Telling Tales: (Or Putting the Plural in Pluralism)

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TELLING TALES: (OR PUTTING THE PLURAL IN PLURALISM)

BY ALLAN C. HUTCHINSON*

“We... are a conversation.”
Martin Heidegger

“Until the lions have their historians, tales of hunting will always glorify the hunter.”
Old African Proverb

We are all tellers of tales. Our lives are a struggle to imagine and enact the best stories we can. These stories run from the sublime to the ridiculous, the ecstatic to the elegaic, the hopeful to the fearful and the marvellous to the mundane. Only in our fantasies are we anywhere near free to indulge our dramatic imaginings to their fullest: even then we are not entirely free for we must dream within the historic experience of our life stories. In life, we are thrust into a work-in-progress. It is a sprawling performance that has countless scenes and a profusion of acts, often being performed simultaneously and repeatedly. Reality becomes congruent with these enactments of the habitual stories and stock tales of the community. To the extent that we get to write and enact our own lives, we must begin with and respond to the dramatic plot in which we find ourselves. The story of my life can never be disentangled from the community’s story in which my story develops and gains significance. While we can never be free of the past or of our communal connections, we need not become slavish adherents to their perceived weight and hold. The future of the past is our present and continuing responsibility. The past has passed and was what it was, but it is up to us to decide what it will become.

For many, life will be exhausted in playing out the stories of others, a cameo role on a stage and in a script not of their making. At best, these enlisted thespians will have to live their stories before they can tell them. In this sense, “[people] make their own history, but they do

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1 M. Heidegger, Existence and Being, 2d ed. (1956) 247.

2 These initial comments derive from a variety of sources. See A. Hutchinson, “Part of an Essay on Power and Interpretation (Including Suggestions on How to Make Bouillabaisse)” (1986) 60 N.Y.U.L. Rev. 201.
not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given, and transmitted from the past.”

We cannot abandon history or dispossess ourselves of its dramatic heirlooms. We cannot create afresh our autobiographies. At best, we must play our given roles until we have the capacity and confidence to re-create ourselves and re-make our world. The opportunity to experience the exhilarating demands and responsibilities of narrative reconstruction is at the heart of democratic citizenship.

History and human action only take on meaning and intelligibility within their narrative context and dramatic settings. We are never not in a story. There are many stories being imagined and enacted, but we can only listen to them and comprehend them within the vernacular contexts of other stories. Our conversations about these narratives are themselves located and scripted in deeper stories that determine their moral force and epistemological validity. There is no truth nor knowledge outside the dramatic context and idiom of history. All conversations occur within history. From the available narrative resources, we are able to shape and shade the possibilities and parameters of our own identities. Also, the anthology of communal folk tales tell us how we expect, predict or assume others will act. Stories are so powerful and pervasive that they not only lay out a path for us to follow, but also provide a limited range of dramatic devices and rhetorical strategies for rescripting the story. It is these dramatic practices and narrative procedures that allow us to perceive, understand, act, criticize, and change in a mutually intelligible manner. By simultaneously empowering certain modes of action and foreclosing others, narrative holds us in a grip that is as powerful as force of arms. Through the interweaving plots and intricate sub-plots of the different narratives, people inhabit different worlds; their understanding of the world and their normative response to it are substantially at odds.

‘The law’ is a potent and institutional story. It is one of the ways society defines itself and presents the world to itself. The styling, staging, and phrasing of the law structure the world in particular and partial ways. Being normative in nature, law is a way of imagining and has a distinct theory of its own relationship to a larger nomos. As an intelligible description of and mutual prescription for action, the legal story predisposes its actors and audience to certain interpretive choices and social stances. Located and sustained by historical conditions and circumstances,

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the dramatic performance of the law is socially imposed and, what is often overlooked, psychologically assumed by individual actors and members of the audience. Indeed, it is often forgotten that law is a story that, like all stories, can be rescripted. The struggle to control meaning and, therefore, the conditions for communal life is fought anew each day. Existing plots and scenarios are only compelling insofar as they are constantly reinforced through daily use and rehearsal.

