

ESSAY:
ATLANTEAN PROSE AND THE SEARCH FOR DEMOCRACY

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Atlantis, the Lost City, has been a focal point of folklore, archeological inquiry, literary criticism, and mystic interpretation. It has boggled the brilliant, confused scientists, and sparked the interest of children. “Skeptics, archaeologists, geologists, and anthropologists may rant and rave, but the myth of Atlantis endures. In every generation, someone emerges to champion the cause and to embroider the story.”² But the significance of Atlantean prose as an avenue through which to best understand critical legal thought has not been explored in depth. To be sure, there have been numerous books, articles, and opinions analyzing Atlantis, but little attention has been given to the legal significance of this type of storytelling. What does it mean to engage myth? How can legal scholars and practitioners learn from and use lessons of antiquity? Where does modern narrative theory fit into traditional legal discourse? I ask the reader to dive into the depths with me and consider what Atlantis can teach us about democracy, critical legal studies, and the rule of law.

I. ATLANTIS, HISTORICALLY

Humyn³ history is intertwined with Atlantean lore. J. Allan Danelek writes:

¹ B.A., University of Richmond; J.D., West Virginia University College of Law. Thanks are due to my mentors and the two people who have most fanned my academic fire; Associate Dean for Faculty Research & Development and Professor of Law Caprice Roberts and Professor of Law andrè douglas pond cummings, both of the West Virginia University College of Law. My interest in Atlantis and narrative began while I was coaching the Midlothian High School debate team in Midlothian, Virginia. I thank those debaters who helped me better understand what I was teaching them. My father, Rick Sciullo, is my biggest champion.

² Len Kasten, *Edgar Cayce on Atlantis*, 12 ATLANTIS RISING, Summer 1997, available at <http://www.atlantisrising.com/backissues/issue12/ar12cayceatlantis.html>.

³ For a discussion of my admittedly unusual spelling of humyn with a “y,” and for that matter womyn, see Nick J. Sciullo, *This Woman’s Work’ in a ‘Man’s World’: A Feminist Analysis of the Farm Security and Rural Investment Act of 2002*, 28 WHITTIER L. REV. 709, 712 n. 10 (2006).

The Atlantis story continues to fascinate us for the simple reason that it speaks to us. It tells us about a potentially lost past, but even more importantly, it speaks to our present and future as well. Atlantis beckons us to consider just how very little we really do know about the world we live in, and it forces us to ponder the possibility that our modern civilization may not be the first to have reached such heights of technological sophistication—just merely the latest to have done so.⁴

Gerald Naddaf, of Ontario's York University, notes, "In the history of literature, few stories have received as much attention as the astonishing story of Atlantis."⁵ Indeed, history is replete with examples of lost civilizations. From stories of South America's first inhabitants to the Lost Colony of Roanoke,⁶ students, professionals, and wide-eyed dreamers have always been captivated by these historical mysteries. Atlantis reigns high above all other lost civilizations in its narrative aspects and historical impacts. Even when taken as a work of fiction without any connection to historical events, a complete fantasy—myth, tall tale, mighty good yarn—Atlantis is still a mesmerizing encounter for all who read and hear it. This mystery lends to the themes of journey and discovery.

History revels in the mysterious. As a history major, I was always fond of the unknown. What made history great was all that I did not know and all the questions that exploded forth from my consciousness at every instance I learned something new. Advocating for the power of historical narrative is in part an advocacy of the value of historical inquiry in a general sense. When I studied history,⁷ among urban studies,⁸ rhetoric and

⁴ J. ALLAN DANELEK, *ATLANTIS: LESSONS FROM THE LOST CONTINENT* x (2008).

⁵ Gerard Naddaf, *The Atlantis Myth: An Introduction to Plato's Later Philosophy of History*, 48 PHOENIX 189, 189 (1994).

⁶ See generally KAREN ORDAHL KUPPERMAN, *ROANOKE: THE ABANDONED COLONY* (2d ed. 2007); LEE G. MILLER, *ROANOKE: SOLVING THE MYSTERY OF THE LOST COLONY* (2002); DAVID STICK, *ROANOKE ISLAND: THE BEGINNINGS OF ENGLISH AMERICA* (1983).

⁷ I was a history major, with no particular focus. I tended to take more classes that dealt with the broad category of social history but also studied Eastern Europe extensively. My advisor was Dr. L. Carol Summers. I completed my senior thesis on food aid and Somalia under the guidance of Dr. Sydney Watts. Dr. John D. Treadway encouraged my interest in Germany and Eastern Europe.

communication studies,⁹ and critical theory¹⁰ at the University of Richmond,¹¹ I developed a sense of history's importance. I developed an appreciation of the historically contingent position of our modern ideas, desires, conundrums, and stories. That type of knowledge—understanding—is what has guided my investigation of the law. I appreciated the law not for what it is, and not simply for what it was, but for what it could be and what it might never be. That rhetorical space allowed me to appreciate the importance of a broader legal discourse that spoke not of right and wrong, just and unjust, legal and illegal, but of the impact that legal professionals—lawyers, judges, clerks, lobbyists, consultants, professors, advocates and businesspersons—have on the daily lives, perceived realities, and critical thoughts of each and every one of us. The journey of historical narrative is of critical importance to the process of questioning and developing ideas of justice, democracy, and law.

Even if Atlantis exists only in the mind, it is as important as any other “factual” story. Thomas-Henri Martin writes that “[s]ome people have seen the New World as Atlantis. But no: it belongs to another world, one that exists not in the domain of

⁸ Professor Stuart Wheeler was the head of the interdisciplinary urban practice and policy major. It combined political science, biology, sociology, rhetoric and communication studies, amongst other majors.

