

THE ONE AND THE MANY

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If you forgive me I shall rejoice;
if you are angry I shall bear it . . .

Kepler, *Harmonices Mundi*¹

The search for law and order begins with our bewilderment. Most psychologists explain birth as a trauma in which all men are born bewildered. If this is so, then few lawyers recover, for most of us spend our lives in pursuit of law and order.

Although barely inborn, the lawyer's need to reduce bewilderment is clearly congenital. Unlike the jurist, however, whose sense of wonder doubtless survives an easy birth, the lawyer's drive is not innate. Part of this paper's purpose is to prove that point by way of psychoanalytic jurisprudence.²

The outcome depends as much on what is meant by psychology as on what is meant by jurisprudence. Man fails to be his own measure through the inherent circularity of his claim. Secular self-sufficiency, when claimed for the social sciences, cannot avoid the fallacy of *ad hominem* argument.³

The touchstone of theology alone affords redemption. Without it, there can be no objectivity. The Assyrian, Babylonian, and Egyptian concepts

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1 Prooemium to Book B; See Polanyi, *Personal Knowledge: Towards a Post-Critical Philosophy* (1962) Ch 1 for an account of Kepler's position.

2 See Ehrenzweig, *Psychoanalytic Jurisprudence* (1971).

3 Psychiatry affords extreme examples. What John says has to be disregarded because John is a paranoic. But what John says is the basis of diagnosing him as a paranoic. Therefore psychiatry regards what it says others must disregard in formulating the mental state of John. The *ad hominem* argument in dismissing what John says because he is paranoic is thus wrapped around in the professional secrecy of psychiatry. An esoteric status substituted for an exoteric status in the case of John. The administration of *ad hominem* argument is thus the professional secret of the psychiatrist. This footnote is not an attack on psychiatry. It merely points out a danger. The danger is this — that psychiatrists who renounce the theological responsibility of their priesthood profess to practise their art without touchstones.

of law would otherwise remain as relatively right as their Mosaic response.⁴ Breaking through what is earthbound in psychology and jurisprudence is thus a driving need for those who would seek the wisdom of absolute values rather than just work in this world.

Work binds, but wisdom liberates. Putting the wisdom of psychoanalytic jurisprudence to work for the purpose of the present paper is therefore hardly apt. Perhaps readers will excuse its use when measured against the paper's aspirations. These draw legal theorists' attention to the present renaissance of Pythagorean thought in natural science. The logical consequence of recognising the Pythagorean mystery of co-existing contraries is to resurrect the need for a concept of God in what scientists taught the last generation to regard as a secular world.

The scientist's laws of science (*physis*) and the lawyer's science of law (*nomos*) are thus seen to require re-integration. Their common ground is metaphysics. For several centuries, unfortunately, neither scientist nor lawyer has studied this subject. Today's good news is that both are once again on speaking terms, not only with each other but with theologians. The basis of their communication is divine communion. "Speak, God," writes the jurist Unger,⁵ while the scientist Polanyi⁶ explains scientific commitment in terms of Christian faith. Each thus turns round from a long accustomed secular self-sufficiency in natural science and jurisprudence to tap theology for a much needed *philosophia perennis*. We are thus drawn back to the presocratics to explain metaphysics.

The moral of the exercise by which natural science has returned to Methuselah is that wisdom is eternal, works are ephemeral, and that what little we ought to value is either so self-evident or long-accustomed as to be completely overlooked. This is the context in which the impact of the recent revolution in the natural sciences revives recollections of a presocratic immortality for the philosophy of law.

The immortality is not just Pythagorean but Heraclitean and Parmenidean. The intellectual fellowship of these later presocratic schools continues to enlighten the perennial problems of today's philosophy of law. The problem of disorder and its attempted resolution through law has never been better exposed than by Heraclitus with his temporal jurisprudence of Chaos and Logos. So, too, the fullest concern for the conflicting opposites of the One and the Many must be credited, on the admittedly little evidence we have, to Parmenides of Elea.

It is true that later still than these schools of thought, Empedocles created a complex cosmogony of four elements moved by the unifying principle of Love and the divisive principle of Strife. Anaxagoras introduced intelligence as a moving cause. And the jurisprudence of Protagoras, who was the first lawyer to propound the liar paradox in legal argument as well as being the first philosopher to proclaim man to be the measure of all

Kahler, *Man the Measure — A New Approach to History* (1943, 1967) 50-72. Cf also the prophetic response of Zarathustra to the Persian Magi with that of Ezekiel to the house of Israel.

Unger, *Knowledge and Politics* (1975) 295.

Supra n 1 at 405.

things, is so fertile a source of twentieth century concern as to require its own independent study. Nevertheless, it was Pythagoras who first voiced the deeper issues underlying this world's superficial need for law and order. Those who still lift the legal veil bear witness that the Pythagorean Brotherhood lives on.

I WISDOM NOT WORKS

Peter Sim researched beyond the need for law and order. His coming to Otago in 1968 to occupy the sole Chair in Law continued a tradition. Like Frank Guest before him, Peter Sim taught jurisprudence. Guest's inaugural lecture had been on "Freedom and Status".⁷ Sim's inaugural lecture was on "Jurisprudence and the Legal Process".⁸ Both professors, in demonstrating their first love for jurisprudence, broke through the conventions by which men batten down bewilderment. In consequence neither sought to impose his own need for law and order on others. On the contrary, ambition retreated rather than advanced under the responsibilities of public office. Only the unsuccessful can ever mistake this for being other than a sure sign of success.

Life's irony lies in its rewards. Academic life is no exception. On the way up through the collective enterprise, the individual is encouraged to compete for public status as an instrument of personal power. Nevertheless professors no less than prime ministers soon find their positions incumbered on them.

The resulting crux created by the intersection of public with private life is left, curiously enough when we consider the way in which the collective enterprise promotes it, to be carried almost entirely as a matter of personal conscience. Whether people do or do not deserve the positions they hold becomes a crisis of conscience. We are not just talking about the incumbents of public office. Everyone in society has some status. The hidden truth is that the decision process for public recognition constitutes a crisis of conscience which is remarkably the same both for those who receive and for those who elude the reward of recognition. It entails coming to terms with the conspiracy of collective action whereby private freedom is exchanged for public status, and personal power for public responsibility.

The conspiracy of collective action whereby the best exercise of personal freedom is rewarded with the worst responsibilities of public office provokes a terrifying trauma of private suffering throughout public life. So to say this implements a policy of scapegoat leadership, but the interface between individual and corporate action is far more complex.

On the one hand, our private fear of failure is stirred up by the collective conspiracy. That this occurs even in academic circles is borne out by none less than John Kenneth Galbraith. In his autobiography *A Day in Our Times*⁹ Galbraith notes the damage done by his fear of failure

7 (1968) Otago LR 265.

8 (1969) Otago LR 1.

9 P 18. In his own case, Galbraith mistakenly attributes this almost universal fear to his own humble farming origins.

receive due recognition. Generally speaking, the result is to drive each individual on and upwards in search of reward. Unfortunately, this provides no solace. On the contrary, our fear of failure is quite naturally supplanted by shame at our own success.

It is quite on the other hand, that this natural succession of feelings affords a renewed opportunity for individuality. Hope springs eternal. Our sense of shame is the hallmark of human honesty. It denotes an awakening spirituality quite immune to the trivial tide of human events. Once again, only the unsuccessful can ever mistake this for being other than a sure sign of success.

This is the context of conspiracy cheerfully conducted by every collective enterprise. It is the context in which each past Dean of our Law Faculty has come to sacrifice his own pursuit of jurisprudence to administer law and order for the many. Neither published anything more on jurisprudence during his tenure. Some parts of Guest's inaugural lecture on freedom and status delivered in 1968 remain still so far ahead of their time as to remain overlooked in their resolution of the present impasse between university administration and scholarship. Indeed, both scholars clearly demonstrated by their early writing that to forego research in favour of administration would be tragic for jurisprudence. *Mea culpa*, for when the responsibilities of administration made Peter Sim cease teaching jurisprudence at Otago the present writer was ignorant enough to enjoy taking over.

According to the almost inexorable equation to be observed whenever personal freedom is rewarded with public status, even academic freedom gives ground to academic status. If scholarship is to survive, then this equation of university administration must be reversed.

It is worth speculating, if one has any patience left for psychoanalytic jurisprudence, whether any institution which encourages its scholars to exchange the pursuit of justice for the administration of law is not imposing some sort of regression on legal scholarship. Law and order are most often the concern of very worldly men. Jurists-turned-statesmen are as unfrocked priests — even though the best of them are, like Pasternak's¹⁰ Uncle Nikolai, "still travelling". Of course if a university or any other essentially religious institution would have wisdom it must allow the wise their leisure. Preoccupying their lives with the worldly task of administering law and order is no substitute.