If law is a story, writing about law is a meta-story or a story about a story. Operating at different levels and from different perspectives, academics tell stories about the legal story, the way it develops and changes, the roles and responsibilities of the dramatis personae, and the like. They perceive their primary task to be both exegetical and editorial. As exegetes, they clarify and explain the obscurities and mysteries of the law story, especially as told by its judicial authors. Different schools of interpretation have formed and there is heated debate over their validity and value. The performance of this exegetical function inevitably collapses into a more creative editorial exercise. Academics reorganize and rework judicial and legislative texts. In so doing, they often embellish, enrich, or enfeeble the primary texts. This is not an occasion for surprise or censure, for decoding is always another form of encoding — traduttore, traditore. Occasionally, the academic translator attains such prominence that the judicial or legislative story-tellers officially re-script the legal drama and incorporate their telling insights. However, as one of the foremost interpreters of law, academics possess and exercise considerable power. Interpretation is at the centre of life and law:

If interpretation is a never-ending task, it is simply because there is nothing to interpret. There is nothing absolutely primary to interpretation because, when all is said and done, underneath it all everything is already interpreted.6

I. TOWARD HUMANISTIC PLURALISM

In writing about writing about law, the contributors to this Symposium engage in a refined and precious exercise. Their stories are further removed from the social performance of the law story. They offer a critical survey of the meta-stories of legal scholars. Yet, notwithstanding this, their stories are no less embedded in the socio-economic and intellectual condi-

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5 See G. Calabresi, "Thoughts on the Future of Economics in Legal Education" (1983) 33 J. Leg. Ed. 359 at 364: "To translate from one language to another is to betray. That is the translation, and the betrayal, of an Italian saying: Traduttore, traditore."

tions of the tellers. Situated within a broader narrative framework that is itself a story about the nature of knowledge-validation and knowledge-denial, all forms of scholarship build on and build a universe of normative assumptions and propositions. There is no position of theoretical innocence; the scholar is inextricably implicated in the political struggle to establish, retain, or change the status quo.

Within the contemporary community of Canadian legal scholars, the normative and narrative theme is predominantly Arthurian in character and ambition; it is the stuff of epic romance. As described by the manual or manifesto for the new Canadian Legal Scholar, there must be a shift from "recherches ponctuelles (isolated, narrowly focused and rather random research)" to "recherche sublime (research that involves finding higher levels of explanation and integration through conceptual and empirical analysis)." In place of the professionally-inspired commitment to traditional doctrinal work, a Humanistic Pluralism must be developed that gives equal time and support to fundamental research on law as a social phenomenon. The challenge is not to turn all plumbers into Periclean clones, but to accomodate and welcome both plumbers and latter-day Pericleans into the law school. Decked out in the colours of the rainbow, the new Canadian Legal Scholar is an heroic figure who marches under the banner 'More is Better' and is selflessly devoted to its own and others' search for the Scholarly Grail. Yet, like the Arthurian Kingdom of old, Humanistic Pluralism flatters, but only to deceive. Beneath the adventurous and daring rhetoric lies an almost feudal form of life. Under the guise of benignity and openness, Humanistic Pluralism effects a subtle tyranny of the status quo.

Most of the essayists in this Symposium subscribe to the Arthurian vision and claim to write to the humanistic beat of its pluralist drum. Canadian legal scholarship is indicted for its general narrowness of focus and shallowness of analysis: a positivist mind-set still thrives and dominates the intellectual milieu. According to the symposiasts, too many academics are content to serve the reactionary interests of the practicing legal

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7 I am aware that the epistemological footings of my own 'story' are even more precarious as it is a story about stories about stories about a story. Like all stories, it is itself the product of particular historical and political conditions. See A. Hutchinson, Dwelling on the Threshold: Critical Essays on Modern Legal Thought (forthcoming, 1987).

