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Abstract: The long haired Pythagoras is an unlikely figure after to whom to name a complex specific to common lawyers. Ironically, however, the mythical figure of Pythagoras 'and his school' was one of the most often declared sources of the distinctiveness of common law. His followers, the Druids, were the first lawyers in Anglia -- specifically, the dark island -- and the strange sacrificial and mystagogic practices of the Druid law givers founded the early rites of the tradition of unwritten law. Using the humanistic technique of history and reminiscence, this article traces the idiosyncracies of the pythagorean philosophy: the refusal to put law in writing, the use of hieroglyphs, the dependence upon oracular judgment, the belief in multiple lives, askesis and akousmata, and places them at the root of what is most emblematically common law.

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Druids and Common Lawyers: Notes on the Pythagoras Complex and Legal Education

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The claim to have discovered a new complex, even if it is one peculiar to common lawyers, has to start with the self. How else could I have made the discovery? How else could I prove that I have worked it through? A distant and personal memory. An intimation from the past. A long time ago, at the age of 15, at an English boarding school, it fell my lot to conduct the evening prayers in B.3, the house to which I belonged. The school was in origin a Christian foundation, historically a mid-17th century Anglican venture, and the House Master who attended the services, at the closing of the day, was fiercely Christian as well as being a former colonial administrator in the Sudan. Enough context. I decided that the occasion was an excellent one for educating the audience on matters of faith. In my preamble to the prayers I announced that I did not believe in God or prayer. I argued in my youthful yet defiant manner that God was an anthropomorphic fiction, a great *prosopopoeia* in the sky, an illusion. I told my fellow students, prefects and House Master that there was a choice. You could supinely accept this fantasy, or face the facts and in Brechtian style inhabit a more real world. Live then die. That is it. And I ended, I thought kindly, by saying that the desire to invent Gods was anthropologically very common and there were definitely some fun polytheistic Gods for those who needed the comfort of spectres or the solace of myth. We could pray to them, and, smiling, I proceeded to do so.

The element of surprise I think prevented any immediate retaliation. I wasn't stopped from speaking, I wasn't dragged from the common room to be punished. I was later threatened with expulsion, furiously beaten when caught not attending church on Sunday—it was compulsory every day, but for longer on Sundays—and I was certainly never allowed to lead evening prayers again. It was one of several instances of Oedipal rebellion, a direct confrontation with authority and a distant dawning of a critical spirit, although it was only much later that I added any political gloss to the mixture of terror and anger that had prompted my defiance. I continued precariously at the school for another year. I allowed my father to enter me for law school when I left—aged sixteen because in England you go to law very young. Many years and a PhD later, I had fallen in love with writing and became a professor of law.

It is not an unusual anecdote. Freud and his followers were full of this kind of case and a professor of law, someone who is simultaneously inside and outside of law, astride vocational knowledge and scholarly endeavour, discipline and dialogue is a most apposite instance of the theorem that an ambivalent relation to authority is likely as not rooted in early experience and familial patterns of relationship to domestic authority, which then get acted out in institutional settings. You are who you came with. Put it like this: I challenged the immediate norm and its attendant authorities, but I also went ahead and led the prayers. I may have mocked the genre somewhat but I stood and delivered the petition to God. I did not leave the School. I stayed on with reluctance and carrying the many scars of corporal punishment. I even went on to law school, though that venture was born of indifference, the product of a youthful history of melancholy, pain and defeat. And once there I really only liked the Latin. The Roman law, civilian history. And that

too was a way of holding up a fist at the professors, these common lawyers with their common sense and common views.

It is upon that sense of an interior, that traumatic attachment to authority, that I want to focus in addressing the trajectory, and in particular the history and paradoxes, of critical approaches to professing law. My initial point is the obvious one that joining the institution, entering the symbolic, acceding to rituals of governance and subjection, starts very young. The image-laden path of biography is the trace of history. And the starting point for critical thought, and my own biographical anecdote clearly attests to this, lies in the critique of religion. That is so, I believe, in a dual sense. For our generation, 'born in the 50s', coming of age in the post-60s, the immediate critical impulse against authority figures began with rejection of the father, the *nom du père* both familial and social. The root of that defiance, the source of opposition, lay in challenging the theology, the singular truth or monotheism that was promulgated in the school, in the rule book, in grammar, in the imperialism of history and most obviously in religious services. There is no subject, no social persona, without a relationship to the institution, and in my case that means an institution and schooling in a Christian *nomos* and law. And on the other side of such biographical intimations, different and similar in all our cases, acknowledged or denied, there is also Marx's crucial historical observation that critical thought—post-Hegelian critique—begins with the critique of religion.

Many years on, a well-versed thespian of the law school's Socratic stage, I do occasionally wonder at why no student has stood up in my classroom and denounced the Emperor's lack of clothes, the fraud of legal truth, the reverence of the responses, or the disciplinary horror of exams and grade curves. It would seem as if the many tears that law students weep are seldom shed in class, and if they are it is in sorrow or humiliation, not in anger or revolt. Alienation, estrangement, denial, as well as fantasies of escape to a professional life fuel emotional absenteeism, rites of 'passing', rather than challenges to authority, ethical demands upon professorial time, or simple and frontal irreverence when professorial claims to knowledge are stretched too far. But reverence there is, residual or partial, good humoured or melancholic as it may appear. And reverence is from the Latin *reverentia*, meaning timidity or awe, induced by fear. It is a dimension of the aura of law, a part of the rite, an aspect of the theatre of justice and truth as relayed by law school and its school lawyers. And fear generates fear not only in the sense that students or subjects of law are at important moments fearful, but also in the more complicated sense that those who are feared themselves both harbour and are harbingers of fear. The statistics on law student depression, on juridically induced heteronormative anxiety depression (JIHAD), prove it; but that is not my immediate concern here.¹ I wish rather to address

¹ According to standard clinical indicators of depression, law students enter law school close to the norm. They rise to two to three times the national average by the end of the first year. By the third year law students manifest almost four times the average level of depression. Levels of substance abuse, alcoholism and other maladaptive coping mechanisms are also significantly above the norm. The statistics are given in S Daicoff, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psycho-

the sources of fear, the senses of non-knowledge, incapacity, disciplinary terror and sacrifice that pervade the teaching relation and the coming to presence of law.

Fear abrogates. The subject evacuates. To overcome fear requires both acknowledging that moment of absence, the lacuna, the vacancy, and piecing together a will to act, to confront, to move through the site of terror. I will suggest in what follows that the phenomenology of professing law is an exercise based in bringing such fear and its attendant vacancies to the surface, reconstructing a phenomenological account of the reasons to be fearful, one through five, and then addressing the sites of knowledge that fear excluded or terror suspended. That will be my strategy and it has to begin, as I have belaboured here, with the question of religion and then move on to the specific question of the local common law school and specifically the exceptionalism of the legal academy in the US of A.

THE DARK ART OF LAW

There is a figure that recurs in contemporary critical accounts of legal studies. It is the paradoxical one of the professor as priest. We encounter this simile most famously towards the end of Roberto Unger's inaugural speech on the critical legal studies movement, published in the 1983 volume of the *Harvard Law Review*.² He describes the leftist lawyers as 'a priesthood that had lost their faith but kept their jobs. They stood in tedious embarrassment before cold altars'. The image so captivated the legal academy, left and right, that it produced an extended response and debate. Dean Paul Carrington most notably opined that these anomic professors had 'an ethical duty to depart the law school' in precisely the same fashion that 'a professor of divinity for whom atheism is the primary message to profess ought to recognize that he has a conflict of interests'.³

My concern with the figure of the doubting law professor does not lie initially in the reactions it produced so much as in the apparent paradox of a critical legal scholar, a leftist lawyer, claiming to feel like a priest. Not only that, but he is a doubting hierophant standing before a cold altar, an unused sacrificial table. He seems slightly sorrowful that the incense has gone, that no flesh is being immolated, no burnt offerings are on view. Why is the proponent of a critique of law immobilised before the site of sacrifice? Why does he stand in tedium—*Te Deum*, for you God—before the altar? And why does he identify with the priesthood that conducts these rites of sacrifice? In sum, what is it that he knows and that others, the masses, the common subjects of law, do not? What will he profess or is this simply confession?

logical Association, Washington DC 2004). For a sociological analysis see S Dolovich, 'Making Docile Lawyers: An Essay on the Pacification of Law Students' (1998) 111 *Harvard Law Review* 2027.

² R Unger, 'Critical Legal Studies' (1983) 96 *Harvard Law Review* 563.

³ P Carrington, 'Of Law and the River' (1984) 34 *Journal of Legal Education* 222 and subsequent correspondence.

