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Articles

Studia Iuridica Lublinensia vol. XXX, 2, 2021
DOI: 10.17951/sil.2021.30.2.49-61

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Law as a Fable: The Issue of Myth in the Interpretation of Law

Prawo jako opowieść. Zagadnienie mitu w interpretacji prawa

ABSTRACT

The fact that various myths influence the shape of law and the mythologization of some of its aspects is indisputable. In most cases, this process of "mythologization" is perceived pejoratively, leading to the establishment of groundless, irrational ideas and at the same time the rejection of "science" in favor of "fiction". This article aims to propose a different approach to both the concept of myth and the mythologization of law, by referring to the classical, ancient understanding of the concept of mythos as a fable, story. Ancient Greek myth performed a function similar to the law, establishing some basic rules in society. Stressing its "narrative" side indicates that what matters is not so much a description of reality, but a process that emphasizes the relational nature of the community. Thus, relating the myth, just like reading the norm of law, is an interpretation of the event in the light of applicable principles and systems of values, while being also a continuous process of shaping social awareness. Interpreting the law as a story means that those who create and use it lose the luxury of simply remaining the "mouth that pronounces the words of the law" as Montesquieu stated, since they are supposed to care not only for its implementation, but also for the quality and conviction of citizens as to its validity. The proposed form of reading the law as a myth-fable, political myth therefore is a search for a plot, understood as a possibility to act, to respond to the needs and problems of the changing world as well as the development of "the political" politics and education of citizens.

Keywords: law; myth; fable; political myth; mythologization; interpretation of law

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INTRODUCTION

The statement that the law has its source in myths only appears to be a trivial one. For somehow it seems that unification of "mythology" with a broader concept of "culture" and "tradition" is automatically carried out, and these factors undeniably influence the shape and manner of legislation. Mythology and the myth itself, however, deserve a more individual treatment, not only as a component of a broader issue of culture, but also as a key concept enabling the constitution of the principles of that culture and the basic norms of social life. The use of the term "myth" in the context of law is often associated with the analysis of the "mythologization" of it, i.e. the assumption that certain concepts, such as the principles of the rule of law, its rationality, validity, or certain due (or not) behaviors are given the rank of general values, superior, always binding, often contrary to empirical observations or the current practice.[1]

Moreover, the ostensible "rationalization" of the discourse and the positivist approach not only do not limit the mythical thinking about law, but themselves become a new legal myth – how else may we define the belief that social, political and even economic problems can be solved by introducing a specific regulation, and that the new norm will automatically change social attitudes? This issue was clearly presented by Peter Fitzpatrick, who stated that the law itself is a form of a myth: it is intended to incorporate the ideal but is only its imperfect reflection, a mode of present existence. We sometimes ascribe a quasi-religious value to norms and their application, but they are only mundane and temporary.[2]

The aim of this study is to propose a new approach to the analysis of law, by perceiving law as a myth, but in its ancient Greek sense – as a fable, thus a certain activity within a community, not only as a theoretical set of more or less actual principles. So far, this way of interpreting the law has not appeared too frequently in the literature. The developing trend of "law & literature" is based rather on the deconstruction of myths (and fables), and therefore directed "backwards". On the contrary, the "mythologization" of law in the sense proposed in this text, suggesting a "fabular"[3] perception of law, aims to draw attention to other elements linking law and myth, above all the constant possibility of re- and interpretation, i.e. reacting to the changing situation and updating conveyed content, which is also related to the continuous process of educating the recipients. Thus, interpretation understood in this way requires constant re-reading of the content, not just recreating specific rules.

[1] K. Koźmiński, *Mity państwa prawa. W co wierzą prawnicy, politycy i obywatele?*, „Pressje" 2017, no. 50, pp. 83–92.

[2] P. Fitzpartick, *The Mythology of Modern Law*, London – New York 2002, p. X.

[3] The choice of this word is elaborated later on, however it is worth explaining here, that it is dictated by a certain ambiguity contained in a possibly more linguistically correct word "fictional".

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The above remarks lead to the necessity of at least a general explanation of the meaning of the term "myth" and its previous understanding in matters related to law, which at the same time is meant to enable a new way of interpreting the issue of "mythologization of law" and law as a myth.