⁹ My critical consciousness was awakened by Dr. Kevin D. Kuswa, Director of Debating at the University of Richmond. Communication is the very essence of law and legal reasoning. Whether telling a plaintiff's story in open court or working through the Bentham, one must understand the role of stories on issues of right and wrong. If we live in a normative world and are forced to think normatively, then we must be able to articulate those notions through the process of communication.

¹⁰ If we are not critical of the world around us then we have failed to participate fully in it. Although law school can and often does teach a critical disposition to the law, undergraduate studies allows a much broader focus on issues of criticism, rebellion, and inquiry. I was profoundly shaped by the application of critical theory in not only rhetoric and communication studies where I was formally introduced to the subject but also in political science, sociology, and urban studies. The more we, as lawyers, students, and scholars analyze the system in which we participate, the more we fulfill our understanding of that system.

¹¹ The University of Richmond is a private liberal arts school in Richmond, Virginia. It has a phenomenal academic reputation and excellent business, history, and biology programs. The University's endowment is significant. Over the past couple of years, especially after I graduated, it has begun to take on a larger role in the community. Diversity has flourished both in thought and in practice.

space but in that of thought.”¹² The domain of thought is as fertile as the domain of space. Of course, to suppose that the “domain of thought” does not have a very important history would be tragic. Martin illustrates that more than the textbooks, wars, leaders, and other tangible artifacts, the thoughts around those artifacts are the constituent parts of progress and hope. The history of ideas is important in understanding the development of events just as much as the events that preceded the focal point of inquiry.

J. Hillis Miller notes:

The substantiality of the “most solid story-tellers” depends on having a “somewhere,” an assumed historical reality as a background or scene. Such a context, by that species of metonymic transfer which is the basis of all narrative, will give solidity to the story narrated within the *locus* and to the interpretation of the story performed by its narrator.¹³

Even if we assume the Atlantean story to be fiction and not history, the fictional aspects of the story do not take away from its lessons of democracy and justice. Instead, they help those messages along, lending Plato greater *ethos*, and in turn allow listeners/readers to develop a more keen appreciation for the story and its messages. Fiction simply tends to read better than non-fiction. Perhaps this is the traditional narrative direction that fiction takes which makes reading fiction seem somewhat easier. In that case, legal professionals must again ask, “How can I best write to inform my audience?” and “What do I know of various rhetorical styles/devices that can help make my reading more crisp and lively?”

The story of Atlantis resonates with people because it relates common experiences and understandings of the progress of civilization,¹⁴ the quest for safety and security,¹⁵ as well as the need to perfect a workable model of government of and by the

¹² THOMAS-HENRI MARTIN, ESTUDIES SUR LE TIMÉE DE PLATON 332 (1841).

¹³ J. Hillis Miller, *Narrative and History*, 41 ELH 455, 459 (1974).

¹⁴ See DANELEK, *supra* note 4, 67-82.

¹⁵ For an analysis of destruction and security in Atlantean myth, see J.S. GORDON, THE RISE & FALL OF ATLANTIS AND THE MYSTERIOUS ORIGINS OF HUMAN CIVILIZATION 219-34 (2008).

populous as well as the composition of a functioning society.¹⁶ These are common themes from the earliest legal and political science writers.¹⁷ From our earliest days in school, at work, and in our family life, these ideas have guided our thoughts, inspiring us all to question and innovate, interrogate and support, and pursue a more perfect place if not in every day parlance then in everyday thought and dream.

The genre¹⁸ of myth is particularly important and instructive because myth is the way in which we develop a theory of origin.¹⁹ Humynity²⁰ seeks origin in order to ground understanding because without a beginning there is no way we can understand endings or perhaps, more importantly, the time and space in between.²¹ Not even the scientific and technological revolutions have changed the importance of myth:

Hum[y]n beings, it seems, have a natural need for myth, a need that has not passed with the advent of the written word, but rather mutated. The advent of modern science, offering strikingly new ways of explaining the workings of our world, has not overridden the need to hear a plausible account of how this world began, as if we still need a narrative of its birth to understand how it is.²²

Myth is pervasive. It is not an ancient art or a relic of a bygone year. In order to understand why Atlantean stories impact law and democracy, one must first realize how important Atlantean stories are to society. A Google search of Atlantis reveals a startling number of websites²³ and a search of most

¹⁶ See DANELEK, *supra* note 4, 83-99.

¹⁷ One would be hard pressed to take a political science course, read a legal history text, or research any historical topic and come across these common themes. The very stuff of a liberal arts education and of classes in law school that are unfortunately maligned as esoteric (jurisprudence, legal history, law and literature) is explanations and investigations of security, government, and progress.

¹⁸ See DANELEK, *supra* note 4, at 32-33; GORDON, *supra* note 15, at 136-48.

¹⁹ See DANELEK, *supra* note 4, at 55-65; GORDON, *supra* note 15, at xxi-x.

²⁰ See DANELEK, *supra* note 4, at 29-38.

²¹ *Id.* at 43-5.

²² Harold Tarrant, *Atlantis: Myths, Ancient and Modern*, 12 EUR. LEGACY 159, 159 (2007).

²³ On February 19, 2009, Google recorded about 36,600,000 hits for the search term "Atlantis." "Atlantis" falls well ahead of "Bill Clinton" with 23,200,000

library catalogues reveals many selections all pertaining to Atlantis. Searches on Amazon and other online book retailers produce even more items.²⁴ Few stories are as commonly told or as widely debated and researched across such a broad spectrum of disciplines.

It is not so important whether or not Atlantis was a real place, as mentioned previously. To debate its location is to largely miss the point of the story. But, for those interested, Atlantis has been placed in the Caribbean,²⁵ the North or South Pole,²⁶ and

hits. Atlantis far surpasses “nanotechnology” with only 10,800,000 hits and my beloved “New York Mets” with 7,490,000 hits.

