

# Editors' Introduction

**Julen Etxabe and Gary Watt**

In March 2013, the Association for the Study of Law, Culture and the Humanities (ASLCH) convened its annual conference in London. It was the first time that the conference had been held outside the United States, and, with a happy correspondence, it fell in an important anniversary year for a U.S. scholar who has profoundly influenced legal thought and practice far beyond his home horizons. 2013 marks the fortieth anniversary of the publication of James Boyd White's *The Legal Imagination*, of which we will shortly say more. 2013 is also, incidentally, the seventy-fifth anniversary of the "publication" of the man himself. The present collection of essays draws together a group of scholars who have gathered in gratitude to the works, wisdom, and personal warmth of Professor James Boyd White. Contributors come from many countries—from The United States, Canada, the Netherlands, Belgium, the United Kingdom, the Basque Country, and New Zealand.

We are delighted that the first contribution to the collection is from Jeanne Gaakeer, who at the 2013 conference joined the roll of distinguished winners of the ASLCH's annual James Boyd White Award. Many of the contributors to this volume had the pleasure of meeting at the London conference, and for some of us, including one of the editors of this collection, that was the first occasion of their meeting face-to-face with the man himself after several years of correspondence. For other contributors it was a welcome chance to meet again the tutor, colleague, and friend whom they know simply as Jim. Indeed, a very good thing about Jim White is that, thanks to his lack of pretension and the clarity of

his communication, students and scholars *can* know him “simply.” Having said that, it is only through serious attention that we come to appreciate the deep challenges that lie beneath the simple things he has to say about living in the law. It is with that effort of attention, and not only to celebrate amity and anniversaries, that we present this publication of twelve essays.

The main title of our book, *Living in a Law Transformed*, is intended to remove the artificial barrier that we all too often erect between our life and our work. If we see work in purely metric terms of so-called human resources, as being those hours that we do not devote to love and leisure and all the rest of life, what damage do we do to true human resources? The answer is that we make a wasteland of the world of work, and thereby deaden a huge portion of our lives. Even more dangerous than that, we deaden the lives of the students, clients, and colleagues who meet us in the law. What a difference would it make for those of us who work as jurists, if we were to acknowledge that we (and our clients, colleagues, and students) are bound to live in law? What a difference might it make if we were to bring our life to work and bring our work to life? James Boyd White challenges us to ask such questions as these.

One of the threads that weaves its way through this collection is that an integration of life and law has transformed the contributors' experience as scholars, students, and teachers, as well as our vision of law. This collection of essays therefore constitutes an invitation to encounter White's work—and the contributors' collective experience of their own encounters—as an experience of living in a law transformed. For just as Odysseus had to learn to recognize Ithaca at his return, White invites us to look at the law anew and to learn to recognize it as something like our own true home.

James Boyd White's *The Legal Imagination* is widely regarded as the founding document of the modern “law and literature” movement. It is therefore appropriate that this collection should start and move from there. The movement takes us through narrative critique, with special attention to critical readings of law as literature. From there, the collection moves to consider the potential for meaningful experience that is to be found in the spaces and silences that exist within and around text and speech. The next group of chapters engages with extratextual sources; the authors travel with White toward an appreciation of paintings, places, movies, and even a simple stone in a stream. This leads us, finally, to the place of practice, not only in the classroom, the court, or the lawyer's office, but wherever we live and work. Thus the journey of the book leads to hope of real transformation.

One feature stressed by many of the contributors to this volume is

White's personal style of writing and the apparent straightforwardness with which he conveys complex and often controversial thoughts. His voice is dialogical in nature, engaging the reader on a personal level. White is not motivated by any desire to prove other views or writers wrong, but by a desire to make his readers participate in his own sense of wonder. He leaves space for their own—your own—judgments.

So what judgment do we, as editors, reach on the works of White? In one sense the jury must always be "out" when it comes to a judgment of this sort. That is perhaps the one unanimous verdict of the twelve contributors to this volume.

It is not so much that James Boyd White's work is hard to classify, but rather that it has created a world of its own. White has developed a personal vocabulary, where each term is defined in relation to every other term, in ways that challenge, and redefine, conventional understandings of language, rhetoric, authority, community, constitution, translation, ethics, and of course, law. In his writings, all these terms acquire a rich array of meanings that are less conceptual and analytic than performative and compositional. White's way of reading legal texts—a contract, a statute, a judicial opinion, a will, the Declaration of Independence, or the U.S. Constitution—entails an invitation to live in a law radically transformed.