WHAT IS A MYTH? DEFINITION PROBLEMS

The concept of myth is experiencing a kind of renaissance nowadays and it appears more and more often in scientific research, however, it should be noted that it is understood in many different ways. In fact, it is impossible to create one universal definition of a myth; moreover, the strive for specialization has led to the creation of various "subtypes" of it, each with its own definitions.[4] Thus, we can talk about anthropological, psychological, sociological, historical, ethnological myths or in the field of literary theory or religious studies, etc.

Still one of the most popular interpretations of the term "myth" is the one made by Mircea Eliade,[5] who considered the myth to be a ritual tale of origins, telling a sacred story, and therefore the intrusion of the sacrum into the profanum sphere, that is, the real world. An important element for Eliade is repetition and ritualization, as he recognizes the need to recreate the myth in an unchanged form so that it still retains its relevance. This interpretation, similarly to others from the fields of anthropological and religious studies, just to mention, for example, the concept of Bronisław Malinowski, causes certain problems. First of all, it is adapted to primitive communities. A significant part of researchers dealing with the issue of myth and its relationship with the law, use as examples the traditional practices of native tribes,[6] i.e. those that still cultivate old traditions and original forms of worship.

It is difficult to recognize the correctness of this interpretation in relation to the most important collection of myths in European culture, that is Greek mythology, because it contains many different fables, depicting diverse, sometimes contradictory versions of events, and besides, it presents not only the tales of creation but also

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[4] Some of these are mentioned by, e.g., A. Sepkowski (*Człowiek w przestrzeni mitycznej*, [in:] *Mity historyczno-polityczne, wyobrażenia zbiorowe, polityka historyczna. Studia i materiały*, eds. E. Ponczek, A. Sepkowski, vol. 1, Toruń 2010, pp. 13–29). See also R. Barthes, *Mit i znak. Eseje*, Warszawa 1970.

[5] M. Eliade, *Aspekty mitu*, Warszawa 2006.

[6] Jean-François Lyotard writes about the ritual tales of the Kaszinahua tribe, Magdalena Krysińska-Kałużna analyzes Native Americans' culture, Mircea Eliade himself devotes relatively little space to complex Greek myths, Émile Durkheim concentrates on totemism, Łukasz Trzciński mainly cites examples of Buddhist, Eastern, Kabbalah and again Native Americans. See J.-F. Lyotard, *Postmodernizm dla dzieci*, Warszawa 1998, p. 46; M. Krysińska-Kałużna, *Prawo jako mit*, Kraków 2017; É. Durkheim, *Elementarne formy życia religijnego. System totemiczny w Australii*, Warszawa 2010; Ł. Trzciński, *Mit bohaterski w perspektywie antropologii filozoficznej i kulturowej*, Kraków 2006.

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numerous plots intertwining with historical time.[7] It is impossible to find the most original version of Greek mythology – the one known to us today is a collection of accounts from various eras, subject to constant supplements and modernization,[8] although it has a certain "skeleton" or a solid "core". However, this "skeleton" is not the oldest variant of the story, meaning the only correct narrative, but rather it consists of the values, principles of conduct and individual dilemmas that refer to social problems. Mythology, while being at the same time a message about the past, contains postulates for changes to be introduced in the present, and therefore sets the direction of development,[9] both for individuals and entire communities.

Moreover, the Greek myth has never been based on direct repetition, but rather on interpretation and reinterpretation, which can be evidenced most clearly by Greek tragedies, presenting well-known motifs, but transforming them depending on the expectations of the audience, current needs or intentions of the authors. Repeatability was only a formal condition, resulting from the technical requirements of song-making and the preservation of the metre, as was in the songs of the aoidoi, or from similar patterns of a thinking process, inevitable within one culture. Thus, in order for individual tales included in Greek mythology to be considered a pure, primal "myth", many of their essential elements would have to be reduced in order to reach only the universal, repetitive "core", which would, paradoxically, (if, as I indicated earlier, that would be possible at all) to strip them of their universality. The constant interest in Greek mythology, however, comes not from its simplicity, but precisely from its multivariant character, literary representation and integrity with European culture and society, manifested above all in the various distribution of accents depending on the needs and issues raised, while, at the same time, maintaining a certain universal message and desired values such as justice, peace, the rule of law, etc.