Men unfortunately prefer works to wisdom — a fact witnessed by the author's commitment to the present undertaking. Works can not only be seen and touched (and so be used to diminish any lonely, late-night doubt that we may not exist), but, better still, can be bartered for fame and fortune in the open market (and so improve the status of our existence). Our gain is others' loss, however, for as part of the bargain we enslave our successors by our work rather than use our wisdom to liberate them.

Although it ought to be otherwise, universities are not immune to this world's ways. The greatest teachers, among them Buddha, Christ and Socrates, never wrote a word. They thus avoided the temptation to serve

themselves. Ordinary academics unfortunately become hide-bound by bricks and bursaries, caps and gowns. "How else can we measure wisdom?" we ask. Complacency becomes the cardinal sin of those cloned in their own cloister. We forget that *Dubito, ergo sum*.

When we turn aside from eternity to look into this world's great works of law, we are apt to forget the brutal lives led by those who implemented them. We forget that their rule achieved renown by works not wisdom. It is true that Justinian introduces his *Institutes* "in the name of our Lord Jesus Christ" but he then goes on to describe himself as "the Emperor Caesar Flavius Justinianus – Conqueror of the Alamanni, Goths, Franks, Germans, Antae, Alani, Vandals, Africans – pious, prosperous, renowned, victorious, triumphant, and ever august". This makes the *Adventures of Asterix*¹¹ seem like plagiarism. It would be wrong to suppose that Justinian, credited with the survival of the world's most rational legal system, beat his opponents into submission by the force of reason. On the contrary, as his Proem to the *Institutes* declares, "The Imperial Majesty should be not only made glorious by arms, but also armed with laws . . .".

Justinian, Napoleon, Edward I and Henry I, to name but a few great law givers, spent most of their literary lives preaching justice. What they actively practised was ruthlessly otherwise. Edward I is renowned as the English Justinian for his great statutes. These were really the work of his prime minister, Burnell,¹² no less than Justinian's *Institutes* were the work of the civil servant Tribonius and the law professors Theophilus and Dorotheus.¹³ Edward I's real-life claim to fame lay not as the English Justinian by which the common law likes to remember him, but as the Hammer of the Scots. North of the Scottish border, the British remember Edward's exploits no less vividly than Cromwell is recalled in Ireland. And as for Henry I, renowned as the Lion of Justice, one is never sure whether this is not merely contemporary sarcasm historically misconstrued. Henry hanged more of his subjects than most English monarchs then or since;¹⁴ and as for his so-called "Laws", they were written unofficially by a private jurist.

Orderliness was often everything to these men whom legal history praises. In their own lives law was but a means to the imposing of orderliness on others. Their calls for justice were, as most calls for justice still are, mere political diversions. These men carried their politics into action, and so employed justice also as a military manoeuvre. They were all, like the litigious Vikings from whom we receive our word "law", military men who once they had retired from active service, conceived a concern to continue imposing their will through law and order. Were it not for a few forgotten civil servants and law professors, Justinian's *Institutes* and the Napoleon

11 Eg Goscinny et Uderzo, *Une Adventure d'Astérix: Astérix Légionnaire* (1967).

12 Plucknett, *Legislation of Edward I* (1949) 161.

13 See Lee, *Elements of Roman Law* (1952) 23, 39.

14 "The severity with which Henry punished offences against the laws caused him to be popularly regarded as the 'Lion of Justice' described in the prophecies of Merlin. William Rufus had reintroduced the punishment of death for offences against the forest laws by Henry it was extended to ordinary crimes. In the year 1124 no less than forty-four thieves were hanged in Leicestershire at one time", *Taswell-Langmead's English Constitutional History* (11th ed Plucknett) 52.

Code would be studied only in military history as examples of intellectual warfare conducted by men whose muscles had become middle-aged.

The worth of wisdom as against works becomes more marked when we try to achieve historical impartiality in considering what constitutes a work. So far we have kept company with the Many in revering the victorious and forgetting the vanquished. We follow the fashion of overlooking men like Hitler and Mussolini. They were not very wise men, certainly, but exceptionally hard workers. They worked almost as hard as Ghenghis Khan.¹⁵ Given the help of a few good law clerks or university professors they might have made their mark as law-givers. After all, the founders of the French, American and Soviet Constitutions successfully resurrected law and order out of their respective bloodbaths. What accounts for the failure of works like *Mein Kampf* and *Il Populo*? Simply that neither Hitler nor Mussolini lasted the rough and tumble of the first few rounds. The pursuit of law and order is always brutal. It is very much part of the struggle for survival by which this world works. On the other hand, wisdom begins, as it ends, quite differently.

II WONDER BEFORE WISDOM

Wonder, as with thumb-sucking, begins in the womb. We have the evidence of our dreams, in which we go on wondering as if we were still in the womb, to prove it. Philosophy thus begins before birth.

If the psychoanalysts are right, however, legal philosophy or jurisprudence is a second-order development. It requires many men to have bewildered births to activate a public need for law and order so that one or two jurists may wonder about it. It follows that jurisprudence begins only in the womb of the world. In being driven by wonder at a previous world and not merely bewilderment at this one, however, the search for justice maintains a firmer hold on immortality than the search for law and order.

For all but a few who recollect their wonder at a previous existence, chaos unfortunately continues until their search for law and order begins. Until then the avenues of personal freedom remain unmarked by the correlative responsibilities of civic life. Man first learns to shoulder his own status among men before beginning to experience, far less transcend, the pain of man's injustice to man.

It is one thing to ascertain the origin of our search for justice, and another thing to ascertain how the search can be achieved. Because we are so bewildered by this world, however, the two are often confused. If psychoanalytic jurisprudence is right in saying that injustice arises from our need to enforce law and order as the result of having been born bewildered, we

5 “. . . Chingis Khan naively imagined that the legislator's pen would be as puissant an instrument in his hand as the conqueror's sabre.” Toynbee, *A Study of History*, vol 7A *Universal States* (1963) 256-257. Chingis was convinced that by drawing an immutable law — the Great Yasa — neither from the institutions of the more civilised nations nor from spiritual revelations but from the customs of his clan, he had established an eternal norm for all time: Vladimirtsov, *The Life of Chingis-Khan* (1930) 74-75. The Tartars thus anticipated Kelson's grundnorm by several centuries.

are tempted to rely on a jurisprudence which does away with our need for law and order. The result makes some sort of anarchist out of every jurist.

Whether our need for law and order will wither away as we ascend with Aquinas to heaven, or as we stay put with Marx to await the historical inevitability of heaven coming to earth, is of merely methodological moment. It can never justify the false dichotomy of world-outlook by which men confuse merely different means of seeking justice for different ends.

It follows that Marxists and Christians begin with more in common than either of them can have with the worldly-minded advocates of law and order who seek to separate them. The reality of their communion is unfortunately concealed by many within their own respective ranks. Perhaps there are as many worldly-minded men who profess Communism or Christianity merely to advance themselves in this world's law and order as there are those who with the same motivation oppose Christianity and Communism from without.

It was not just Marx, but Christ¹⁶ too, who railed against religion as an opiate of the masses. Priests have a tendency to put people to sleep. It takes a prophet to awaken them. There is no doubt that both Marx and Christ woke people up. That fact expresses their common calling as prophets. Besides, each secured the status claimed for him by bringing about the future he foretold. In this way, the prophecies of each continue their respective processes of fulfilment.

Despite all their differences, there is no deeper metaphysical reality than the divine gift of prophecy common to Communist and Christian fellowship. Equally metaphysical but of more interest to the lawyer, however, is the fact that Communist and Christian share the same ideology of this world's law and order. It is an ideology which is essentially Pythagorean in its jurisprudence of the conflict between the present world's status and the coming world's freedom. For both Communist and Christian the outcome is inexorable. What that outcome will be goes beyond the ability of this, as of every other academic paper, to enlighten. Relying as we do on works not wisdom, we have chosen to remain earthbound in our consideration of law and order.

It is in accounting for our world's law and order that Pythagorean, Marxists and Christians differ most from everyday academics. They have unlike us, this in common — they share the ancient freemasonry of Orphic doctrine by which the world is to be explained simply as an egg. Change and rest, status and freedom, life, death, and resurrection are all embodied in the World-Egg. Its essence is expressed by the homoeostatic equilibrium between the security, yet also fragility of its shell, which symbolises the world as we know it now, and the fertility, yet vulnerability of its content which symbolise the world as it is about to become.