²⁴ See generally SHIRLEY ANDREWS, ATLANTIS: INSIGHTS FROM A LOST CIVILIZATION (6th prtg. 2004); IGNATIUS DONNELLY, ATLANTIS: THE ANTEDILUVIAN WORLD (Dover Publications, Inc. 1976)(1882); DAVID GIBBONS, ATLANTIS (2006); FRANK JOSEPH, THE ATLANTIS ENCYCLOPEDIA (2005); DAVID KING, FINDING ATLANTIS: A TRUE STORY OF GENIUS, MADNESS, AND AN EXTRAORDINARY QUEST FOR A LOST WORLD (2006); CHARLES R. PELLEGRINO, UNEARTHING ATLANTIS: AN ARCHAEOLOGICAL ODYSSEY (1993); LEWIS SPENCE, THE HISTORY OF ATLANTIS (2003); COLIN WILSON AND RAND FLEM-ATH, THE ATLANTIS BLUEPRINT: UNLOCKING THE ANCIENT MYSTERIES OF A LONG-LOST CIVILIZATION (2002).

²⁵ David Hatcher Childress, *Top 10 Possible Locations for Atlantis*, http://www.bibliotecapleyades.net/atlantida_mu/esp_atlantida_17.htm (last visited Feb. 24, 2009).

With the discovery in 1968 of what appeared to be a huge polygonal stone road in the shallow water off Bimini, Atlantis was thought to have been found in the Caribbean. A lost pyramid underwater staircases, fallen pillars, all seemed sunken ruins indeed. Atlantis could have spread over a large portion of the Atlantic, from the Azores to the Bahamas and possibly even Florida.

Id.

²⁶ David Hatcher Childress ranks Antarctica as the sixth most likely location of Atlantis:

When Charles Hapgood resurrected the Pin Ri’s map, a map copied from older maps by a Turkish admiral and which showed Antarctica as an ice-free continent, the concept of Atlantis in the frozen polar wasteland was born. Since Atlantis may have been destroyed in a pole shift, Antarctica was probably at a more temperate climate 10,000 years ago, and may hold megalithic ruins such as South America. Antarctica seems a long way away from the Mediterranean with which it fought a war. Also Atlantis supposedly sank beneath the ocean in a day and night. Antarctica rather accumulated ice for thousands of years. Does Atlantis lie beneath the Antarctic ice?

Crete,²⁷ to name a few of the many theories.²⁸ Atlantis is important because of how it fits into a larger storytelling paradigm designed to teach and instruct about morality and virtue. This storytelling paradigm is not fitted to place.

Atlantean discourse is quite old. Plato makes the first reference to Atlantis in *The Timaeus*²⁹ and *The Critias*.³⁰ Plato describes Atlantis as a naval superpower that conquered much of Europe and Africa. Plato positions Athens and Atlantis, as much competing states as competing theories of government, as enemies in his dialogues, and concludes that Atlantis sank into the ocean after a failed attempt to invade Athens. It is the interplay between Athens and Atlantis that gives us terrain on which to discuss democracy and law. Plato opens up a wonderful literary world in which storytelling and fantasy communicate complex ideas about justice, morality, and fairness. Without the great apparatus that is Atlantis, one cannot help but wonder if Plato would have made these contributions.

Sir Francis Bacon continued the story with the posthumous publication of *The New Atlantis*.³¹ This work emphasized the utopian interpretations of the Atlantis story. Bacon lived at a time when morality was the highest pursuit, and he was arguably quite a rebel. He introduced the scientific method,³² perhaps his

Id.

²⁷ David Hatcher Childress ranks Crete as the tenth most likely location for Atlantis:

According to the tourist literature in Greece, the explosion of the Aegean island of Thera destroyed Crete and at the same time, Atlantis. While Plato is quite explicit in his time frame and location for Atlantis (9,400 B.C. and in the Atlantic), Greek archaeologists seem certain that Atlantis can be found only a few hundred miles from Athens. Thousands of tourists come to Thera every year and drink the local Atlantis wine while they discuss Atlantis. For them, Atlantis will never be found anywhere else.

Id.

²⁸ Richard A. Schultz, *Atlantis and the Evolution of Humanity*, ROSICRUCIAN DIG., Vol. 84 No. 2 2006, at 49, 49-53.

²⁹ PLATO, *THE TIMAEUS AND THE CRITIAS* (Thomas Taylor trans., Princeton University Press 3rd prtg. 1968) (1944).

³⁰ *Id.*

³¹ SIR FRANCIS BACON, *NEW ATLANTIS* (1627)

³² Sir Francis Bacon, F.R.C., *The New Atlantis*, ROSICRUCIAN DIG., Vol. 84 No. 2 2006, at 13, 13-14.

strongest link to hermetic philosophy.³³ Bacon's break from the absolutist Christian morality of his time was significant. His writings were not so divorced from this tradition, however, as *The New Atlantis* contains an interesting blend of ideas that seems to show the scientific method helping to discover morality. The pursuit of morality has guided much current scholarship on Atlantean stories³⁴ and indeed provides the backbone for the theories of democracy, hope, and freedom that have spawned from critical analysis of this story.

II. THE RHETORIC OF DEMOCRACY

Democracy and legal discourse are very much one in the same. The pursuit of democracy and the pursuit of a legal paradigm based on justice follow similar ethical underpinnings. Some may say that there are democratic underpinnings to legal discourse where others might say that democracy cannot exist without a legal system based on justice. It seems that both of these propositions can be true without being exclusive. Cyclical as that may be, the origin of democracy and of systems of justice, are not being debated today in this article.

The rhetoric of democracy is of the highest importance. The rhetoric of democracy is more concerning than the practice of democracy. Indeed, one of the greatest criticisms of our democracy is that the words we use to describe the ideal democracy are masking the insidious injustices of the democracy we live. Words are powerful, and the words that constitute our ideas of government are all that much more important.

