LOGOS, LEX, AND LAW

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I am not sure whether I have been invited here today as a lawyer who writes poetry, fiction, and political philosophy—or as a writer who happens to be a lawyer. There is a difference. It is a difference much like that between a man looking at his favorite hunting dog—and a physiologist looking at the same dog. As we have learned from quantum physics, the object is altered by the point of view of the observer as well as by the act of observation. In fact, even the language which describes an object may differ radically depending on the observer. This seems especially true in the professions. One becomes accustomed to—if not at ease with—the Latinate baroque of medical and legal terminology, agreeing that it imbues discussion of its objects of contemplation with a degree of precision lacking in everyday talk.

That is surely true. As far as it goes. But even as legal terminology and legal analysis add precision to discourse, they tend to create alternate realities in which lawyers come to live and act and have their being. If the price of regional precision is loss of overall reality, one needs, as it were, another place to stand in order to determine when the fictions of the legal system part altogether with what one experiences as real in terms of the larger universe we all inhabit.

The battle between the logos of the poet or novelist and the lex of the lawyer seems embodied in an essay written by a friend of mine back when we were both studying at Tulane Law School. This friend came to me one day with a paper called The Crimes of Odysseus. He had studied the Odyssey with great care, and found that its hero had committed no less than sixty-three felonies in the course of his adventures. After dealing with the blinding of the Cyclops and the subsequent armed robbery of his cave and such-like, my friend settled down in his last pages to a close analysis of Odysseus’ homecoming, his slaughter of the suitors, and his climactic massacre of the maid-servants, who had succumbed to the suitors over the years.

I listened in amazement as he described the problems in relation to trespass, the use of force without warning in such cases, and the knotty

* “Logos, Lex, and Law” was a presentation given at the University of Oklahoma School of Law on January 31, 1985. The invitation was initiated by Professor Drew Kersen. The presentation was filmed and a video-cassette of the lecture is maintained by the University of Oklahoma School of Law library. The essay is published here for the first time. For a brief commentary on Corrington’s use of the title, “Logos, Lex, and Law,” see the Editor’s Epilogue: Lex, Logos, and Law. All of the appended footnotes are by the editor.
issue of whether in fact the suitors might not, given Penelope’s ambiguous words and Telemachus’ youth and lack of standing to order them off the property, even be considered invitees rather than trespassers. Moreover, had not Odysseus continued his bloody progress even when the suitors attempted to withdraw? As to the dispatch of the maidservants, there could be no question but that we were dealing here with multiple capital murder on a scale that relegated Richard Speck\(^1\) and his unholy company to the trivia file.

When he had finished, I stood there wrapped in silence. A future member of the American Bar had just reduced one of the founding documents of Western culture to the status of a bill of information ready for a grand jury.

—Harry, I said at last, —I gotta tell you. He had a lot of provocation. I’d defend.

He looked at me in surprise, his eyes narrowed as if he had suddenly discovered he was parlaying with a barbarian. —You’d lose, he said shortly, and walked away.

It was that day, as I realized Harry was probably right about my losing, that I began to think about the cleft between *lex* and *logos*, between the formal structure of law as it exists within its own institutional and verbal domain—and the “discourse” of Heraclitus, that deep-welling true order of things human and things celestial called at different times *Themis*, *Dike*, or *Logos* by the Greeks, *Ma’at* by the Egyptians, *Me* by the Sumerians, *Rta* by the Vedic Indians, and *Dharma* by their Hindu successors.

I have had good reason and a lot of time to consider this cleft between legal institutions, their synthetic language, and their attitudes—and the traditional senses of right, truth, and order as they appear in the most ancient human documents we have discovered. As a philosopher and as a lawyer, what seems to me the dominance of system and vocabulary over underlying truth, what the Romans might have called the appropriate *ratio*, stands as the most profound ongoing tension in modern society.

As a writer, my work has tended toward that tension as iron is drawn by a magnet. It is an endless source of good stories. For behold,

I tell you a great mystery: a social order is not at last sustained by its legal and political institutions and their mechanical processes laying claim to fairness, justice, and equality—but by the way in which those institutions and their claims are perceived by the human beings who both compose them and are governed by them. It is not enough that justice be done. Justice must be seen to be done.

When I was a young man, they told me that human rationality began with “the break with myth.”

Eminent thinkers like Martin Heidegger, Eric Voegelin, and Georgio de Santillana proposed the work of Anaximander of Miletus in the 6th century B.C. as the point at which theology and cosmology parted from one another and the reign of reason began. Eric Neumann, a follower of Jung, has shown in The Origin and History of Consciousness, the linkages between archaic myth and modern thinking. More recently, Professor Julian Jaynes has written a thought-provoking book on the origin of consciousness in the breakdown of the bicameral mind.