In the context of the World-Egg, Pythagoreans, Marxists, and Christians wonder at the general bewilderment besetting this world's establishmentarians of law and order. Why is it our world-womb appears exponentially less secure to people preoccupied with law and order than the womb-world which engendered us all? Preoccupying oneself with law and

16 Matthew, 23.

order seems to manifest merely a fetish for shells. Why is it that lawyers ally themselves with priests in promoting rituals of law and order to prevent change, and oppose prophets who foretell what will hatch from these same ritualistic shells? The only answer known to psychoanalytic jurisprudence refers back to our bewilderment at being born. Until we overcome this bewilderment,¹⁷ our lives as lawyers remain earthbound to this world's status — and never rise higher in function than being mere custodians of the shell. Only Orphics appreciate the paradox by which we all live to translate the appearance of freedom signified by our own birth into the real responsibility of our giving birth.

The hard-shelled status we achieve by virtue of our own creativity, whether in conceiving ideas or children, binds us into the world-womb. This implantation is no more secure, however, than our earlier maternal one. It is beset by this world's final metamorphosis of death.

The question of how we ought to go about reversing the reaction of bewilderment at birth and death is a very real one. It is the only real issue on which Marxists, Christians, and Pinchme go to war. On all other issues the terrifying tragedy of human conflict lies in everyone being in complete agreement.

The fact that most infants recover from the trauma of being born is sufficient proof that the womb-world is commensurate with the world-womb. Of more metaphysical importance is the hint of immortality it carries that only this-worldly life is commensurate with death. Of course other-worldliness aspires to a faith higher than mere positivist hints of immortality. What we are talking about, after all, is natural law. For the present, we are content to observe quite positively that this world's rate of recovery from bewilderment is such that few neonates are neurotic enough to grow into lawyers, and fewer still are psychotic enough to grow into law givers. Despite all efforts of the worldly-wise, almost every infant grows up into a surprisingly healthy child, quite happy to spend his life, as Rousseau taught Emile, in "digging his own garden".

Genesis now gathers weeds as Moses himself foretold when he wrote it.¹⁸ We must thus thank Rousseau for his resurrection of horticultural jurisprudence from the Pentateuch. Were it not for his gloss on gardening none of us might be vouchsafed our own time round. For as long as there remains one man on earth contentedly digging his own garden then the apocalypse may be avoided.

Most of us have the misfortune to outgrow even the happiest and healthiest of childhoods. Poets, wise men, and fools are the only exception.

17 We shall overcome our bewilderment as lawyers only by recognising the limits of law. One would expect of any profession that its own limits would be the first taught. There is no curriculum of legal education anywhere, however, which teaches the limits of its own learning. The result is that lawyers, no less than priests and doctors, persist sometimes in overstepping and otherwise falling far short of the mark. Thus legislatures on the one hand misconceive the concept of law as something that can be made to move contemporaneously with the times, yet on the other hand stone the prophets and so delimit the proper province of law.

18 We see no reason to dispute one of our earliest legal fictions, namely that it was Moses himself who wrote all five books of the Pentateuch.

Poets die young. It is not clear to which of the remaining classes those who continue to seek justice belong. Wise men and fools have so much in common. Above all, both have innocence.

Innocence, as Kant¹⁹ points out, rarely keeps. Yet Haeckel²⁰ was only half-right. Individual development does not only recapitulate the history of the human race. It also presages what follows for its future. Roots and twigs, beginnings and ends are One²¹ — not opposites. The Many are but several appearances, in rooted earth and twig-textured air, of a single reality.

How wonderful is the singularity of the One to those who seek refuge from the bewildering diversity of the Many! Here lies the attractiveness of monist or unitarian thought. How awesome is the anonymity of the Many to those who would escape the inexorable individuality of the One! Here lies the attractiveness of dualist, trinitarian, and even pluralist thought. Such is the nature of the One and the Many, however, that there is none from Thales onwards who can consistently and rigorously maintain a strict disjunction between monist and pluralist ways of thinking.

It was Aristotle who first imposed the need for strict dichotomy in human reasoning. Since then men have argued (with an interesting inconsistency) whether it is in unity or diversity that one should seek reality. Korzybski²² attacks this strict disjunction and brands it as an Aristotelianism. Two-valued thought is too extreme. In Aristotle's place, Korzybski would have us resurrect Pythagoras.

Korzybski is dismissed, more often ignored, throughout the professionalism²³ of western philosophy. After all, like Descartes who advanced philosophy by routing the philosophers, Korzybski was not an academic, but a military engineer. General semantics²⁴ aside, philosophy remained school-bound. It was left to the natural sciences, and the theoretical physics

19 "Innocence is a splendid thing, only it has the misfortune not to keep very well and to be easily misled", *The Moral Law or Kant's Groundwork of the Metaphysics of Morals* (ed Paton 2nd ed) 72.

20 Haeckel, *Studies on the Gastraea Theory* (1873-84).

21 "Few have asked why lightning, trees, arteries, and rivers each branch in similar patterns and what cause there might be for their underlying harmony. Why does wood in a tree trunk . . . Why do cracks in mud . . . Why do the fiddle-heads of ferns . . . Why do so many natural processes, at first glance so different, appear to act as metaphors for each other, echoing a few formal themes over and over?" See *Harvard Today* (Fall, 1974) for an account of the philomorphs in their resurrection, whether they know it or not, of the natural argument for the existence of God. (Also infra n 78 on the crisis of metaphysics in modern theology).

22 Korzybski, *Science and Sanity: An Introduction to Non-Aristotelian Systems and General Semantics* (4th ed 1958).

23 Ryle, *The Revolution in Philosophy* (1956).

24 Korzybski, supra n 22.

of Böhr²⁵ and Heisenberg²⁶ in particular, to reawaken a metaphysics older than Aristotle. In this way the earliest ideas of ancient Egypt²⁷ are already beginning to break through the thin Greek and Roman veneer of our own brief medieval renaissance. In time, if not for the next generation then the next civilisation, the full force of Pythagorean thought will again sweep over the science and philosophy of law. To understand how this will come about, in terms of Böhr's complementarity rather than Pythagorean co-existing opposites, and pursuant to Heisenberg's principle of uncertainty instead of Heraclitean flux, requires a closer look at the wonder with which our philosophy of law first began. Out of this wonder, first of the womb-world and then of the world-womb, grows the love with which we first firmly attach ourselves to, and then as surely disattach ourselves from life. Empedocles was only partly right. Love is not merely the unifying but the universal force. How can we realise this if not through Plato's philomorphology of roots and twigs? The key to our complexity is most certainly another world's simplicity.

III WILL VERSUS WONDER

If we accept *God is love* as the key to our complexity we have a formula which is all very fine in theory but capable of much misunderstanding in practice. This is as true of professing law and order as it is of professing love. Would-be lawyers, like would-be lovers, learn by bitter experience to avoid professing what they do not actually feel.

The difficulty of accepting love as the next world's touchstone for the problems of this world's law and order nevertheless lies deeper than reconciling what one says with what one does. Our world knows many kinds of love. Exactly what is meant by the priest, for whom a wedding is little different than a funeral,²⁸ when he says "God is Love"?

If the key to our complexity is another world's simplicity, one would imagine that in God's eyes the *Phaedrus* and the *Kama Sutra*²⁹ are seen as one. The same divine reductionism must surely apply to different legal

²⁵ To a lawyer, Böhr's theory of complementarity may be most simply explained in terms of what provoked Böhr to propound the theory in atomic physics. He became aware that you cannot know someone at the same time in the light of love and the light of justice. See Böhr, *Atomic Physics and Human Knowledge* (1958).

²⁶ One of the simplest expositions to the layman of the uncertainty principle enunciated by Heisenberg is that made by Popper. "Every physical measurement involves an exchange of energy between the object measured and the measuring apparatus (which might be the observer himself). A ray of light, for example, might be directed upon the object, and part of the dispersed light reflected by the object might be absorbed by the measuring apparatus. Any such exchange of energy will alter the state of the object which, after being measured, will be in a state different from before. Thus the measurement yields, as it were, knowledge of a state which has just been destroyed by the measuring process itself." Popper, *The Logic of Scientific Discovery* (1959, 1972) 218.

If we accept Kahler's proposition (supra n 4 at 52) that Egypt, Babylon, Assyria and Persia represent the first historical stage of mankind, then Egypt, as the first world power, can be credited with beginning it all.

"Funeral or wedding?" asks the priest of a caller, with an equally smooth vague smile . . ." Vasili Rozanov, quoted by Renato Poggioli, *Rozanov in Studies of Modern European Literature and Thought* (1962) 61.

Walker, *The Kama Sutra of Vatsyayana and The Phaedrus of Plato* (1963) 7-15.

systems. The Soviet and American Constitutions are thus but two of a kind; for whatever logic applies to reconcile different aspects of love as a universal force must also apply to reconcile different systems of law.

