is new and certainly nothing can be proven to be new within a tradition that explicitly speaks not to the contemporary or living but addresses an infinite future, ‘posterity’, with laws drawn from an indefinite past. The key to the possibility of this practice is a concept of tradition as an esoteric and oral adventure. Law is an auditory phenomenon, something heard, something handed down through the oral rites of a close-knit and carefully circumscribed initiate community. Davies offers the following definition: „England’s law was *ius non scriptum* ... For indeed the Reports are but comments or interpretations upon the text of the common law: which Text was never originally written, but has been ever preserved in the memory of men, though no mans memory can reach the original thererof”.²² And Davies hurries on to remark that the common law of England „is a Tradition, and learned by Tradition as well as Bookes”. And tradition in this context means oral teaching, the recollection of what was said, including all the signs and other mnemonics of the art memory.

Law in this theorem is everywhere for the lawyer to uncover. Thus it is the common opinion of the bar, it is what was heard and remembered in Court or conversation, it is pervasive and surrounding and simply needs the attentive ear of the Inns of Court, of the professors – the *iuris periti* – of the third university. Thus in the *Enchiridion Legum* the unwritten quality or virtue of common law is expressly referred to the fact that the Common Law „imitated the ancient *Druides* of this Land (but yet gone farther than they) who, following the Pythagoreans did not commit their Learning

19) Fortescue, *De Laudibus*, at 27.

20) This is one way of interpreting Sebastian Timpanaro, *The Freudian Slip: Psychoanalysis and Textual Criticism* (London: NLB, 1976); and this I will hazard to say is Peter Kingsley’s substantive strategy in *Ancient Philosophy*.

21) Sir John Davies, *The Original, Nature, and Immortality of the Soul with an Introduction Concerning Human Knowledge* [1592] (London: Banks, 1714) respectively at 15 and 34.

22) Sir John Davies, *Le Primer Report des Cases & Matters en Ley Resolves & Adjudges in les Courts del Roy en Ireland* (Dublin: Franckton, 1615) at fol 1b.

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Nach Aufhebung der Zulassungsregelungen durch den Europäischen Gerichtshof im Juli 2005 hat das Parlament umgehend eine entsprechende Gesetzesreparatur vorgenommen. Die vorliegende 2. Auflage beinhaltet die vollständige Aufarbeitung der letzten beiden Gesetzesnovellen mit den entsprechenden parlamentarischen Materialien. In bewährter Weise soll der universitären Praxis eine rasche Basisinformation zur Verfügung gestellt werden.



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to Writing”.²³ The principle behind that refusal to inscribe the law lies in a belief attributed most often to Plato that writing will ruin memory and hence the Greeks insisted that the law remain unwritten and, paradoxically, inscribed invisibly in the breast. Thus the law rests in *scrinio Pectoris Judicis*.²⁴ Davies equally extols an interior source, a memory and practice that passes the law on like image or dream: „*lex est iustitia inanimata* or *lex est mutus magistratus* – only by the tongue of the learned and eloquent lawyer does it speak. The law is a rule which requires its architect to apply it – an instrument like the lute. The interpreters or professors of the law are the Mercuries of Jupiter’s invention.”²⁵ He goes on to remark that „the learned professor of law is *lux a tenebris* – a star in the firmament of the commonwealth ... his house as it were an *oracle* not only to a Town or City, but to a whole country.”²⁶

Allowing for changes in terminology, Latin argot, and Christianized context, the references to the unwritten, to memory and repetition of that which in fact escapes memory and is simply embodied, lived, breathed is highly suggestive of Pythagoras, of the *akousmata*, of the oracular character of oral tradition. It leads to a second feature of the tradition. The unwritten law requires careful custody, the *scrinium* or library of the chest, bookshelves of the heart. Here we encounter the question of the authority not of the