My own studies have convinced me that “the break” either with myth—or from the bicameral mind—constitutes no more than a tactical alteration in the character of human experience. The death of the gods is much exaggerated, and it is not without interest that the reign of reason was most widely proclaimed at the very hour when Robespierre elevated a whore called “The Goddess of Reason” to the main altar of the Cathedral of Notre Dame as the blade of the guillotine rose and fell mindlessly in what would one day be called the Place de la Concorde.

Carl Jung observed that we had killed the gods—and now they return to us as mental diseases and psychological complexes. James Hillman tells us that the gods still dwell within us, and we must either placate them, come to terms with them, or be destroyed—because they are functions of our psyches.

I trust I need not launch into a long disclaimer here in regard to the dangers of hypostatizing—of taking such things as the symbolisms of the gods and cosmologies and philosophies literally. Indeed such literalism

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is destructive of the very values the literalist would attempt to protect—and that is as true of law as of philosophy or theology or cosmology.

These names are metaphors—noein, theoria—a word related to our word theatre—shows, displays, dramas, ways of seeing. Extended metaphor acknowledged as such we call myth, poetry, art. Metaphor purporting to refer to concrete reality we call science, politics, psychology, medicine, sociology—and law.

The lawyer or the writer begins to walk the path of wisdom when he comes to realize that his metaphor, his chosen way of seeing the world, is not co-extensive with reality, that the concreteness of the law is an illusion generated by potential force—what the great jurisprudentialist John Austin called "sanction," and that alternative ways of seeing, other displays, other dramas, may, in a given situation, not only supercede his own, but require that he step outside the legal paradigm altogether and revision the world from within quite another metaphoric structure.

I have an old and cherished friend who is generally conceded to be one of the finest plaintiff and criminal defense attorneys in Louisiana. There is a longstanding philosophical dispute between us. My friend believes absolutely in the adversary system and its rules. For him, play within the institutional structure and verbal fictions of the law constitutes the central meaning of civilized life. His successes are numberless. His ability to achieve results favorable to his clients is remarkable. My friend is jokingly called "007" by some of us, because his representation seems on occasion to constitute a license to kill.

I do not share his rigorous belief in the adversary system. I surely admire the antique English virtue of "playing the game" in law even as I admire pro football's violence wedded to finesse. But I insist that the metaphor of law, formalized into a Mandarin-system where legal language, usage, and technique manipulates the frame of reality itself, becomes—indeed, has become—as empty and arid as the cold spiritless abstractions of late medieval theology. I tell my friend that some of his victories within the system constitute defeats for Themis, Dike, Logos—and at last perhaps defeats of Lex itself.

A system in which, for example, "probable cause" and evidentiary exclusion become gavottes danced over the corpse of fact and reality and victim seems to me to be a system in decline. Not because I disagree

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with the present application of such devices, but because, my own opinion aside, I have come to sense a growing skepticism—if not cynicism—among Americans regarding the whole range of our law from criminal procedure to income taxation. I recognize that honest lawyers and jurists may differ on the whole range of issues from "vigilante law" to the issue of abortion as it is enshrined in *Roe v. Wade* and its progeny. But the debate between us all becomes meaningless if either side in the debate scorns or has forgotten Lord Mansfield's dictum: It is not enough that justice should be done. It must be *seen* to be done.

Lest you suppose that my background in film and TV has made me prone to elevate image over substance, let me assure you nothing could be farther from the truth. I am not speaking here of "images," "packaging," "massaging the media," or conducting a public relations campaign for the American legal system. Quite the contrary. I mean what I believe Mansfield meant, and what he meant was that the substance of law is not revealed by pointing to the careful repetitive enactment of certain procedural norms. It is revealed only when men *see*—again the Greek *noein*—that justice is done. Those who must live under the law must be shown the drama in which disorder in the body of the community is returned to order by the movement of *Lex* toward *Logos*. Anything less penetrating imitates the aimless whirling of a Buddhist prayer-wheel or the fingering of a rosary when belief in Christ has departed.

Still, what precisely does *see* mean in such a context? It means essentially what the poet Allan Tate meant by "knowledge carried to the heart."7 It means a drama, a display, a showing set out so that it radiates its *alethia*—its shining forth out of darkness, its *divine* quality. *Alethia* is the Greek word for truth, the divine, taken from the Sanskrit word for shining, glowing, sending forth rays of light, and is an adjectival form of *Deva*, meaning a god. The "seeing" Lord Mansfield and I have reference to is *insight*. It is that look into essences that tells us what we see is true. And insight possesses, in its fullness, the same kind of compelling power as mathematical logic. When, through insight into the *theoria* and the *dramatis* of a case at law, we see true judgment, we experience *Dike*, Justice. And *Dike* is a god.

