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# Prometheus Unbound: Law in the University

Harry W. Arthurs

*Osgoode Hall Law School of York University*, [harthurs@osgoode.yorku.ca](mailto:harthurs@osgoode.yorku.ca)

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# PROMETHEUS UNBOUND: LAW IN THE UNIVERSITY

H.W. Arthurs\*

## Introduction

It is a great honour for a former law professor to be asked to deliver one of the most prestigious of all lectures in Canadian legal academe. When I received your invitation, I felt a little like an exiled head of state who had just been summoned to return home to receive full honours and a pension.

Like all exiles, however, I sense that I have gotten out of touch. I never knew very much law outside my own fields of interest; now I have forgotten whatever I did know. I do not read the Dominion Law Reports before breakfast--or afterwards. While my attention was momentarily distracted, I missed the first five years of life under the Charter, although fortunately people keep me up to date somewhat by suing me or my university. And although legal research and education were themselves once a subject of morbid fascination for me, I see them now only through a budget or committee report, darkly.

For the first time in my adult life, I am concerned with legal education not in the law school, but in the university. Alas, what I may have gained in perspective, I have certainly lost in credibility, at least if credibility translates as knowing what you are talking about.

In fact, ladies and gentlemen, as I reflect on my shortcomings as the Bennett lecturer, I wonder why I ever accepted your kind invitation.

Actually, I had hoped to revalidate my intellectual credentials by using a powerful and enduring metaphor--the Prometheus myth--as the organizing device for my remarks. Appeal to a stylish metaphor is a standard academic ploy if one lacks substance. However, as it turns out, it is also a dangerous ploy. Prof. Kuttner responded to my proposed title--Prometheus Unbound--by sending me the text of, and a commentary on, the original Greek play--to the study of which he apparently devoted an entire year of school.

By the time I was able to cast about for other titles, my original choice had been advertised, and several people had agreed to speak to it in a series of seminars. So here I am, the victim of my own rhetorical excess. Prometheus Unbound I have promised, and Prometheus Unbound I must deliver.

But not just yet. For now, let us leave Prometheus where we know we can find him again--chained to a rock for his impertinence in revealing to humans the divine secret of fire, his vitals gnawed daily by an eagle with a limited imagination and a high tolerance for protein.

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\*President, York University; Professor, Osgoode Hall Law School. Text of the Viscount Bennett Memorial Lecture, delivered at the Faculty of Law, University of New Brunswick, September 29, 1988.

### **The Good News: Progress in Legal Education**

Instead of the bad news about Prometheus, let me offer some good news about Canadian legal education: a great deal is happening. I will mention just three of the main developments.

First, there is an increased interest in skills training. On the one hand, several provinces have refocussed their bar admission and articling programs more directly towards practical skills of lawyering--interviewing, negotiation, drafting, and advocacy. On the other, skills training has worked its way back into the undergraduate curriculum as well. Cooperative programs are being considered in Ontario and elsewhere, which have as their ambition closer integration of the academic and practical phases of legal education.

This focus on skills training is certainly not without historical precedent. Until well into this century, in many provinces--including Ontario and New Brunswick--formal legal study was regarded as a part-time supplement to the full-time business of apprenticeship. More recently, clinical legal education has attempted to provide undergraduate law students with exposure to practical legal situations in a controlled setting. Each of these previous models had serious weaknesses, but the issue of skills teaching is a real and continuing one. The cooperative education model is more carefully integrated than either of the two earlier models, and deserves the opportunity of a fair test.

Nor is skills training the only "new" theme in legal education. Law school calendars contain a harvest festival of courses which have little to do with practical skills, and very much to do with the intellectual perspectives lawyers need if they are to make any meaningful contribution to resolving the complex political, economic, cultural and social issues which Canada confronts today. These courses vary from school to school, from year to year, but they range freely from legal theory and history to informal dispute settlement to constitutional litigation to feminist perspectives on law to tax policy..