8 Consultative Group on Research and Education in Law, Social Sciences and Humanities Research Council, Law and Learning (Chair: H.W. Arthurs) (1983) at 75. I term this intellectual mind-set 'Arthurian' after the name of its chairperson and leading light, Harry Arthurs. However, as a matter of fairness it should be noted that Harry Arthurs' personal scholarship is more committed to the true pluralist credo than that of many of his peers. See, for example, H.W. Arthurs, 'Without the Law' (1985).


10 See infra 8-10.
community and "[t]his orientation tends to result in the production of technicians rather than creative thinkers."¹¹ Being "acquiescent rather than critical,"¹² academics have resisted the broadening and deepening influence of other disciplinary perspectives and, at their most intransigent, have struggled to keep the door of the law school firmly shut to those who would sully the law with such suspect infiltrations.¹³

Yet the general opinion is not all gloom and doom. The symposiasts see shafts of light in the bleak castle of contemporary scholarship. If sensitively and patiently nurtured, this enlightened work can be encouraged to suffuse the traditional shadows. This not only would serve to expose the shoddiness of much mainstream work that has relied on its shadowy life to conceal its poor quality, but also would allow the best mainstream work to take a fuller part in the overall jurisprudential project. Accordingly, the self-imposed task of the symposiasts is to facilitate and expedite the evolution of more sophisticated scholarship rather than to demand a revolution in intellectual consciousness and practice. It is a matter of complementing and supplementing the extant material rather than doing away with it and starting again. Within the Arthurian Kingdom, these 'knights of the round table' lead the crusade for the Scholarly Grail with a much trumpeted belief in the virtues of Pluralism and Pragmatism.

Stressing the 'closed shop' mentality of the common lawyer, Mario Bouchard urges a shift in academic attention from its present pathological preoccupation to a more fundamental analysis of the empirico-theoretical foundations.¹⁴ Agreeing with Bouchard that research priorities are too often set by government, John Claydon and D.M. McRae lament the fact that much of the promise of the 1970s has not been fulfilled.¹⁵ If Canadian international law scholarship is to be taken seriously, scholars must first take themselves seriously and develop a working environment more suited to theoretical work. Although more optimistic, Marc Gold warns against the danger of replacing black-letter law with black-letter theory.¹⁶ Along with more inter-disciplinary collaboration, he offers rhetorical theory as a possible way out of the present impasse and stresses the importance of understanding the needs and interests of the different audiences played to by scholarly performances.

¹² J.E. Claydon & D.M. McRae, "International Legal Scholarship in Canada" (1985) 23 Osgoode Hall LJ. 477 at 483.
¹³ See G. Parker, "Legal Scholarship and Legal Education" (1985) 23 Osgoode Hall LJ. 653.
¹⁴ Supra, note 11.
¹⁵ See supra, note 12.
¹⁶ See M. Gold, "Constitutional Scholarship in Canada" (1985) 23 Osgoode Hall LJ. 495.
In a majestic essay, Rod MacDonald offers a tour de force of civil law scholarship. Highlighting its almost obsessive search for systemic and intellectual 'purity', he reveals how and why the dominant tradition is under severe challenge. He concludes that, provided a successful and indigenous methodology is crafted, this inter-generational conflict offers brighter prospects than elsewhere in Canada. After an extremely comprehensive survey of the field, John McLaren suggests greater dialogue and intellectual engagement between disciplines and makes an explicit plea for heightened Pluralism. Finally, Leon Trakman continues the paean to Pluralism. He demands that scholarship take up the sociology slack between doctrinal exposition and socio-economic conditions. As though speaking for all his Arthurian colleagues, he concludes that "[t]o reach the sky, the scholar must learn to fly; no one should reasonably expect less, nor more."

II. FROM A FEMINIST PERSPECTIVE

Within the ranks of Canadian legal scholars, there are subversive elements that struggle to resist the siren song of Humanistic Pluralism. They believe that its romantic call to scholarly arms is a sham: the battle-cry of 'More is Better' is likely to mean in practice 'More of Much the Same'. A small and diffuse number of scholars recognize that the time is well past to grasp the political nettle. Unlike Ulysses, they do not plug their ears and tie themselves to some convenient mast, but take a much more aggressive and combative stance towards pluralism. They insist that there must be a sharp break in the dramatic conventions of the scholarly performance and a revolution in narrative consciousness. Yet, not surprisingly, some of these are not confident enough to break ranks entirely and burn their institutional bridges. Instead, fortified with hope rather than conviction, they continue to work for change from within.