The allure of the sacerdotal figure can act as a first clue. It is what I will term the Pythagoras complex and it is actually quite common amongst leftist lawyers. Unger was not alone and he was not the first critical legal scholar to engage in this rhetorical excursion. Seven years earlier, in an anarcho-marxist account of law as domination and oppression, Bankowski and Mungham used a similar simile.⁴ The politically committed law teacher, meaning the leftist law professor because any other position was a default rather than a commitment, and don't we just miss those days of clarity, was in a double bind. His position 'is like that of a monk in a monastery who finds, to his horror, that he is ceasing to believe in God'. And there were others later as well. The Norwegian abolitionist sociologist Thomas Mathieson wrote powerfully and persuasively of the inordinate pomposity, the elegant rituals, the reverence and deference shown to the law professors in the Faculty of Law in Oslo. Their everyday status was more akin, he argued, to charismatic modes of authority than to rational bureaucratic governance.⁵ Pierre Schlag makes a comparable connection in writing of law as 'God by other means', and then towards the end of *The Enchantment of Reason* we learn that 'what we have is a group of thinkers and actors who no longer respect their grid, who no longer believe in its operations, but who have not the slightest idea what else to do'.⁶ The loss of belief inexorably implies a prior faith, a structure or grid over which the believer has control and which the doubter relinquishes with a certain melancholy. So too *Postmodern Jurisprudence* contains a chapter on altars and provides professorial guidance on an ecclesiastical court's determination of the difference between a table and an altar.⁷ And, last example, Duncan Kennedy joins the throng in repeatedly raising an inverse figure, that of the death of the movement, that of a priesthood that presumably turned to stone or simply froze before those cold altars.⁸

If what you are dealing with is in essence theology, the word of God as reflected in the rule book of law, it certainly figures that there will seem to be something esoteric, sacred even, in the art of relaying those norms. What seems most apparent is that whether they believe in law or not, critical legal scholars do not escape their structural position, their place on the grid, without effort, without self-reflective endeavour. There is no escaping a certain degree of ambivalence, a Janus face as it used to be called. There is without question a dimension of paradox to the critical pedagogue's disavowal of the institutional and pedagogic power that they both represent and purvey. It is an existential

⁴ Zenon Bankowski and Robert Mungham, *Images of Law* (Routledge, London 1976).

⁵ Thomas Mathieson, *Law, Society and Political Action* (Academic Press, London 1980) 89–107. His earlier translated work was Mathieson, *The Politics of Abolition* (Martin Robertson, Oxford 1974).

⁶ P Schlag, *The Enchantment of Reason* (Duke University Press, Durham NC 1990).

⁷ C Douzinas and R Warrington, with S McVeigh, *Postmodern Jurisprudence. The Law of Text in the Texts of Law* (Routledge, London 1991) 161–82.

⁸ The first announcement of the death of CLS came very early on, in D Kennedy, 'Psycho-Social CLS' (1985) 6 *Cardozo Law Review* 1013. The theme is present again throughout Kennedy, *A Critique of Adjudication* (Harvard University Press, Cambridge MA 1997).

contradiction. The dilemma of the radical law professor who has to work with what is there, a prior law, an extant institution and its closely guarded norm. Even or especially at an everyday level, she has to walk through the library or corridors whose walls are littered with the portraits of former deans, judges, eminent and almost exclusively white male professors of the past. She is surrounded by Latin inscriptions, obscure maxims, dated dates. She passes through portals, foyers, lobbies, moot court rooms, faculty lounges that are full of paintings, busts and bronzes of the great tradition. She makes her way to the elevated stage of the lecture theatre, and there declaims from the podium—statistics indicate that even in the Socratic classroom the average law professor, male or female, speaks for roughly 75% of the hour—where she assumes authority to give answers, writes and grades blind exams, and these activities are all historically located in a system of precedent, in a culture of repetition, of doing what has been done before and for no better reason than that this is what has been done before. It is almost relaxing, mildly comforting even, to slip back into these patterns of authority, the ease of the role, the aura and garb of being the professor of a profession, the familiarity of possessing the knowledge that the neophytes seek.⁹

What then is the art of professing law? What are the mysteries, the *arcana imperii* that the professor professes? Obviously enough, common law is an antique language, an ancient art, a long established tradition, and the starting point for understanding the role of those whose profession it is to profess this argot of custom and practice is historical. Here and immediately common law history provides a surprising turn.¹⁰ The keepers of the secrets of law, the professors and practitioners of the earliest Anglican law, were *Druidion*—or as we would say Druids. There is no disputing this according to the early texts. Theologians and lawyers are in full agreement that the art of common law began amongst the Druids as a poetic, professorial and priestly enterprise. Take it a step further and we can hypothesise, along with the Renaissance Cambridge civilian Dr John Cowell, that common law was at root ‘a dark and melancholy’ art.¹¹

The references to the Druids are in the main taken from Caesar’s description of the conquest of Britian, but gain very different glosses according to the interpreter.¹² Sir

⁹ R Robson, *Sappho Goes to Law School* (Columbia University Press, New York 1998) ch 13 ‘Lesbian Sex in the Law School Classroom’ describes some of this sense of ambivalence and contradiction briefly but well.

¹⁰ For discussion of the psychoanalytic dimensions of this figure see P Goodrich, ‘The Pythagoras Complex’ (2007) 5 *Juridikum* 23.

¹¹ J Cowell, *The Interpreter: Or Booke Containing the Signification of Words* (np, Cambridge 1607) Preface, 3r.

¹² Other than the sources I cite below, there is also A Duck, *Of the Use and Authority of the Civil Law in the Kingdom of England* [1589] (Browne, London 1724) at viii, who cites Caesar; and C Fleury, *The History of the Origin of the French Laws* [1674] (Browne, London 1724) 3–6. *Enchiridion Legum* (Henry Twyford, London 1673) at 80–81 adverts to the unwritten quality or virtue of common law. This quality 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 to Writing’. Blackstone, in his *Commentaries on the Laws of England* (Clarendon Press, Oxford 1769), reiterates the narrative at the close of Book 4 (at 401).

Henry Spelman, for example, in his discourse *Of the Law Terms* refers to 'our British' who 'judged all controversies by their priests the Druids, and to that end met but once a year'.¹³ He concludes that they 'are little to the purpose' with regard to tracing the origins of the law terms. They didn't hold terms, but the reference remains. The most thorough descriptions are to be found in the work of the Renaissance antiquary John Selden and somewhat more precariously in a text from the 1630s attributed, on the balance of probabilities, by its early 18th century editor to one Sir William Jones.

Take Selden's account from his *Jani Anglorum facies altera*. The Druids, called 'Gownmen by the Gauls ... were the interpreters and guardians of the Laws'. They formed a College of Pontiffs or High Priests and decided 'all controversies, public and private'. To this he adds that if anyone refused to abide by their decisions 'they excommunicate him, that is, forbid him to come to sacrifice, which among them is the most grievous punishment'. To be excommunicated was in effect to be outlawed, and 'everybody goes out of their way, and shuns their company and conversation for fear of getting any harm by contagion'. The Druids themselves, in Selden's account, were as a class privileged and specifically exempt from taxes and military service, 'and had an immunity in all things'.

Sir William Jones is to much the same effect but adds from other sources that the Druids dwelled in 'rocks and woods and dark places' and their principal haunt, now called Anglesey, was from '*ur ynys dewyll*, that is, *the Dark Island*'. Jones makes clear also that the Druids were the teachers and scholars of their age: 'all the arts, sciences, learning, philosophy and divinity, that was taught in the land was taught by them, and they taught by memory, and never would that there knowledge and learning should be put in writing ...'.¹⁴ Their laws, in other words, were unwritten, and esoteric. They were perhaps dark in the sense of unseen and somewhat ghostly, but the final and most important word rests again with Selden. The dark art that Cowell referred to has a very specific historical meaning. The Druids were 'of *Pythagoras* his School'. It was from the esoteric philosopher Pythagoras that the Druids learned their 'secret and mysterious Arts'. They studied and decided 'not in Inns of Court, but in that secret and holy retirement of *Pythagoras*', and to this Selden adds: 'Whether the Druids ... had their *Metempsychosis* or transmission of Souls, from *Pythagoras*, or he from them, I cannot tell'. But he does go on to 'grant they were of *Pythagoras* his School' and that they were undoubtedly 'of the oldest standing among the Philosophers of the Gentiles, and the most ancient among their Guardians of Laws'.

The privilege of the Druids, their exemption from tax, war and indeed from the evil of death, if death's sting is loss of memory, also had a purpose: 'Upon account of that privilege, they had in their Schools (which were most of them in Britain) a great confluence of youth', where, according to Caesar, 'They are said to learn without book'.

¹³ Sir Henry Spelman, *Of the Original of the Four Law Terms of the Year* (Gillyflower, London 1614).

¹⁴ Jones, 'Answers' in T Hearne (ed), *A Collection of Curious Discourses* (London 1720) 213.

Other evidence suggests that outside of schooling, these priestly professors were solitary scholars who shunned company and believed in cultivating the immortality of the soul. There are in any event descriptions of statues of Druids from Wales and from Gaul which portray tall barefoot figures, cloaked and hooded, with long beards, book and staff in hand, 'with a severe forehead and melancholy brow'.¹⁵ And others confirm this general depiction of origin and figure of philosopher law teacher as a holy scholar who hides and studies an occult art in solitude. I have dwelt on it somewhat because it is a little unfamiliar and yet, to the extent that common law prides itself and identifies itself with a distinct national tradition, this is its image of origin, its earliest source of custom and unwritten law. The immemorial or 'time beyond memory' to which common lawyers fondly refer as the intrinsic source of customary law, the law of the land, is in fact dark and Druidic, a matter of sacrifices attended, burnt offerings proffered, of learning and determination dispensed by esoteric and distant holy figures, severe of brow and melancholy of disposition, 'stooping down with their Head, and fastening their eyes on the ground.'