A third important development is the expansion, over the past decade or so, of legal education which is directed to audiences other than students in the LL.B. program. Several universities now offer well-developed interdisciplinary law programs to arts undergraduates. And, at the other end of the spectrum, post-graduate study in law is becoming more and more important for specialist practitioners as well as intending academics.

These are very different developments; they point in opposite directions, in many respects. But collectively they raise an important question: will new pedagogic missions and strategies help to hasten fundamental change in legal education? or will the professional style and content of the traditional LL.B. program survive despite--and even come to dominate--law teaching in these new environments?

Turning from legal education to legal scholarship, there is also some important news. Varieties of legal theory--neomarxism, law and economics, liberalism

and feminism--are being discussed in a breadth and depth that would have been unthinkable even ten years ago. Linkages to other disciplines -sociology, linguistics, philosophy, history, economics, political theory--have been forged to an extent that may even have overtaxed the intellectual capacity of their highly creative proponents. And books and periodicals which would never previously have seen the light of day are now being published both by commercial publishers and with the support of sponsors such as the Osgoode Society for Legal History and the Social Sciences and Humanities Research Council.

I have not been either complete or judgmental in this brief account of legal education and scholarship. I simply want to convey, at the outset of my remarks, the general sense that there is considerable innovative activity being generated in and around Canadian law schools. Against that background, I would like to look at the larger question that I have set for myself: where does law sit in the university?

### **Law as a Universe of Discourse**

If one were to talk about "science in the university," one would be able to describe the object in view. "Science" has come to mean a way of looking at the world, a technique of empirical observation and theorizing which attempts to describe, organize and explain the physical dimensions of our world, the matter of which it is composed, and the relationship amongst its constituent elements. Science students learn how to observe and theorize, master what is known and begin to ask questions about what is not, and work systematically at higher and higher levels of understanding.

To an extent, the paradigm of science has come to dominate much of the rest of higher education and research. The social sciences have quite consciously adapted the scientific method to the study of human and social relations, although there is a healthy and continuing debate over how much empiricism and quantification can actually tell us. Even the humanities, traditionally resistant to scientism, have to some extent gone over to it in fields such as linguistics and history.

In short, knowledge is generally understood in terms of various epistemological traditions, of which the scientific tradition is at this moment a particularly powerful one. But when we talk of "law in the university," do we have a similar understanding of what legal knowledge is, and how it relates to other traditions of knowing?

The answer, I suggest, is "no." Law has a long history as an academic discipline: it was one of the first to appear in mediaeval universities. But today law exhibits few of the signs of a distinct intellectual tradition: it seems to be organized around a professional ideology, rather than an epistemology. Despite the changes in the law school curriculum and pedagogy, despite the new frontiers of research, despite the changes in professional and societal expectations of law, law does not have a special way of understanding the world analogous to that of the physical or social sciences.

Consider, for example, that law professors are very committed to teaching their students to "think like lawyers," but are unable to explain just how it is that lawyers think--much less what is distinctive about lawyers' thought. Effective drafting or advocacy may preoccupy lawyers, but they do not seem anxious to comprehend exactly what they "know" when they have read a case, or exactly what they have created when they make a contract.

Nor even in legal-academic circles is the nature and quality of legal thought itself the focus of much attention: it is still often regarded as a peripheral enterprise. Law professors still tend to measure the success of their intellectual ventures by the extent to which they command respect in professional circles--through opinions for law firms, arguments to courts, studies for law reform commissions, or draft statutes.

Let me slightly qualify what I have just said. I suggested earlier that law schools are not entirely devoted to nurturing the professional tradition--or feeding off it. That is true: their intellectual fare is not exclusively professional. But nonetheless what predominates, what gives distinctive tone and character to virtually all Canadian law schools, is still the professional nexus. Other traditions, other agendas, other ways of looking at the world can be found as well, but a law school is still a school for training lawyers and providing them with the tools of their trade. It is a place for study within the law. For most law professors and students, law remains a bounded universe of discourse, a universe in which knowledge comprises a set of tacit assumptions about how the world works, about values and customs, about what is done and not done, about the sacred and the profane.