Let us not confuse the rhetoric of democracy with the actual form of government connotated. The rhetoric of democracy is the tool used by those in power to mask the un-democratic nature of our government. The more we hear from our leaders that the system works, rights are being protected, and liberties are everyday more entrenched, the less rhetorical space we have to critique the government for its public image as that of a functioning democracy—born out of the rhetoric of democracy.

³³ *Id.*

³⁴ For a discussion of the moral issues of Atlantis applied to our current times, see GORDON, *supra* note 15, at 311-18.

Rhetorical democracy and system democracy must be differentiated. One is a tool of the oppressor and one is the hope of the oppressed. Rhetorical democracy exists in the words spoken down to the masses from the oppressor. It is the coat of paint that disguises the weather-worn floor boards of government for, by, and of the people. System democracy is the functioning unit of government that does more than pay lip service to equality, justice, and progress. It is the teeth in rhetorical democracy's bite. It is the means by which society can move forward, addressing the concerns and injustices that plague all groups with a process that makes results possible. We must challenge rhetorical democracy in order to challenge the problems of system democracy. Surely what actually is and what is wished or desired are creatures of a very different nature.

While the rhetoric of democracy remains strong, the reality is that attempts to actually practice democracy are undermined by private interests that are privileged over the public good. The scale and structure of the political economy has created the conditions wherein people sense little control over their lives, and increasingly believe and practice a form of "democracy" that consists of voting occasionally, paying taxes reluctantly, and consuming regularly. People refer to themselves not as "citizens", but as "taxpayers" or "consumers." The voice of "the public" is no longer heard through active citizen engagements on issues but is now passively recorded in opinion polls and votes, denying any sense of collective public agency or action.³⁵

Perhaps this is why the pursuit of democracy through narrative is so important. It is an attempt to reclaim democracy in spite of the rhetorical constructions against it. It is an attempt to rationalize a loss of democracy and act on that realization. Or is it used to erase the loss of democracy that United States citizens have been taught to fear? Who wants this memory erased? It seems to me that narrative offers some hope and that the quest for democracy through historical narrative can and may pose a

³⁵ Lynda H. Schneekloth & Robert Shibley, *Placemaking: A Democratic Project*, RECONSTRUCTION, Summer 2005, available at <http://reconstruction.eserver.org/053/schneekloth.shtml>.

counter-narrative to the harmful narrative of the rhetoric of democracy.

Narratives, whether affirming or rebelling against a controlling force's vision of truth, matter because they bring together consciousnesses and link the various histories of the multitude. The multitude,³⁶ masses, mobs, call them (us) whatever one may, are creatures of story, persuasion, speech, and recognition. While often maligned in traditional legal discourse, these groups are able to flourish in a narratology of resistance.³⁷ "Narrative has a unique ability to embody the concrete experience of individuals and communities, to make other voices heard, to contest the very assumptions of legal judgment."³⁸ Narrative is the act by which individuals may begin to protest—to challenge established theories and practices, ultimately empowering them to transcend the status quo.

The story of progressive thinking is a story deeply intertwined with the voice of dissent. Narrative provides the structure through which we can all speak and hopefully all learn. This is not a call to Spivak's subalterns,³⁹ or a rallying cry for the downtrodden (although it certainly could be), but instead a recognition of the way in which society communicates about the marvelous and the mundane, democracy and doughnuts.

Narrative is also gaining favor with political scientists, historians, law professors, and other academy participants⁴⁰ in part because it is a retreat to a simpler time⁴¹ and partly because

³⁶ See generally MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* (2000).

³⁷ Peter Brooks, *Narrative Transactions – Does the Law Need a Narratology?*, 18 *YALE J.L. HUMAN.* 1, 2 (2006) ("It has become something of a commonplace - - too much of one -- that legal storytelling has the virtue of presenting the lived experience of marginalized groups or individuals in a way that traditional legal reasoning doesn't.").

³⁸ Peter Brooks, *The Law as Narrative and Rhetoric*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 14, 16 (Peter Brooks & Paul Gewirtz eds.) (1996).

³⁹ See Gayatri Spivak, *Can the Subaltern Speak?*, in *MARXISM AND INTERPRETATION OF CULTURE* (Cary Nelson & Lawrence Grossberg eds., 1988).

⁴⁰ Brooks, *supra* note 37, at 3 ("Whereas a number of disciplines that border on the law -- history, sociology, philosophy, even economics -- have within the past couple of decades recognized a 'narrative turn' in their work, there does not seem to have been an analogous recognition in legal adjudication.").

⁴¹ James West Davidson makes the point of historians, but his analysis could easily be applied to other disciplines:

of the supposed power of narrative to more readily disseminate scholarship. We must move beyond the confines of traditional thought in order to debase the oppressive powers of master narratives.⁴² Utilizing Atlantean lore is one way, a significant way, to go about all of this.

III. MYTH, DREAM, AND UTOPIAN PURSUIT

Even if utopian thought seeks to transform the present by articulating an alternative future, its power lies in its lack of respect for politics as the art of the possible, in its insistence that realism consists in the demand for the impossible. Utopianism is discursive terrorism to the degree that it challenges the prevailing historical and instrumental rationality of bourgeois culture.⁴³

It is precisely the rational underpinnings of bourgeois culture that must be overthrown in order to explore the potentials

No doubt some historians will find the return to narrative a comfortable retreat, just as others have found the jargon of the social sciences a convenient substitute for clear thinking. I would argue, however, that to focus the debate on “traditional narrative” narrowly construed is to close off intriguing alternatives which historians might explore. Despite the worthwhile directions which the proponents of narrative have outlined, their discussion has been framed almost entirely by the now time-honored canons of the social sciences. Beyond those canons lies a long-neglected way of writing history: by viewing it as a literary endeavor.

James West Davidson, *The New Narrative History: How New? How Narrative?*, 12 REV. IN AM. HIST. 322, 323 (1984).