There are many who would decry as wishful thinking these consequences of employing love as this world's touchstone. Instead, the consequences are the outcome of ruthlessly practising what we preach. Our appreciation of the divine process of lovemaking by which the Many are reduced to One³⁰ depends on our acceptance of free will. It is love that decides alternatives. "Pondus meum amor meus; eo feror quocumque feror" wrote Augustine.³¹ Yet if love is the driving force that determines each man's will, not all men wonder about the same alternatives. Worse still, some of us cease to wonder at all.

Without wonder, love atrophies and dies. Our capacity to love and be loved requires the exercise of our free will. Otherwise we just do what we ourselves or others want, without appreciating our freedom to undertake alternative action.

What causes the mainstem of our desire to branch into alternative courses of action? Wonder is certainly instrumental, but Plato's philomorphology is needed to ascertain the original cause. It is true that, as Simonides³² says, "God alone can have this privilege", but, unlike the ancients, we can now, through Christ's redemption, rely on a loving rather than a jealous God. A loving God shares His wisdom. It thus follows from wisdom being the knowledge of first causes, and philosophy being the love of wisdom,³³ that philosophy can be simply seen to be the love of God. The worth of seeking a secular self-sufficiency in the social sciences is thus restricted to *ad absurdum* argument. Every other way of excluding theology from jurisprudence is invalid.

If wisdom is a divine privilege which *God chooses* to share with us, we are most apt to forget that when we consider, and invariably begin to boast of, our own free will. We then forget how alternative courses of action are caused by God and not brought about by man, and therefore branch off the mainstem of His Creation, and not from what we pretend to have achieved all by ourselves. The only opportunities we make are those of His we take, and when we are wise enough to see the abundance of alternative courses of action provided by Him, it would be folly to consider making opportunities of our own.

The beauty of the Ramean tree allows the logician to express his joie de vivre. "Divide and conquer" is the maxim of the successful military commander. "No trespassers" forlornly answers the aboriginal inhabitant. On the strength of "distingeo" the lawyer exacts his fee. Thus bifurcated man goes on trying to draw the line between the Many alternative appearance of his One reality. It is as if through all his development he were doomed by the egg-shell status he achieves as a result of exercising his choice between

30 That they may all be one; even as thou Father, art in me, and I in thee, that they also may be in us John 17:21.

31 *Confessions* XIII-9, 10.

32 Frag 3 (Hiller); quoted Aristotle, *Metaphysics*, 982, b 30; also by Plato, *Protagoras*, 341 344C

33 Aristotle, *Metaphysics* Bk A Chaps 1-2.

ternative freedoms, never to recognise his freedom of choice. "To be or not to be" is the ultimate question making it impossible for any man to deny his free will. "Philosophy begins," as Marcel³⁴ the French playwright-philosopher chose to declare in Aberdeen, "by recognising the fact that suicide is always possible."

Each man, albeit in his own way, manifests the same dendritic pattern of free will throughout his life by exercising choice in the operation of dichotomy. Yet once having drawn the line, and decided which alternative is to be, this or that, the question arises for how long our lives will follow the same line or forge out a new one? Without God as the ultimate logician of free will,³⁵ what point is there to human individuality? "None" is apt to be our fair-weather reply, "reality is the One, the same dendritic pattern of dynamic progress for all, no matter how deceptively different are its many manifestations." Who, in the final flush of childish innocence, has not similarly stepped into God's shoes, and, turning his back on parents as an atheist turns his back on God, claimed for *himself* a monist self-sufficiency?

By such means, childhood innocence soon gives way to the chaos of adolescence. From no other experience can be learned the graceful art of finding way. The individual challenge is met no less than civilisations are needfully rent asunder for new ones to be manfully rebuilt. Conflict breaks out anew. This world's need for law and order reasserts itself. The wheel of life turns, and goes on turning for as long as there is life.

How lucky we are to escape living for eternity on this world's terms. An unending need of temporal jurisprudence would be Hell indeed. Immortality is vastly different, hinted at by a *philosophia perennis* which lies on resurrection, the needful precondition for which is death.

Sometimes the perennial philosophy by which this life is seen to entail death becomes too painful a part of man's growing up. The subtlety with which life hints at death changes to grotesque exaggeration. The temptation for adolescent man in seeking to master his own fate then brings on the riskiest stage in human development. Whether with sword or cannon, abstract theories of predestined damnation, or the apocalypse by way of cosmic reaction, his urge is to balance out the account by self-termination. All jurisprudence then becomes a hideous distortion. "Out, brief candle; this life is but a walking shadow." As for Macbeth, so ourselves, the certainty of death seems preferable to the uncertainty whether one will remain alive. Rather than cope with indecision over survival, the temptation is to put an end both to man's high-flown aspirations as well as his reckless roots of despair.

The Gifford Lectures, University of Aberdeen 1949-1950 *On the Ontological Mystery* (1951-52) 14.

The argument may be outlined as follows: In exercising our free will, love is the sole determining force or principle of destiny. God is love. So also, as a matter of reciprocal equation, love is God. Drawing nearer to God is thus the predestined outcome of our loving exercise of freewill.

It is all one and the same, this fractious life of law, logic, and whatever other twigs sprout from the mainstem of humanity in its desire for law and order. If only we could find the mainstem, then as lawyers we would hope that every appearance of twigs and roots would conform to an underlying reality — the Grundnorm (as Kelson called it) or the Great Yasa (as the Tartars knew it) of law and order. Unfortunately there are limits to drawing legal lines. Too much law imprisons each man's mind. Only the wise and witless survive the process of habituation on which Hart³⁶ depends to explain social orderliness. "Think big" says Genghis Khan wearing seven-league boots to walk over Holy Mother Russia, Saviour of the West. "Think small" says the petty grudge-informer slipping through the interstices between the Nazi rules.

It is just as important for adolescents in their repudiation of authority to recognise how conflict gives rise to rules of law as it is for children to realise how rules of law give rise to injustice. Without adolescents there would be no need for rules of law. If only this were a world in which all grew up or none grew up then there would be no need for lawyers. If we would truly ascertain the notion of law, therefore, there is no alternative but to re-examine the concept of conflict.

The irreconcilability of conflict with legal continuity, and of justice with the adequacy of rules to avoid conflict, provokes one to look beyond justice as the obvious end of jurisprudence. Once one has distinguished gamesmanship and chivalry from arbitrary power, law and order from gamesmanship and chivalry, and justice from law and order, it is tempting to go on distinguishing new hierarchies of juristic consciousness. Yet in practical terms of earthly rule it was exactly at this point of juristic exploration that Arthur's kingdom foundered.³⁷ A love that transcended not only justice but all previous juristic understanding was a theological alternative too far ahead of its time to be implemented by minds so preoccupied with gross issues of law and order that cries for justice remained barely heard.

Until the sleepers awake³⁸ and the concept of love comes into its own as the ultimate end of jurisprudence, the safest course of juristic education is to explain the intrinsic frailty of attempts at law and order. This is done by accounting for conflict, first, still earth-bound by arbitrary power as the strict disjunction of open-textured law and order, and secondly beyond the fulcrum of retributive justice, as the non-Aristotelian concept of the co-existence of conflicting opposites. Whether we prefer to thin ourselves ahead of our times by measuring legal science against Böhr's concept of complementarity in natural science,⁴⁰ or by looking backwards resurrect a heritage of legal reasoning older than Aristotle, is beside the point. We live in exciting times for legal theory, when across twenty centuries and at least five different civilisations, opposites are once again ma-

36 Hart, *The Concept of Law* (1961) 9-11.

37 See White, *The Once and Future King* (1958).

38 The Arthurian legend has it that the knights of the round table are but asleep and awakened when the time is ripe for the search for justice to continue.

39 Cf Augustine v Empedocles in the history of ideas.

40 Supra n 25. See also Moore, *Niels Böhr, The Man and the Scientist* (1967); Rozental *Niels Böhr: his life and work as seen by his friends and colleagues* (1967).

to meet. Coming to terms with the co-existence of conflicting opposites marks the end of adolescence, and the coming of age of jurisprudence. The critical issue in this process of growing up is how we can most gracefully give way to the conflict of opposites in the context of established legal theory. Will we fight as of old against the new, or rather choose to begin anew by turning the other cheek?

IV REDUCING PSYCHOANALYTIC TO ANALYTIC JURISPRUDENCE

General jurisprudence discloses that every earthly legal system professes the prevention and cure of human conflict. Comparative jurisprudence convinces us that some legal systems exaggerate the remedial response and ignore the prophylactic. However diversely legal systems relate to conflict, nevertheless conflict remains the root of law. We have already psycho-analysed this in terms of human frailty. The result is to infer the public authority of law from our private fear of conflict. Logical, as distinct from psychological exposition, however, requires us to analyse rather than psycho-analyse the same concept of conflict. From all honest atheists, of whom God's world doubtless stands in need, a certain forbearance will be requisite, for the only means of validating *ad hominem* argument is by employing the touchstone of theology.

