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FOREWORD TO THE
ANNIVERSARY EDITION

This book is an Anniversary Edition of the original version of The Legal Imagination, published forty-five years ago this year.

I am honored that the publishers want to make this book available once more, and to do so in its original form.

The Preface and Introduction to the Student do a fine job of introducing the book, and I need not repeat here what is said there. But a few remarks may be welcome, as a matter of orientation.

This book was originally designed to teach law students how to “write,” that is, to come to productive terms with the nature and limits of legal language in a way that does justice to the workings of their own minds and to the experience of those whom the law may threaten, injure, or assist. This is its main mission, but it has a greater reach than this, for it confronts issues that are also present in other professions and ways of life. I think it can thus be read not only by people of the law, but by anyone with an interest in language and power, in writing as a way of thinking and creating, or in culture as a reality and force.

I have made no revisions or updates or changes of any kind. This book is a facsimile of the original. It has many of the virtues of a young person’s book and I am glad we are not changing it.

Does this mean that it is out of date, irrelevant to contemporary concerns, in the law and out of it? I do not think so. Certainly most of the substantive legal questions raised in the book are still with us: the use of racial language, the proper way to think about abortion and the death penalty, the insanity defense, discretionary sentencing, the standards and values by which we should judge a judicial opinion, the nature of equity, and what it means to try to create and live by a system of rules. It is true that the rules of law on some subjects have changed,
but I think the fundamental questions at issue are still with us. This is even more plainly true of the broader issues relating to language and character and culture.

I think in fact that this book may be of wider relevance now than when it was first published, for its central concern is with integrity — integrity of the law, of language, of the individual person — at a time when integrity itself sometimes seems to be threatened as a value.

This book is not in form a jurisprudence book, but it is based upon, and acts out of, a view of law itself, a view that strongly resists current inclinations to reduce law to a matter of social policy, or theory, or economics, or politics. Law has its own materials, its own life, and its own way of being. It is — certainly from the point of view of lawyer and judge — not a structure but an activity of mind and imagination.

I develop this view here, not by conceptual elaboration, but by performance and implication, the only way I think it can be done. But I can say this much: I think law is not merely a system of rules and principles, nor is it reducible to policy choices or class interests, but is rather what I call a language, by which I do not mean just a set of terms and locutions, but a whole cluster of habits of mind and expression. It is an enormously rich and complicated system of thought and expression, of social practices and definitions, which can be learned and mastered, modified or preserved, by the individual mind. The law makes a world. It is our task to acquire the art of reading and speaking the language of that world.

Beginning on these assumptions, The Legal Imagination asks such questions as these. How can one possibly begin to manage a discourse that is based on something as apparently crude as a legal rule, which in the nature of things always includes what it does not want to include and fails to include what it wants to include? How one can sensibly talk to a prosecutor, jury, and judge, when the statute under which your client is charged seems to remove every issue of what might be called justice? How does the law talk about people, and how should it do so, in comparison especially with the literary artists who know how to do this? How does the law use the language of race, rooted as it is in our
world-historical crime of racial slavery, and how should it do so? How
does the law talk about insanity and sentencing in the criminal law,
and how should it do so? What do we mean by “judicial reasoning,”
and when is it good, when bad? and so on.

In all of this I am imagining the law as a system of expression, a
language and a set of practices, that can be learned and used — and
must be transformed, in large ways and small, if justice is to be done.

The reader is invited throughout to compare legal texts with others,
drawn from high literature, from history, from philosophy, from psy­
chology, and from the ordinary stuff of life. Likewise, the questions
ask the reader repeatedly to call upon experiences of his or her own,
with the thought that they can provide an analogy or perspective from
which to examine the texts and issues before us.

This means that the book is not a standard text book, full of as­
sertions, but a kind of work book, full of questions. The questions are
invitations with which I hope both the student and the general reader
will want to engage.

In these ways the book establishes a conversation with the student,
a conversation which the general reader can overhear and participate
in at second hand. This is easier than might be thought because the
questions asked of law students can be seen, with very little change, to
speak as well to any person who seeks to use the materials of his or her
culture to speak to others and to manage relations with the people he
or she addresses — that is, to all of us.

The heart of this book is the relation I try to establish with its
readers, both students and others: at once demanding and supportive,
imaginative and realistic, serious and comic. I hope its emphasis on the
individual mind, individual experience, and individual responsibility
will be seen to be of particular value today.

One embarrassment I have not been able to remove is the remorseless
use of the male pronoun to refer to all human beings, and I wish I
could change them all to include women as well as men. I make no
defense of this practice, except to say that it was standard in those days.
But that could be said about lots of bad things.
There are also sensitive discussions here about the horrors of racial slavery and our national efforts to respond to that legacy, which may be difficult for the reader, especially if taken out of context. I hope I have not spoken in ways that were careless or unaware, but if I have I hope the reader will be forgiving, and hear a youthful voice behind the words, attempting to lead the discussion in a good direction.

J. B. W.
2018