The dark art is also, however, a reference to a non-Christian or more positively pre-Christian practice.¹⁶ The Pythagoreans believed that upon death the soul passed into another body, human or animal. According to Diogenes' account of the life of Pythagoras, he claimed that in earlier incarnations he had been the son of Hermes the messenger God. Hermes told him he could choose any gift he liked, except immortality. Pythagoras asked to retain through life and through death a memory of his experiences: 'Hence in life he could recall everything, and when he died he still kept the same memories.' Of the other anecdotes that surround the history of his life, we learn also that he took his doctrines in the main from the Delphic priestess Themistoclea, that he trained many notable lawgivers, and that he was the originator of the maxim 'friends hold all things in common'. It is really however in Iamblichus' *Life of Pythagoras* that the full import of the Pythagorean tradition is relayed.¹⁷

¹⁵ J Selden, *Jani Anglorum facies altera* [1614] in *Tracts* (Basset, London 1683) 16, citing Conrad the Celt. Selden in fact devotes two chapters to the Druids, more space than to any other antique source or genealogical forebear of the unwritten law. See also Selden's youthful *England's Eponomis*, reprinted in the same volume of *Tracts* and referencing Hotman and Bodin, as well as Pliny, Strabo, Marcellinus, Lucan, Tacitus and Caesar. Selden's other source of plastic confirmations is W Camden, *Britannia sive florentissimum regnorum, Angliae, Scotiae, Hiberniae chorographica descriptio* [1586] (Collins, London 1695).

¹⁶ This proleptic dimension of Pythagorean philosophy is well elaborated in K Eden, *Friends Hold All Things in Common* (Yale University Press, New Haven CT 2001) ch 4 'Pythagoreans and Christians on Traditioning the Common Life'.

¹⁷ *Iamblichi de vita pythagorica liber* (L Deubner (ed)) (Leipzig 1937); Iamblichus, *On the Pythagorean Life* (G Clark (tr)) (Liverpool University Press, Liverpool 1989). The defining modern study is W Burkert, *Lore and Science in Ancient Pythagoreanism* (1972) which debunks most of the traditional accounts of Pythagoras but does not of course impact the role that these texts played in forging the tradition, the legend, myth and invention that came along with the figure of Pythagoras. See also C Riedweg, *Pythagoras. His Life, Teaching, and Influence* (Cornell University Press, Ithaca, NY 2005). For a meticulous philosophical excavation, which gives full due to the Pythagorean influences upon Plato, see P Kingsley, *Ancient Philosophy, Mystery, and Magic* (Oxford University Press, 1995).

Pythagoras established a school and tradition of philosophy as a way of life developed through a lengthy apprenticeship, an arduous training or *askesis*. He was first a teacher, a self-conscious founder of a tradition (*paradosis*), a promulgator of a system of justice tied to the esoteric shared knowledge of a community of friends. As Plato recognised in his depiction of the ideal city, it was Pythagoras who was the originator of the idea that justice depends upon community and the sharing of knowledge as well as of things, upon a common way of life, upon amity as the bond that precedes and makes justice possible. The details are not here my first concern but rather the structure of the Pythagorean way of life as it influences and informs the later legal tradition, both Druidic and latterly secular and common.

In synoptic and structural terms the teaching of philosophy as a way of life was predicated upon the high ideal of capturing the soul for the good.¹⁸ If that was the goal, its mode of inculcation was through discipline and knowledge. Pythagoras by all accounts founded a school with the specific purpose of training the soul, because education was the key both to discipline and to influence. Education has a full and complicated meaning for Pythagoras but for our purposes it had justice as its goal and political training as its means. Education was politics. It lay at the heart of the city and it laid the foundations of just practices. The philosopher in this sense founded community upon education, upon teaching an esoteric knowledge, and so training youth in the ways, the language and deeds of the just. Friends who hold words and things in common will act justly towards each other and will pass that sense of discipline and commonality on to those who follow them.

There are many other features of the Pythagorean way of life that merit mention but that do not alter the structural place that he accords to the politics of education and the inculcation of just practices. We should, however, briefly note that Pythagoras apparently borrowed many of his ideas from the Egyptians and in particular a love of symbols and riddles, of hieroglyphic adages or maxims, which would become the esoteric knowledge of his school. The interpretation of symbols, the deciphering of short oracular statements—*sileni Alcibiadis* as they were called—was the most important of methodological skills for the *philologon* or lovers of knowledge that Pythagoras trained. The handing down of the *symbola* or cryptic symbols was of the essence of the Pythagorean school. It was the manner of preserving an unwritten tradition, a mnemonic practice, and also the best method of teaching the skills of interpretation and elaboration that later textual traditions would depend upon.¹⁹

The Pythagoreans treated education as the primary practice of the philosopher. Education trained students in the art of politics, in the practices of equality and friendship out of which justice stemmed. Knowledge preceded politics, amity gave birth to justice,

¹⁸ Diogenes, *Lives*, VIII, 32.

¹⁹ Erasmus, *Adages* [1538] (University of Toronto Press, Toronto 2001) provides one of the best accounts of the *sileni Alcibiadis*.

and law itself was simply the direct expression or proper interpretation of the oracular tradition or inherited symbols of wisdom. There is of course much else. The Pythagoreans would wear white robes. They tended to solitude. They trained in an ascetic lifestyle and practised meditation as part of their discipline. There is a telling anecdote of Pythagoras advising a change in tone on the lute as a means of resolving a dispute. And it is to Pythagoras that we apparently owe the phrase *ipse dixit*, he said himself, meaning ‘the master spoke’, and this is how it is. The professor, one might say, has spoken, *ex cathedra*, oracularly and irrefragably. Also of interest to common lawyers, Pythagoras ‘demonstrated that in the universe, in life, in the cities, in nature, that which comes before is more honoured than that which follows’.²⁰ His maxim to that effect, the relevant *silenus*, is ‘the beginning is half of all’, which well summarises the impetus of precedent as the *ipse dixit* of the professors and judges who pass on what came before. And finally, for more current polemic concerns, we find also in Pythagoras the maxim ‘all things correspond to number’.

There, then, in synoptic form we have the roots of the figure of the Druid as poet, philosopher, educator and lawgiver. The towering disciplinary icon of the professor precedes that of the legislator, just as philosophy and skill with symbols precedes and dictates what is just and what should be law. The professor of law is first off an interpreter of inherited symbols, of *sileni Alcibiadis*, of what Coke called the *vocabula artis* of common law. Here is what Iamblichus reports: ‘Unless one can interpret the symbols, and understand them by careful exposition, what they say would strike the chance observer as absurd ... full of nonsense and idle talk. 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 ...’²¹ Here then the Delphic Druid professes a law that is classically and explicitly a knowledge of things divine and human. It is an esoteric knowledge, a hieroglyphic enterprise, an initiate and guilded practice. The professor trains souls by handing on an immortal or at least trans-generational knowledge, the hieroglyphs of history, its symbols and the means of their interpretation by the ‘Gownmen’. And one could note here also that etymologically the Latin *professor* means public teacher and only later did it gain the secondary meaning of professional as one who practises a technical calling.

The Christian tradition borrowed many of the skills inculcated by the Pythagoreans: the vestments, the ascetic discipline, the love of symbols, the reverence for tradition, the practice of friendship or brotherhood in knowledge, and of course the goal of capturing the soul. The Inns of Court, the early Christian community of common law, likewise inherited those figures and practices. By now, of course, the Druidic was Christian, but

²⁰ Iamblichus, *Pythagorean Life*, 15 and 72.

²¹ *Ibid.*, 46–47.

the professor of law at the Third University, the Inns of Court, was a priest, a reverend judge as they used to say, and partook daily in Christian service. Consider Sir John Davies, lawyer and poet, in the preface to his case reports: 'The learned professor of law is *lux in tenebris*—a star in the firmament of the commonwealth ... Is not his house as it were an *oracle* not only to a town or city, but to a whole country?'²² And that Pythagorean sentiment is hardly uncommon. Coke, most obviously, regards Littleton as an oracle, his name 'not only that of a lawyer but of the law itself', and his treatise on *Tenures* is eulogised as 'the most perfect and absolute worke that ever was written in any humane Science'. It would provide the diligent student with all that was necessary to join the community of common lawyers. Littleton's picture, we are also informed, his 'grave and reverend countenance', may be seen hanging in the Churches of Frankley and Hales Owen. His book is itself a further picture: 'a figure of that higher and nobler part (that is) of the excellent and rare endowments of his minde, especially in the profound knowledge of the fundamentall Laws of this Realm.'²³ Here then the student will learn all the *sileni Alcibiadis* or oracular terms and ornate symbols of the common law from their very own English Pythagoras, their native Druid, their Anglican professor, the 'Gownman', barrator or practitioner of the *ars bablativa* resident in the Inns of Court.

There are innumerable other instances of this lavish praise of Littleton and of eulogy bestowed upon this 'Worke of as absolute perfection in his kind, and as free of errour, as any Booke that I have knowne to be written of any humane learning'. Note also that through this work Littleton 'faithfully taught all the professors of law in succeeding ages'.²⁴ Littleton is without error and elsewhere Coke expands this principle to remark that differences of opinion as to law are simply the result of the unlearned involving themselves in professorial functions. Where there is error it is because *in hominis vitium non professionis*, which can be translated with only a little invention as meaning that it is humans (the *imperiti*) who err and not law professors.²⁵ And one could easily add numerous instances of a similar reverence extended to continental jurists, to Bartolus for example whose figure was so venerated that law professorships were often called *cathedra Bartoli* or Bartolean Chairs, and of whom it was said that if you differed from his interpretations, you were guilty of heresy.²⁶

Translate all this just a little by way of preparation for the ensuing analysis of the critical legal professoriat and we could say that we have the elements of a star system, of

²² Sir John Davies, *Le Primer Reports des Cases et Matters en Ley Resolves & Adjudges in les Courts del Roy en Ireland* (Franckton, Dublin 1615) 9v. For a recent and expansive account of the symbolism of the Inns of Court in the early modern era, see P Raffield, *Images and Cultures of Law in Early Modern Europe. Justice and Political Power 1558–1660* (Cambridge University Press, 2004).