Contrary to the extended notion of law as a system of norms, White has invited us to view law as a culture of argument constantly being made and remade out of the resources of a given language. Consequently, he has rejected the dominant scientific model of law, and instead views law as an art or activity brought to life by the individual people engaged in it. One should not see in this rejection a refusal to speak about questions of theory. (Quite the opposite—there is a sense in which White's work is deeply theoretical.) However, he rejects any suggestion that a theory can do away with the tensions, ambiguities, and perplexities of law. At bottom, his work evinces a profound skepticism for any attempt to reduce the world into a "system," wherein every element can be neatly defined or assigned exactly the same value and meaning regardless of its particular context. A strictly systemic way of proceeding ignores what he calls the "radical literariness of life," conveying the simple idea that life is more complex than any theory could possibly explain it.

One could do much worse than to call James Boyd White a humanist of law. Nowadays humanism is a loaded term, often decried for its undertones of anthropocentrism and the imperialism of the Western white man imposing his own culture under the pretense of universality. Humanism is also evocative of worn-out debates about the "literary

canon" and certain sentimental pieties about human nature. Sharing none of these postulates, White's humanism is not the kind that puts "man" at the center of the universe and the world at his feet, but one that emphasizes, against the odds of existence, the human quest and potential for meaning.

Likewise, he is not interested in defining an essence of "man" to raise him above other forms of life, or to distinguish individuals from one another in clans or islands. White speaks certainly from the perspective of a particular time, context, and culture, but his work is infused with a love for cultures different to his own. Performing the task of a translator (a favorite metaphor), he develops a practice of slow reading through which that which was foreign and unknown may become increasingly familiar, even if never fully owned. For White, this process begins by learning the language—be it the Greek of Homer, the Latin of Augustine, or the Italian of Dante—which may grant us access to others' social and political worlds, their terms of value, their ways of speaking about the natural world, their cosmology, and their conceptions of the transcendent.

White's selection of texts has never been shaped by a canon of purported high literature. Rather, he has followed those texts that spoke to him regardless of their provenance, finding illumination equally in African masks, literature written by children, or the paintings of Vermeer. More importantly, when he reads "canonical literature," including Plato, Emily Dickinson, and George Herbert, his readings unsettle and defy our usual understandings of these texts.

White's writings contain a core of optimism about human potential and capacities. However, it would be a mistake to interpret this as naïve or sentimental, which is a vice he has often denounced. White has warned against the ugliness and corruption of certain forms of life and against the violent and dehumanizing practices of what he calls "the empire of force," including appalling practices of torture.

White's humanism can be connected with the importance and the centrality he grants to language. For him language is not an inert system of signs to be codified, but something that exists in interaction between speakers, in real-life encounters and misencounters. His works also focus on the limits of language: what language cannot express, access, and what it distorts or destroys in the form of dead language, empty slogans, and propaganda. Yet, language is arguably all that we have to communicate with each other, in whatever form this is expressed: physical gestures, facial expressions, bodily language, or awkward silences.

In positing language as central to law, the critic may point out the risk of downplaying the political and coercive elements in law. Admittedly,

White has not been interested in the kind of issues often discussed under the heading of "politics." Still, he has time and again stressed that our ways of speaking and talking to and about each other are fundamentally ethical and political—for they are invitations to constitute different kinds of communities. Such forms of community are not based on any purported commonality of interest and purpose, nor are they necessarily cozy and friendly. Rather, these are rhetorical in kind, sometimes as fleeting as the expressions that imagine them; other times long-lasting and solid as institutions.

The present volume also wishes to pay tribute to White's inspiring work as a teacher, through which he has created innovative courses with a healthy atmosphere of collaboration and mutual respect. In the area of legal education, he has written against the colonization of the law by the instrumental rationality of cold-calculus economics—a particular way of translating everything into a utilitarian calculation of costs and benefits—that sets itself up as universal and neutral. His writings also provide inspiration for legal practice, which as one contributor to this collection reminds us, calls for our personal ethical participation.

The chapters in this collection are, accordingly, a call to participate in the contributors' own struggle to read and appreciate and to search for meaning in it all. Each of the contributors will acknowledge that the works of Professor White have placed us at the uncomfortable cutting edge of meaning. White coaxes his readers to appreciate all things in which meaning may be found. There might even be meaning in the fact that, out of the extensive oeuvre of James Boyd White, two of the contributors happened to pick as the starting point for their chapters the same short passage from the same book. What should we read into the shared choice of that one passage out of thousands? There is surely a danger of reading too much into it. There is certainly a danger of reading too little into it, for coincidence itself is sometimes meaningful.