Civil law, with its prophetic heritage of law-making by legislation, seeks to pre-empt worldly conflict. It relies on a legal continuity established through values that transcend societies and civilisations. Our common law, on the other hand, is more time-bound, largely by Anglo-Saxon custom. We rarely acknowledge the Judaic justice, Greek *aequitas* or Roman *fiat* from which we gain our inner strength. It is true that everyone steals from God,⁴¹ but because we look back far less than do the civilians we cannot look so far forwards. For the most part, therefore, the common law is content to rely on resolving rather than preventing disputes, and so commits its faith to the secular hindsight of judges rather than the divine foresight of legislators.

Conflict entails opposition. We see this at its clearest in terms of contraries. This is because we are often obliged to exaggerate a truth in order to tell it. We are thus encouraged to communicate by way of extremes. The so-called Laws of Thought, by which a thing is what it is, and cannot both be what it is and not be what it is, but at any one time must be either one thing or the other, demonstrate the strictness of disjunction between contraries at a fundamental level.

Aristotle⁴² is responsible for the strictness of this disjunction. Less rigorousness would inconvenience his doctrine of predication. But the rigorousness of his disjunction, being metaphysical, imposes a critical strain on Christian jurisprudence. Justinian rooted out Aristotelianism as an affront to the Orthodox faith. The early Fathers opposed the rigorousness of the dichotomy between faith and works, body and soul, good and evil, heaven and hell, and heart and mind, for the resultant box-thinking which

See Fischer, *Everybody Steals from God: Communication as Worship* (1977).

See his proofs of the Law of Contradiction, *The Scope of Metaphysics: Metaphysics* (Book Γ Chaps 3-4).

Aristotelianism would bring about. The scholastic philosophers of later medieval times opposed the intellectuality of Averroism for the same reason. Their opposition clearly foretold twentieth century atheism.

Christian theology has never quite recovered from incorporating pagan metaphysics, yet the remedy is homoeopathic. Pythagoras is even more of a pagan than Aristotle, and his theory of coexisting opposites emanates from Egypt, the oppressor of Israel. It is all very well to love our neighbour and learn from the Greeks whose language is that of our New Testament; but it is more troublesome to transcend the parochialism of neighbourhood loyalties and love our enemies by learning from the Egyptians. To pass by on the other side means God may never again visit Israel, for the chance to carry up Joseph's bones from Egypt will be mundanely misunderstood merely as having been already fulfilled by Moses.⁴³

One way or another, whether by turning one's back on, or confronting God, theological jurisprudence commits us to a world view of justice. This paper nevertheless stops short of Korzybski's world-view in the cause of anti-Aristotelianism. If all men were as consistent in word and deed as the next world requires of them, then Korzybski⁴⁴ would be right in claiming that Aristotelianism is the cause of most of this world's insanity. Luckily the evil of inconsistency (in Aristotelian terms) operates to good purpose (in Pythagorean terms). Most men maintain their sanity by acknowledging their inability to lead consistent lives. They admit the coexistence of conflicting opposites, that is to say, the sin that lies within them.⁴⁵ Christian jurisprudence (as distinct from Christian theology) is thus essentially Pythagorean, not Aristotelian. This carries with it the risk of heresy that

43 " 'God will surely visit you, and ye shall carry up my bones from hence' . . . So Joseph died . . . and he was put in a coffin in Egypt" *Exodus* I, 25-26. Pliny was right — everything new comes from Africa. See West, *Early Greek Philosophy and the Orient* (1971) for the gift of the Magi in freeing the Greeks from the very limitations of what they could see with their own eyes by the very extravagance of oriental fancy. Pythagoras, Copernicus, Galileo, Brahe, Kepler, and Böhr are all part of the continuing exodus from the Ptolemaic cosmogony of man as the centre of the universe in Egypt's semblance of Eden. Even the Christ-child came out of Egypt, as it were to fulfil the same prophecy. Israel's exodus becomes but a recognition of responsibility to love her enemies, commonly misconstrued and consequentially never fulfilled in terms of freedom from oppression. In terms of this responsibility, Israel's bondage to Egypt still goes on. We overlook our continuing exodus from that bondage by failing to recognise our freedom to exercise that responsibility. It is an exodus overlooked by our exaggerated deference to what is written, and thus is thought to constitute completed work, not on-going wisdom. As lawyers we rule ourselves by the dead hand of the written Gospels no less than we once chained ourselves to the stone tablets of Mosaic law. By considering the dead language of scripture to constitute a closed book, we thus overlook the everyday excitement of its dynamic fulfilment. Nevertheless the scriptures are, like Uncle Nicolai, "still travelling". If the search for justice is to escape Egypt and not get bogged down in the relativism of the historical, anthropological, sociological, and psychological schools then it must recognise theology's search for absolute values as the only means of reducing psychoanalytic to analytic jurisprudence. Hones atheists are encouraged to view this simply as the One individual life written large in terms of Many lives, which is only a reciprocal form of worshipping the same reality of Man lives being written as One.

44 Korzybski op cit supra n 22.

45 For I do not do the good I want, but the evil I do not want is what I do. Now if I do what I do not want, it is no longer I that do it, but sin which dwells within me. *Roman* 7, 19-20. See Tillich *The Eternal Now* (1963) 37-46.

the next world too will be construed as Manichean. It will be recalled how Augustine was tortured by the Manichean solution to the problem of evil as being a co-existing and equivalently powerful but contrary force to good.⁴⁶

To establish integrity once again between the laws of physics and the philosophy of law requires a level of precision applied to ancient philosophy no less than that contemporaneously required for subatomic, in its relation to atomic physics. Those who are excited more by beginnings and ends must bear with this world's boredom of travelling between them. Wisdom, in its concern for first causes or principles, calls us to account not only for original and final, but also for efficient and instrumental causes. Thus we are obliged to face up to the somewhat dry and academic task of re-evaluating the rationality of presocratic thought. In its own way the account will be interesting, however, for the *ad hominem* arguments with which our long-established legal values are apt to be dismissed by psychoanalytic jurisprudence as ritualistic, mythopoeic, unscientific and irrational, prove to be the same *ad hominem* arguments long used by academics in dismissing ancient philosophies of law. The paradox of learning by which we realise that no new lamps can be exchanged for old in scholarship is demonstrated by the way in which these forgotten philosophies are now revived by theories of complementarity and uncertainty in natural science.

Returning natural science to its rightful place as part of the philosophy of law naturally has immense impact on jurisprudence as "the oldest social science".⁴⁷ The effect on jurisprudence in its search for justice can only be explained by going back to the presocratics to contemplate the Pythagorean mystery of the One and the Many and reassess its rationality.

Aristotle⁴⁸ wrote of two kinds of Pythagoreans — those who constitute the whole sensible world out of the principles of number, and those who maintain that there are ten first principles (not unlike his own ten categories of existence) by which to explain the world. The Pythagorean principles are interrelated. More significantly for the outcome of western philosophy by which Aristotelian supplanted Pythagorean thought, each of these principles constitutes a dyadic relationship between coexisting contraries. Each of the ten principles of the Limited-Unlimited, Odd-Even, One-Many, Right-Left, Male-Female, Rest-Motion, Straight-Crooked, Light-Dark, Good-Evil, Square-Oblong thus express (to borrow from Aristotle's terminology) an *essential* contradiction.

At this point, because (1) each of the nine contraries from Odd to Square (including One) and Even to Oblong (including Many) are subsumed respectively under Limited and Unlimited; and because (2) the mathematical precision we now look for in conceiving of finite and infinite is easier to demonstrate in terms of the Limited and Unlimited; and because also (3) our language copes less well with the One and the Many than with the Limited and Unlimited, we shall go on to examine the rationality of the coexisting contraries in terms of the Limited and

Armstrong, *An Introduction to Ancient Philosophy* (1957) 207.

Wurzel "Methods of Juridical Thinking" in *Science of Legal Method: Select Essays* 289. *Metaphysics* 65 (references are to the Warrington translation, Everyman edition (1956)).

Unlimited under which the One and the Many are subsumed. Throughout this treatment of the One and the Many in terms of the Limited and Unlimited we should bear in mind, however, that Parmenides later gave pride of place to the One and the Many in a way which is more provocative for the qualitative rather than quantitative analysis of the social sciences. Nevertheless we shall stick to the Pythagorean nomenclature by which the One and the Many are subsumed under the Limited and the Unlimited, for the purposes of maintaining as much rigorousness of argument as possible in this short account.