Of the symposiasts, Neil Brooks falls into this group; he is a reluctant rebel with a cause. Condemning the extent to which academics remain willing hostages to professional interests, he recommends a moratorium

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17 See R.A. MacDonald, "Understanding Civil-Law Scholarship in Quebec" (1985) 23 Osgoode Hall LJ. 573.
on doctrinal writing which has hitherto only served to legitimize the power of the bench and bar. He trenchantly criticizes those who pretend that scholarship can and must be apolitical:

The charge that is frequently made about scholarship that addresses, for instance, the influence of social class, political power, and the distribution of wealth on the law is that it is politicized scholarship. Scholarship... must be value-free: it should not reflect the political credo of the author. The notion that scholarship can adopt a value-neutral stance is such nonsense that its persistence can only be explained as itself reflecting a political act. The most obvious way in which values influence scholarship is simply in what is written about. Values clearly shape the interests of scholars and influence the types of questions they ask. A decision to write on a subject that assumes a particular value judgement is a decision not to write on a subject that opposes it. Consequently, to the extent that the assumptions underlying an article have political connotations, which they almost invariably have, writing the article is a substantive political act, no more neutral than the decision to address the assumptions directly. Thus, there is no such thing as ‘disinterested’ scholarship... only [a] question of what kinds of interests a scholar will serve. The claim of objectivity is simply an excuse for unaccountability.21

In spite of Brooks’ genuine distaste for ‘apolitical’ scholarship, the most uncompromising attack on Humanistic Pluralism comes from the feminist symposiasts. Feminism is the cutting edge of social change and offers itself as a revolutionary alternative to contemporary practice. However, while feminists unite in their opposition to women’s oppression by men, they divide on its intellectual basis and, therefore, on the best strategies to overcome it. In terms of scholarly activities, feminists tend to share the basic belief that knowledge and gender are not mutually exclusive categories: metaphysical commitments operate to conceal the man-made and man-serving construction of reality by making women’s experience and standpoint invisible or trivial.22 The feminist ambition is to rethink and rework not only the human drama, but the way we think about the idea and experience of what is and can be the human drama. To multiply the number of female actors and authors is only part of the task. The drama and performance must be on a wider, more popular front and by virtue of a different ethic and voice.

The most appropriate way to illustrate the critical and constructive arguments of the feminist front against pluralism is by way of a story.23 Heinz is poor. His wife is going to die. She can be cured by a drug that costs $1000. Heinz does not have the money. The chemist refuses

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22 For a succinct account of this argument, see V. Held, “Feminism and Epistemology: Recent Work on the Connection Between Gender and Knowledge” (1985) 14 Phil. & Publ. Affs. 296.
23 See C. Gilligan, In a Different Voice: Psychological Theory and Women’s Development (1982).
to lower the price. In responding to the dilemma, Jake thinks that Heinz should steal the drug. Relying on the conventions of logic, he argues that life is worth more than money and that, although stealing the drug would be illegal, it is the 'right thing to do'. Amy is against Heinz stealing the drug. Seeing in the dilemma a narrative of continuing relations, she worries about the effect on the wife of Heinz going to jail. Amy wants to explore the possibility of Heinz borrowing the money or of appealing to the chemist to defer the payment. In drawing her conclusions from these responses, Carol Gilligan underlines the different moral universes inhabited by Jake and Amy:

