

Preface

In the beginning was the word and the word became law. With this scriptural metaphor, I want to draw your attention to the relation between language and authoritative claims of meaning. How exactly does the word become law? How indeed do language and law interrelate? What do people do with and to language, and what does language do to them? And even more important, what do they do to one another with the help of language? For me, these are the questions that form the basis for the study of literature and of law. When words become law and meaning is claimed, the foundation of both literature and law in language reveals itself. Now, few lawyers will contradict the thesis that law is a discipline in which language plays an important part. Less self-evident, however, are the contents of the bond between law and literature. Lawyers have long questioned, and some still do, the relevance of literature to law. The combination of law and literature, which had long been dealt with as two separate spheres, is still not as widely accepted as, for example, the economic approach to law. Indeed, even today many lawyers regard the realm of literature as remote from the exigencies of everyday legal practice. Yet, the interrelation between law and literature that this introductory metaphor illuminates has been the starting point for the development of an interdisciplinary field of legal scholarship that is now called, sometimes affectionately, sometimes disparagingly, *Law and Literature*.

Intended for an audience of law students and legal professionals who are interested in interdisciplinary legal thought, the aim of this book is to provide a concise survey of the various theoretical perspectives within the *Law and Literature* movement, as well as elucidate its central topics by analyzing the work of James Boyd White, one of the founders of *Law and Literature*. Ever since 1973, when he broke new ground with the publication of *The Legal Imagination*, White has consistently taken the similarities between law and literature as his object of study.

What must be pointed out at once, is that White has no specific theoretical aspirations. His aim is not to build an all-encompassing theory. The value of his work lies primarily in his reflection on the common bond of law and literature in language by means of a study of the actual performances in literary and legal texts. In a sense, his work reveals a sceptical attitude with respect to theory, or even a certain hostility to theory. It

is rooted in his rejection of those forms of scholarship that have abandoned actual experience in favor of autonomous, abstract theory. For White, the term theory as a product of reflection should be taken much more in the original meaning of the word, found in classical Greek, where the verb 'theorein' meant 'to review a situation and try and learn something from it'.

White shows that interdisciplinary scholarship does not necessarily aim at developing a new theory. He does so in two different, yet related ways. First, in offering his analyses he tries to stay on the level of the actual performances in language, rather than connecting these to an already existing theoretical framework. Secondly, he does not eschew to offer, and subsequently use, his own personal experiences of the congeniality between law and literature. His method is that of exemplary performance.

As a consequence, White's work can be seen to show, both in its contribution to the scholarly debate in a broad sense, and in the actual performance of his own texts, that literature and law can go hand in hand to contribute to legal theory, in every sense of the word. In this, he differs from much of the Western-European tradition, legal or philosophical, obsessed as its participants have long been with theory for the sake of theory.

Central to White's work is the idea of law as a cultural competence and a branch of rhetoric, or 'the art of constituting culture and community'. On this view, law can be seen as an institution based on the idea of recognizing the other, both in the literal and in the figurative sense, in that law offers opportunities for telling one's story and to be heard. Thus, law is a method of integration. It is a specific practice for dealing with the opposite sides of a case and it is also a means of understanding and, if possible, reconciling these sides. The work of the lawyer in general, and that of the judge in specific, is therefore literary: central to the enterprise of law is the idea of translating the stories of clients, parties in a lawsuit, into the language of the law, and where the judge is concerned, of translating these stories into a new reality for the parties involved.

That means that we should pay detailed attention to the function and the value of the word, precisely because of the importance of narrative for law in this process of transformation. What is the role of the story which, in White's terminology, is a part of rhetoric? And what is the nature of the community that is actually constituted? These questions cannot be discussed, let alone answered, without developing our thoughts on the current view that citizens take the legal system to be legitimate only when they know themselves to belong to the legal community.

For me, this means that eventually the study of the relationship between law and literature will direct, or rather, will have to direct its critical at-

tention not only to the discursive and rhetorical dimension of law, but also to the ideological dimension. In other words, to the place of narrative and authoritative claims in law, so that the system of law can be understood as a system of relations.