A particular struggle that the editors of this volume have faced is the challenge of ordering the chapters in a meaningful sequence. The editors' choice might be expressed as a choice between structure and freedom, or rather as an appreciation of the need to keep structure and freedom in productive tension. What James Boyd White offers as our guide is to reflect upon "The Silken Tent" of Robert Frost's eponymous poem, which "in guys ... gently sways at ease." He might have helped us to a specific reading of the poem, but our sense is that it is enough to learn (which we had not otherwise guessed) that the poem can be read as an attempt to express the very tension between structure and freedom that we must somehow get a feel for as people living in law and, specifically now, as editors of this book. So we turn to a brief introduction to each of

the twelve chapters in the order in which, through some combination of chance and design, we have placed them.

In "Law and Literature Redux? Some Remarks on the Importance of the Legal Imagination," Jeanne Gaakeer traces the development of literary-legal studies over recent decades and discusses the future of humanistic legal education and practice, in light of James Boyd White's seminal contributions to the legal imagination. From at least three perspectives, Gaakeer stresses the *methodological* implications of law and literature for our views on law (e.g., as a positivist "science" or an hermeneutic "art"), the *paideic* potential of law and literature for contemporary legal education, and the *historical* relevance of the *studia humanitatis* and their exemplary contribution toward high-quality interdisciplinary research and the modern practice of law.

François Ost's "Towards a Critique of Narrative Reason" aims to rehabilitate narrative, against the dominant paradigm of thought which disqualifies it. The fact that we have all been nurtured by stories should make this effort an easy one, but the prevailing doctrine tends to discredit narrative, presenting it as subjective and frivolous. In his analysis, Ost focuses on the constitutive character of narrative, both as the collective story, memory, and history of a people, and as the personal novel each one of us tells to himself, in order to create his own identity. Ost suggests that such a conception of the human as *homo fabulans* (or storytelling animal) could lead to an outline of a "Critique of Narrative Reason," out of which theoretical reason and practical reason will emerge.

In his essay "Imagining Rhetoric, Approaching Justice," Willem Witteveen turns to the contemporary relevance of rhetoric as one of the arts essential for democratic citizenship, for arguing a case in court as an effective and responsible lawyer, and for deciding issues of law and justice as a judge. However, the fear that rhetoric functions merely to disguise naked forms of power makes it necessary to return to the classical rhetorical tradition, in order to reimagine for our own time what rhetoric as an art or *technè* can actually mean. Inspired by James Boyd White's reading of *Gorgias* in *When Words Lose their Meaning*, Witteveen argues for small but meaningful steps toward an open-ended ideal of justice beyond procedural fairness; namely, as a set of virtues and ethical relationships manifested in communication, which he illustrates with Giotto's paintings on the walls of the Capella della Scrovegni.

Continuing the theme of justice, Julen Etxabe's "It's Not All About Pretty: Human Rights Adjudication in a Life and Death Situation" unfolds judicial opinions using the methods of White's *Justice as Translation*. Against ways of assessing judicial opinions in terms of the concrete result they reach or the policy they recommend, White proposes a "stan-

dard of excellence" that focuses on the democratic quality of the conversations that are opened by every opinion, bringing us close to Bakhtin's multi-voicedness and dialogism. Such a way of reading does not wish to dilute political concerns into a matter of *style*, but rather the opposite, to reveal the profundity, and ethical and political implications, of what is often dismissed as mere style. Etxabe illustrates the possibilities of this analysis with the European Court of Human Rights case of *Pretty v UK*, a decision involving a case of euthanasia, and argues for the continued relevance of this kind of analysis in human-rights adjudication.