One law student does not have to explain to another the legal hierarchy of authority in which the constitution is supreme, and the rest of us, are ranked in descent from judge to legislator, then down to citizen and lowly civil servant. One legal scholar does not have to explain to another that there are conventional limits on the vehemence which one expresses--"with respect"--in scholarly discourse, or that the demonstration of internal contradiction in a legal proposition will undermine it more effectively than a critique based on an appeal to external values.

Above all, students and professors, lawyers and judges, share a belief system: better word than deed, better rule than reason, better reason than order, better order than disorder, better predictability than uncertainty.

Thus, we have implicit theories of knowledge, of value, of communication, which are distinctive to law schools, and different from those which persist throughout much of the rest of the university. Fair enough: but do not departments of literature or astronomy or economics exhibit similar idiosyncracies? No, I suggest, those departments are not quite as different from each other as law is from the rest of them.

Most other disciplines are, in a sense, virtually sole proprietors of a body of knowledge about a particular phenomenon or area of activity or thought. But

what makes law's situation in the university so problematic, so interesting and unique, is that while its academic culture is distinctive, it does not own an exclusive object of scrutiny. Others can speak with at least as much authority as we about the central questions of our discipline. Philosophers and economists and historians and psychologists and scholars in a dozen other disciplines can tell us things about law which we do not "know" in any professional sense.

Of course I do not mean that our minds are blank on such questions: we may possess intuitions or anecdotal evidence or deeply held views; we may even have read some books or talked to well-informed, non-legal experts. But our intuitions, evidence, views or "knowledge" are seldom well grounded, and almost always lack the assurance that others possess when they approach the same "legal" issue from their particular perspectives.

Nor do we see the need for other people's knowledge until we are forcibly confronted with the limits of our own. Let me take a typical case. Suppose there is a rash of articles, in the social science literature or in the newspapers, on the unreliability of eye-witness identification or on the travails of low income debtors. Frankly, there is very little response we can usefully make to such revelations from within traditional legal discourse. We must turn to other disciplines for our answers, disciplines like psychology or economics.

Nor do law's problems reside only at the periphery: rather important technical questions, like the meaning of "equality" in the Charter, lie as much within the grasp of philosophers as of lawyers. Indeed, when we consider that law is a discipline which is so reverential about the past, it is surprising that we are virtually without any trained capacity to discover and assess historical evidence. The usage of words, the mental map of society, the basic structures of judicial and governmental institutions in, say, the nineteenth century is *terra incognita* to most legal practitioners, and most legal academics. Yet we deal constantly with judicial precedents and legislative provisions which have their origins in that period, and whose original text remains in full force and effect today: *Hadley v. Baxendale*, *Rylands v. Fletcher*, the Arbitration Act, our Constitution Act itself.

The professional tradition which continues to dominate legal practice, legal education and legal research has nothing credible to say about any of these subjects. If we want to know about them, we have to reach outside law as a "universe of discourse" and enter into conversations with aliens from other universes, to engage, as it were, in extraterrestrial communication. I am well aware of the tradition in science fiction--not very different from that of classic mythology--in which humans condescend when they encounter what they conceive to be lesser beings. To their mortification, they come to realize that it is they who are in fact the less knowledgeable, even the less civilized and cultured, species. In that encounter, in the self-scrutiny it engenders, is the beginning of wisdom. So too with law.

Just six or seven years ago, one of Canada's brightest and most open-minded practitioners was discussing the state of legal scholarship. He had great respect for the contribution of legal academics, he said: "I will read anything written by a

law professor." Our hearts fluttered. Then he continued: "but I will never read an article written by a damned sociologist." That was before the Charter, before the courts began to look at social facts or survey evidence. Today, he reads sociology--and anything else he can get his hands on and his mind around. Today we all do.