²³ Coke, *Institutes*, Preface, np.

²⁴ *Ibid.*

²⁵ Coke, *Reports*, vol 1, Part II, Preface at fol A.6 a–b.

²⁶ A Duck, *De l'usgae et de l'autorité du droit civil dans les états des princes Chrétiens* (Guignard, Paris 1689) 134. Discussed in P Goodrich, 'The New Casuistry' (2007) 33(4) *Critical Inquiry* (forthcoming Summer 2007).

a status hierarchy, of an esoteric knowledge conveyed through rites of ascetic discipline and through emblematic figures of tradition and transmission. What we inherit, in other words, these inextinguishable memories that pass from body to body, from life to life, in the endless capture of souls ‘for the good’, is not just a concept but also a place, position and institutional habitus. It is a role, a figure of truth, a *prosopopoieia* that has gained momentary mention within left accounts of lawyering but haphazardly, fleetingly, in an exterior form and without history or even much thought.²⁷ So the authoritarian, conventional law professor has been ridiculed from time to time. Roberto Unger was elevated briefly to the position of the prophet of the critical legal studies movement, and Duncan Kennedy has occasionally been termed the High Priest of CLS, but these are figures that have not been pursued; nor has the question of how to inhabit or extricate oneself from these roles ever really been extensively addressed.

The professor of law teaches a way of life, a capture of the soul, an esoteric and in origin dark art of hieroglyphs and occult symbols. He and more recently she too schools youth, passes on a tradition of dark words, black letters through whose proper interpretation the good soul and the spirit of amity are putatively kept alive across generations. Law here instantiates community and perpetuates tradition through its priestly function. The law professor teaches the inherited art of founding community symbolically. It is the discipline of disciplines, the law as a way of life.²⁸ It is a passage of faith, of *ipse dixit* or divine authority, and it is religious through and through. It binds. The law is *ligamen* or ligament as we would say and holds the body, private and public, soul and deed, together. And by those same tokens, law can use any of the other arts—music, poetry, theatre, dance, painting, whatever—to aid its cause of properly displaying the absent roots of being together, the *metempsychotic* relay, the origins of justice, the zone of indeterminacy of judgment as such. High stakes involve the use of any and all arts, techniques, practical aids that are available. It is a veritable bricolage to which today we can add literature, economics, history, media studies, linguistics, feminism, race theory, or good old simple and singular critique.

INTERIOR AND EXTERIOR: AN INTRODUCTION TO ACADEMIC SCHIZO LAWYERING

The Pythagorean project, philosophy of law as a way of life, may seem at some remove from contemporary law teaching. History is like that—distant and initially unfamiliar. The figure of the Druid, however, the image of the professor as priest and officiating at

²⁷ The references are in the main quizzical. The best are the earliest and are reviewed in P Goodrich, ‘Satirical Legal Studies: From the Legists to the Lizard’ (2004) 103 *Michigan Law Review* 397, 457–64.

²⁸ In Ramist terms it is *ars artium et scientia scientiarum*—the art of arts and the knowledge of knowledges. See P Goodrich, *Languages of Law* (Weidenfeld and Nicolson, London 1992) for discussion of this point.

rites of sacrifice, is perhaps a little less difficult to recognise. What is crucial to my thesis is that the centrality of education be acknowledged and that the political nature of the art be addressed. The law professor, and often it is especially the leftist law professor, uneasily inhabits a structural site of training the soul to do the work of law. The law professor is structurally placed as the first lawgiver. The law professor hands on a language, the *ipse dixit* or maxims and symbols, the *sileni Alcibiadis* of modern common law. It is a religious or we could say spiritual function in that it is aimed at the soul, at *mens legis*, and teaches the code of conduct and rules of governance of community. It is also and more obviously political. The law professor trains the new jurists, the nascent subjects of law, and hands on to them, most often implicitly, a sense of community, the rules of amity, the initiate markings of professional knowledge. Such at least is what history suggests and the inherited images of the jurist as oracle and reverend brother relay.

Move now from the sublime to the ridiculous, from distant past to immediate present, from the druidic to the economic, and we can take a letter or two from the pages of Richard Posner's far from exploratory *Frontiers of Legal Theory*. It is not an immediately obvious choice. Ronald Dworkin's *Law's Empire* or Anthony Kronman's *The Lost Lawyer* might seem more directly to the point: the optimistic figure of Hercules as philosopher seer, or the more melancholic figure of a fading lawyer statesman, both in their way present an image of the law professor as a meta-politician. Both are interesting and useful foils for a left critique of law, both implicitly stress the religious function of law teaching, and both imagine priestly figures who will in a somewhat unwitting way revert to the proper Druidic function of law teaching, which is that of capturing the soul of the student—or, in Dworkin's more imperial project, that of the judge for fraternity, for the good and the true. They will remain in the margins, however, because they are marginal. They represent a somewhat alien presence, what used to be called a 'fucus' or cosmetic overlay, an anxiety or grandiosity of the legal off hours, a fine idealism, and not really a description of the rites of passage in the Socratic classroom, the everyday practice of the law professor.

So turn to Posner. Elevate his position in the citation rankings, why not? At the beginning of *Frontiers*, first paragraph, where Kronman is talking of loss of the lawyer's soul, Posner simply states that 'traditional legal education is practical'.²⁹ He goes on, laconically or esoterically, it is hard to say, to indicate that there you learn to parse statutes and judicial opinions, recognise fundamental legal doctrines, learn professional values, and acquire skills relevant to litigation and negotiation. 'Such an education, followed by practical experience as a lawyer with a good firm or in a good government agency, can form a highly skilled professional.' The language is interesting, and the syntax a touch ironic. The 'good', which is mentioned twice, comes after legal education, is exterior to law school and its training, and is to be found or acquired, presumably by chance, through

²⁹ R Posner, *Frontiers of Legal Theory* (Harvard University Press, Cambridge MA 2001) 1.

placement at a 'good' firm or 'good' government agency. On this account, semantically at least, the good does not reside in education, it is not inculcated through parsing texts, neither is it acquired through professional values, nor even through learning 'fundamental legal doctrines'; which may be accurate but seems a touch strange in the introduction to a treatise on the frontiers of legal theory. How would the firm or the agency know the good, let alone the good of law or the good of agency for that matter, if not from earlier training, from the classroom, from the classics, from law school?

Posner proceeds to make a version of the same point in his own way: 'understanding and improving the system' is not a function of law school training because 'it cannot cultivate the requisite *external* perspective'. For an external perspective, for the essential tools necessary for understanding and improving the system, for access to the good, he suggests recourse to an outside of law, to the generality of the theoretical, although he also acknowledges: 'This is not entirely a good thing; a lot of legal theory is vacuous.' And later he laments also that the term is 'pretentious'; which is really code for Posner saying that theory is a misguided enterprise, not really part of the good, and it is economics that is in truth the discipline that applies most universally and objectively to the legal system in all its substantive domains. Later on that. For the moment Posner is just an example, a prime example, because both polemical and vague. He is also not that self reflective, not here at least, and hence he is especially symptomatic.

Return to what he says about legal training. You parse, you gain skills, and if you are fortunate and go on to a good firm or agency you learn to 'work' the system. All of which casts legal education in a somewhat enigmatic light—not least because Posner is not going to discuss it. He is on to theory, which is outside of law school in its traditional pedagogic guise and which in the main will not actually help with practising law. It may promote utopian inclinations or generally unsuccessful 'lawyer-engineered legal reform', but that is external to the didactic enterprise of learning law and becoming a 'highly skilled professional' working the system. So Posner discusses legal education, the professing of law, only by implication and omission. It would seem that it is hermetically sealed. It is separate from the good. It involves neither understanding nor improvement of what is studied. No critical impetus, no self-reflective apprehension of the discipline. No evaluation of the moral good of the substantive subjects studied, and indeed, more extreme still, no understanding or evaluation of the system being joined. Law school in this regard, according to Posner, the pioneer of the frontiers of legal theory, is in essence a pre-reflective discipline, or were one to be Freudian about it, which Judge Richard is not, a pre-Oedipal pursuit.

What then is this interior of law, this pre-reflective and in essence secretive dimension of legality that legal theory itself cannot address except as an outsider? The answer has to be a species of catechism, the rules of oral instruction, originally in a faith and latterly in its law, a matter as the Romans put it most eloquently *de fide instrumentorum*, of faith in

our instruments (which has come to mean in our writings). Certainly it could be argued that the distinction between interior and exterior is an analytic one and it is true that such is arguably its philosophical provenance. We find it most notably in HLA Hart, who distinguishes the internal and external aspect of legal rules. The internal aspect is what Neil MacCormick termed the hermeneutic point of view, that of an understanding predicated upon a degree of internal acceptance or approbation of the relevant legal rules and logically also of the system as a whole.³⁰ MacCormick is very clear on that and requires expressly that the law professor believe in the value of the system as a whole, that he or she regard the enterprise as being a good one and for the good. There has, in this view, to be a degree of acceptance for interpretation of law to be possible. So Hart believed, and MacCormick mimics, but, while that internal requirement of faith in the grid is interesting, it is not what Posner means.