V RE-ASSESSING THE RATIONALITY OF PRESOCRATIC THOUGHT

The possibility of coexisting contraries is strongly denied by most Western philosophers. That contraries could ever coexist is extremely problematic to the Western mind. Until the present day those systems of philosophy employing the doctrine of coexisting contraries were liable to be dismissed from the realms of rational expression by such epithets as religious,⁴⁹ mythopoeic,⁵⁰ or primitive.⁵¹

Nearer our own time, the doctrine of coexisting contraries has been resurrected in a number of different intellectual arenas. In legal theory, Sir Henry Maine,⁵² anticipating the paradoxes of Hohfeldian analysis, expressed a premonition of their coexistence in his formula for social progress from status to contract. Hohfeld,⁵³ moving from historical to analytic jurisprudence, relied on the doctrine for his logic of legal relations. Relying on the same doctrine, he also went on to the account for the coexisting and contrary systems of law and equity in a way which still remains entirely overlooked by every text-writer on equity. The oversight is explicable only as an Aristotelianism. Coexisting contraries have also been given political expression in the theory of peaceful coexistence at international law.⁵⁴ The so-called "new mathematics" re-emphasising the shape and pattern of numbers again returns to Pythagorean numerical configurations of the universe.⁵⁵ Napier's⁵⁶ bones and logarithms still startle anyone revelling in the abstraction of mathematics, but it would hardly shock Pythagoras to accept that figures are configurate.

It is in natural science more than anywhere else, however, that the resurrection of Pythagorean thought has drawn us back to the presocratics. Once

49 Farrington, *Greek Science* (1944, 1953) 45-46.

50 I regret that the source of this expression, in a short but highly provocative paper of an interdisciplinary nature on the pre-socratics, continues to elude me. The regret is especially intense, since it has been largely my recollection of this paper, read over 20 years ago that maintains my interest.

51 Armstrong, *supra* n 46.

52 *Ancient Law* (1861); See Jamieson "Status to Contract — Refuted or Refined" [1980] CLJ 350.

53 Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1913) 23 Yale LJ 16; "Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1917) 26 Yale LJ 710.

54 Rothstein, *Peaceful Coexistence* (1955).

55 *The Shape of Mathematics* (ed O'Neill 1970).

56 An ingenious method of multiplication and division devised by John Napier, *Rabdologia seu Numerationis per Virgulas libri due* (1617).

again opposites meet, now in the attempted reconciliation of atomic and subatomic physics — and the whole of creation bates its breath as the essentially Pythagorean principle of complementarity propounded by Böhr again holds sway.

Since it would be hard to apply the epithets religious, mythopoeic or primitive to this modern expression of what is after all only the doctrine of coexisting contraries, it may well be that the epithets were never in the first place applicable to the doctrine. For when any system of philosophy is capable of being explained in rational and scientific terms, it is the duty of the historian of abstract thought to explain the philosophy in those terms.

The inclusion of the first principles Limited and Unlimited in such a list of contraries as Aristotle describes,⁵⁷ might indicate at first glance the applicability of such epithets as primitive and mythopoeic. The problem of relating first principles to other contraries should, however, be reserved until the following questions have been considered: (1) the relationship of the coexisting first principles, Limited and Unlimited, to the Pythagorean notion of numbers; (2) the relationship of the first principles, Limited and Unlimited, to the Pythagorean notion of the cosmos by means of the number theory; (3) the relation of the first principles to knowledge, and the process of coming to know.

1 *Number, the Limited, and the Unlimited*

According to Aristotle,⁵⁸ the Pythagoreans considered the principle of Limited to be odd, the conflicting principle of the Unlimited to be even. We might be more inclined to predicate this relationship nowadays in terms of the odd being limited, and the even being unlimited. Indeed, it is the opinion of the commentator Raven,⁵⁹ that the limited and the odd by the time of Aristotle were coextensive in their meaning; and that so also were the unlimited and the even. Zeller⁶⁰ argues that the opposition odd-even is primary to the opposition limited-unlimited, but as Ross⁶¹ remarks, this does not do justice to the ethical element in Pythagoreanism. Certainly it seems that the opposition odd-even is meaningful irrespective of the recognition of the coexistence of the contraries, limited-unlimited; but the opposition odd-even is not meaningful within the Pythagorean number theory without the recognition of the principles of the Limited and the Unlimited. It has frequently been remarked by many commentators, Cornford⁶² among them, that the proper relationship of the two sets of contraries, odd-even and limited-unlimited, is that the former is the manifestation of the latter. But this is no more helpful than to say in the language of Platonic philosophy “that sensibles exist only by participation in the Forms after which they are called”.⁶³ The concept — if it be

Metaphysics 65.

Idem.

Raven, *Pythagoreans and Eleatics* (1948) 130ff, 188-194.

Zeller *Philosophie d. Griechen* (6th ed Leipzig 1919-20) i 490-493 (see Alleyne's trans (1881) i 306-532 on the Pythagoreans).

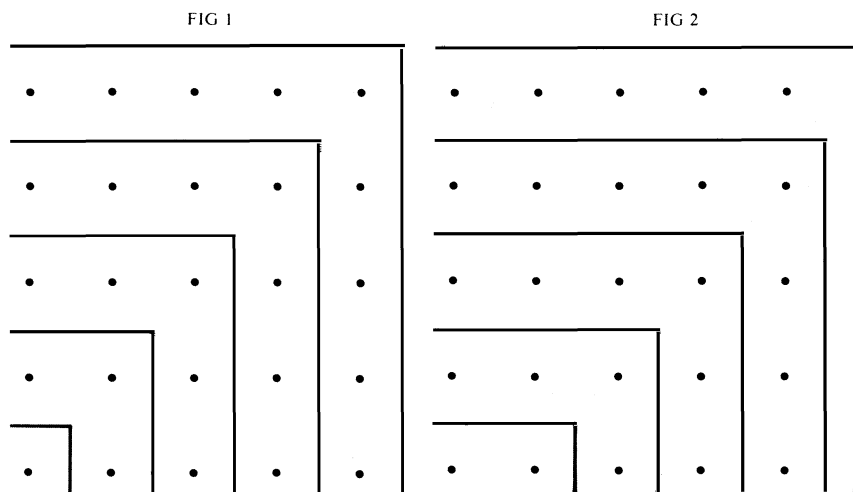
Ross, *Aristotle's Metaphysics* (1924) i 148.

Cornford, *Plato and Parmenides* (1939).

Metaphysics 67.

such — of manifestation is neither more nor less clear than the idea of participation. It is perhaps no coincidence that Plato, who so much admires the Pythagorean system, should have encountered the same problem.

The relationship of conflict inherent in the contraries odd-even and limited-unlimited is the foundation of Pythagorean number theory, world-theory, and therefore also the theory of law. Three hypotheses attempt to show the relationship. The first (Fig. 1) is put forward, among others, by Stobaeus, Alexander and Themistes. Aristotle⁶⁴ also gives his authority to this hypothesis in his *Physics*.



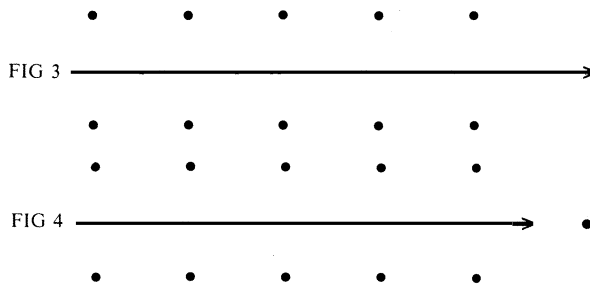
Figs. 1 and 2: Explanation of the relationship between odd-even limited and unlimited by hypothesis of square and oblong numbers (Aristotle, Stobaeus, Alexander, Themistes).

Let us start with one dot, and round it draw a gnomon. The continuation of this process will always result in a square (Fig. 1). This is to say that the proportion of the sides is always definite, the resulting figures being of definite shape. Such numbers are odd numbers, and they are limited (or the limited is odd) because the shape which the gnomon takes around the number is always limited or definite. Perhaps such numbers may in Pythagorean language be called square numbers, and indeed we shall investigate this possibility when we come to consider the relationship of the first principles to other contraries, the nine of which given by Aristotle include the square and the oblong. On the other hand (Fig. 2), if we start with two dots, the shape of the figure resulting from the gnomons drawn around it varies indefinitely. Such numbers are even numbers, and since the shape of the gnomon area is oblong, the numbers themselves may be called oblong, though we shall investigate this possibility later. The sh

⁶⁴ *Physics* 203a, 13.