tradition, whose age and repetition assures its juridical value but rather the more precarious legitimacy of the interpreters, the hierophants who have custody of tradition and the task of passing it on. The sect of interpreters has to be carefully circumscribed and rigorously differentiated from the populace at large. Here the link to common law is again direct and striking. The Pythagoreans required a lengthy seclusion – followers were sent away for three years to test their constancy and the veracity of their love of learning – and then they spent a further five years training in self-control, and learning in silence. After five years, if found worthy, the apprentice joined the inner circle and could see Pythagoras for the first time. Now, inside the veil, the neophyte philosophers learned the maxims of the master, the *ipse dixit* truths that constitute the wisdom of philosophy: „They try to preserve these as divine teachings; they make no claim to speak for themselves, nor do they think it right to speak, but they hold those who have acquired the most maxims to be best equipped for wisdom”.²⁷

The esoteric character of the common law tradition needs little reiteration. It required long seclusion, learning in silence, controlled diet, reverence and melancholy. The asceticism of the community of lawyers, their monastic roots, the hierarchy of learning and transmission, the secretive silences, the eating together all gain lengthy attention in the

23) *Enchiridion Legum* (London: Henry Twyford, 1673) at 80-81.

24) *Enchiridion*, at 43 and 57.

25) Davies, *Primer Reports*, at fol 8b.

26) Davies, *Primer Reports*, at fol 9b.

27) Iamblichus, *Pythagorica*, at 36.

curricula literature of the Inns.²⁸ The point is that they form the basis of a community and way of life. The *akousmata* provide the basis for the secret transmission of an esoteric set of truths, the darkly encoded, apodictic or *ipse dixit* conditions of knowledge. According to the Pythagoreans, teaching and tradition were to be constituted by secretly conveyed beliefs and symbols. It was because the tradition was unwritten that it required encoding in mnemonic forms, through enigmatic or oracular symbols quite separate from the vernacular and ordinary language. The symbols appear absurd to the uninitiated: „But once they are deciphered as symbols should be, and become clear and transparent instead of obscure to outsiders, they impress us like utterances of the Gods or Delphic oracles, revealing an astounding intellect and having a supernatural influence on those lovers of learning who have understood them.”²⁹

The maxims were thus oral mysteries, secret meanings (*tacitem inhaerentem*), an esoteric and essentially hieroglyphic set of verbal fragments or riddles that could only be learned after rigorous and lengthy initiation into the lifestyle and practices of the sect that had custody over them. Once learned, the maxims or truths simply required relay, enunciation or proclamation -- *ipse dixit*, so it is said. The common law tradition parallels this practice of knowledge very closely. Start with the maxims. Common law is made of unwritten reason, long established customs retained and transmitted in the form of maxims. Thus, most explicitly, William Noy in an early work devoted to the maxims of common law defines them as follows: „Every maxim is a sufficient authority to itself; and which is a maxim and which is not, shall always be determined by the judges, because they are known to none but the learned.”³⁰ The maxims were thus to be heard and remembered, learned and stated. Jupiter, according to the poetically inclined Sir John Davies, was their original author and as such a source suggests, the function of the lawyer could hardly be that of revising or inventing maxims. They were already given and had to be learned and transmitted. The esoteric knowledge of the learned lawyer was that of having heard and remembered the maxim, lots of maxims in fact, and then having learned them, was qualified to pass them on.

Contemporary with Noy, Francis Bacon explains that his corrective collection of *Maximes of the Law* is formulated in Latin „which language I chose as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest Authority and Majesty to be avouched and alleged in argument.”³¹ The power of simple diction of the maxims is well captured in the choice of a foreign language to preserve and record them. This conveys the authority, the

maiestas of the maxims: these are no ordinary words, these are hidden truths. Sir Edward Coke was to the same effect and admitted that the language of law was one that was not recognized by the grammarians but that served well a more esoteric purpose of conveying established and unquestionable principles and rules that the maxims encode. Thus, in his commentary on Littleton, he asserts early on that maxims have *dignitas* and *auctoritas*,³² and continues that these are „so sure and uncontrollable as that they ought never to be questioned. And that which our Authors here and in other places calleth a Maxime, hereafter he calleth a Principle and it is all one with a Rule, a common ground, Postulatum or an Axiome.”³³