Indeed, jargon can be off-putting. Similar sentiments likely resonate with many legal scholars and perhaps most law students. Davidson makes the point that there is potential for a literary interpretation of history, a way to be not a historian of literature, but a literary historian.

⁴² Stanley Aronowitz, *Postmodernism and Politics*, SOC. TEXT, Special Issue: Universal Abandon? The Politics of Postmodernism 1989, at 46, 46. (“By now, nearly everyone agrees that the shift in sensibility that Nietzsche announced about a century ago has finally arrived. Postmodern-ism, the name given to this shift, is marked by the renunciation of foundational thought, of rules governing art, and of the ideological ‘master discourses’ liberalism and Marxism.”).

⁴³ *Id.* at 55.

for democracy. We must act out against rationality because rationality creates the striated space⁴⁴ of rhetorical democracy, the terrain to which our shackles are bound.

Myth is the way we search for truths. It is hypothesis testing on a meta-narrative axis. The realization of the dream is often incidental to the myth/dream/idea itself. The adage, “it’s not the destination, but the journey,” rings true. What matters most about Atlantean myth is the fun, adventure, and thought that goes into constructing these stories. With each construction, we find new ways to understand our world and new ideas about which to hope.

Atlantis gives us hope and love. The pursuit of Atlantis is therapeutic in that it creates a vision to which we can cling. Atlantis is a utopia, not in the sense that Plato constructed it as a utopia, because he did in fact construct it as the exact opposite, but because both the act of hoping for something better and the hope itself are utopian. The process of hope is inherently liberating as it affords the dreamer a place away from reality, a place where one can realize the effects of their hopes. I utilize the concept of “dreamer” because dream enables the pursuit of hope, something beyond that which we can control or immediately experience.

Richard A. Schultz has noted at least a bi-level purpose of Atlantean myths:

Plato and Bacon, like many other mystics, wanted to influence the direction of their cultures. They knew that cultures maintain a tension between the struggles of daily life and the vision of a better, easier, more ideal world. By working on two levels—the physical world and the intangible, esoteric world—they hoped to improve the mystical perception of universal principles of their citizens.⁴⁵

From this rhetorical terrain, that of the dream, democracy becomes that much more real because the dreamer is already there. The dreamer is in the dream—is the omnipotent observer.

⁴⁴ See generally, GILLES DELEUZE & FELIX GUATTARI, A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA (1987).

⁴⁵ Schultz, *supra* note 28, at 54.

Looking back from the dream to the “real,” the dreamer is able to engage in a dream management scenario where the steps necessary to fulfill the dream can be discussed. Dreams provide space in which one may act. Dreams make enriching pursuits possible.

Atlantis was a fictional account designed to critique the existing social order. Atlantis was not utopian. The pursuit of something better, however, is a utopian pursuit. We must look not at what Athens was or what Atlantis was supposed to be, but instead at the interaction between history and fiction and the resulting synthesis. Denise Albanese notes, “[t]hus defined, the utopian fiction problematizes the culture out of which it emerges, throws the form of power it ascribes to that problematized culture off balance.”⁴⁶ The critic must then decide if Atlantis, the story, is a creation of fictionalized Atlanteans or of historical Athenians. Is it a criticism of ancient Athens or does it laude Athens’s virtue? Does Plato make Atlantis out to be a warning of Athenian excess or is Atlantis a representation of what Plato views Athens to be? Scholars hotly debate these questions. The answer is not as important as the questioning process. In order to find democracy, utopia, or whatever ideal is important, one must consider the story and its meanings, follies, and interpretations. A text is only as strong as the questions it raises in perceptive readers.

Beyond Plato, however, Atlantean stories have continued to embody the trope of the journey, a strange and intriguing new place of discovery and testing.

The early modern utopia is difficult to access. Utopias from this period are reached after difficult journeys, generally by sea, involving shipwrecks and storms. When they are found, utopian countries are strange and unknown; entering a utopia always involves a process of discovery, a process which by its very nature challenges the status and the knowledge of the reader. Though written at a time which has become celebrated as the age of discovery, utopias deny that the world is wholly known. The utopia insists upon the existence of secrecy, of unknown waters and lands, and asserts that the

⁴⁶ Denise Albanese, *The New Atlantis and the Uses of Utopia*, 57 *ELH* 503, 504 (1990).

reader is not in full possession of knowledge of the world; there exists also no-place, never before visited.⁴⁷

Stories create open spaces from which tellers and listeners can develop new theories and pursuits. Myth creates an even broader space by releasing the world from the moorings of big “T” truth, a farce created by proponents of rhetorical democracy. What is perhaps most interesting is the duplicity of the utopian story. The story of a journey is also a journey. The story of challenge, knowledge, or confusion is also challenge, knowledge, or confusion. This equation does not follow the symmetric property of equality,⁴⁸ however. What a marvel!

IV. CRITICAL HISTORIES AND DEEP DEMOCRACY

Atlantis helps us understand faults through critical history. “Plato and Bacon, like many other mystics, wanted to influence the direction of their cultures.”⁴⁹ I think back to the days when I learned about Nietzsche and later on about Foucault. What made these scholars so interesting, and what makes them so important today to a critical understanding of law and society, is the way in which they engaged history as active participants and fluid critics. No longer was history dry words on a crumbling canvas; rather, history became a tool, a method, and a set of ideas to critique and be critiqued. This seismic shift rippled through many disciplines and allows us now to understand complex theories like postmodernism, critical legal studies, and law and literature. Reading stories of Atlantis and then critically engaging those stories builds upon the tradition of many fine scholars. To explore Atlantis is really to explore critical theory. Atlantis provides many different ways to understand history, law, hope, democracy, and rhetoric and it is no wonder students continue to be intrigued by Atlantean lore.