The problem is that we do not, most of us, "speak the language," or at least speak it with sufficient fluency to carry on an intelligent conversation. Lawyers, it is true, pride themselves on their ability to do a quick study, to become--at least for the purposes of a negotiation or a cross-examination--instant experts in diseases of the lower back, the financial affairs of trust companies, or automotive engineering. But how expert can an instant expert be? Would we want medical doctors or trust company executives or designers of gas tanks conducting murder trials or drawing complex contracts, after a few hours briefing? We would be the first to insist that their expertise is superficial, unauthentic, ultimately suspect. Yet in our conceit--or is it innocence?--we imagine that we can penetrate the mysteries of all branches of practical and theoretical learning, and dominate all discourse with experts in any other discipline. Worse yet, we tend to behave as if other disciplines had no purpose except to await our beck and respond cheerfully and informatively to our call.

Within the university, as well as in practice, there lingers some of this professional arrogance. Law, for so long at the margins of university academic life, now wants to be at the centre of it. To understand the source of that ambition, one must look more closely at the place law has recently come to occupy more generally in our culture, politics and social thought.

### **Law as a Strategy for Empowerment**

In the past twenty or thirty years law has, for the first time, been specifically proposed as a strategy for empowerment. Today women, children and ethnocultural minorities, the physically handicapped and economically disadvantaged, prisoners and pensioners and people with strange lifestyles or bizarre ideas have all come to believe they can vindicate their individual and group interests through recourse to law. All of these genuinely do lack power in our society of "normal" male middle class anglophone right-thinking people. And they have been persuaded, to paraphrase Mao Zedong, that power grows out of the end of a writ.

This is an unlikely prospect, in my view. However, there is just enough positive evidence to sustain this growing faith in law--especially since, as members of these groups believe, there are no options. Indeed, such advocacy groups do enjoy occasional spectacular courtroom victories, such as the Supreme Court's recent decision on abortion. But the incidence and effect of such victories remains to be documented.

How often do powerless groups, or their members, actually win lawsuits, and how often do they lose? When they lose, what effect does the loss have on their position? Do they recover from defeat, and sue, sue, sue again? Or do they fall back dispirited and despairing?

And when they win, do they really win? Who really believes that--even after the Supreme Court's decision--all Canadian women have, or will soon have, equal and easy access to abortion? Will there not be more rearguard actions by recalcitrant governments or hospitals or medical practitioners? problems of funding and facilities? more legislation and litigation? shifts in the membership and doctrine of the Supreme Court? Is a legal victory ever safe, until it is secured by social and intellectual and economic and cultural forces? And, for that matter, is it not often the case that these forces, rather than formal law, are the effective agents of change?

I suggested a moment ago that, for the first time, law was being seen as a strategy of empowerment. That statement was ambiguous, if not downright misleading. Law has always been used to empower, but until recently it was seen as empowering only the powerful--those with the resources to go to law, with the influence to shape legislative policy, with a stake in orderly process sufficient to warrant their recourse to it. The question is whether law can be used not by those who have but by those who have not, whether social and economic transformation can be expected from an essentially conservative institution, or indeed whether recourse to a legal strategy may in the end even be counterproductive for its newest proponents.

These are hard questions, and there are no obvious answers. However, my doleful prediction is that the answers will be disappointing to those who have recently invested much trust and many resources in law. But whatever the answers turn out to be, it is the heady prospect of change through law which is, in large measure, responsible for the transformation of legal research and education. The university itself is a laboratory in which law's transformative influence is being tested.

For example, the demographics of the student body, staff and faculty in most universities do not reproduce those of the general community. This may or may not be the fault of the universities, but it is an undeniable fact. In reaction to this fact, in many institutions, women, francophones, the learning disabled, and members of other disadvantaged groups are seeking remedial action in hiring, in admissions policies, and in access to special opportunities and benefits.

To take another example, many students are subjected to discipline, failed academically, or otherwise negatively affected by decisions made by a university or one of its many committees. For them, the issue is likely to be due process--"due" being defined in terms of traditional adversary-style procedures or--in a pinch--any process which might produce a more positive outcome.