Continuing the exploration of judicial opinions, in "Slow Reading and Living Speech: James Boyd White on What a Constitutional Law Opinion is For," Jeff Powell examines White's practice of "slow reading" as an approach that demands openness to the points of tension, fracture, or contradiction that are central to its meaning. On this view, it is a mistake to act too quickly on the impulse to harmonize discordant elements in a serious piece of writing, including legal writing. Powell illustrates his argument through a brief consideration of White's book on George Herbert's "poetry of voices" and then turns to Justice Jackson's famous concurring opinion in *Youngstown* on the limits of executive power, which has become a trite doctrinal formula. A slow reading of Jackson's various voices, however, shows how that usual reading is untenable. In Powell's view, Jackson's accomplishment lies precisely in making it plain to the reader the unavoidable uncertainties that accompany, and should accompany, momentous constitutional decisions. After noting the difficulties of contemporary constitutional law to approach such "living speech," Powell argues that White's approach to reading has far-ranging implications for how we teach and think about the law.

Taking the issue of voice into a different register, Jack Sammons suggests that much of White's lifetime of work can be read as an attempt to address through performances the very personal issue of how to speak in a religious voice. This may present an almost insurmountable challenge, for how can a religious voice be audible in a world where the mode of thought demanded by religion has gone missing? Beyond an obvious problem of translation, Sammons surmises a more radical inability to have experiences we call religious and to make sense of them in any language. "The Impossible Prayers of James Boyd White" addresses this challenge through an inquiry into White's way of reading literary texts, in which the text's "imagined world" can provoke a "cultural dislocation" that transforms both us and our culture. For texts to have such emancipatory effect, however, texts must be read in a particular way, so that meaning is not chosen based on other values, but as experienced as the mystery of being moved by a "nothing" other to

us yet real. This leads us away from the imaginative transformations opened by readings to the ontological character of the identities uncovered and, ultimately, to something prior: the creative capacity of meaning—the meaning of our seeking meaning—which is an assumption underlying White's work, offering us an experience phenomenologically undistinguishable from what he call religious.

While the essays of Etxabe, Powell, and Sammons focus on issues of voice—the many-voicedness of judicial opinions, the competing voices of a single judge, and the voices of Jim White the author—Richard Dawson turns his attention to silence, which is not to be understood as the mere counterpart, or absence, of voice. In "Justice and Silence," Dawson argues that a distinctive aspect of White's work *is* a concern with the topic of silence. Rather than focus on the dehumanizing tendencies of some forms of silence(ing)—including economics—Dawson connects silence with a pressure toward the inexpressible, which signals a fracture in the social bonds and structures of meaning, and takes us to the limits of our imaginations. For Dawson, an encounter with such forms of silence may enable us to attune to the conditions of our existence in life and law alike. Drawing on a number of texts (including *Huckleberry Finn*, *Billy Budd*, Shakespeare's *Richard II*, and Herbert's *The Temple*), Dawson points to the intimate connection between silence and justice, sensing in justice-related silence not a defect, but a gift beyond language. This brings us, next, to our capacity to appreciate the speech and silence of stuff other than formal languages and texts.

While James Boyd White has devoted much of his work to the rescue of meaning in language, art, and the human world, Joseph Vining wonders about the extent to which modern law is amenable to such kinds of "close reading." In "Meaning in the Natural World," Vining frames the question as the problem of the *objet trouvé* (e.g., a stone smoothed by the waters of a river that Jim White kept at his desk), which cannot be read in the same way that a piece of visual art, or music, or written text can. In essence, the problem posed by the (putative) meaning of inanimate objects might be the same facing legal operators when they attribute meaning to words found in a piece of legislation, or an administrative or judicial opinion. For, whenever law is viewed not as an expression of mind, but as the product of "sociocultural forces," the issue arises as to the meaning that can be attributed to the outcome of such impersonal processes.

In "Reading Materials: The Stuff that Legal Dreams are Made On," Gary Watt enquires into the "materiality" of words and the intrinsic force that material stuff works upon the human mind. Offering multiple examples, Watt fosters a Whitean approach towards a meaningful



appreciation of material culture beyond text and speech. In his view, such an approach might open the way to improved environmental respect, to more just and finely attuned judgments, and to an appropriately harmonious, touching, and responsive social constitutions. One of the examples that attracts Watt is, remarkably, the same smoothed stone that attracted Vining that attracted White. Watt finds it intriguingly akin in its properties to the kind of solidity and balance we find admirable in law and certain sculptures. According to Watt, such a form of balance is not based on a strict or equal symmetry, but rather in its asymmetry: a form of dynamic balance that expresses motion and energy created by oppositions, contrast, and disequilibrium. Following James Tully's reading of Bill Reid's *The Spirit of Haida Gwaii*, Watt sees another Canadian First Nations' sculpture *The Dance Screen (The Scream Too)* as a material example of a constitutional disposition that stands for more than strict equality, and which calls to be completed by the touch and endless engagement of the public.