Now White himself does not specifically address the practical aspects of the contemporary politics of law; yet in my opinion his work offers an excellent contribution for such a process of awareness to take form, in the sense that it suggests a mode of thought that can be used to study the relationship between law as a hermeneutical process and law as an argumentative process. For central to White's view on law as a cultural product and cultural activity is the idea of law as an argumentative process characterized by attention to the authoritative text.

Since White himself always takes an actual textual performance as his starting point, I have opted for a close reading and a romantic hermeneutics searching for the author's intention, though not in the traditional sense, as a method of investigation for this book. White presents himself as a literary author who does not seek association with the work of other theorists in the field, with the result that he can only legitimize his position from an internal point of view, and that I think justifies my approach. However, the claims White makes are also analyzed from an external point of view in order to avoid the pitfall of an exclusive author's intention approach. Not only will the internal consistency of White's thought be tested, but possible and actual criticism will also be considered. Thus, starting from the idea that the subject can be understood from his cultural artefacts, my question is as ancient, philosophically, as it is simple: Who is that man and what is he trying to tell us? My aim has been accomplished if after having read this book, the reader will be incited to turn to White's works and to those of other authors in the rich and vital field of *Law and Literature*.

This book starts with a chapter on the renaissance of the humanist tradition in law with the rise of *Law and Literature*. The subject of what lawyers can learn from literature according to the different strands in *Law and Literature* will form the background against which White is introduced. Chapter 2 discusses White's views on language, rhetoric, and legal and cultural criticism so as to set the agenda for chapters 3 and 4. Chapter 3 first offers an analysis of White's thought on the ways in which law, ideally, constitutes relations between people, and secondly discusses the contemporary debate between *Law and Economics* and *Law and Literature*, as well as White's ideas about law and interdisciplinarity. Chapter 4 is dedicated to a detailed survey of White's analyses of judicial opinions in order to lay bare the cornerstones of his view of law. Law as aspiration and the meaning and function of judicial ethos in White's civic humanist

tradition are the subject of chapter 5 in which the value of White's approach for Western-European legal cultures and for the future of interdisciplinary legal scholarship will be shown.

A final word, then, about the title of this book. When I started studying White's work, I soon found that it was permeated with the idea of hope. From my continental point of view, this is associated with the American dream in its most noble form. This idea and ideal for me are exemplified in Alexander Pope's famous lines from *Essay on Man*. I chose them for a title, and a motto for what has become this book, even before the publication of White's *Acts of Hope* confirmed my choice. I realized that I would run the risk of being misunderstood since 'hope springs eternal' for many people has become a cliché. It is a metaphor that has been the subject of neglect, misunderstanding, or even abuse. Though it may seem paradoxical, that is at the same time the reason the phrase is so valuable for my project, since what White constantly does, and what I therefore want to show you, is warn against a reduction of language to cliché. Thus, I hope to draw your attention to the primary meaning of these lines and offer it as a metaphor for White's view on law.

This book began as a dissertation, written in Dutch and defended at Erasmus University Rotterdam, The Netherlands, in 1995. I want to acknowledge Gouda-Quint publishers in Arnhem who have been kind enough to allow me to reproduce material which was part of my dissertation. Years ago, in my second year in law school, the study of law suddenly seemed to have lost the brilliant quality that had attracted me. Moreover, I even began to dislike learning to look for applicable rules and points of law. It changed with a course on the philosophical roots of continental law. I owe René Foqué a debt of gratitude for teaching me that the essence of law lies far beyond 'who won'. He introduced me to the topic of *Law and Literature* and its history of ideas, and drew my attention to *The Legal Imagination*. I would also like to express my gratitude to Jim White himself. Ever since I first made his acquaintance when I visited Ann Arbor on a research trip in 1993, we have been on cordial terms which I hope will survive this book. The inspiration his books continue to give me means more to me than words can express. Wittgenstein was right, we should preserve silence on all that is immensely valuable to us, but which cannot be significantly uttered. I have also had the good fortune to make the acquaintance of Deirdre McCloskey, when she was Tinbergen Visiting Professor at Erasmus University Rotterdam, The Netherlands. Her wisdom and scholarly generosity, as much as her sense of humor, have made a lasting impression. I am grateful to Willem Witteveen and Nick Huls for making insight-

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