He is more intuitive than that. He states straight out in the introduction to his new frontiers: ‘By “legal theory” I mean to exclude both philosophy of law (legal philosophy, or jurisprudence)—which is concerned with the analysis of high-level law-related abstractions such as legal positivism, natural law, legal hermeneutics, legal formalism and legal realism—and the analysis of legal doctrine, or its synonym, legal reasoning ...’³¹ Which blanket and arbitrary exclusion of most of what would historically fit under the rubric of theory certainly excludes the analytic distinction between internal and external relations. It also rules out Hart’s conception of the internal aspect of legal rules involving not only ‘common standards’ but also ‘a critical reflective attitude’. In fact Posner leaves us with nothing more than a presupposition, an assumption of a self-evident skill or knowledge set that is interior to law and so too, by implication and practice, free of the exterior disciplines of theology, history, politics, literature, economics or any other additive recognised, or more likely not, by Posner.

What then is the interior of legal education, of professing law, that Posner assumes to pre-exist the exterior and to require little or no explanation. Particularly so, self-evidently so I would guess, if what is being discussed is theory with its bent towards the vacuous. We can start straight-faced with what Posner says. It is where you learn to ‘parse’. You learn the *pars orationis* or parts of speech. You learn, in other words, the skills of legal address, the grammar of law’s texts, the nuts and bolts of construction and interpretation. Such is the immediate meaning of parsing and it tells us really very little, almost nothing. But of course parsing has other connotations, more complex roots that include weaving of cloth, fabrication or making of something. Here presumably it is the weaving of the seamless web of common law that is being inculcated. In that latter and solid etymological root we could also play a little and note that a Parsee—a student who is taught to parse—is also, phonetically at least, a Parsi or Perse, one in flight from Mohammedan persecution,

³⁰ N MacCormick, *HLA Hart* (Arnold, London 1981).

³¹ Posner (n 29) 2.

from Muslim attack. Perhaps, by extension, in the hands of an American common lawyer, one could view it also as a resistance of sorts to Eastern knowledge, non-Christian norms; which seems pretty accurate. The Parsee in this admittedly somewhat indirect philological sense is the inheritor of the war of monotheisms, the descendant of the crusades, or here of *pax Islamica*, of the history of the imperial Caliphate.³²

It is an interesting lexical play, a curious coincidence in its way, but my argument hardly depends upon it. Posner's reference to parsing is simply a coded reference to the technicality or distinctiveness of common law method. He is implying, if not directly stating, that there is an interior of law, a distinct, discrete and unified interior—a system. To parse is to learn the means of dis-encrypting the *sileni Alcibiadis* of law, a matter of coming to terms with the dark symbols, the black letters, the sacred and so hidden truths. More than that, this schooling of youth, this passing on of tradition and way of life, occurs in tacit forms, through aura and without writing, through the simple status, or—be direct about it—the Druidic authority of the one who passes the knowledge on through the agon of the Socratic lecture. The very fact of there being an interiority of law, an internally defined perspective and unified subject or system, requires no discussion, is in itself without theoretical interest for Professor Posner. It is pure Pythagoras: *ipse dixit* Posner, or in an Anglicised version we can say that it is axiomatic, a question of this being an article of faith, a matter of belief, the secular juridical equivalent of the Reformed Christian requirement of proceeding *sola fide* or by faith alone.

Posner's silence, his separation of theory from law teaching, his intuitive repetition of the distinction between interior and exterior, his silence as to what constitutes the method of interiority, the origin of the good, is highly symptomatic. Posner, to be blunt, is reproducing the conditions of faith in law by means of passing on the mystery of the law teacher's and indeed the law school's 'secret and holy retirement', the space of schooling understood in Pythagorean terms as the site of passage of souls, of an eternal memory. I am not suggesting that Posner is explicitly adopting such an arcane, esoteric or priestly position. He is not that prepossessing figure. It is rather a structural place that is being instantiated and reproduced. It is the normative function, as Pierre Legendre puts it, that Posner relays.³³ To understand it requires a little more history and a sense of the dual aspects, or Janus face, of teaching law.

History is local. The US law school is here the site and issue of analysis. My concern is to address its implicit message or more simply its tacit rule of method. Posner's silence as to the practice of law teaching, the cryptic reference to parsing, is our starting point. Here in the interior, free of exterior, free of the 'good', which with luck will come later, youth, the student, is taught the *ipse dixit*, the black letter, the arcane maxim, the grammar

³² On which see M Diamantides, 'Towards a Western-Islamic Conception of Legalism' in P Goodrich, L Barshack and A Schütz (eds), *Law, Text, Terror. Essays for Pierre Legendre* (Routledge, London 2006).

³³ See P Goodrich *et al* (eds), *Law and the Unconscious: A Legendre Reader* (Macmillan, Basingstoke 1997) for an introduction to Legendre's oeuvre.

of legality. This is what the law student pays for and it comes with all the trappings, the rites and theatricality of truth. That is the lore, the theology, of the place but by the very same token it offers no reflection upon the status of these rites, neither their history nor the history that they contain and pass on. According to Posner, the law professor simply professes parsing. He could, of course, and put him to the task and he surely would say much more than that. Would doubtless write books on efficient parsing, the cost-benefit analysis of grammatical relations and so on, but the point is that he hasn't and even if he had there would be no history, no exteriority, no theory of good and bad to accompany his elaborations. And thus, deep within the pedagogy of law, at the interior or core, in the *sanctum sanctorum*, we have an open question, an empty space, a void. Beyond this point, law runs out. For Posner that means presumably that we have exceeded all interiority and have to move to theory, to the exterior, to see what we think about our inner experiences of law, our encounter with the professor and his Pythagorean art.

All religion is an attempt to deal with the void, with death. Law is no different in that sense. That is not my point, although it is a valid and interesting one and particularly pertinent to lawyers. The issue that I want to address is rather the disavowal of this point, the institution of the void as silence, as non-reflection, as the moment—the precise moment—of abandoning ship, of leaving law for theory. The law professor splits. Posner leaves. But more than that, he expresses a structural split, he silently embodies a bifurcated professorial persona, a schizoid position. Others have made this point as well, usually in relation to the schizoid character of legal theorists who lack training in theory or write outside their discipline. Posner has doubtless been subject to such criticisms as well. I don't think that he is in this regard exceptional. It is intrinsic to the contemporary constitution of the US law school that the professor inhabit a deeply troubled or blithely insouciant position in relation to the core of their professional practice, their role as pedagogues, their professing of law in its ritual senses. Put it like this: if theory really is exterior to law then professing law is going to require shifting or dancing between worlds, between interior and exterior, between unconscious and conscious, between unknown and known, law and theory as distinct relations to the practice of professing.

THE EXCEPTIONALISM OF THE US LAW SCHOOL

I have used the example of Posner, brief though it is, for obvious reasons. Selden reports, 'The *Druids* have one over them, who has the chiefest authority amongst them'. He also comments, just to offer a sense of transition and tradition, of legal metempsychosis or passing on, that 'when he dies, if there be any one that is eminent above the rest, he succeeds in place'. Posner pretty much fits that bill in the US legal academy and his succession to this position, just to state the obvious, was pretty much by dint of unspoken

eminence or elevation without election. A very common law form of process, but one that should be acknowledged. He founded a movement, he promulgated a theory, and law and economics swept through the US legal academy. For this to be possible, for economic analysis, cost-benefit calculus, to become the theology, the external criterion of the good, certain prior conditions of possibility had to appertain within the law school.

The history of the contemporary US legal academy, the 'Harvard effect' and Langdell's case method have been told often enough. I can be brief because all I really want to do is posit a theory of the conditions of possibility of the contemporary legal academy, its denial of theory, its externalisation of the good, its flight from politics as the history of injustices. I am concerned, in other words, with the constituents of the void, with what it is that Posner does not say, what it is that the professor of law and economics, the prototype of scientist and doctrinal scholar does not profess, omits to teach. So the history I will refer to begins in the late 19th century with the appointment of Christopher Columbus Langdell to the Deanship of Harvard Law School in 1870. He was to remain Dean for the next quarter of a century and during that time Harvard became 'the market leader and professional exemplar' of the newly formed University law school.³⁴ What was the secret?

The extant portraits and busts of Langdell show a suitably Druidic figure. Wavy hair coming down over his ears, a long beard parted down the middle, left and right, and spectacles, the mark of the thinker and scientist seer. He is what the glossators would have termed a *langobard* or long beard and there is something prophetic, megalographic, in his image.³⁵ He looks the part of the inventor and founder. What he founded, of course, was the case method as the basis of the newly formed University science of law. This was the latter quarter of the 19th century and science, in the sense primarily of the refutation of historicism, was the mood of the times. The President of Harvard University, Charles William Eliot, a mathematician and chemist, had revolutionised the teaching of chemistry by jettisoning lectures as the mode of teaching in favour of the 'classroom laboratory method'.³⁶ Experiments, the stuff of the laboratory, were to be conducted with a view to deducing from them the general principles that governed individual cases. Langdell was appointed to reform legal education in a similar manner. He was in some respects a curious choice: 'Langdell, taciturn and studious, surrounded his work with a "deep silence"'. But if the issue is not so much science as faith, then the deep silence is precisely the mark of the Druid, the Pythagorean leader, whose followers and acolytes will spread the word. And that is indeed what happened.

³⁴ R Stevens, *Law School. Legal Education in America from the 1850s to the 1980s* (North Carolina University Press, Chapel Hill 1983).

³⁵ On the portraits of law school Deans see P Goodrich, 'Looking at the Overlooked: Portraits of Law School Deans' (2006) 54 *Buffalo Law Review* 833.

³⁶ Neil Duxbury, *Patterns of American Jurisprudence* (Oxford University Press, 1995) 14.