When looking for a different, more modern, definition of the term "myth", we can refer to the dictionary definition. In the *Dictionary of the Polish Language*, "myth" is defined as:

1) a story about the life of gods, demons, legendary heroes, trying to explain the creation of the world and the rise of human being,

[7] Włodzimierz Lengauer distinguishes between sacred myths about gods and historical myths about heroes, whereby in my opinion this division may raise considerable doubts, since heroic myths also contain sacred elements, for example those resulting from the hero's origin. There is no doubt, however, that myths were used to explain historical phenomena, or were interpreted as an allegory of them, which is done, e.g., by Herodotus. See W. Lengauer, *Religijność starożytnych Greków*, Warszawa 2004, p. 17; Herodot, *Dzieje*, Warszawa 2007, I, 1–4.

[8] H. Samsonowicz, *O „historii prawdziwej". Mity, legendy i podania jako źródło historyczne*, Warszawa 1997, p. 17.

[9] *Ibidem*, p. 24.

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2) a false opinion about someone or something; fiction, fairy tale, fantasy, daydream,
3) a false story about a person or event.[10]

The term, as it were, contains a certain falsehood in it. Its former meaning is not only narrowed but also distorted. The ancient myth, since it dealt with the most antique events in the history of the world and humanity, connecting them with the sacrum, could never be false.[11] Nowadays, the myth is identified with a "fairy tale", a story for children, or a populist, simplified message for those who do not want to investigate the facts themselves. As Joanna Włodarczyk writes, "the myth calms down, explains and presents simple solutions, so needed in the era of globalization and informational noise. It offers ready-made recipes and frees you from thinking".[12]

The definition of a political myth, presented in the PWN encyclopaedia, is similarly constructed. According to it, the political myth is part of a broader concept of social myth, meaning certain, and what is important, irrational unjustified ideas about social reality, often constituting systems of stereotypes and rationalizing antagonisms.[13] Also, in this case, the emphasis is on irrationality, as well as antagonisms and stereotypes, i.e. a simplified, "childish" approach, in the common understanding – untrue.

One of the first and best known definitions of political myth was created by Georges Sorel, for whom the myth was an idea "reflecting and synthesizing people's aspirations, being at the same time a stimulating and directing action",[14] and thus not only an idea, but also a program, and, as he clarifies, "the myths are not description of things, but expressions of the determination to act".[15] Intuitively, a fairly large discrepancy can be seen here, because Sorel's myth is an action, not a fable. The effect of irrational human action is opposed with rational projects and institutionalized discussions, so Sorel somehow divides the ancient understanding of myth into two aspects: (1) utopia, i.e. a rational plan, an intellectual narrative, and (2) myth, the action *per se*, beyond the reach of discussion. However, this division seems to me to be purely theoretical and artificial, since it is impossible in practice to separate Sorel's utopia and myth, which in the political sphere must

[10] *Mit*, [in:] *Słownik języka polskiego*, https://sjp.pl/mit [access: 10.02.2021].

[11] M. Eliade, *op. cit.*, pp. 10–14.

[12] J. Włodarczyk, *Współczesne mity polityczne. Mity okrągłego stołu oraz IV Rzeczypospolitej jako mity powstania nowego państwa*, „Poliarchia" 2013, no. 1, s. 142.

[13] *Wielka encyklopedia powszechna PWN*, vol. 7, Warszawa 1966, p. 366. More on the issue of political myth, see M. Jaskólski, *Mit polityczny*, [in:] *Słownik doktryn politycznych i prawnych*, eds. K. Chojnicka, M. Jaskólski, vol. 4, Warszawa 2009, pp. 193–201; T. Biernat, *Mit polityczny*, Warszawa 1989 (here are also other definitions of political myth, which I do not quote due to their exhaustive description in the literature and the fact that the purpose of this article is to propose a different interpretation).

[14] M. Jaskólski, *op. cit.*, p. 195.

[15] G. Sorel, *Rozważania o przemocy*, Warszawa 2014, p. 39.

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essentially occur simultaneously – behind most of the insurgencies there is a plan or an idea.[16] Moreover, while Sorel's description of the myth as an irrational action may indeed seem adequate when we consider political myth in a historical context, it is completely detached from other interpretations, especially on literary, theological or anthropological grounds.