Considering the moral dilemma to be “sort of like a math problem with humans”, he sets it up as an equation and proceeds to work out the solution. Since his solution is rationally derived, he assumes that anyone following reason would arrive at the same conclusion. . . . In contrast, Amy's response to the dilemma conveys a very different impression. . . . [She sees] in the dilemma not a math problem with humans but a narrative of relationships that extends over time. . . . Instead, seeing a world comprised of relationships rather than of people standing alone, a world that coheres through human connection rather than through systems of rules, she finds the puzzle in the dilemma to lie in the failure of the druggist to respond to the wife. . . . Just as [Jake] relies on the conventions of logic to deduce the solution to this dilemma, assuming these conventions to be shared, so she relies on a process of communication, assuming connection and believing that her voice will be heard. . . . Thus in Heinz's dilemma these two children see two very different moral problems — Jake a conflict between life and property that can be resolved by logical deduction, Amy a fracture of human relationship that must be mended with its own thread.24

Gilligan does not insist that this moral imagery is biologically determined. She suggests that both these voices are present in human dialogue and in ourselves. They exist in tension and have become identified with 'male' and 'female' voices. Moreover the 'hard' male accent has tended to drown out the 'soft' female accent. For Gilligan, the challenge is not to replace one with the other or to redress some vague historical balance, but to bring together the two voices and transform our moral discourse. Of course, Gilligan's diagnosis and prescription have not gone uncontested.25 For instance, Catharine MacKinnon prefers to emphasize

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24 Ibid. at 26-31.

25 This is not the place to survey the debate within feminist circles. An excellent sampler of views can be found in E. DuBois et al., “Feminist Discourse, Moral Values, and the Law — A Conversation” (1985) 34 Buff. L. Rev. 11. This is a transcript of a discussion between five feminists. Not only do the participants explore the problems and possibilities of feminism, but their conversation is governed by a dynamic different from typical law school debates and it attempts to put into practice what they are conversing about. It is an exercise about and in feminism. As Carrie Menkel-Meadow puts it, "one of the wonderful things that feminist discourse has done to the law has been to make us look at the method by which we make a new world at the same time that we argue about the substance of what that new world should be. I hope that some day there will be unity between the substance and the method." Ibid. at 57.
the political dimensions of the ‘Heinz and Amy’ story. She points out that Amy only speaks or, more importantly, is only heard if Jake chooses to listen. If Jake does not listen, Amy loses: if Amy does not listen, Jake still wins. For MacKinnon, the point of the story is that, as in law, “his foot is on her throat.”

In different ways and to different degrees, four of the symposiasts take up the implications of some of these ideas for the past and future of Canadian legal scholarship. They combine to expose and criticize legal scholarship as embodying “a male perspective on the world masquerading as an objective non-gendered perspective.” Indeed, the whole notion of ‘scholarship’ is assailed. In her wide-ranging essay, Kathleen Lahey charts the relation between male power and social knowledge and, as its corollary, the denial of this relation by male-stream theorizing. Insofar as feminists eschew the extant norms of objectivity, rationality, and the like, they engage in a necessary form of unscholarly scholarship. The fervent ambition must be to detach power from the male points of view and to harness it to the larger project “of losing the world.”

The remaining three essays make a firm and detailed application of that thesis to discrete doctrinal scholarship. Mary Jane Mossman uncovers the deeply conservative and male tendencies of property writing and condemns its ‘closed’ mentality. By refocusing the inquiry on “the how and why for the choice of questions and not the answers,” she unearths the political roots of past efforts and suggests a new agenda for property writers. In a similar vein, Christine Boyle tells a pathetic tale about the domination of Canadian criminal law literature by foreign heroes and the invisibility of women in academic discourse. She drives home her arguments by imagining a world in which the central question is “Is non-feminist work really scholarly?” Finally, in the corporate area, Kathleen Lahey and Sarah Salter not only continue the feminist project of unmasking the prejudices of existing scholarship, but begin to rethink the legal principles that determine the moral order in which bureaucratic organizations exist. All the essays conclude by urging academics to

26 Ibid. at 74-75.
28 See K.A. Lahey, “... Until Women Themselves Have Told All That They Have to Tell ...” (1985) 23 Osgoode Hall L.J. 519.
30 Supra, note 27, at n. 63.
contribute to the monumental task of (re)making the world a better place to live and love.