One hardly need add that such insight is not provided in cases where defective warrants or minor police error releases a rapist or a murderer back into the society he has ravaged—or when the Justice Department attempts to quash the opinion of a federal judge, to keep

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that opinion from being printed in the Federal Supplement, when that judge assails the Department of Justice and the Internal Revenue Service for malicious and irresponsible conduct toward a defendant.

Now the lawyer's case is the writer's story or poem. Each, insofar as it is significant and its problems rightly solved, stands toward the measure, the Logos, the central order. It is worth recalling that Hegel's favorite drama was Antigone. From the perspective of a lawyer, the choice is particularly apt. For Antigone represents not the specious and easily resolved tension of luminous good and wretched evil—the kind of case we settle out of court in a hurry if we represent the latter. Antigone rather sets forth the awesome tension of two incontrovertible goods.

Creon, the king, speaks for the essential interests of the community, the state. Antigone stands for the primordial blood ties of family and the cult of the gods.

You will remember that the play carries onward the awful doom which began with Oedipus Tyrannus, went forward with the Seven Against Thebes, and now has come to an instant's equipoise with the end of the battle and the death of Antigone's two brothers. Eteocles, who had defended the city and its order, is given a hero's funeral. The body of Polyneices, who had made war against Thebes, is left to rot unburied, prey to crows and wolves, his psyche thus wandering unstilled. Creon commands that no one so much as sift a single ritual handful of soil over the corpse—even though such rite is commanded by themis, ancient custom. Antigone does so, despite the law—and is condemned to death for having buried a traitor against the nomos of the city as embodied in Creon's decree.

The peripheral issues raised in Antigone are numerous and add to the complex and confusing texture of the play as drama and reportage of late 5th century Greece. But the central tension is never in doubt: Antigone must bury the body of her brother: Creon must uphold his decree and demand that traitors to the city be denied the same rites as those who died in her defense. Such grounds of compromise as you and I might suppose simply did not exist for the Greeks.

Antigone states her case-in-chief clearly enough:

At least he is my brother—and yours, too, though you deny him. I will not prove false to him.

. . . .

Be as you choose to be; but for myself I myself will bury him. It will be good

to die, so doing. I shall lie by his side, loving him as he loved me; I shall be a criminal—but a religious one. The time in which I must please those that are dead is longer than I must please those of this world. For there I shall lie forever. You, if you like, can cast dishonor on what the gods have honored.

Yes it was not Zeus that made the proclamation; nor did Justice, which lives with those below, enact such laws as that, for mankind. I did not believe your proclamation had such power to enable one who will someday die to override God’s ordinances, unwritten and secure. They are not of today and yesterday; they live forever; none knows when first they were. These are the laws whose penalties I would not incur from the gods, through fear of any man’s temper.

So for such as me, to face such a fate as this is pain that does not count. But if I dared to leave the dead man, my mother’s son, dead and unburied, that would have been real pain. The other is not. Now, if you think me a fool to act like this, perhaps it is a fool that judges so.9

Creon’s argument is, of necessity, less dramatic, less pressing toward the essence of things. Still, as lawyers, we are forced to hear it sympathetically.

. . . I here proclaim
to the citizens about Oedipus’ sons.
For Eteocles, who died this city’s champion, showing his valor’s supremacy everywhere, he shall be buried in his grave with every rite of sanctity given to heroes under earth. However, his brother, Polyneices, a returned exile, who sought to burn with fire from top to bottom his native city, and the gods of his own people; who sought to taste the blood he shared with us, and lead the rest of us to slavery—
I here proclaim t the city that this man

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shall no one honor with a grave and none shall mourn.
You shall leave him without burial . . . .
Such is my mind in the matter; never by me
shall the wicked man have precedence in honor
over the just. But he that is loyal to the state
in death, in life alike, shall have my honor.\(^{10}\)

This is not an especially strong example of the argument from public
policy—which, as lawyers, we know is the last refuge of one who has no
case. But we must understand Creon as the legitimate ruler of a
troubled city-state desperate to re-establish order after a series of
disastrous reigns. Now Creon's pride and unbendingness aside, the
issues reach deep into the roots of Greek order as it was perceived at the
threshold of the Classical age. Shall reason rule in the form of decrees
by kings agreed upon by the people? Or shall themis, the archaic
customs ordained by the gods, at last have authority even over the
mechanisms of state?

Sophocles' answer is unmistakable: the law of the state, however
rational, will be confounded by the larger, encompassing Dike of the
gods when it proposes to stand against the ancient usages. In modern
terminology, the metaphor of law is not perceived to be a conclusive
metaphor; it is not co-extensive with the reality of experience. The
prophet Teiresias, whom you will remember from Oedipus Tyrannus,
warns Creon that his determination to uphold the rational system at the
cost of profaning archaic custom will bring only a new round of
catastrophe and destruction upon Thebes, and upon Creon himself:

[Y]ou have thrust one that belongs above
below the earth, and bitterly dishonored
a living soul by lodging her in the grave;
while one that belonged indeed to the underworld
gods you have kept on this earth without due share
of rites of burial, of due funeral offerings,
a corpse unhallowed.\(^{11}\)

In his determination to establish by decree an inequality between
traitor and patriot, and by his condemnation of Antigone to be buried
alive, Creon has outraged the central order, and turned the natural
succession of things on their head. A living woman has been buried; a
dead man has been denied a grave.