A definition closer to today's understanding is proposed by Ernst Cassirer, who recognizes that the contemporary myth is created artificially, constituting the final instance of appeal when simple rationalization is no longer possible. According to Cassirer, it must combine two paradoxes – it is rational and magical at the same time: developed for specific reasons and used for certain purposes by its creators, it is based on irrational beliefs and faith of the audience. Thus, the myth has become instrumentation of politicians and activists, produced by specialists like any other object.[17] Moreover, it is worth noting at this point that the isolation of a purely political myth is also entirely theoretical: each myth is in some way political, and most political myths are simultaneously historical, sociological, and even literary. It is difficult, however, to consider a rich collection of Greek, Roman, Celtic, Germanic and many other stories as spontaneous plans of action, and at the same time they cannot be denied their political nature – after all, they concerned social issues, standards of conduct and issues related to the exercise of power and organization of the states. Thus, an attempt to divide and "classify" individual myths as myths of a specific type leads to the narrowing of the understanding of this term and the limitation of research possibilities to one specific field and thus stripping the myth from its universal aspects.

FICTIONAL ASPECT OF MYTH AND LAW

How, then, can, or in my opinion, the concept of myth be understood, not only in general but primarily in the context of law? Using the word "fictional" might be a bit misleading, since it suggests something untrue. However, by it, I understand the aspects of fable and plot in both myths and law, something that is better described by the Polish word *fabularny*. I would advocate referring to the ancient Greek understanding of myth, where *mythos*[18] usually meant a certain story, a fable. In

[16] G. Sorel (*ibidem*, pp. 124, 29–40) himself points out that "there are few myths which are perfectly free from any Utopian element", and that "it is identical with the beliefs of a certain group, it is an expression of these beliefs in the language of movements", thus emphasizing the "active" function of the myth, but at the same time blurring the division, because "beliefs", like utopias, can also be the product of intellectual work, but implemented in a practical, not purely theoretical, form.

[17] E. Cassirer, *The Myth of the State*, New Haven – London 1946, pp. 281–282.

[18] At first, in Greek thought, there was no distinction between *mythos* and *logos*. These terms were first clearly contrasted by Pindar, and then consistently put in opposition from the time of Plato.

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Aristotle, it is a plot (as Hneryk Podbielski expresses it in the translation of *Poetics*), having different variants, and just as tragedy interprets and reflects certain aspects of the myth, the myth itself presents the history of the world, gods and heroes, at the same time being their allegorical interpretation.[19] It is impossible to ignore the relationship between the law and these mythical stories – the law has its sources in mythology, consisting not only in a simple dependence, that it derives from basic values which are inscribed in myths, such as the already mentioned rule of law, the need for justice, obedience, rules regarding the exercise of power. Moreover, in the myths themselves specific laws are described and established – many mythical events represent precisely the constitution of political norms and rules.

What is more, the plot is not a simple account of reality, but also implies explaining the causes and potential effects of the actions (or omissions)[20] taken by the actors. Therefore, it combines answers to the questions of "Why?" and "Where from?".[21] The myth is not limited to a synthetic presentation of the situation, but most often presents a whole sequence of events leading to it, as well as their results, additionally introducing interaction with the sphere of sacrum,[22] which gives the plot an additional significance while encouraging the form of personal, inner experience and imitation, enabling cognition and personal development. Mimesis is a condition of catharsis, not only in art but also in social life. The fable is therefore not a description but a process, emphasizing the relational nature of a community in which dialogue and conversation are necessary, instead of a simple presentation of views or their imposition by one of the parties.[23] The very original idea of the myth, being an oral story repeated by singers, assumed listening, which could later enable the reconstruction of the story, with the listener becoming a potential co-creator. The ritualization so emphasized by Eliade in Greek myths is only, as I signaled earlier, a formal repetition, assuming a similar pattern of thinking and a potential course of action that is meant to lead to the desired goal. Telling a myth, just like

See I. Trzcińska, *Logos, mit i ratio. Wybrane koncepcje racjonalności od XV do XVII wieku*, Kraków 2011, p. 41; K. Narecki, *Logos we wczesnej myśli greckiej*, Lublin 1999, p. 38; W. Lengauer, *op. cit.*, p. 20.