III. AGAINST HUMANISTIC PLURALISM

One of the strengths of these feminist essays is their exposure of the false promises and claims of Humanistic Pluralism. For all of their chest-beating (and brow-beating), the disciples of Humanistic Pluralism share many of the same operative and tacit assumptions as those scholars they criticise and chastise. Indeed, the major contribution of these critics is to reinforce and perpetuate the extant order of scholarly values. At the heart of the academic establishment is the lingering belief in a unitary truth, a reliance on instrumental rationality, a denial of ideology, and an insistence on the possibility of objective, in the sense of ahistorical and apolitical, standards for scholarly worth. In short, while Humanistic Pluralism is celebrated as a triumphal salute to tolerance and diversity, it is little more than a monotonous threnody of hope abused and forever deferred. The problem is not so much its pluralistic aspiration, but its monoistic and conservative performance. The true promise of a radical pluralism is lost and perverted in its stunted practice.

The aerial imagery of Leon Trakman’s ‘flying’ metaphor captures the appeal and failing of Humanistic Pluralism. Packaged and promoted as a soaring and stirring tale of comradely striving and boundless adventure, it is not so much a flight to anything, as a flight from everything. Scholars’ heads may be in the clouds, but their feet are fixed firmly in the warm clay of history. No study of the study of law can ever be apolitical or ahistorical. Although claiming to be beyond ideology or, at least, neutral as to competing ideologies, Humanistic Pluralism has a very marked ideological slant and bite to it. Political aloofness and indifference is an insidious form of betrayal and amounts to a thinly-veiled fanfare for a slightly reformed status quo. As Al Katz puts it, “If the middle way is the truth, it is not the middle way but simply a form of absolutism.” Commitment to meaningful change is pushed aside by the crushing and uncompromising weight of orthodoxy: plus ça change, plus c’est la même chose.

In the Arthurian world of scholarship, everyone is welcome provided that they are a humanistic pluralist. While the pluralist constitution formally entrenches the faith in relativity and diversity, the contemporary regime of Canadian scholarship is far from a democratic and egalitarian

31 See supra, note 19.
Humanistic Pluralism is King: radical pluralists need not apply. Furthermore, the current state of affairs perpetuates itself through breeding future scholarly citizens in its own image. People are not unencumbered or unsituated, but are located and involved in historical communities. As Lord Tennyson put it, “I am part of all that I have met.” The Arthurian world is not a society in which no particular type of person outnumbers any other, but is a society that promotes a particular way of life in which Humanistic Pluralists thrive and outnumber all others.

Although directed towards the evasion and transcendence of history, theorizing and scholarship are grounded in historical circumstance. Theories are produced in specific socio-historical situations and help to generate a particular version of history. Human reason and discourse are the prized possessions of a social heritage. Rationality cannot divest itself of history and reach an ahistorical truth. Legal scholarship can never be more than a stylized literary genre and, like all literary genres, it is beholden to its historical milieu. Theoretical discourse has no privileged status above other discursive practices. Scholars begin and end with their own cherished values. By a circuitous process of reasoning, they manage to confer universal validity on their preferred values and interests.

An integral component of Humanistic Pluralism is the pervasive reliance on instrumental rationality; this ties together the seemingly disparate threads of contemporary scholarship and effectively excludes all forms of non-instrumental scholarship. The Arthurian scholar imagines that social change can be effected by looking at the world, diagnosing the malaise, and prescribing a customised dose of legal change: everything is as it seems and can be experienced directly. There is presumed to be a direct causal link between law and social behaviour. Yet this whole instrumental mind-set fails to appreciate the important ‘ideological’ dimension and function of law; there can be no unmediated experience of social reality. For instance, constitutional adjudication does not so much cause or condition, but comprises and is constitutive of existing social life. Legal discourse is a particularly potent medium for negotiating and constructing social reality. It is one of the ways society defines and presents the world to itself.