Or to take one more example, classrooms and commonrooms are both likely settings for contentious issues of free speech and free belief. What of a faculty member denied a promotion because her writings on creation science are not taken seriously by her colleagues? What of a student group denied access to university facilities because of its racist or leftist ideology?



These are not all instances of empowerment in the sense that I defined that term initially. But the underlying issue in each example is the same: formal legal rules and processes are being invoked directly, or by analogy, as the governing principles by which the university must conduct its affairs as an academic institution, as an employer, or as a dispenser of social goods.

### Law as an Approach to University Governance

What is the actual experience of universities with the law? Does that experience suggest that law might become, or has already become, a formidable presence on Canadian campuses?

Law, as a body of normative rules, has obviously had an impact on universities far out of proportion to the incidence of law professors and law students on any given campus. It is found in a hundred forms and a thousand contexts in every university--in Senate or Faculty legislation, collective agreements, administrative manuals, codes governing discipline, athletic competition or parking. Law is expressed in terms of prescriptions and prohibitions, administered with varying degrees of formality and solemnity, and is increasingly regarded as a cardinal organizing principle of academic life. Student evaluations, faculty hiring decisions, research awards, interpersonal conflicts, and the inevitable bureaucratic business of large, complex organizations are all confided to legal forms. Rampant legalization is not a phenomenon peculiar to universities. However, it is especially significant because universities claim to be devoted to collegial governance and to even more democratic and participatory arrangements.

Take a concrete case. Should Prof. X be promoted from one academic rank to the next? One might imagine that such a question could and should be answered collegially: the professoriate in a particular department or faculty would exchange frank views based on some years of personal and second-hand knowledge, paying special deference to the conclusions of those most knowledgeable, and reasonably confident that no one would convey them to the candidate. Then they would reach a consensus or--in rare cases--bring matters to a vote, which would be accepted as the honest and informed judgment of peers, the quintessential collegial decision celebrated in the folklore of academe and the novels of C.P. Snow.

This paradigm of government by deliberation, by consensus, by deference and trust seems to have few attractions in a world where law is available. At least one must conclude it has few attractions. The tendency is towards highly structured adjudicative proceedings, with evidentiary rules and rulings, a mini-jurisprudence, reasoned decisions, multiple appeals, judicial review--and very little true collegiality.

And we see the pattern repeated again and again: students litigating their grades, miscreants shielded from penalties, sensible people afraid to act on "what they know but cannot tell," scarce resources lavished on the creation of a manic regime of campus legality.

Actually, the signals sent by the courts themselves are not as unequivocal as people at universities seem to imagine. We are not yet sure whether the Charter does apply directly to universities; the standard of fairness or natural justice expected of domestic decision-making bodies is still a matter of debate; doubts linger over the residual right of institutions to operate through collegial, as opposed to formal, adjudicative, procedures.

Nonetheless, we are in the grip of law. Nor is this surprising. Almost everyone is in the grip of law, and universities and their constituencies are likely more susceptible than most. After all, people who work or study in universities, even those who want to do so, are typically better informed, more articulate, more intellectually resourceful, more rights-conscious than most.

I suggested that universities are a laboratory in which the experiment of empowerment through law is being pursued. If people in universities are actually able to achieve empowerment in this way, then the experiment will be judged a success, and its success will inspire imitation by other groups in other contexts. But if the experiment fails or if its results are equivocal, if there are changes in form rather than substance, if the costs exceed the benefits for those using the strategy of legal empowerment, we will nonetheless have learned something. Then the limits of law will be better understood, and the need for alternative strategies more apparent.

### Law as an Academic Culture

Let me now square the circle. I began by venturing some observations about law schools. I then suggested that one of the reasons why they are so interesting today is that law itself is viewed increasingly as a strategy of empowerment. I now want to return to the subject of legal education in order to remind you of the continuing presence within law schools of other tendencies, tendencies which limit their interest and influence, limit the usefulness of empowerment as an organizing principle of legal education, and limit the prospects of recourse to law as a general political or social strategy for disadvantaged groups.