Langdell sought first to establish the ‘dignity’ of law as a scientific discipline and one worthy of a place in the University. His scheme for achieving this end was simple. As common law has always done when challenged or in need of ideas, Langdell imported continental legal thought. He sought stimulus and product from Roman law—after all they have been doing it much longer and much more universally. To give law the ‘dignity’ it needed—and recollect that dignity is both honour and according to the relevant legal maxim ‘what does not die’ [*dignitas non moritur*]³⁷—it was, he claimed, essential to establish two things: ‘that law is a science, and that all the available materials of that science are contained in printed books.’ As Stevens puts it, Langdell confused science as an empirical endeavour with science as a rational activity, and continued to proclaim that ‘the library is the proper workshop of professors and students alike; ... it is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists’.

That was the theory—it could have been phrenology, says Pierre Schlag, but in fact it was law. What it taught, as Langdell’s colleague Ames put it, was ‘pure law’ and nothing but pure law and it led, as Neil Duxbury has, as ever lucidly, observed, to a Darwinian practice of teaching. I will note just two things. First, the laboratory that the student studied in, the experiments confronted and reproduced, were very limited in number. The belief that science involved extracting surprisingly few principles from an even more surprisingly small number of cases led to a somewhat bullying method of quizzing students on the cases that they had read and prepared for class: a very few cases, even fewer principles. That was legal science, school law, the interiority of legality, the skill of Posner’s parsee. To this we need to add that the extraction of principles, being a scientific enterprise, always involved relating the individual case and the principles deducible from it to the ‘system’, the purity or putative totality of law. Here then the student was at a disadvantage. Youth knows less than age and certainly does not know either the purity or the totality of law. Thus the classroom struggle, the inaptly named Socratic method, will break the student down: ‘If the instructor can break the student expert down and force a reversal of his opinion and then start on him again and break him down a second time, so that he is forced to admit that his first opinion was right, the instructor will score a considerable success.’³⁷

The interiority of law here appears to be a carefully constructed void, a violence done to the ego of the student, an imperial intervention which breaks and breaks again. The student is broken rather as God broke the law tables, so as to inscribe anew. The issue of this erasure of the student self aptly captures the neophytes’ birth to law, the symbolic permutation in Legendre’s terms, the moment of metempsychosis or passing on of the juridical soul in Pythagorean teaching. Extrapolate a bit. This method of schooling is

³⁷ Cited in Duxbury, *ibid*, 17.

both agonistic and censorious. Students, of course, may often love it—love of the censor is common enough—but what should be kept in mind is that the process is predicated upon removing the subject from their prior self, denying biography, experience, affect and history so as to constitute a new subject, the Christian project, as Tim Murphy depicts it, of the penetrative scheme and inculcation of the juridical soul.³⁸ First, erase what is there, penetrate, break down. Then, for safety, for certainty, do it again.

The Socratic method replays the principles of legal science in the pedagogic setting. Looked at as a discipline, the same practice is evident. The discipline of law, the US version of legal science, arrives more or less *ex nihilo*, as a conqueror, as the sudden invention of law school and school law as a University product, as a commodity that has the dignity of scientific status and can to be sold to the University and then to the future of lawyers unborn and untrained. The secret of legal science, the professional status of the discipline, the higher fee, all lie in setting common law up as a distinctive scientific practice, as a method and métier that is quite independent of other disciplines, that has its own laboratory, its own logic and system. Just as the student is broken down and broken down again so as to clear the passage of the professional soul, so too the discipline of common law is excised from history, removed from politics, separated from philosophy, and indeed confined away from all other disciplines so as to constitute its own interiority, so as to make it pure.

There were and are many advantages to Langdell's case method. It is cheap to teach and highly profitable as a commercial enterprise. It comes with the dignity of science, with the patina of professionalism, meaning that it is not easily contested or disproved. It cauterises its students emotionally and intellectually, with the result amongst others that they will likely cleave to law school, stay there, see it out, pay their dues, even if they don't go far or stay long in the profession. Even if it is not a happy life, they will do the time and get through law school. But return to Posner and the present. The greatest invention of the case method, the trick as it were, lies in placing law in a vacuum. The discipline as a practice of teaching involves simply extrapolating from a very few cases. You are taught, as Posner put it, to parse. But parsing is pointless without a purpose, and working the system is meaningless if you have no sense of how the system developed nor of the justice and injustice of its applications. Put it as lightly as this: parsing, working the system, learning the pure interior of law, all leave the student in a void, bereft of history or context, biography or experience. And the same is true, quite frankly, of the professors. They are simply older students who have probably run away from a few brief but unpleasant years as clerks or apprentice practitioners. They sit in the library now, or on LEXIS or Westlaw, along with all the other students, and to borrow Langdell's fertile image again, they are in their laboratory, doing their experiments, which means nothing less

³⁸ WT Murphy, *The Oldest Social Science? Configurations of Law and Modernity* (Oxford University Press, 2001).

and nothing more than reading appellate court decisions. The discipline resides in the imaginary domain of the higher court determinations. You don't even need to read the transcripts of the trial. The student is actively discouraged from knowing what happened—why there was a conflict let alone what social pathology underlay the dispute. The game is to read what the judge or judges said. A pure science indeed. A science that is perfectly clean, quite unadulterated by time or place or persons. A science, as Althusser would have put it, without a subject.

If the case method generates a vacuum, a science without a subject, a classic instance of anti-humanism, then the perfect theory of law, the theory that will match the discipline will be, as Posner puts it, 'vacuous'. He means that theories other than law and economics are vacuous—law and literature, for example, in his view, has nothing to teach us about law—but in fact he is protesting too much. The vacuous theory of the vacuum, the empty exercise *par excellence*, is law and economics. It has swept the American law schools, it is now the standard of judgment of scholarship, it is the measure of status, the ruling network, the dominant theoretical perspective. The reasons for that are, of course, economic. Couldn't be anything else. Law and economics is as cheap and profitable as the case method itself. Indeed, as I suggested, it borrows the very same protocols of scientific method and manipulates them in the laboratory of the library or more often in the candleless lecture theatre of the skull to determine *in abstracto* and entirely hypothetically whether one or other formulation of a legal rule will result in greater efficiency. Bentham's felicific calculus is replaced by what I will term an 'ecfactic calculus', a universal measure of imaginary product or of hypothetical efficiency.³⁹

The roots of law and economics lie in game theory as adopted by the analytic legal philosophers of the second half of the 20th century. The issue is that of reading law as the rules of a game: cricket in England, baseball in the States. Treat law as a game, the rules of a game, and then hypothesise the most efficient method of arriving at any given desired outcome. The game theory assumes of course, in economic terms, that all the players are rational actors, that the actors are equivalents, abstract entities, and that the market—the playing field—operates according to its own invisible laws of profit maximisation. Assume the conditions of a perfect game, control that is for all variables, and then make your 'ecfactic' calculations. The details have been rehearsed elsewhere and the sale of law and economics as a credence good, as the theoretical commodity that law school produces, is not the only point. Note simply that this supposed science of law and economics—it is hardly respected by economists, but that is another story, another status conflict—has leapt into the laboratory, the vacuum that the case method generated. It has done so with remarkable success and that is because it mirrors the vacuum, it requires nothing more

³⁹ *Ecfacio* is one version of the Latin root of efficiency. I draw the term from this specific if obscure lexical root because of the connotations: *ec* or *ex* meaning 'from' or 'away', and *facio* meaning 'to do'. It implies a shift away from doing, the opposite of a practice, a non-rendering. All of which fits my intended neologism very well.

than the case method offers: take a principle of law, an isolated case or doctrine, compare it to an alternative principle, hypothesise the rational actor's response to the two possible outcomes, intuit the maximally efficient outcome on the basis of how supposedly rational entities would respond, and there you have your *ecfactic* calculation.

The exceptionalism of the contemporary American legal academy lies in the combination of the case method and the *ecfactic* calculus. The dyad of imaginary laboratory and imaginary science allow for an exceptionally resolute professionalism—if there is no scholarly discipline, no subject, then parsing is irrefutably the profession, the *recondite* detail—and for a highly successful ornamental theoretical discourse of the economics of legality. The latter is a low cost and highly efficient mechanism of credentialising law professors and provides an essentially ludic mode of professional interrelationship. It can even give law professors a marginal status as service providers for the regulation of market driven dimensions of legal conflict. That said, even Posner admits that law and economics is 'theory', that it is external to law, a moral discourse that will help to determine what is good and what is bad in the system of rules. The *ecfactic* calculus is not a dimension of parsing, it is not interior to law; it is rather, and here we return to our starting point, a *recondite* rite, a hieratic mode of life, a Druidic practice or Pythagorean capture of souls.