While the state often relies on crude force or threats to achieve its ends, its strength and long-term viability stem from its successful use of law. The discursive practices that comprise the language of the

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law structure the world in particular and partial ways. Charter-talk, for example, is a rhetorical medium of the most potent kind. Constitutional litigation must not be thought of as an independent variable in society and as sharing a complicated and, perhaps, unfathomable cause-and-effect relation with society. Adjudication and other social phenomena are part and parcel of the same thing: law, courts, property regimes, civil rights, and the like interpenetrate in manifold ways. In modern society, it is almost impossible to describe or account for social practices without describing or accounting for the legal relations among and within them.35 Law and adjudication are not important because they cause anything to happen, but because they form part of an integrated and rhetorical system of social control and ordering. If we really want to change society, we must stop thinking about the legal process in instrumental terms and start to appreciate its discursive and ideological dimension.

The critical upshot of all this is that modes of thinking are themselves revealed as contingent. Humanistic Pluralism has originated and matured at a particular time and serves particular interests. The historical introduction and institutionalization of the search for the ahistorical foundations of knowledge and truth operate to freeze existing patterns of social and intellectual relations. It legitimates an established distribution of power by conferring on it a spurious but respected ontological status. Importantly, this epistemological strategy has constrained and controlled our appreciation of the historical imperative itself; it has sought to persuade us to turn a deaf ear to the subversive message of historical contingency. There is no position of theoretical innocence or indifference. Any act of scholarship, in either its practical or theoretical performance, has an indissociable political and historical dimension. The question of what amounts to valid knowledge about legal phenomena is itself a political matter: legal epistemology is ideological warfare fought by other means.

The traditional view is that politics and knowledge are separate entities; knowledge can only arise and exist outside the sphere of politics' corrupting influence. Yet, when knowledge is valid, it can engender and sustain politics. My story is to challenge this critical separation and to demonstrate how politics and knowledge are mutually generative and supportive. Politics is as much the producer of knowledge as its product. While politics cannot be exercised or effective without knowledge, the production of knowledge impinges on and nurtures politics. The hidden agendas of politics are secreted within the interstices of 'scientific' codes of knowledge:

in a society such as ours, but basically in any society, there are manifold relations of politics which permeate, characterise and constitute the social body, and these relations of politics cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation and functioning of a discourse. There can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of this association. We are subjected to the production of truth through power and we cannot exercise power except through the production of truth.36

IV. TOWARD RADICAL PLURALISM

My own story has been to suggest that we must re-stage and re-craft the saga of Canadian legal scholarship. Although the pluralist tale recounts an escape from the crumbling castle of Absolute Truth, modern scholars still live in the neighbouring fields and work in its capacious shadow. It is a traditional and grim fable of conformity and acquiescence based on superstition and fear; it is reminiscent of the Flat Earth story. Any exploration or expedition that pushes beyond the Arthurian horizon will, so the story goes, result in heretics dropping off the rational world and landing in an anarchic nihilism where only might is right and chaos has full reign. This simple allegory still manages to hold scholarship in its iron(ic) grip. Yet it could only begin to make sense in a pseudo-modernist narrative where there lingers a mystic belief in some objective certainty, even if it remains perennially out of sight and out of reach.

The moral despair that is associated with a rejection of the Humanistic Pluralist project is a figment of its own imagination. History shows that tyranny and repression thrive more where there is a widespread belief that absolute knowledge is at hand than in circumstances where there is a healthy distrust of such claims. Indeed, the recognition and acceptance that knowledge and politics are symbiotically related does not sabotage the possibility of any moral life, but forces us to take responsibility for our present predicament and future prospects. Humanistic Pluralism seeks to persuade us that the impersonal and anonymous hand of reason will choose for us among the smorgasbord of moral solutions on offer in the Arthurian restaurant at the end of the moral universe. But, when all is said and done, we are the chefs and the diners. We create, cook, and consume these moral offerings. There is no impersonal or anonymous hand to rescue or relieve us from the heavy responsibility of making our own moral choices. The only hand at work belongs to the restaurant’s proprietors: it is the iron fist of the status quo in the velvet glove of Humanistic Pluralism.