The use of Latin can provide an initial key. The maxims have *dignitas* and *auctoritas* and these are terms with highly technical meanings. *Dignitas* is here a synonym for axiom and connotes an undying power, a truth or office that has and will subsist beyond mere positive law.³⁴ *Dignitas non moritur*, it doesn't die. This also suggests the meaning of *auctoritas* in this context which, as Agamben has pointed out, means more than mere *potestas*, but rather connotes the foundation of law, a power before and above law that authorizes legality through its embodiment, in and through the *auctor* or sovereign.³⁵ This, according to Agamben, represents a biopolitical rather than legal tradition. By this he means that the authority of the axiom coincides with an empty space, an absent and intrinsically vague mystery that those that embody the tradition alone can recall and relay. It transmits a power that is greater than law and that can abrogate law or institute cases of *iustitium* or exception. Such biopolitical power is cognate, I will suggest, with the *ipse dixit* but exceeds it as form over content.

The 'hieroglyphic' character of legal knowledge, the opaque and ugly sounding nature of legal terms, such that they are explicitly described by Fortescue as *Sileni Alcibiadis*, provides a fully instantiated juristic version of the *ipse dixit* and also offers an avenue into the third and most difficult dimension of the complex.³⁶ The *Mathematikoi* were those who continued the mathematical tradition that Pythagoras founded. They believed that number took precedence over matter and that mathematical description of phenomena was to be preferred to accounts of physical things. The theory of number starts with music and the discovery that concordant musical intervals can be expressed by simple numerical ratios. From this was derived the notion of harmony as a mathematical phenomenon which governed things, world and cosmos, the one and the many. According to a maxim relayed by Iamblichus, „all things correspond to number”. Thus Archytas tells a story of one

28) Fulbeck, *Direction*, provides as good a guide as any. Dugdale, *Origines Juridicales* [1666] (London: Newcomb, 1671), provides a useful and detailed account of everyday training in the Inns, including menus, dress codes, and accounting practices. Goodrich, 'Eating Law', in *Law in the Courts of Love* (London: Routledge, 1996) provides an analysis of dining rituals.

29) Iamblichus, *Pythagorica*, at 46-47.

30) William Noy, *The Grounds and Maxims of*

the English Law [1631] (London: Lintot, 1757) at fol. D3b.

31) Francis Bacon, *The Elements of the Common Lawes of England* (London: More, 1630) at fol. B3b.

32) Edward Coke, *The First Part of the Institutes of the Lawes of England. Or, A Commentarie upon Littleton, not the name of a Lawyer onely, but of the Lawe it selfe* (London: Societie of Stationers, 1620) at 11r. The

maxim in full is: *quia maxima est eius dignitas*

& certissima autoritas, atque quod maximè omnibus probetur.

33) Coke, *Institutes*, at 11r.

34) I am here following Legendre, *L'Empire de la vérité* (Paris: Fayard, 1983) who at 19 translates *dignitas* as axiom.

35) Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005).

36) 'Hieroglyphickes' is taken from Davies, *Discourse*, at 3v; the reference to Fortescue is to *Direction*, at 56.

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of the early Pythagoreans, Eurytus, „that he used to give the number of all sorts of things, such as horses and men, and that he demonstrated these by arranging pebbles in a certain way.”³⁷ Later Pythagoreans made incessant analogies between numbers and things and while this probably departs from the earlier tradition which, according to Aristotle, explained only a few things by numbers, even Aristotle admits that according to them the „right time” was seven, justice was four, and marriage three. The number ten, the ‘Tectactys of the Decad’ also had a sacred significance to the Pythagoreans, making a pyramid when represented by dots (1 + 2 + 3 + 4).