HISTORY AND CONSCIENCE

The history of challenges to legal science or more recently to law and economics evince not only that there are cyclical patterns of dominant ideology in law but also that the imaginary site of legal science is extremely durable. Law in the sense of *nomos* or structural disposition of social places is our fate, the predestination if you will of all stable human groupings. The radical critics of law have always been a minority, and generally deemed heretics, outlaws, heterodox or, in the current version of that jargon of exclusion, psychotic or schizoid. To teach law and to write theory, as currently constituted, are separate activities, interior and exterior, self and other. Hence my starting point, the initial anecdote of a child denying God and then leading prayers, challenging authority in the same moment as he relays it. That is the paradox of critical legal scholars, what Deleuze would term their moment of schizoid consciousness in the positive sense of facing an interior challenge, another self that impishly or youthfully defaces what the legal subject, the tired white face with one less idea each day, has come to profess.⁴⁰

Without history, without an exterior of the discipline internal to the subject and to the subject of law, the phenomenology of professing law becomes a practice of avoidance and escape. Unger used the fascinating image of a fatigued priesthood, Druids who stood

⁴⁰ G Deleuze, *Essays: Critical and Clinical* (University of Minnesota Press, Minneapolis 1998) 32.

before cold altars in tedious embarrassment, longing I would guess to slough off that history. For him it would seem as if law teaching could only bring sorrow and the inevitable conclusion would seem to be that the self-consciously and also technically melancholic law professor is bound if not to give up their job, then at least to devote their energies to something else. Unger shifted into political philosophy and recently ran for President in Brazil. At least that shows that law professors at elite US law schools would seem to have ample options. Others have tried alternative exit strategies. The names don't matter, but we can note a range of options from therapy to fiction, from utopian imaginings to sub-cultural adventures in style. Or, much more common, there is the path of disenchantment, the slide back into the role of the traditional law professor, the slow engagement with the mask of legal science and the everyday routines of parsing. It is a slide to the right, an ecstatic dissolution of hope, a waning of aspiration, or both and more. But in all of this there are ample opportunities for humour and anger, pleasure and pain, polemic and denial, acting up and acting out. It is not my intention to judge such modes and moods directly. I have learned perhaps from prior mistakes. I would rather end by addressing the phenomenology of this binary structure.

What is striking is the pattern of what I think is best characterised as avoidance. There is a long history and a continued refusal to break down the opposition between interior and exterior, which here means the existential separation of radicalism and profession, the disciplinary disjunction of theory and law. Start off with a simple admission. The law professor, the critical legal scholar, the radical jurist, joins a hierarchy, is conferred with a status, takes up a socially designated place and role, enters an institution and way of life. It is true of course that they receive no training for this role: the qualification is simply the status credentials of their schooling and clerking and the ability to pass, meaning initially at least to please a small audience of hardened law professors by appearing to be either unthreatening or like them. Then they are thrown into the classroom for a period of untenured years during which their lives, their manners, their *modus vivendi*, is under constant disciplinary surveillance. Faculty sit in, the Dean watches, reports are made, gossip circulates, spouses and friends go to lunch or dinner with the bright young recruits. The Faculty is the panopticon, it is an omnipresent eye, a velvet threat, but it is indicatively not a pedagogy in pedagogy, nor a training in legal scholarship. Just as the chief Druid emerged spontaneously, the path to tenure is an expression of the self-evident, of tacit norms, unspoken rules, the constitution of the law school in the antique sense of its criteria of good manners and the law of white spaces.

So just as the law student is to be broken down and then broken down again, the neophyte legal academic must also be broken down and broken down again. That way and only that way can the law school reproduce itself and the politics of legal education play its proper metempsychotic role. I am tempted to state that it operates as a species of trauma, a wounding that constitutes initiation into the institution. The legal feminist has

to show over time that she can do 'straight law' and get on with her male colleagues. The African-American radical has equally to show that he or she fits in, that no dreams of confrontation with the white professoriat will be relayed in meetings, that there will be no angry outbursts in corridors. And the gay or lesbian or transgendered legal scholar must also evidence that their gendered epistemology can be translated into the law of sexual orientation and into questions of rights and duties as reported through a case book and the gentle passage of precedent. The Marxist has to prove that he is a materialist at the level of theory and not at that of practice. The critical legal scholar must show that she is a respectable critic. All so that the order of academic law can continue in its well-settled place. No challenges to the grid, no jettisoning of the case book method, no stepping outside of the common sense orbit of the reproduction of law.

The personal archive gets replaced by an institutional archive. Put this phenomenologically and we can say that the trauma of law is repeated in the trauma of law teaching. A double induction into an occult order, into what is quite accurately presented historically as a Druidic profession and its Pythagorean way of life. Ironically, because of the exceptionalism of the US legal academy, the entry into law teaching now actually is quite literally an induction into a philosophy of numbers, the ecstatic calculus, and even if such neo-legal economics is avoided, the order of law professors still reigns upon the basis of an esoteric knowledge, a mysterious truth hidden from popular view. Phenomenologically, however, trauma is not about content but rather about repetition, about what cannot be seen but only enacted. That was Deleuze's interesting view and it helps explain the primary function of the law teacher's traumatic initiation. Put it in Pythagorean terms. There is no training in teaching, no direct inculcation of method or epistemic. What occurs happens structurally, tacitly, in the unspoken zone of the 'said of the unsaid'. What does this convey? My answer, derived from informal surveys, from my personal archive as well as from those of the few colleagues who share such things, who can remember how they began, who have the courage and the honesty to recall their own initiation, is that it trains the professor in a style of 'leading'.

The law professor doesn't have to teach in any manner that is recognised, let alone theoretically supported by educationalists. He or she has only to learn how to lead, how to convey the appearance of knowing. And that may mean nothing more (or less) than standing before a cold altar in weary embarrassment. It may mean teaching 'nonsense', as Duncan puts it. Or being absent while present; burbling; speaking in Latin maxims; holding forth in the mode of lengthy digressions. Dangling the key in any of its variant forms, but most usually through adopting a mask of authority, a façade of professionalism, of vocational intelligence, and holding that over the students during the course of the Socratic monologue that hides the history of law behind the *agon* or very real ordeal of antagonistic interrogation.

The law professor learns to lead, to conduct and induce from a distance. The professor is in this sense a prelate. He who dances first. But in the terms of my current account we

can note two conditions of leadership that stem from the historical place of legal education within the common law world. First and most obviously the student of law learns deference to law. Remember Nietzsche's terse observation that the jurist is simply a filing clerk, a librarian learning the classification system of the archive, a being suffused with dust and smoke? For the Druids this was the purport of the doctrine of metempsychosis. The subject inherits a soul, that of the common law. What comes before is greater than what follows. Tradition binds the present. The inheritance of law is a specular transmission of an invisible essence, the *gravitas* or simple obscurity of a law that has been removed from history and temporarily transformed into a pure body of rules, a logic of predicates and their entailments, an ecfactic calculus. And because this mode of transmission is a game, or game theoretic exercise, it is an unknowable enterprise, a method without substance and as such an exercise that requires a significant element of deference, even of reverence, for law.

The other face of the law teacher, of the former student who has been broken down and broken down again, is that his deference for the arcane or esoteric truths of law manifests as authority. The neophyte teacher has to grasp at straws. Their institutional soul is relatively empty, a more or less clean slate, and yet here, suddenly, after deferring deferentially throughout their training, they now have to lead. I mentioned earlier that reverence stems from fear and that fear abrogates, it erases the subject, it wipes the slate clean. What do you teach if you know that at root you have nothing to teach? First rule, *prima regula*, step one, you teach what you know. You adopt the position, invest in the fiction, take up the role of a leader, someone who can carry the discussion, who can conceal enough to lead those who are listening to believe that not everything has been said. That, at least, is the danger, the structural trap, the line of authority, the default position in the professing of law.

Deference has its complement in reverence. We defer to what we don't know and we revere or fear that dark space or void that we know that we cannot know. The trick of the law professor is to come up with words that will intimate or intimidate: inside, somewhere, through whatever lens, the professor can see into the truth of law or at least is a little closer, first in the class, in terms of his proximity to what none except the divinity can fully incorporate and so actually or empirically know. The law professor, it turns out, is only slightly less fearful than the student to whom she passes on her sense of deference, her reverence, her space of fear. The law professor is first, one might say, amongst the ranks of the deferential, and from a distance, helped by myopia or dim lighting, he may look like a Druid, the lectern his altar; and the board or screen behind him can serve pretty well as the site of the *sileni Alcibiadis*, or as a *sanctum sanctorum*, a space into which thought disappears.

That has to be frightening; more or less, a little or a lot, depending upon childhood, temperament and expectations. The point is that the law teacher joins the Druids, becomes a leader, carries around his or her *sileni Alcibiadis*, the ugly box of pretty truths.

That is the nature of common law, its historical form, its continuing presence. The Druids were distinctive for their practice of deciding cases, for elaborating law on a case by case basis, for believing that the judges, the priests or *sacerdotes*, made the law. And they were notable also for insisting that the rules of law remain unwritten, that they should be inscribed in the heart, incorporated in the body of the bearded priestly figure, the solitary knower, and never made hostage to writing. As Caesar and others noted, when the Druids died out, their knowledge departed with them. The common law inherits that tradition and way of life. And for the professor of law, all these years on, it still poses the familiar problem, the hoary question: how do you teach a law that is not there? How do you pass on an unwritten tradition? What can be said of what you do not know? And the answer lies in the mode of transmission, the aura of reverence, the attitude of deference, the secrets of form.

All of which leads to two less metaphysical conclusions. The first reverts to my initial anecdote. Why lead the prayers or play the role of priest? Unger formulated this in terms of the embarrassment experienced while standing in front of the altar. If we acknowledge the history, interpret the theory and address the practices of law professors, our practices, then choices become possible. The Druidic rites, the deference, the reverence, the fear are excisable along with their primary causes. It is possible to drop the mantle of leader, the hierarchical position, the primary relation to what is feared yet partially known. That insistence is really no more than the radical gesture toward a commonality in non-knowledge, the genuinely Socratic position of dialogue. So the first premise in this nascent phenomenology, easy to state, uncomfortable and hard to enact, is that rather than leading, the law professor listens. Let go of the monologues, resist the maxims and one liners, the smart Alec answers, the put downs, the arbitrary impositions of theme and tone and topic.