Atlantean stories are the foundation upon which we can pursue new theories of democracy. Because Atlantis challenges, or at the very least augments, stories of ancient Athens, it is a

⁴⁷ Chloë Houston, *No Place and New Worlds: The Early Modern Utopia and the Concept of the Global Community*, SPACES OF UTOPIA, Spring 2006, at 13, 13.

⁴⁸ The symmetric property of equality is expressed by the equation $a=b$; therefore, $b=a$.

⁴⁹ Schutlz, *supra* note 28, at 55.

significant extension of classical democratic thought. The way in which we engage history dictates how we will make history. Gerrit Gong notes:

The emotional and geographic reach of remembering and forgetting issues is increasing, as their impact on public perceptions and popularity determined strategic alignments. To make history is, by definition, to describe the past from a perspective of the future. To determine, the future is, at some point, to make history. At the crucial nexus of each government's and each country's political battle to determine how the past will shape the future, remembering and forgetting issues will provide the vocabulary for and the battlefield on which strategic alignments in the contemporary world will turn. We are witnessing the beginning of a new history.⁵⁰

The very powerful art of remembering⁵¹ is crucial to understanding democracy. Democracy develops as an outgrowth of tradition either to reify or rebel. The changes that the United States has seen over the many years since the Declaration of Independence and the Constitution are many and far-reaching. Those founders who were thoughtful and provocative enough to lay the foundation for our democracy could never have imagined the democracy we now experience, for better or worse. Remembering is the strategy that allows us the potential to change and the promise of a responsive set of ideals codified into a democratic system of governance.

⁵⁰ Gerrit Gong, *The Beginning of History: Remembering and Forgetting as Strategic Issues*, WASH. Q., Spring 2001, at 45, 56.

⁵¹ Nick J. Sciullo, *History & Cultural Memory*, RICH. TIMES DISPATCH, May 30, 2008, at A13.

Memory is vitally important to a nation's cultural identity. It is how we structure our stories about right and wrong, past and present, and justice and injustice. The way we remember shapes our attitudes about politicians, the polis, and the people. Without an adequate understanding of memory's importance, we stand to falter on the doorstep of social thought.

The quest to find Atlantis is a critical history that seeks to displace the over-simplification of legal thought by a relatively small oligarchy. Atlantis shifts the terrain bringing in not narrative themes, but an actual narrative. This narrative is the narrative of history, the narrative of thought, the narrative of legal idealism. Atlantis represents the journey toward democracy, justice, and equal representation, not the destination. The destination is an illusory place on a large space of hope. To preserve hope we must traverse the perils of space and not sit contently on a pre-conceived appropriate place.

Quite frankly, the power of narrative is underappreciated, and the content and lore associated with Atlantean myths is an undiscovered gem in the pursuit of hope. We must continue to pursue change, dreams, and hope as a means of encouragement—a means that enables further progress. Schultz describes this progress: “[a]ccording to hermetic philosophy, that which is below is like that which is above. The physical or New Atlantis will materialize as we as a culture recognize and realize our own paradise within.”⁵² Hermetic philosophy bends linear understanding so that we can no longer comprehend traditional dualist philosophies. Atlantis weaves history into the present, brings the ephemeral with the grounded, and ties space and place together into a collective thought process of significance.

Atlantean storytelling creates an environment of deep democracy. By “deep democracy,” I mean a radical pursuit of democracy where we must take on democracy not as an abstract concept that escapes us in the ether of social thought, but something that lies under every uncovered stone, hangs from every tree branch, and frolics across every meadow.⁵³ To tell the story of Atlantis is to live democracy unabashedly, personally, deeply. The storytelling of democracy is different from the reading of democracy because it makes the storyteller part of the action. Storytelling is an active pursuit,⁵⁴ an inquiry, something that manifests itself to others. Reading is a pursuit that is internalized and may seep out into conversations but is not readily

⁵² Schultz, *supra* note 28, 55.

⁵³ MICHAEL TOBIAS ET AL., *DEEP ECOLOGY* (Michael Tobias ed.) (1984); *see also* ARNOLD MINDELL, *THE LEADER AS MARTIAL ARTIST: AN INTRODUCTION TO DEEP DEMOCRACY*. (1992) (coining the term “deep democracy.”).

⁵⁴ Reading very rarely involves the public. It is private, quiet, and internal. Storytelling involves communicating what is read, presenting material to tell a story. The storyteller speaks and is listened to.

identifiable with strong verbal markers.⁵⁵ One does not live reading; one does live storytelling.

The pursuit of deep democracy is a pursuit that involves a personal stake in the purpose of the pursuit. Much like deep ecologists,⁵⁶ deep proponents of democracy seek out a living, breathing democracy in which they are personally involved and in which they may personally develop an attachment as well as shape the direction of the purpose, pursuit, and product.

Atlantis provides an historical example of storytelling for hope and inspiration. As opposed to looking to today's struggles as the sole beacons of progress and hope, we ought to look to history's many fine examples. Critical histories allow us the advantage of repeating history, by understanding the hope and promise of past stories, we can repeat their dreams and pursue them further.

Narrative through Atlantean storytelling is a way in which we can develop a theory about law and democracy because narrative is central to legal theory. Atlantis then becomes a tool we can use. The hypothetical that is Atlantis is precisely the necessary dynamic for a discussion of the possible.

Professor Robin West notes:

It is not surprising that legal theory should rely so heavily upon narrative form. The subject matter of legal theory is the "nature of law." This nature is partly revealed by the content of law -- its history and political and economic underpinnings. Examining law as a "fact" can help us understand what law is and what it has been in the past. But law is also an ever-present *possibility*, potentially bringing good or evil into our future. The nature of law is also revealed, then, by our aspirations for and our fear of law: fantasies and nightmares revolving around power, reason, and authority. When we discuss what is, we rely quite rightly upon description and analysis. But when we discuss what

⁵⁵ For a thorough analysis of verbal markers through an analysis of irony, see LINDA HUTCHEON, *IRONY'S EDGE: THE THEORY AND POLITICS OF IRONY* 141-75 (1994).