Creon argues with Teiresias, spokesman of the archaic modality of
thought, and after long dispute changes his mind. Too late. Antigone is

\(^{10}\) Id. at 168.
\(^{11}\) Id. at 202.
dead, Creon's son, her betrothed, is dead—as is Eurydice, his mother, Creon's wife. Creon himself is at the verge of madness. Dike has prevailed. So much for the merits of positive law in 5th century B.C. Greece.

There is an overarching order beyond law, beyond science, beyond every systematic of experience we have conceived or will conceive. The Greeks metaphorized it as the gods. You may, if you are amused by psychiatric jargon, call it genetically-programmed right-hemisphere directives. In any case, it remains hooded in mystery, out beyond the conventional situations and simplifications of reality we create within this or any other conceptual system.

It is the task of the writer, the poet, the novelist, the philosopher, the historian, to "fill the gaps" as we say in Louisiana Codal Law—to fill the spiritual and psychic gaps that no amount of technical training prepares us to grasp. It is the work of the creative thinker to see, to invite insight as the archaic poets invited their muses, and to create symbolic structures of human experience so large and encompassing that they penetrate past the limits of social systematic and approach the Logos—the central order which governs the psyche as well as the cosmos. I suggest that some such work, such insight, should also underlie the metaphor of law—that we all may see Justice done.

Finally, a footnote on my law-school friend who wrote his paper on The Crimes of Odysseus. He was unable to find a review that would publish the paper, but we heard later that it was on the strength of that essay—along with excellent grades—that he got a job in a very prestigious firm. He is making a lot of money in corporate work, and there is talk of his running for judge in Orleans Parish. I, on the other hand, plan to move out of the jurisdiction as soon as I find work elsewhere—indoors, and no lifting.
EDITOR'S EPILOGUE: LEX, LOGOS, AND LAW

In "Decoration Day," Corrington has his protagonist, a retired Louisiana state court judge named Albert Sidney Johnston Finch, muse about the writing of expanded version of a "treatise" with the title, "From Logos to Lex to Law":

For months I had been considering sitting down to write a treatise on legal philosophy. At an exalted level. From Logos to Lex to Law, I thought I would call it. It would probe the archaic depths of the legal tradition—not as a bag of statutes and rules, but as a spiritual structure. I could be certain that no practicing lawyer worth his salt would read it. I like that.¹

Corrington comments again on the relation of law to logos in one of his stories, "A Day in Thy Court." In the story, the lawyer protagonist, who has set off to do some fishing—in both the literal and metaphysical sense—observes:

It occurred to him that these green-golden fishes had meant as much to his life as the course of the law. But even as he thought it, he laughed aloud. Because bass were as much a part of the law as he was, as were the courts in which he passed his life, the attorneys with whom he lived it out. The law is lex. The bass is logos. She was. He remembered a passage from one of the old Greeks, something about how deep lies the logos, so deep that no dive could reach it. You could not, deep-diving, find the depth of the soul, though you traveled the whole way down, so profound is its logos. That was it.²

Corrington did not, in this view of the relation of law to logos, mean to denigrate law. Walter Journe, the lawyer in another Corrington story, "Every Act Whatever of Man," shows a deep appreciation of the Civil Law:

[T]here came to it no problem that men had not struggled with before. And not simply Englishmen whose Common Law was as rough and recent as their ways, but Spaniards, Frenchmen, Germans—even Russians and Arabs. All had their civil codes. To be a civilian lawyer was like standing for a moment a the end of the law's long intricate web. This strand, two millennia old, still grew, was vital, and no man

who served within it was left alone with his problem. If the code of Louisiana had no answer, then the Code of Napoleon. If not that, then Justinian or Gaius, the Corpus Juris Civilis. What work could man undertake that had not been done before, by those of every tongue and hue who had preceded, those brothers in the law?³

Walter Journe’s sentiments may well have been shared by Corrington himself, but they were not sufficiently compelling for Corrington to devote his own life to the practice of law.⁴

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³ “Every Act Whatever of Man,” in Collected Stories, id. at 301-341, at 315 [26 Legal Stud. F. 245, 259 (2002)].
⁴ Corrington graduated from Tulane Law School in 1975. He practiced law in New Orleans from 1975 to 1978, then gave up the legal profession to pursue work as a writer of daytime TV dramas.