There can be no doubt today that law is "in" the university in a formal sense. It is impossible to enter the profession without a law degree, and law degrees are awarded by universities with law faculties. Inevitably, then, professors of law will possess academic credentials, hold university appointments, engage in activities and follow career paths which resemble those of other professors, and--in cases of extreme confusion--even become university presidents.

Yet it is not altogether true to say that legal academics are academics *comme les autres*.

Their credentials differ significantly: although most law professors have three degrees like other professors, their terminal degree is likely to be a Masters, not a Doctorate. This means that most law professors enter their careers without the formative experience of preparing and defending a doctoral thesis, an experience usually considered indispensable preparation for a life of scholarship.

They hold normal academic ranks, it is true, but they move through them at a faster rate than colleagues in other faculties, drawn upward by the magnetic attractions of alternative careers in practice. And within those ranks, they tend to be better paid than their peers in other faculties, for much the same reasons.

Their primary activities are, of course, teaching and writing--but teaching to whom and writing for whom?

They are teaching a select group of students whose career plans are fairly urgent and explicit, and whose academic interests are significantly defined by ambition. The values, wants and needs of their students naturally influence the pedagogy, curriculum, and culture of the law schools. As we know from a whole literature of legal education, the experience is intense and total, and the mind is, all too often, sharpened by narrowing--and this despite the serious efforts of most law faculties to humanize the experience. We all have seen which courses attract the highest enrolments, what part of a course is passed over lightly, when in a given lecture the pens go down and people cease to make notes. In most cases, it is the "serious" professional business of information, rather than the "fringe" intellectual issues of interpretation and critique, which mobilizes energies and focusses attention.

And the professional nexus has other effects. Lawyers celebrate the "seamless web" of the common law; they believe in the great fraternity of the bar whose members share a devotion--passionate if polyandrous--to "our mistress, the law"; they resist formal specialization--even though law practice is increasingly specialized--because credentialism might undermine the position of general practitioners; and they are deeply suspicious of explicit theorizing which might, in fact, assist us to understand law as a unified system.

What has this meant for law faculties? It has meant the same superficial unity of knowledge, the same prejudice against a specialized division of labour, the same suspicion of credentials, the same reluctance to take theory seriously.

Because of the supposed unity of knowledge, courses and seminars in the law school are typically self-contained. A basic course in contracts or constitutional law may be the only course that a student ever takes in the subject. While "advanced" courses or seminars may have formal prerequisites, they seldom have real antecedents: intellectual skills do not usually build from one level to the next. Because of hostility to the division of labour, there are no departments in law schools, and seldom formal "areas" or "groups" of scholars working in a particular field. Whether as a reflection of the bar's hostility or of their own indifference, law schools make little attempt to consciously convey to every student the theory, method and tradition of intellectual work in law. These are not viewed as indispensable to professional attainment--and more to the point--they are not in fact indispensable. Indeed, theory, method and tradition are also largely irrelevant to success in legal academe, and are sometimes viewed by law faculties as marginal activities which make disproportionate and unjustified demands on the scarce resources needed for professional formation.

What is true of lawyers and law professors is also true of law students: their culture is also very much affected by the professional nexus. To cite a few examples: the names chosen by law school teams in intramural leagues, the folk heroes of discussions in the common room or cafeteria, the titles given to social events, the topics of spontaneous humour and the achievements which are acknowledged by formal honours--all of these serve to reinforce not only the internal student culture, but also its professional nexus.

All of this is relatively innocuous. However, there is evidence as well that some of the less desirable features of the professional culture are replicated in the culture of law schools. Adversarial rather than cooperative behaviour, excessive rationalism and insufficient empathy, sexism and insensitivity to the needs and attitudes of nondominant groups are all said to be characteristics of the law school culture which reflect and reinforce the professional culture.