⁵⁶ TOBIAS, *supra* note 53, at 17.

is possible, what we desire and what we dread, we quite naturally turn to stories about hypothetical communities and the legal actors and forms within those communities.⁵⁷

It is instructive to look at Professor West's analysis in order to unpack the pursuit of the possible. West illustrates the historical character of law. Law needs history, and the pursuit of law, an education in law, is very much connected to the socio-historic realities of legal precedent and thought. What is law without history? Without social and cultural understanding? Without economic and political underpinnings? There can be no legal theory without a comprehensive interdisciplinary approach to legal thought.

Legal thought, traditional legal thought, is analytic and quantitative. The approach to law that has been embraced by most professors is an approach characterized by rigid analysis, categorization, selectivity, and segregation. Atlantean lore is narrative as a rejection of this traditional approach of scientific knowledge,⁵⁸ of the fact as supreme. That is not to say that narratives cannot be true, true in a colloquial sense not necessarily a philosophical one.

Law illuminates a possibility, just as Atlantis does. There will always be what *is*, but it is the pursuit of what *could be* that keeps us writing, thinking, dreaming, learning, and striving. When West writes of law's *possibility*, she describes the possibility of a new understanding, a new order, new conditions—a new socio-legal condition. Law is not reactive or proactive, but active across the entire time-space continuum. It is inherently possible. Law cannot be captured; it is not static.

Discussions of law involve discussions of authority, power, fear, and hope. These discussions need not be in a narrative mode, but it is through narrative that we are best able to understand the spectrum of thoughts involved. Everyone who has read traditionally written law reviews, most Supreme Court cases, and countless syllabi for legal classes has encountered emotions

⁵⁷ Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV 145, 146 (1985).

⁵⁸ MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES* 263-64 (2d ed. 2002).

such as fear and hope, and has endeavored to understand authority and its manifestations, as well as the sources of power.

Lastly, Professor West describes how we must rely on hypotheticals in order to describe our desires, wishes, and hopes.⁵⁹ Atlantis is the hypothetical, the critical history, the narratology that communicates our aspirations and dreams. Atlantean storytelling communicates the hope that we can realize democracy, that we can come closer to a world in which right triumphs over evil. Because we have no frame of reference for the ideal, we must communicate the ideal in hypotheticals. The pursuit of the ideal is an illusive chase that requires the posing of hypotheticals and the telling of stories to make the idea cognizable. What is an idea without a reference, a schematic through which it may be interpreted?

V. NARRATIVE AND LEGAL DISCOURSE: BRIDGES TO A NEW WORLD

Storytelling has long been important to law. A compelling opening statement or closing argument can frame an advocate's success.⁶⁰ An effective hypothetical may force an expert witness to tell the story that a plaintiff envisioned in pre-trial preparation. Judges construct opinions that often read as novellas.⁶¹ Narrative has also been an important part of the surrounding legal climate. Advocates, lobbyists, spin-doctors, and others have used the power of narrative to shape the course of politics and opinions on legal matters in the press.

⁵⁹ See generally West *supra* note 57.

⁶⁰ Professor Anita Hill notes the power of narrative in an article memorializing A. Leon Higginbotham, Jr. who, she argues, helped use his personal narrative to become the great scholar, jurist, and activist that he was:

The use of narratives and stories in law is common. Lawsuits in particular are about events. In the courtroom setting, witnesses tell the story, or their version of the story, of the events that led to the trial. In both opening and closing arguments, attorneys sum up the stories of all the witnesses to suggest a narrative to jurors.

Anita F. Hill, *Tribute: The Scholarly Legacy of A. Leon Higginbotham, Jr.: Voice, Storytelling, and Narrative*, 53 RUTGERS L. REV. 641, 645-46 (2001).

⁶¹ *Id.* at 646.

Professor Derrick Bell commented when discussing his series of *Space Trader* stories:

I do not consider my stories a major departure in legal education. The use of hypotheticals is a staple of discussion in law school class-rooms. In addition, final examinations are generally presented in a series of fictional facts out of which law students are expected to recognize and apply legal precedents to support their conclusions.⁶²

I agree with Bell's assertion that law school is full of hypotheticals, stories, fictions, scenarios, and the like. Law school embraces this model as a way to keep students on their feet and constantly adapting to new events and challenges. Even law review writers often find themselves hypothesizing about the next available case or describing the appropriate facts necessary for the Supreme Court to rule on a potential test case. Law reviews as a whole have begun to publish more narrative works and more works on narrative.⁶³ Law professors relay stories to students and other faculty members to impart as well as gather knowledge. The result is a legal community well versed in narrative even though the community may not fully understand or appreciate the power that this narrative tradition harnesses.⁶⁴

The use of narrative is growing,⁶⁵ and it is the hope that this work lends something useful and creative to other scholars in the field and inspires students to test the narrative waters.

Narrative provides a strategy to present threatening ideas in a new and non-threatening way. The *Space Trader* stories are a marvelous example. If Derrick Bell had said, "The White majority

⁶² Derrick Bell, *The Power of Narrative*, 23 *LEGAL STUD. F.* 315, 316 (1999).

⁶³ Jean C. Love, *Commentary: The Value of Narrative in Legal Scholarship and Teaching*, 2 *J. GENDER RACE & JUST.* 87, 87 (1998); see also Kathy Abrams, *Hearing the Call of Stories*, 79 *CAL. L. REV.* 971 (1991).

⁶⁴ There have been numerous debates about the relevance of storytelling and narrative in a legal context. See generally Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *STAN. L. REV.* 807, 824 (1993); Jane B. Barron, *Resistance to Stories*, 67 *S. CAL. L. REV.* 255 (1994). Those debates are very important to the way in which law is taught and understood, but that debate can be had elsewhere. This paper works with the understanding that narrative has at least some characteristics that make it worthwhile as a teaching and learning tool.