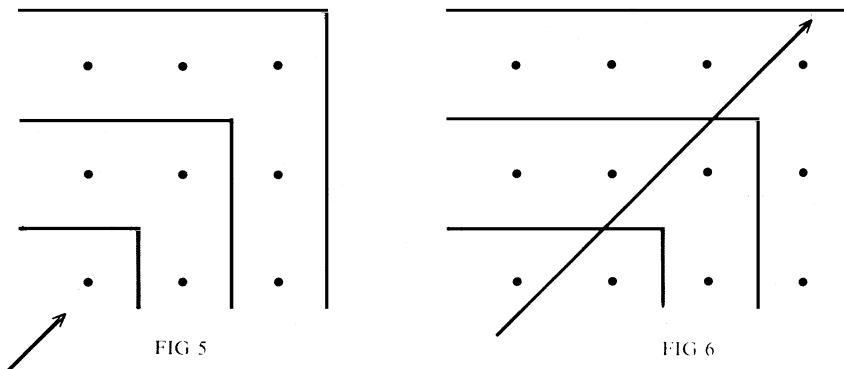
⁶⁵ *Metaphysics* 65.

of the figure formed round even numbers varies indefinitely and this is the relationship between the even and the indefinite or unlimited.



Figs. 3 and 4: Explanation by analysis of division (Heidel).

The second hypothesis (Figs. 3, 4) is put forward by Heidel,⁶⁶ which, says Ross,⁶⁷ is entirely in the spirit of early Pythagoreanism. Let us first take an even number, for example the number ten. Let us divide the number by means of an arrow (or, says Ross,⁶⁸ “the process of halving represented by an arrow”). The arrow will divide the number, which being even will divide in two equal parts and the arrow without hindrance will have an *unlimited* journey, since there is no solid unit or object to stop it (Fig. 3). Thus even numbers are unlimited, or the unlimited is even, whichever way you interpret what is in Pythagorean theory, a manifestation more than an illustration. On the other hand, the division of an odd number (Fig. 4) will not result in equal parts, and the remaining part will stop the process of division, that is the journey of the arrow is limited. Thus odd numbers are limited, or the Limited is Odd.



Figs. 5 and 6: Explanation by the bisection of oblong numbers (Mondolfo, Raven).

⁶⁶ Heidel, *Archiv für Gesch der Phil* xiv 392-397.

⁶⁷ Supra n 61 at 149.

⁶⁸ Idem.

The third hypothesis (Figs. 5, 6) was put forward by Mondolfo,⁶⁹ and later by Raven,⁷⁰ though by the latter quite independently, so it seems, of the former. It is supposed by this hypothesis that Aristotle had in his mind the figures represented in 1 and 2 and that the applicability of the principle Limited-Unlimited was not in virtue of the shapes defined by the gnomon constructed round the numbers but rather by a process of division which on application to an odd number refuses to be so divided that two triangular figures are formed. As can be seen from figure 6, however, a line can be drawn through the middle of any oblong number, no matter how large, and bisect that oblong number into two triangular figures; the line is not limited by any dot or number in the way of it. Thus oblong numbers, which are even, are unlimited numbers; or to express the same proposition in another way, the unlimited is manifested in even numbers.

The principles of number, according to the Pythagorean theory of numbers, were the contraries, the Limited and the Unlimited, and each and every number was constituted of these two parts. Every number is different from every other number. Thus 5 differs from 7, 12, 100, and every other number; the reason for its difference being the very nature of 5 itself, that is it is 5 itself which makes itself different from every other number. The diversity of a number, that which makes it different from every other number, is said to be indefinite or unlimited. But in another sense numbers agree; thus 5 is one number, 10 is one number, 2 is one number. Thus numbers agree in so far as they are once times themselves — a way of putting it which reminds us of Napier's bones. This agreement is expressed by the statement that numbers are limited. The number 1 is no different from any other number; it differs from all other numbers by the very reason of its being number 1, it agrees with all other numbers in so far as it is *once* times itself. This diversity and agreement become more pronounced when we consider that numbers are at least represented (if not manifested) by figurate symbolism; a fact which made it appear to the Pythagoreans that number, the principles of which were the Limited and the Unlimited, was the essence of all things. In its being also the essence of law, here was possibly the earliest argument for jurimetrics.

2 *The Limited, the Unlimited, and the Cosmos*

If all things are numbers, and the coexistent contraries Limited and Unlimited are the principles of numbers, can we not expect to find traces of these two contraries in the world of sensible things? The evidence suggests that the Pythagoreans answered such a question in the affirmative. Indeed an affirmative answer was a necessary step towards their theoretical knowledge. Philolaus remarks:⁷¹

It is necessary that everything should be either limiting or unlimited, or that everything should be both limiting and unlimited. Since then it appears that things are not m

69 Mondolfo, *La Fila sofia dei Greci nel suo sviluppo* 446-8.

70 Raven supra n 59 at 192-193.

71 Cf what is spurious and genuine in the Philolaus Fragments: Burkert, *Love and Science in Ancient Pythagoreanism* (1972) 218-298.

up of the limiting only, nor of the unlimited only, it follows that each thing consists both of the limiting and the unlimited, and that the world and all that it contains are in this way formed or adjusted.

The important words are “it appears that”; this would seem to imply that the principles were not postulated or assumed, for clearly Philolaus argues from experience or observation when he says “it appears that things are not made up of the unlimited nor of the limiting only . . .”. Plato⁷² describes the contraries Unlimited and Limited in his dialogue *Philebus*. The former principle is the negative of measure or limit. The latter principle, when used by Plato, almost corresponds to our own use of the word “law”. However it is difficult to say how far Plato, for his own purposes, and during the course of his own intellectual development, wanders from the original Pythagorean doctrine.

It has been mentioned that the Pythagoreans symbolised numbers by figurate symbolism. This figurate symbolism had at least four consequences: (1) it blurred the distinction between sensible objects and abstractions; (2) it was the first complicated form of symbolism which both (a) incorporated the symbols of lower numerals in the symbolic expression of higher numerals, and (b) at the same time arranged this symbolic expression in geometrical forms; (3) by blurring the distinction between sensible objects and abstractions, at the expense of much else, the system permitted a good deal of inferential work to be undertaken which eventually itself led, by the crisis of Pythagorean number theory in the fifth century A.D. no less than by the previous crises in their physics in the fifth century B.C., to the making of the distinction between sensible objects and abstractions; (4) by the emphasis on number the Pythagoreans enabled the process of universalisation to be carried one step further. Previously such ancients as Thales had subsumed the universe under a sensible universal such as water. This, as Ferrier⁷³ remarks, is “a particular universal, in other words, a contradiction”.

It was necessary to find a higher principle of universality, and this the Pythagoreans did by subsuming the world under the universality of number. In doing this they are frequently criticised for blurring the distinction between (1) sensible things and abstractions; and in turn (2) *physis* and *nomos*; but at the time of the formulation of their theory the distinction between sensible things and abstractions does not seem to have been made; and since a distinction is only made when a grouping together seems problematic, perhaps it was by *reductio ad absurdum* from the Pythagorean theory that it became necessary to make the distinction. Whether or not the Pythagoreans meant “all things are numbers”, or “numbers express all things”, is impossible to say since people of that time do not seem to have made the distinction. And in this instance it may be helpful to admit the mythopoetic nature of their process of thought, although in the con-

2 . . . the ancients, who were our betters and nearer the gods than we are, handed down the tradition, that whatever things are said to be are composed of one and many, and have the [limited] and [unlimited] implanted in them: *Philebus* 16d (Jowett translates with the more usual “limited” and “unlimited” substituted for “finite” and “infinite” — see Jowett’s note on this: *Dialogues of Plato* vol 3 4th ed (1953) 575).

3 Ferrier, *Lectures on Greek Philosophy* (1866) i 61.

temporary context of Böhr and Heisenberg it is an increasingly critical question of legal theory as to whether the distinction between physis and nomos is a correct one.

The extension of the opposites, the Limited and the Unlimited, to the sensible world was, however, an extension from abstraction to sensible things of which the Pythagoreans seem to have been aware. It was an extension which took place gradually, however, from the first principles of the Limited and the Unlimited through numbers which were considered no less a part of the cosmos than the sensible things themselves. Indeed, as the fragment of Philolaus shows, the first principles of number — the Limited and the Unlimited — may have been recognised as originating in the physical sensible world. To call the Limited and the Unlimited the first principles of number, as Aristotle⁷⁴ does, in no way entails their priority to the sensible world, despite (1) number and the sensible world being coterminous in Pythagorean philosophy; and (2) even if number and the sensible world were recognised to be distinguishable by the Pythagoreans, that which is prior to number need not be prior in argument or principle to the sensible world, even though that be subsequent in principle to number. The fragment of the later philosopher Parmenides may well apply: "It is all the same to me from what point I begin, for I shall return again to this same point."

Between the first principles of number — the Limited and the Unlimited — and the sensible world stretched an ingenious system which was, or was represented by, the Tetraktys of the Decad. The number 1, so •, was a point of magnitude having length and breadth. The extension of 1 was the extension of the point resulting in a straight line, 2, or ••. The extension of 2 was the extension of the line, not by producing it because that would merely be the extension of the point but by moving it laterally, thus creating a plane, 3, or •••. The extension of the plane or surface was made by the lateral movement of the surface, thus creating a solid ••••. In such a way the world was created. The Tetraktys 1 + 2 + 3 + 4 represented the world of sensible objects. Inferences were made from this system of numerals. Thus the moon, the sun, Venus and Mercury were at distances from the earth which were to one another as 1, 2, 3, 4, and so with the other planets.