The authors did not plan it, but the previous chapter and the next one follow neatly from each other by keeping us with the First Nations people of Canada. In "Reimagining 'The True North Strong and Free': Reflections on Going to the Movies with James Boyd White," Rebecca Johnson describes her personal experiences in designing, and teaching, a seminar in Inuit law and film to a group of primarily non-Inuit law students at the University of Victoria. Despite the veritable revival of Inuit culture and political activism in the last twenty years, and the fact that Indigenous scholars have become increasingly fluent in "Canadian Law," Johnson avows that there has been insufficient engagement with Indigenous legal orders on their own terms. Faced with the challenge of devising such a trans-systemic course, Johnson found invaluable theoretical and practical tools in the works of James Boyd White (including *The Legal Imagination*, *Justice as Translation*, and *The Edge of Meaning*). Taking as a given White's insight about learning to *live* within a language, a culture, and a legal order, the purpose of the course was to enable non-Inuit students to begin to "inhabit" the Inuit North and make possible, also, the imagination of law as something other than a universal colonial force. In this setting, films by or about Inuit function not as examples of "the truth," but as places where students can work at inhabiting a space of imagination and mutual engagement.

If the encounters with the works of James Boyd White are an invitation to live in a law transformed, it is only fitting that this volume should include an experience that changed the life of a practicing lawyer. In his essay, Thomas Eisele describes an experience of self-discovery after early years of law practice in which he could not find vitality in his

work. After receiving a review copy of *The Legal Imagination*, Eisele realized that none of his legal work breathed life and that the instruments, memos, and letters he was drafting were “forgeries” borrowed from form-books and other available models. Although *The Legal Imagination* offered no apparent “method” to become a competent lawyer, the book’s invitation to consider the lawyer as a kind of artist and the law as a kind of literature made an impact. With the help of White’s instruction, and his self-tutelage working through the materials of *The Legal Imagination*, Eisele came to realize that the forms and formulas he had emulated prescribed no solutions to the legal problems facing him and his client. Rather, the competent legal solution could be made manifest (or failed to be made so) only in so far as one could manage to create it out of those materials. If “generativity” can be defined as the ability to come to some understanding of what one cares about most in life and to take care of that passion, *The Legal Imagination* allowed Eisele to generate legal instruments that could speak to the difficulties and complexities of life in which the lawyer and the client find themselves.

The concluding chapter of this collection is Mark Weisberg’s “A Gift in Yellow Clothing: Learning and Teaching with *The Legal Imagination*.” When the book arrived on his desk in 1979, the combination of fiction, history, poetry, and law; the refreshing questions and comments of the author; the challenging and provocative writing assignments; and the voice that addressed students as individuals in a jargon-free manner, were all qualities that attracted Weisberg and compelled him to offer a course modeled after it. Working with *The Legal Imagination* ever since, Weisberg not only discovered his own vocation as a teacher, but afforded students the opportunity to experience their work as the product of independent minds; to define their own responsibilities as writers and participants in a community; and to develop the associative and imaginative dimensions of thought and language on top of the cognitive and logical ones.

Anyone familiar with Jim White’s teaching style and method will recognize many of the strategies described by Weisberg, including a remarkable form of “silence” that the teacher can productively use to foster shared responsibility in an atmosphere of mutual respect. Those who have not had the privilege of attending any of Jim White’s courses and seminars will obtain a rare glimpse into what the theoretical claims of the author look like, and can accomplish, in the real environment of the classroom.

In the four decades since the publication of *The Legal Imagination*, and for even longer than that, James Boyd White has repeated his distinctive call for personal ethical participation in the life of law, and he has

repeatedly been the first to respond to that call. To look back on his life's work is to look at the first forty years of the modern law and humanities movement, but the advantage of anniversaries is that they come in perpetuity and prompt us to look to the future. A good deal of our hope for law's future lies in the life that the works of James Boyd White can bring to law. Looking back, James Boyd White was pleased to tell us that the "life of writing has given me friends." Looking forward, we hope that we, a few of his friends, have produced a book that will encourage new readers to experience the life in his writing.

After this book was sent to press, we have been saddened by the terrible news that Willem Witteveen, his wife and daughter were amongst the passengers of flight MH 17 to Kuala Lumpur where they were headed to visit their son and brother. This book wishes to honor our good friend Willem and his family.