⁶⁵ Hill, *supra* note 60, at 646.

in the United States would sell their Black compatriots in an instant,” he would have likely been shunned as an extremist and there likely would not have been nearly as many follow-ups to his original story, let alone the countless number of other articles and comments addressing his work. Marginalized groups are not only marginalized by way of government and legal repression, but also by rhetorical oppression. The majority controls vocabulary, grammar, and acceptable modes of expression. Majoritarian society controls the acceptable music, dances, foodways, economic practices, and other cultural activities. In such a world, the minority is in a difficult position. It is a position subordinate to the rhetorical whims of the majority. Narrative is a non-threatening way to present counter-majoritarian ideas.

Law schools are increasingly embracing classes that deal with narrative in its many forms. Law and Film, Law and Literature, and Critical Legal Studies classes are becoming more prevalent and increasingly popular. Furthermore, classes on feminism, race, class, and even the environment are incorporating narrative at an increasing rate.⁶⁶ It is no coincidence that classes dealing with traditional minority groups or ideas associated with counter-majoritarian interests are utilizing narrative as a strategy for deeper understanding.

Benjamin L. Apt describes legal narratives:

Within the last decade, a number of legal scholars have embarked on a new way of writing about law called ‘legal narratives.’ A legal narrative is a story that focuses on the effect of a particular law on the lives of its characters. The main characters

⁶⁶ Professor James Elkins notes:

We have grown accustomed to propositions that stand ready to enhance our pedagogies; they appear with regularity. Today, I talk about narrative but we could substitute race theory or feminist jurisprudence. . . . Feminist jurisprudence and critical race theory attempt to be both instructive (providing a new pedagogical agenda) and subversive of old ways of thinking and pedagogical practice.

James Elkins, *What Kind of Story is Legal Writing?*, 20 *LEGAL STUD. F.* 95, 99 (1996).

are often members of groups that have long suffered from discrimination in America.”⁶⁷

This definition is unduly narrow. Legal narratives can and do describe how many laws, a series of laws, or a prevailing legal climate may affect groups. For example, a legal narrative may describe the effects of environmental legislation on economically disadvantaged communities. A legal narrative might discuss a series of school desegregation cases, or the various incarnations of the Farm Bill.⁶⁸ Legal narratives can be large metanarratives that seek to explain the entirety of some aspect of law or some group’s interactions with the legal system, or small very individualized projects that address an individual or a few individuals’ experience with a specific statute. Because legal narratives are so diverse, the study of narrative in law yields many possibilities for reconfigurations of accepted knowledge.

Richard Delgado and Jean Stefancic illuminate the benefits of narrative in legal discourse:

Legal storytelling is a means by which representatives of new communities may introduce their views into the dialogue about the way society should be governed. Stories are in many ways more powerful than litigation or brief-writing and may be necessary precursors to law reform. They offer insights into the particulars of lives lived at the margins of society, margins that are rapidly collapsing toward a disappearing center. This is not true just of our times. In Biblical history, storytellers for oppressed groups told tales of hope and struggle—for example, that of the Promised Land—to inspire and comfort the community during difficult times. Reality could be better—and, perhaps, will be. Other storytellers have directed their attention to the oppressors, reminding them of a day when they would be called to account. Stories thus perform multiple functions, allowing us to uncover a more layered reality than is immediately

⁶⁷ Benjamin L. Axt, *Aggadah, Legal Narrative, and the Law*, 73 OR. L. REV. 943, 943 (1994).

⁶⁸ See generally Sciullo, *supra* note 3 (using feminisms to deconstruct agriculture policy).

apparent: a refracted one that the legal system must confront.⁶⁹

Narrative is not only a way out for the oppressed; it is also a way to communicate a vision of hope. Narrative is a way individuals can construct ideas about how to realize the democracy they seek.⁷⁰ The storytelling process is the process by which communities may develop the forms of government and the distribution of rights and liberties that they feel appropriate.

VI. NARRATIVE AS DEMOCRACY AND LAST THOUGHTS

The very art of narrative is a democratic endeavor. It brings people into the fray. People know narrative and understand the storytelling process inherently. The history of civilization is that of the storyteller—griots and griottes,⁷¹ bards, and town criers are all a part of the world's narrative tradition. It is in the village square, the college dorm room, the town hall, and the pulpit. These are the places that narrative lives and is born, again and again. It is no coincidence that American democracy was born in halls, churches, and taverns. Democracy developed in ancient times in the halls, homes, and squares of the Greeks. These are the places where communities engage in the revelry of political change.

Also, democracy is narrative. The act of speaking out/up is critical to the democratic project. The voicing of dissent, the promotion of a culture of questioning, and the power of the multitude are all ideas that are deeply intertwined with democracy. Narrative then is an exercise in democratic theory to the extent that it can allow for minority groups to be heard. The concept of democracy as narrative is the belief that democracy is born and constantly re-created, re-assembled, and re-developed

⁶⁹ Richard Delgado & Jean Stefancic, *Derrick Bell's Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color If the Price Were Right?*, 62 U. COLO. L. REV. 321, 328 (1991).

⁷⁰ This is not to say that all people desire democracy or even that all people should desire democracy. There are certainly flaws in the various democratic systems across the world.

⁷¹ See THOMAS A. HALE, *GRIOTS AND GRIOTTES: MASTERS OF WORDS AND MUSIC* (2007) (providing a comprehensive analysis of griots and griottes in African cultural significance); BARBARA G. HOFFMAN, *GRIOTS AT WAR: CONFLICT, CONCILIATION, AND CASTE IN MANDE* (2001) (discussing the griot in Mande culture).

each time a rhetorical act is committed. There is no Democracy, only multiple democracies mediated through myriad channels and multiple actors. Democracy is told everyday.