[19] W. Lengauer, *op. cit.*, p. 16.

[20] J. Hillman, *Uzdrawiające fikcje*, Warszawa 2016, p. 21.

[21] Chiara Bottici presents a slightly different thesis, maintaining that the main question to which the myth answers is "Where from?", and its primary goal is not to explain but to establish the principles. It seems to me, however, that these two questions are not mutually exclusive but rather complementary, and the answer to the question "Why?" additionally can serve to perpetuate the rules and values by the myth introduced, as it is easier to accept the existence of certain rules when they are explained. See C. Bottici, *Imaginal Politics: Images Beyond Imagination and the Imaginary*, New York 2014, p. 129.

[22] J. Hillman, *op. cit.*, p. 25.

[23] Most often – the state. More broadly, see I. Barwicka-Tylek, *Słuchanie. Zapomniany fundament demokracji*, „Ethos" 2019, no. 1, pp. 125–151.

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reading a legal norm, is therefore to interpret an event in the light of the applicable rules and value systems, and this is not only a temporary activity, performed at the time of the problem (violation of rules) but a continuous process of shaping social awareness, developing the desired patterns, in short – education.

The Greek classical myth combined many kinds of myth today: it was both historical and political or social. At the same time, it tried to present "the past", that is, old events, ways of thinking, history of the community, combined with "now", highlighted in the changing views, new values, and desired social attitudes. In the modern myth, there is often a transfer between the past and present, as it justifies that today it is still the way it used to be, and it used to be because certain events took place: the wider context does not matter. Meanwhile, the Greek myth aimed not only to transfer but also to indicate the causes and consolidate the rules and constitution of the social order.[24] The cosmogonic myth explains not only the origin of the world and religion, but also the validity of social rules, which result from the fact that after a period of struggles and unrest, Zeus gave the world Dike, or justice, which is vividly represented by Hesiod in his poems. Athens are supposed to uphold the rule of law because it was on their Agora that the Erinyes have been tamed and new procedural rules have been introduced. Theseus is the one who urges the Greeks to unite for the first time and then recognizes the need to hand over his power to citizens who understand the whole city's needs better than he does. Thus, a myth simultaneously establishes and strengthens the desired course of action. He suggests the Athenians should respect it so it may remain a symbol for all of Greece, thus a specific action, while explaining why the rulers of Athens (as well as the Athenians themselves) aspire to be "better", while not identifying every Athenian ruler with the mythical righteous Theseus, allowing changes and reinterpretations to appear. The hero is a signpost showing the desired direction of development, but it does not mean that everyone will achieve the same effect, because the hero is someone extraordinary.[25] His attitude, however, his person makes other, "ordinary" people have a model to which they can aspire. For example, the above-mentioned myth about Theseus depicts the birth of a leader who then creates the foundations of the new system in a peaceful manner and places power in the hands of the citizens themselves, giving up the privileges of the monarch. The story of Telemachus allows us to illustrate the desired features of the ruler and to indicate various ways of organizing the state and the implications arising from them, while at the same time shows young men the need to develop, break out of the family nest and enter adulthood. The tragedy of Orestes leads to the creation of new rules

[24] S. Hrebenda, *Mitologia społeczna w literaturze fantastycznonaukowej*, Katowice 2000, p. 9; W. Werner, *Kult początków. Historyczne zmagania z czasem, religią i genezą. Szkice z historii historiografii polskiej i obcej*, Poznań 2004, p. 10.

[25] Ł. Trzciński, *op. cit.*, p. 15.

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of punishment and the replacement of revenge with an independent, fair trial. Even Heracles, as Włodzimierz Lengauer points out, introduces a certain order with his actions, establishing (albeit often with force) the law – he demands the promised payment, cares about respecting the will of the gods, punishes the villains.[26] The hero is a model, he embodies the problems and paradoxes of everyday life, his action, regardless of individual consequences, primarily bring positive effects for the entire community,[27] and at the same time confirms the validity of existing ethical rules or leads to their changing. By "filtering" experiences and presenting them in a form that is simpler for the recipient, the myth presents the complexities of life, indicates the course of action and encourages imitation.