Whether these qualities also set law students apart from other students is a question less often asked. For whatever it is worth, it is my impression that neither the law schools nor the legal profession differ much from the general stratum of society with which they are most closely associated. In fact, if they differ at all, they probably tend toward virtue rather than the opposite. After all, people generally want to at least appear to practice what they preach, and appearance sometimes gives rise to genuine conviction. As a French philosopher once said, "many a man became a good man by leading a life of hypocrisy."

So much for the student culture and the curriculum. What of the world of intellectual endeavour which law professors share with their university colleagues?

It is true, of course, that many legal academics are prolific authors--perhaps even too prolific in some cases. But their academic writing is not like that of other disciplines. They write less for their fellow academics than for the large professional, judicial and legislative audience whose views and actions they hope to influence in practical ways. This may be all to the good; it may not. But, by contrast, professors of English or anthropology write largely for other professors of English or anthropology, and even scientists--who belong to a less-cloistered community--write for their peers, inside or outside the university.

Only law professors, and academics in a few other professional disciplines, consciously address their scholarly efforts to practitioners rather than fellow researchers. This obviously affects the development of the legal academic culture.

And finally, there are any number of subtle reminders of the unusual position of law as an academic discipline. For instance, whatever the formal nomenclature, the law faculty is almost always referred to as "the law school." Of course the word "school" evokes important classical and historical references. But in the context of legal education, the word serves to remind us that law is not a discipline, a department, a faculty precisely like--say--science or humanities. The word "school" connotes professionalism, as in "business school" or "med school"--professionalism not incompatible with an academic identity, but not precisely interchangeable with it either.

And there are other, more tangible reminders: the law school is almost always housed in its own building, with its own library. And that library is not simply a convenient collection of the most important source materials required for daily use: it is virtually the only locus of materials used for study and research in law. An examination of works cited in most legal writing--academic or professional, of use patterns of books in the general university library, of the work habits of most law professors and students, would reveal how totally discourse in law is confined by the four walls of the law library. Even chance encounters with the literature of other disciplines are made unlikely by the physical fact that the law library and the law school live monogamously, forsaking all others.

Law, then, is today *in* but not fully *of* the university. However, what is true of law today may not be true of law tomorrow. There are powerful forces at work inside and outside legal education which may domesticate law within the university to a far greater extent than it has been.

Today's law teachers are better educated than their predecessors; their intellectual interests are more various, their ambitions larger. And there are more law teachers than there were a generation ago, including a critical mass of legal theorists, historians and sociologists. Moreover, law has become an important topic on the agenda of a number of other disciplines whose members are eager for a dialogue with their legal colleagues. Just in the past few years, for example, there has emerged a Canadian Law and Society Association, which publishes an important learned journal--one of several now specializing in issues which are not obviously and resolutely professional.

And while the professional nexus of law schools remains strong, the nature of the profession itself is changing. Larger and larger numbers of law graduates are moving into government, corporate and other careers, either before or after getting called to the bar. And within conventional legal practice, we can see trends to specialization, even changes within specialties, which will require lawyers to broaden the base of their knowledge, if they are to advise or represent their clients effectively. The changing nature of professional careers will ultimately change the student culture and make it more like that of graduate and specialized programs in other disciplines. And, finally, these changes in the academic and student cultures may, in the long run, stimulate further changes in the way law is practiced.

### **Prometheus Unbound: the Meaning of Progress in Legal Education**

What does this all mean? Will law's coming of age as a university discipline--not yet, but soon--transform law as a profession, and as a powerful social force, and endow it with the capacity to heal and console, to mobilize and empower? Will progress in our knowledge about law, necessarily entail better law, more justice, a happier society?