Diogenes cites Alexander Polthistor and is probably our best source on the significance of number to Pythagoras: „From the unit and the indefinite dyad spring numbers; from numbers, points; from points, lines; from lines, plane figures; from plane figures, solid figures; from solid figures, sensible bodies, the elements of which are four: fire, water, earth, and air; these elements interchange and turn into one another completely, and combine to produce a universe animate, intelligent, spherical ...”³⁸ Aristotle gives an extended account of these numerical principles in the *Metaphysics* and concurs that for Pythagoras numbers were the elements of all things that are. He concludes that „The elements of number are the even and the odd, and of these the latter is

limited and the former unlimited. The One is composed of both of these (for it is both even and odd) and number springs from the One; and numbers, as I have said, constitute the whole universe.”³⁹

Even as briefly described above, certain significant features of the doctrine of numbers can be elicited. First, the doctrine grew out of a discovery relating to music. Harmony was numerical. The importance of number was in this sense musical and as a cosmology number was the avenue or mechanism of harmony. A second feature, and one which fits well with the theory of the *ipse dixit*, is the predication of all number upon the one, the monad or limit being the source of numbers and of the unlimited. Turning then to the common lawyers we find the principle of the one firmly ensconced in the monotheistic principle of a singular truth. More than that, the early common lawyers also paid great attention to mathematics and to music as the proper modes of description of the properly ordered commonwealth and aptly applied laws. According to Lambard, in the *Archeion*, the purpose of law is to limit the oracle „to have but one tongue and voice wherewith to speak to all sorts of suitors”.⁴⁰ Consciously or not, a numerical root, the One was the proper source of law and the limit of legal action. More than that, Lambard also offers the view that the sovereign must deliver to his subjects *aequam et rectam iustitiam* and

37) From Burnet, *Early Greek Philosophy*, at 100.

38) Digenes, *Lives*, at VIII. 25-26.

39) Aristotle, *Metaphysics* 1.5986a 17-21.

40) Lambard, *Archeion or Discourse upon the High Courts of Justice in England* [1591] (London: Seile, 1635) at 4-5.

that this comprises a variety of forms: „if either this Arithmetically Government (as they call it) by rigour of law only, or this Geometrically judgement at the pleasure of the Chancellour or Praetor only should be admitted; and yet if it they be well compounded together, a most sweete and harmonically justice will follow of them.”⁴¹ The echoes of Pythagoras are very plain to hear.

Treatment

The beauty of analysis is that it is an interpretative treatment, it is proper to law, a dimension of judgment suspended and turned back upon itself. The Pythagoras complex embodies a host of suggestive narratives, forgotten histories, clues and signs of possibilities. The symptom is in a sense its own cure. This is so not only in the sense that I would encourage common lawyers to enjoy their symptoms – dress up a bit more, indulge their symbolaographic tendencies – but also in the sense that the Pythagorean tradition potentially incorporates the conditions for its own renewal. Start with a cryptic sign. Sir John Davies commented that the common lawyer was an architect of law, he was „an instrument like a lute”.⁴² With his lute he played the notes that woke a sleeping law. An instrument was needed to effectuate the instruments of law, to put the symbols into practice. Sir John Davies provides another fine clue in his poem on the immortality of the soul: „These Tunes of Reason are Amphion's Lyre,/Wherewith he did the Thebane City found:/These are the Notes, wherewith the Heavenly Choir,/The Praise of him which the Heav'n, doth sound”.⁴³ We need only add that Amphion's lyre was given him by Hermes to resurrect the full constitutional significance of this music of the laws.

It was Pythagoras who first instituted music as a mode of education and of dispute settlement. Iamblichus reports that „the first stage of his education was music: songs and rhythms from which came healing of human temperaments and passions”. Music was a mode of medicine, it healed, and a form of treatment: „It is especially remarkable that he orchestrated for his pupils what they call ‘arrangements’ and ‘treatments’. He made, with supernatural skill, blends of diatonic and chromatic and enharmonic melodies, which easily transformed into their opposites the maladies of the soul ... All these were restored to virtue, using the appropriate melodies like mixtures of curative drugs.”⁴⁴ Similarly, there is also the anecdote of Pythagoras nipping a dispute in the bud through a musical intervention. A drunk youth went at night to serenade his girlfriend by his rival's door. All hell was about to break loose when Pythagoras intervened and told the flute-player to change to a solemn tune, which promptly calmed the young man down and he returned home peacefully.⁴⁵ It is one of many instances – „Empedocles did something similar” – in which *nomos* is understood quite directly as melody or rhythm, as a musical appropriation or first law that constitutes community as something common and communicated tonally as well as verbally.