The turn to conversation is fraught with difficulties. By abandoning the search for foundational truths, we enhance the possibilities for the powerless to engage in the essential dialogue of world-(re)making, but provide ample opportunities for the powerful to dominate that conversation. As conversants and story-tellers, we are front-line combatants in the daily struggle to resist, reproduce, or change the world. We can never escape the historical context of our efforts in narrative construction. But, armed with that knowledge, we can guard against its hegemonic impulses. We are not condemned either to idolize existing discursive practices or to degenerate into a desultory solipsism. Within the contingent space between the customary accent of power and its evolving dialect, people might better be able to engage history, exercise their imaginative potential, and enact their own life stories.

As a conversational idiom, Humanistic Pluralism constricts the range of dialogic choices in the name of greater choice. By insisting on a ‘neutral’ mode of discourse in which no one can claim to have a vision of the good life that is better than anyone else’s, it removes from the scholarly agenda the most important of all possible topics. In effect, it renders the establishment of a radical pluralism unattainable and undesirable. Even though the good life might be exhausted in looking for the good life, we need more, not less, debate about what we can become and the world we could make for ourselves. We must stretch and enlarge the discursive resources at our disposal so that we can go beyond the traditional boundaries of social life and bring back linguistic records of our imaginative adventures. The seductive melody of Humanistic Pluralism must be resisted. Instead, we must work together so that we can “oppose inhumanity in different songs of joy.” In abandoning this Arthurian strain of pluralism, it will be necessary to learn a different ethic and to respond to a different dynamic:

In the serious play of questions and answers, in the work of reciprocal elucidation, the rights of each person are in some sense immanent in the discussion. They depend only on the dialogue situation. The person asking the question is merely exercising the right that has been given to him: to remain unconvinced, to perceive a contradiction, to ask for more information, to emphasize different postulates, to point out faulty reasoning, etc. As for the person answering the questions, he too exercises a right that does not go beyond the discussion: by the logic of his own discourse he is tied to what he has said earlier, and by the acceptance of dialogue he is tied to the questioning of the other.

The polemicist, on the other hand, proceeds encased in privileges that he possesses in advance and that he will never agree to question. On principle, he


possesses rights authorizing him to make war and making the struggle a just undertaking; the person he confronts is not a partner..., but an adversary, an enemy who is wrong, who is harmful and whose very existence constitutes a threat. For him, then, the [dialogue] does not consist of recognizing this person as a subject having the right to speak, but of abolishing him from any possible dialogue; and his final objective will be... to bring about the triumph of the just cause he has manifestly been upholding from the beginning. The polemicist relies on a legitimacy that his adversary is by definition denied.39

V. BEYOND BABEL

Once upon a time, a tribe conquered a land to the North. Although the local population spoke a variety of tongues and dialects, everyone was soon ‘persuaded’ to speak the same language. The tribal elders announced that they would build a city and a tower so unprecedented in size that it would stand as an unparalleled mega-monument to man’s prowess and power; it would be an obelisk of pride and intimidation. Construction and completion of the tower soon became the raison d’être of its whole economy and national life. All its resources and efforts were slowly but surely being exhausted in this magnificent obsession. While never modest in scope, the plans for the tower became increasingly elaborate and ambitious. With its completion seemingly further away than the day they started, the tower simply collapsed of its own weight. Many were killed in the disaster, but some survived. They dispersed throughout the land. New languages were developed and old dialects were revived.

Traditionally, this has been told and heard as a cautionary tale of conceit and come-uppance, impiety and imperfection, and destiny and despair. Yet, as I interpret it, it is not a curse from which we must deliver ourselves, but a blessing that we seem unwilling to accept. Theorizing is not some grand architectonic structure, but more a vast force field in which no assertion is immune from revision.40 Hubris remains the singular quality of the modern scholar: humility is more befitting and modesty more called for. The ambition to build a new Camelot (was there ever an old one?) on Canadian scholarly soil is as ill-conceived and, hopefully, as ill-fated as its Babelian predecessor. At certain times, it is more productive to destroy for the sake of our own generation than to build for eternity.41 Humanistic Pluralism is one place to begin.

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40 W.V.O. Quine, From a Logical Point of View (1953) at 42.
41 See R. Rorty, Philosophy and the Mirror of Nature (1979) at 369.