What that leaves is the possibility of the slow and painful task of learning law anew. Here there is no system to fall back on, no instantiated logic to believe in, no right answer awaiting professorial discovery and declamation. Quite the opposite. There are texts. Read them, read them together, read them well. Which means read slowly, read as a philologist, read the history, the context, the politics and sociality of the text. Who does what to whom? When, where, by what means? Why? It takes a long time to elicit and probe those questions. They are in general off the grid because they are not questions directed immediately to doctrinal categories, to rule based resolutions, to a systemic legal logic; rather they are directed at persons and at life. Nor are there obvious or adequate answers; there are simply questions, and the possibility of painstaking reconstructions through history, transcripts, further images and texts. No comfort here in leading; each and all are in the desert. Start with what you know collectively, in dialogue, from shared histories and experiences expressed.

It is a difficult role. An inversion of the more obvious comforts of the Druidic posture. The phenomenology of radical teaching begins with divestment of the body stuffed to

sneezing point with law. A moment of self-consciousness, a different kind of embarrassment to Unger's professional tedium, the pomposity of 'Professors three and four times over, stuffed with their favourite Aristotle and swollen with a plethora of doctoral definitions, conclusions, and propositions. I would not say this of all of them, but of, alas, far too many'.⁴¹ To which Erasmus adds that 'those men are very often furthest removed from true religion who make a show of religious perfection in title, in costume, and in ceremonial'. In this sense, for the sake of conveying both history and conscience, the critical law professor has to begin with a species of professional striptease, a certain institutional nakedness. She is a woman; he is English; a survivor of boarding school; a working class boy made good; a gay Greek; daughter of holocaust survivors; second generation Caribbean-American; an adoptee; lesbian; trans-sexual; an Islander; an aristocrat; or whatever it is. *Hinc stans*: here I stand.

A professor of law is a being astride two disciplines, the academy and the profession, scholarship and law. A professor of law starts upon the practice of criticism by seeking to express their knowledge of this ambivalent position, a *schizo* consciousness, weakness, history, experience, enthusiasm, and doubt. Nothing else to be done about it but to embark explicitly upon difficult conversations, listening to experience and history, self and others, as well as setting about the double reading of troubled texts, the posing of questions to which none of us has any complete answers, the exposition of the pathologies and the injustices that the institution harbours and the law, the unwritten tradition and its reliquary books relay. We are here then not so much to convey 'establishment', the silence of the origin, the veiling of the history of violence, but rather to question the veil and so put our ignorance to work. Such and similar would seem to be the honest points of embarkation, the appropriate openers to dialogue. That and a certain attention to the aspirations of the group, the moral sensibility that fiction and the residues of earlier education have maybe imparted to those who come afresh to study law. Attention then has to be paid to the ideals, the experience and enthusiasms of the subjects of discipline, the disciples, the students. They bring their desire to the classroom, they want to enjoy learning, and in a majority of cases they still hold fast to the Pythagorean hope of doing some good.

CONCLUSION

Critique begins with the critique of religion and I have tried to spell that out in terms of legal critique and the peculiar or Pythagorean theology of common law. It has its own specific history, its own infinite particulars, its Druidic inheritance, and its own everyday practice or way of life. It is to this history, our history, that the radical pedagogy of law

⁴¹ Erasmus, *Adages*, 247 and an interesting instance of *plus ça change, plus c'est la même chose*.

should be addressed. It is to the specific immunities, the criteria of leadership, the Delphic symbols of the insular tradition, the *lex terrae*, that scholarship and pedagogy should be directed. I want to end by suggesting that critically reformulated, the Pythagorean philosophy that lies at the roots of professing common law provides multiple and significant insights into the structural or epistemic place of the critical law professor as well as offering some potentially radical theories of the embodiment of law, inverse or observe, that professing entails.

The art of professing common law, mundane though it may at first appear, is inherited, unwritten and largely unanalysed from a very ancient tradition. The distinctive features of common law—its Gallic traits—can be mapped by reference to the Pythagorean art of teaching philosophy and law as a way of life. Pythagoras formulated this in terms of directing life towards the good, as a theological project, as the institution of a tradition, as a *metempsychotic* practice. That sounds esoteric but in fact was predicated primarily upon the axiom of any system of precedent, namely that the past is prologue, that we inherit from the origin, that the first is half of all. What was most distinctive about the Pythagorean way of life, the *askesis* of his teaching, was also what likely will seem most familiar to common law professors. The master teaches, *ipse dixit*. What is taught is an esoteric tradition and language, a meaning below the text or transmitted *sub auditio* as it used to be termed, meaning in an oracular, occlusive and initiate form. The *sileni Alcibiadis* are the maxims and cases, the argot and rhythm of common law, its symbols, its built environment, its art and other plastic forms, its modes of conversation, its habits of interaction, its treatment of persons and texts. To this we can add the centrality of the politics of education, the training of the young in the common ways of the common law not only so that they in turn will form a community of friends, a brotherhood, but also so that they too will appreciate the Delphic beauty, the supernatural influence of the symbols of law.

It is familiar enough and yet curiously, uncannily strange. I would like to suggest that what is embodied, what has been inscribed tacitly, through the unwritten quality of the unwritten law is precisely interiorised at a level that is as hard to resist as it is difficult, even painful, to unravel. Broken down and broken down again, the history of the exceptionalism of the US law school leaves us with the aggressively wounded, or the damaged and frightened. The critic straddles both affective states, aggressive in polemic, frightened in terms of status and being, praying perhaps that they will not too go down as 'yet another normativ'. So the critic as law professor takes the stand. It is hard to resist. It provides a little respite from themselves, a moment of theatrical forgetting. Priestly, knowing, wise, eminent, clever, quick, eloquent and more, the law professor slips unthinkingly into their role, their discourse, their presentation of self in a damaged everyday life. What is significant is the appreciation that it is precisely at the level of everyday life, day to day interactions, Faculty meetings, lecture theatre pedagogy, during

the swift solemnity of office hours, that law gets re-established. What is said, as Derrida liked to ask, in the 'said of the unsaid'? When does this discourse leave the archipelago of the abstract, the exterior realm of theory, the *utopos* of doctrine, the parallel universe of the irreal, and touch upon diurnal and nominate everyday life? The radical teacher has to do that work, experience the unease and disquiet of the interior of theory, the ambivalence of unsettling routine while teaching law. Critical law professors—and how could a scholar claim to be anything else?—are still 'Gownmen', or at least they remain so until they think their way to taking the gown off. And with it also will pass the aura, the reverence, the deference, of an archaic and unthought Druidic status, a supernatural power, a claim to knowledge beyond the limitations of the merely human and its histories of injustice, of violence and death.

A final anecdote to flesh this out. As a young law professor in England I used to commute a considerable distance to work. I lived in Edinburgh. I taught at the University of Newcastle upon Tyne, roughly 60 miles away. I arrived at work late one morning, November 1987 I believe, and there was much excitement in the common room. Lord Goff of Chieveley, a Law Lord, was due to give a lecture that day to the students. Such a distinguished visitor was a great boon to the school and the Dean whispered excitedly to me that if I hung around the common room I could meet the great man himself before he spoke. He duly arrived, in good time for his lecture. I introduced myself and then went to the lecture theatre to attend the gala juridical performance.

The hour arrived but Lord Goff of Chieveley did not. We waited. Five minutes, ten minutes, a quarter of an hour. No Lord Goff. I continued to wait. The students, a packed lecture theatre of 100 or so, waited. There was a respectful silence. No murmurings of impatience. Quiet reigned and a full 30 minutes late, Lord Goff, Chief Druid, the contemporary 'Gownman', appeared. His talk was peculiar and somewhat impromptu. He said that judges follow the law and so there was nothing very much of interest that he could say about case law. Then he said that to try and spice things up he would tell the students about those cases in which he had made new law. The exceptions, I guess, that proved the rule. *Ipse dixit* Lord Goff. And then he was gone.

It was not the lecture but the waiting that captured my attention. When I enquired of a colleague, I was told—apocryphal though it may sound—that 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.

I am not sure that there is a rhetorical figure for delayed entrance. Perhaps it is a species of surprise or *exclamatio* because the point is that the expectation of arrival is upended. Lord Goff, in his eccentric manner, had alighted upon a subtle yet effective way of marking his presence and solemnising the occasion. He brought his ritual status with him in the form a trouser-changing routine. For a moment there, just before going in to talk, the emperor was at least partially naked, the Druid undressed, the Law Lord without trousers, de-bagged as we used to say at boarding school in England many years ago.

I doubt that Lord Goff's routine was one of recollection. I have interpreted it as a rite of solemnisation, a moment of ritual augmentation, but it is also a touch bizarre, and rather amusing. I could say much more, but mean only to keep it in mind as an instance of *iurisperitus resartus* or the judge redressed. Which leads me well enough to my final point. Stanley Fish likes to claim that judging is like hitting in baseball. You clear your mind, you brace yourself, you change your trousers in Lord Goff's case, you hit. That is what Fish imagines Dennis Martinez to do. And likewise the judge: he forgets; he empties his mind and determines; he judges. That is what judges do, just as baseball players hit. You have to forget. Empty your head. Enter the zone. To do this you have to put the past aside. You vacate so as to play in the present tense. Such at least is Fish's theory and while it may be descriptively accurate in many cases, it is hardly either morally desirable or professorially sound. On the contrary. It is the opposite of radical pedagogy or critical thought. Professing law should be all about remembering; about using time and the facilities of scholarship to reconstruct the injuries of the past and the injustices of the present.