3 *The Limited, the Unlimited, and Knowledge*

That which is unlimited cannot be known. The process of coming to know is the imposition of the limit on the unlimited: that which we know is the limited. According to Plato,⁷⁶ there are three categories, the limit, the unlimited, and the union of the two (the limit and the unlimited). This together with the Pythagorean mysteries of music,⁷⁷ was later to lead to Aristotle's doctrine of virtue as the mean between two extremes.

⁷⁴ *Metaphysics* 64-65.

⁷⁵ This account attributed to Alexander (see Ross supra 61 at 145) does not agree with Aristotle's account of later Pythagorean astronomy.

⁷⁶ *Philebus*, in which Socrates also discusses the fourth category of existence, namely, cause of the union.

⁷⁷ In particular the harmonic equilibrium between the lower and upper tetrachords of scale expressed by the evolution of the eight-stringed from the four-stringed lyre: see Pindar *The Philosophy of Music* (1924).

Let us take the example of a straight line. To conceive of a straight line with its ends removed such that no others are substituted is impossible. But then according to the Pythagorean doctrine this is not surprising since that which is unlimited cannot be known. The ends of a line are its limits and enable it to be known. The line is therefore, like all known things, the union of the limit and the unlimited, resulting in the limited.

It remains only to consider the relationship of the coexisting contraries, Limited-Unlimited, Odd-Even, One-Many, Right-Left, Male-Female, Rest-Motion, Straight-Crooked, Light-Dark, Good-Evil, Square-Oblong. The relationship between the first two pairs of contraries has already been considered. The relationship between Many and the Unlimited may be inferred from the plurality of differing numbers which was said to illustrate the unlimited nature of numbers. Square-Oblong and the first principles may be related by the nature of numbers, even numbers being oblong, odd numbers square. The inclusion of darkness in the Unlimited column may be explained by the analogy of light-knowledge, darkness-ignorance. But this is not irrational, nor need it be termed primitive since we are still said to argue by analogy.⁷⁸ The inclusion of Good and Evil are to be expected: Pythagoreanism was a meeting of “two streams of interest, the ethico-religious and the mathematico-scientific”.⁷⁹ Male and Female are a reference, remarks Ross,⁸⁰ to the fact that the female was thought to be inferior, the male superior, and that the inference seems to have been that because “they [Left, Female] were bad and the bad was unlimited, they must be unlimited”. But Plato⁸¹ compares the functions of father and mother to those of the limiting form and the indefinite matter respectively. “And we may liken the receiving principle to a mother, and the source or spring to a father . . .”.

VI PYTHAGOREANISM REBORN

One purpose of this paper has been to demonstrate that what physicists worried about as being a return to mysticism by way of Böhr’s complementarity⁸² is founded on a mistaken view of Pythagorean thought. The Pythagorean coexistence of contraries, the One and the Many no less than the Limited and the Unlimited under which they are subsumed, is capable of an explanation in rational and scientific terms; and that while one must be aware of such attitudes of mind as primitive or mythopoeic, yet to dismiss the coexisting contraries as such does not solve the problem. It is true that the attempt is severely hampered by the scarcity of material. No matter

78 “How do we know a man’s angry? Not like we know a kettle’s boiling — by deduction from the physical symptoms. For in knowing another man’s angry we use the analogy of our own feelings”: Wisdom, *Other Minds* (1952) 218. Cf what Tinsley calls “the ‘crisis of metaphor’ in modern theology The surrender of metaphor means the end of religion and, significantly, the death of what we have come to regard as distinctively human feelings:” *Dietrich Bonhoeffer* 32-35, *Karl Barth* 28-29, 84-93, and more specifically in answer to “the demythologizing enterprise” of *Rudolf Bultman* seriatim (all in the series *Modern Theology* (1973)).

79 Heidel, supra n 66 at xiv 390.

80 Supra n 61 at i 151.

¹ *Timaeus* 50d.

2 Supra n 40.

how convincing it may appear to say that the Pythagoreans never made the distinction between things and numbers, this is a statement for which there can never be any positive proof; not only because of the lack of authority, but also because a symbol and the object for which it stands are so closely related to one another that none might expect the distinction to be remarked upon, even though the distinction had been made. In a rather similar way the same circularity incapacitates our entire argument were we to construe its conclusion as one of proof. Rationality can never itself be proved. It can only be demonstrated.

Today's theoretical physics will have its say, no less than yesterday's classical physics has had its say, in legal theory. The fulcrum of Aristotelian two-valued logic on which legal scholarship rigorously depends for a strict dichotomy between true and false will see to that. The strictness of two-valued logic will wear away its own rigorousness against the renewed complementarity of twentieth century scientific thought.

In legal practice, the result will be to diminish the forcefulness of adversarial methodology as a two-valued decision procedure. In legal theory, the centuries old breach between natural and legal science will be healed. The dendritic patterns made by roots and twigs will be seen to express complementary realities more than the conflict over any dichotomy between earthbound duties and heavenward aspirations. The result will be a holist rather than a particularist view of law, in which hierarchies of law will integrate the apparently conflicting truths of Pythagoras and Aristotle, much as hierarchies of knowledge are employed in geometry and the natural sciences. The meek of presocratic times shall come into their inheritance in the way that new circles are created only by the extension of the old.

We began by employing psychoanalytic jurisprudence to trace our concern for law and order to its beginning in our bewilderment at birth. Analytic jurisprudence reduces chaos to conflict. Fear of conflict re-institutes itself as the authority of law. To prevent and cure conflict is the profession of law. Putting the profession into practice requires a precise account of conflict. Was Aristotle right in applying a two-valued logic? The presocratic philosophers thought otherwise. The early Christian Fathers thought otherwise. The scholastic philosophers thought otherwise. Modern theoretical physics thinks otherwise. The question for today's legal theorist is whether we ought to change our medieval tune.

"Speak God," writes Unger.⁸³ For such as Johannes Kepler, following in the Pythagorean footsteps of Brahe and Copernicus, God was on speaking terms. For Kepler the pursuit of science was ecstatic communion, conforming to Polanyi's⁸⁴ formula for the scientist in his relation to the world of "how a Christian is placed when worshipping God". Our exodus from

83 *Supra* n 5.

84 *Ibid.* "When classical physics superseded the Pythagorean tradition, mathematical theory was reduced to a mere instrument for computing the mechanical motions which were supposed to underlie all natural phenomena. Geometry also stood outside nature, claiming to offer an a priori analysis of Euclidean space, which was regarded as the scene of all natural phenomena but not thought to be involved in them. Relativity, and subsequently quantum mechanics and modern physics generally, have moved backwards towards a mathematical conception of reality": see *supra* n 1 at 14.

Egypt was not just the march of Judaic civilisation, but, for as long as we regard it as a continuing exodus, the advance of all civilisation. From Moses to Böhr the continuing exodus from Egypt erodes the Ptolemaic cosmogeny of man occupying the centre of the universe. God still speaks from Africa, for the exodus is a continuing one. He speaks through men like Moses, Pythagoras, Copernicus, Brahe, Kepler, Galileo, Descartes and Böhr. They are the prophetic visionaries of new legal systems whereas the lawyers are but the custodial priests of obsolete laws. Kepler⁸⁵ saw it all clearly when he wrote:

I will indulge my sacred fury; I will taunt mankind with the candid confession that I have stolen the golden vases of the Egyptians, in order to build of them a tabernacle to my God, far indeed from the bounds of Egypt. If you forgive me, I shall rejoice; if you are angry, I shall bear it; the die is cast, the book is written, whether to be read now or by posterity I care not; it may wait a hundred years for its reader, if God Himself has waited six thousand years for a man to contemplate His work.

The usual response of the priests is to try and silence the prophets. For this the priests are not to be blamed. The conflict between the priests and prophets of the law merely manifests the essential incongruity between freedom and status, explicable only in terms of conflicting opposites and different hierarchies of law. Beyond Pythagoreanism reborn, a resurrected Aristotelianism is thus already hinted at, with a renewed dichotomy between physis and nomos. Such is the way in which the metamorphosis of our wonder at the law gives birth to paradox in our continuing exodus latterly from Egypt but originally from Eden. "Ce n'est pas seulement en politique que la meilleure sauvegarde des gouvernements réside dans la vigilance d'une opposition."⁸⁶

Supra n 1.

Brunschvicg, *Le Rôle du Pythagorisme dans L'Évolution des Idées* (1937) 25.