Let us consult Prometheus, who ought to be something of an expert on such questions. Prometheus, as you will recall, got himself into difficulty because he

stole fire from Zeus and gave it to mankind. There are some intriguing parallels between fire and law. Each is regarded as the property of the gods; each is thought to be a necessary condition of organized and progressive societies; each reaches us through courageous and clever human intermediaries. But each is also fraught with danger. Fire--used negligently or brutally--can maim and destroy. And in the hands of evil or indifferent people, law can alienate and enslave. Knowledge, I contend, does not necessarily mean progress, and the getting of knowledge is important for itself, not for what it can do for us.

But these conclusions do not exhaust the metaphorical possibilities of the Prometheus myth, at least if we are prepared to take sufficient liberties with it. The cast of characters wants looking at. First, in one version of the myth, Prometheus himself was the son of Themis, the goddess of justice and law: convenient coincidence, this, or perhaps an indication that my extravagant interpretation has a degree of divine sanction. Second, the Pandora myth is closely identified with the Prometheus myth, and might be said to be its feminist counterpart, another convenient coincidence, since the time is obviously ripe for close examination of how law is defined by and defines the relationship between the sexes.

Third, Prometheus was finally released from his rock--yes, Prometheus Unbound, as I promised--by Heracles, who spent much of his life wandering about the Mediterranean performing impossibly difficult tasks which in the end earned him a place in world literature, but otherwise seem to have had little practical significance. If Prometheus' gift of fire was, metaphorically, a gift of law, then Heracles must obviously have been an early law professor. Our role--the Heracleian role of law professors--is after all to unbind Prometheus, to thwart the punishment of the gods, to remind even the mythic bringers of law of the ambiguity of their gift and of their ultimate dependence on mortal agencies, and to accomplish great feats of little practical consequence, other than to instruct and inspire through our exertions and example.

I warned you that I would take grotesque liberties with the Prometheus myth, and indeed I have, as will be obvious to anyone with a rudimentary knowledge of mythology, of literary criticism, or of academic humour. I hope you will forgive me. Need I explain that I have shamelessly abused one myth in order to bring into focus several others?

All too often, it seems to me, people who study and practice law see themselves in Promethean terms. What they have given to society is as crucial to progress as fire. Without law--they are fond of reminding everyone--there is no justice, no order, no progress. Law is an essential element in the democratic state, in economic development, in the achievement of harmonious social and personal relations. And the dispensing of law is a selfless task, which exposes the lawyer and the judge, to personal sacrifice, public abuse, and the risk of occasional horrendous, state-imposed sanctions. Judges are required to decide cases according to law "though the heavens fall," and lawyers to pursue their client's rights and interests whatever the cost to themselves.

This is all Prometheus-like professional behaviour, and it inspires as well many students and law professors. Even those of a more skeptical disposition,

those who identify with Heracles, draw sustenance and self-image from the Prometheus myth. But is that so very disturbing or even surprising?

All professionals--not just lawyers--imagine that their special contribution is crucial to human progress, and complain that its importance--and their own sacrifices--are undervalued. What distinguishes lawyers is only their relative inability to take a critical distance from their own mythology, and to investigate its claims with a degree of detachment.

By the same token, all academics--not just law professors--fancy themselves to some extent as Heraclean figures, liberating civilization not from practical discomforts like darkness and cold, but rather from myth-making itself. It is our conceit that we can dispel all myths--in the world, and in the university--by the stern discipline of right reason, of cold logic, of hard fact.

Law in the university, law in the world: the one overstating its principled contribution to justice, the other infatuated with its own austere integrity, each somehow unable to borrow perspective from the other, or to relate itself to broader historical trends. Perhaps, after all, professional law and academic law are more like each other than they imagine.

This is a time of change for law in the university, as it is for law in the world. That change involves both reality and illusion; it invites both the making and unmaking of myths. And it is forcing us, if nothing else, to try to understand and evaluate what we have for so long taken for granted. There is no justification for smugness or sentimentality--not about the legal system or the legal profession, not about legal education or legal scholarship. But equally, there is no reason for cynicism or despair. This is an exciting and important time to be in law or in the university or--best of all--to be in both at once.