The reference to music could be followed much further but that is not my purpose here. What is initially significant to the reference is its summoning of the collective character of juridical endeavor. Music was educative, it was part of a training or schooling and it can remind us of the importance of the institutional to the legal. Lawyers are trained in law schools and any treatment or change of artifice and lifestyle will start in the schools and as a pedagogic enterprise in revision or reform. This takes us back to the *akousmata*, the doctrines, and *askesis*, training or lifestyle as key dimensions, defining features of the Pythagorean. Pythagoras was a pedagogue. He viewed teaching as his vocation, training and schooling as his mission, the inculcation and incorporation of a way of life his goal. This essentially political purpose and project allows us to address the most interesting dimension of the Pythagorean for contemporary purposes and the reason in many respects for its revival here.

Pythagoreans, according to Plato, „are distinguished among their contemporaries” by a „certain way of life”.⁴⁶ We have seen that this meant in part a musical training, an ability to listen, a commonality of tone and appreciation therewith of the significance of harmony and the priority of affect over cruelty, of amity over law. That is the initial meaning of the Pythagorean *nomos* and we can add numerous other maxims relating to all aspects of diet, conduct, friendship and being together. Turning again to Iamblichus, we are told that Pythagoras taught „that there is also a kind of justice in dealings with others ... There is ... a right way and a wrong way of talking to people: it varies with age, status, kinship and favours done, and with any other such difference between people”.⁴⁷ There is an appropriate mode of address, there is a right moment, a time for silence and a time for speech.

Translate the above into the legal as we inherit it and the Pythagorean offers radical insight into the importance and the limits of law. Where the Pythagoras complex offers an esoteric and internal instance of lawgiving as a solitary and solipsistic enterprise, a golden thigh, a mystic proclamation by hooded figures declaring oracular disciplinary truths, the Pythagorean way of life indicates something quite different. Here justice and law are understood exoterically as pedagogy and training in lifestyle, in an ethics or habit of virtue, in modes of conversing and listening, in justice as friendship understood as living together and holding in common. The law school is here emblematic of a mode of life and community that will instantiate justice and judgment in a theatre of communal belonging. Put it like this. Music precedes money. Justice is predicated upon dialectics not dictates. Conversation, its rhythms and tones, its communitarian facets, its own ethics and justice, have far more to tell us of law than the pathological and failed expressions of judgments that are always already too late.

It is the music of friendship, the chance of encounter, the dance of life together that *askesis* embodies. Pythagoras, of

41) Lambard, *Archeion*, at 72.

42) Davies, *Discourse*, at 8v.

43) Davies, *Immortality*, at 26. [Typography modernized].

44) Iamblichus, *Pythagorica*, at 26-27.

45) Iamblichus, *Pythagorica*, at 49.

46) Plato, *Republic* X.600b, in *Collected Dialogues* (Princeton: Princeton U.P., 1978) at 325.

47) Iamblichus, *Pythagorica*, at 79-80.



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course, favored amity over law. Music was the instrument of amity and in this vein Pythagoras taught the revolutionary potential of music in place of force. He also taught the value of the long term, of listening and especially of waiting. The transmigration of souls means a trans-historical perspective, a long view. Not law but *nomos*. Not the father but the friend. As Francis Bacon put it, friendship means my soul in another.⁴⁸ He was a lawyer and he doubtless knew the implications of that particular and amicable transmigration of souls. For the Pythagorean, and perhaps Bacon was one as well, or at least as to this, the real question of law is scholastic, to do with the school, with training the individual collectively, with living together and learning to respect the

routines of the other, the patterns of things held in common, the desiderata of the amicable, the law as a way of life.

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48) Francis Bacon, *Essays* [1596] (London: Macmillan, 1896) at106.