The law is trying to achieve exactly the same effect.[28] The law made by heroes is linked to their heroic activity, just like them, it becomes a story inscribed in tradition. Thus, it can achieve absolute power in society – not as established and sometimes imposed regulations, so not in a strictly positivist sense, but as a component of social consciousness, because the law, like the myth, explains and sanctions a certain order within the community. Its presence presupposes the existence of a community in which it itself performs the functions of an ancient hero, setting standards, describing the desired behaviour and obligations of citizens, protecting and sometimes making difficult decisions. The role of those who preach this tale, like the aojds, poets and tragedians in ancient Greece, is extremely important in this.

If the law is a fable, then those who create and apply it – legislators, lawyers, judges – lose the luxury of simply announcing or applying its norms, i.e. remaining Montesquieu's "mouth that pronounces the words of the law", because a good fable requires commitment from the narrator, taking into account the conditions of the world presented, the character of the heroes, potential plot twists and morals, and additionally – grasping the interests of the listener or reader. Hence, the lawyer or a judge is not only to take care of the enforcement of the law but is also even obliged to care for its quality and convince citizens of its rightness. In fact, similar assumptions were made by Leon Petrażycki, who claimed that the activity of lawyers should be to transfer the norms to the consciousness so that they may work intuitively. An analogous approach was also presented by the first Spartan legislator Lycurgus, a figure otherwise mythologized in later centuries, who forbade anyone to write down his laws, but instructed citizens to implement strict rules of upbringing, which should embed the binding rules in the Lacedaemonians' consciousness so deeply that they would obey them automatically, without the need to refer to written regulations.

[26] W. Lengauer, *op. cit.*, p. 177.
[27] Ł. Trzciński, *op. cit.*, pp. 154–156.
[28] J.S. Bruner, *O poznawaniu. Szkice na lewą rękę*, Warszawa 1971, p. 55.

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The "mythologization" of law makes it impossible to fall into nihilism and anarchy, when positive law is a result of the interests of various groups that constitute it, and thus arouses deep opposition among others who consider the non-compliance to be desirable and even downright commendable. Because a myth is not only a fable itself, but the form of acting ON the fable,[29] hence the law thus understood is inscribed in society, its values, needs, traditions and history, and at the same time does not remain obsolete, because, like every story, it remains susceptible to interpretations that allow it to react to the current problems, and cannot be reduced only to a set of documents. Moreover, such understood mythologization is not only about creating exemplary models of actions that can only be recreated or imitated, like it has been suggested by Eliade,[30] but also about the possibility of acting or creating and modifying – not all mythical values remain constantly valid, but even that itself is justified in the myth, since gods and heroes also changed the social order, represented different attitudes, and sometimes overthrew the previous orders. Therefore, mythologization does not encourage us to go back to the origins, but, on the contrary, teaches us to think, interpret and how to maintain pluralism. Like in any fable – the plot is progressive.

CONCLUSION

Belief in myth did not prevent the ancients from a rational approach to reality.[31] On the contrary, mythological narratives contained a part of ancient knowledge – the function of myth was not only to name or explain things and phenomena but also, as already mentioned, to ground them in reality. Hence, it did not only concern simple physical phenomena, such as the creation of the world, the development of nature or the history of gods and people, but also more abstract values: the issues of governance, justice, law. The ancient myth creates a cultural base that also contains the desired values, patterns of proper behaviour and social attitudes, enabling the formation of political life, not only at the beginning of civilization but also "here and now".

Greek myths can form the basis for considerations about the state and law. They can be analyzed, broken down into prime factors, reinterpreted and some universal conclusions can be drawn from them, which enable not only efficient but also fair management of the state and society. The discovery of the role and meaning of myth in this process may be just as important, if not more important, than the

[29] C. Bottici, *op. cit.*, p. 129.

[30] Wiktor Werner (*op. cit.*, p. 12) argues otherwise, stressing that the myth should be passed on unchanged because it constitutes a kind of a model.

[31] Z. Dudek, *Psychologia mitów greckich*, Warszawa 2013, p. 15.

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efforts to adapt their content to contemporary problems. It is not necessary to add modern nomenclature and abandon the traditional message to make it relevant and appeal to people today. There is no need to add new threads, supplement their content with contemporary assumptions or ascribe today's motivations or values to the heroes, but it is enough to feel the fable to see its multidimensionality and timeliness. Searching for a second bottom by distorting the message of myths and assigning them the content not contained in, which, however, constitute significant contemporary problems, not only does not facilitate the search for a solution but also diverts attention from the originally announced values. The traditional message also makes sense, and besides, it also possesses an emotional, social and historical load, because it points to important problems of old societies, most of which have not become obsolete at all. Updating can only make the reader lazier, unwilling to look for solutions personally, but focusing on individual, specific problems given to him in such a way.[32]

The proposed approach is thus also different from the trend of "law & literature", which is gaining popularity in Poland because it is not intended to simply deconstruct myths (or literary texts in which they are contained) in order to find the basic values of the aforementioned "core" or search for elements of the law in them. This method of analysis, due to the limited collection of myths, is doomed either to an increasingly frequent appearance of the already established content or to overinterpretation and a strenuous search for "contemporary" threads. Meanwhile, reading the law as a fable, and therefore a process, consists not only in finding the message contained in literature or regulations but also in searching for a plot, i.e. the possibility of action enabling, even nowadays, the development of judicial activism or deepening our political nature. According to Szymon Hrebenda, a myth is "a specific type of story in which a certain existential situation is brought into reality, serving to mediate between the contradictions of the real world. At the same time, thanks to the presentation of easily digestible information about the world, this story organizes the life of the community that identifies with it".[33] The author used this definition to prove that science fiction, also a certain genre of a story, is a myth. At the same time, on the basis of it, one can quite adequately consider that it could apply to a myth understood as a law, which, however, also aims to "mediate between the contradictions of the world" and "organize social life". Over the past decades, science fiction has tried to keep up with the dynamically changing reality,

[32] The above allegations refer largely to the otherwise brilliantly written and witty book entitled *On Law and Myths*, which *de facto* deals with the problems of today's world (or rather the Republic of Poland), and treats myths not so much as a starting point, but completely modify their content. In my opinion, this is an interesting literary procedure, but destructive for the very message contained in the myth, since it completely diverts any attention from it. See E. Łętowska, K. Pawłowski, *O prawie i o mitach*, Warszawa 2013.

[33] S. Hrebenda, *op. cit.*, p. 75.

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adjust its vision of the future and take into account the changes taking place in the world. An analogous fate may, therefore, be shared by law, understood as a fable about our reality and responding to the needs and problems of the changing world.

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ABSTRAKT

Fakt wpływu rozmaitych mitów na kształt prawa oraz mitologizacja pewnych jego założeń są niepodważalne. W większości wypadków ten proces „mitologizacji" postrzegany jest pejoratywnie – jako prowadzący do ugruntowania bezpodstawnych, irracjonalnych wyobrażeń i zarazem do odrzucenia „nauki" na rzecz „fikcji". Celem niniejszego artykułu jest zaproponowanie odmiennego podejścia zarówno do samego pojęcia mitu, jak i do mitologizacji prawa poprzez odwołanie się do klasycznego, antycznego rozumienia pojęcia *mythos* jako fabuły, opowieści. Starogrecki mit pełnił funkcję zbliżoną do prawa, ustanawiał bowiem pewne podstawowe reguły obowiązujące w społeczeństwie. Zaakcentowanie jego strony „fabularnej" wskazuje zaś, że istotny jest nie tyle opis rzeczywistości, ile proces podkreślający relacyjny charakter wspólnoty. Tym samym opowiadanie mitu, podobnie jak odczytywanie normy prawa, stanowi interpretację zdarzenia w świetle obowiązujących zasad i systemów wartości, jest również ciągłym procesem kształtowania społecznej świadomości. Ujęcie prawa jako opowieści powoduje, że ci, którzy je tworzą i stosują, tracą luksus prostego pozostania monteskiuszowskimi „ustami ustawy", ponieważ mają się troszczyć nie tylko o jego wykonywanie, lecz także o jakość oraz przekonanie obywateli co do jego słuszności. Proponowana forma odczytania prawa jako mitu-opowieści, mitu politycznego polega zatem na poszukiwaniu fabuły, czyli możliwości działania umożliwiającego reagowanie na potrzeby i problemy zmieniającego się świata oraz na rozwój polityczności i edukację obywateli.

Słowa kluczowe: prawo; mit; fabuła; mit polityczny; mitologizacja; interpretacja prawa