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The Legal Imagination: Studies in the Nature of Legal Thought and Expression

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The Legal Imagination: Studies in the Nature of Legal Thought and Expression. By James Boyd White. Wolters Kluwer, 2018. Pp. 986, \$75.

This book, now available in a 45th-anniversary edition, is a marvel for its breadth and creativity. It remains a must-read for lawyers, law students, and law professors, even those who are not familiar with the Law as Literature movement for which the book was a founding contribution. Those who read it decades ago would be well served by a revisit because the book's care and attention to legal language remain uniquely powerful.

The author, James Boyd White, describes the book in an Introduction to the Student as “an advanced course in reading and writing, a study of what lawyers and judges do with words.”¹ But he acknowledges in the new Foreword to the Anniversary Edition that the book's reach is much greater and that it can 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.”² In fact, the book's true project seems to be broader still — it is a survey of the humanities and the history of Western thought (Socrates, Plato, Aristotle, William Shakespeare, Alexander Pope, William Blake, Jane Austen, Walt Whitman, Mark Twain, Robert Frost, etc.), an education in close reading and critical thinking, and a primer on how to be a person with integrity. Basically, the book is a curriculum of what, in a perfect world, all law students would know in addition to what law school traditionally teaches them.

¹ James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* xxxix (2018).

² *Id.* at xxi.

The Legal Imagination engages with questions so deep that they feel mystical. The book presents its thesis as follows: “that the activities which make up the professional life of the lawyer and judge constitute an enterprise of the imagination, an enterprise whose central performance is the claim of meaning against the odds: the translation of the imagination into reality by the power of language.”³ In support of this idea, the book asks the reader hard questions: Why would someone become a lawyer? How does the language of the law change the lawyer who uses it? Is language capable of describing people fairly? Can the language of the law effectively organize experience and behavior? How did the law allow for the evil of slavery, and what other evils does it still condone? How is a judicial opinion like a poem and a judge like a poet?

The book is organized into seven chapters, each dealing with an aspect of how the law and language intersect. For example, there are chapters on the lawyer as writer, how the law talks about people, rules and relationships, and judgment and explanation. Within each chapter are readings from a range of sources, essays by the author, discussion questions, references to more readings, and writing assignments. Despite its breadth, the book is consistently focused on the individual reader. It asks the reader to engage with the discussion questions and writing assignments on a personal level, to not write vague or clichéd responses as one might in a college paper, but to really think deeply about what the text means for the reader’s own experience. For example, the book describes one writing assignment as “an invitation to pursue your own line of thought in your own way.”⁴

At the same time that the book is profoundly intellectual, it uses ordinary language outside the lexicon of law school —

³ *Id.* at 758.

⁴ *Id.* at 856.

principally, the idea of voice and conversation — to describe the complexity of legal structures, processes, and practice. By doing so, the book is accessible to a reader who is new to thinking about the law as a literary endeavor. For example, the following passage is a description of what it really means to say that the purpose of law school is to learn “to think like a lawyer”:

[T]he lawyer must master not one voice but a variety of voices, to be used in an enormous diversity of conversations; yet never does he seem to be free to speak directly and easily in his own way, to say what is actually on his mind. Faced with the unbudging uniqueness of things, he is engaged in a perpetual struggle with what others have said, with what the law has given him to work with; and it is no wonder if you conclude that he is bound by restraints of intolerable rigidity. To ask him whether he is able to say what he wants is to ask him to address a sea of difficulties, and it should not surprise you to be told by a particular lawyer that he chooses not to ask that question of himself.⁵

One essay by the author that is particularly thought-provoking asks the reader to compare the judgment of the characters in Jane Austen’s *Pride and Prejudice* to the judgment of the legal system during sentencing.⁶ The essay explains that *Pride and Prejudice* “can be said to dramatize . . . what it means in human and social terms to reduce experience to a narrow range of responses, to impose rigid and flat identities upon oneself and others — to speak, that is, as the law seems to speak.”⁷ And the book offers many similar treasures. For example, an extended section provides classic poems and then asks the reader to compare them to judicial opinions, explaining that “[o]ur central question is whether the judicial opinion, like the poem, has a form with its

⁵ *Id.* at 195.

⁶ *Id.* at 401–07.

⁷ *Id.* at 403.

own meaning — its own resources for expression and demands on the reader and writer — and if so, how that form can be defined.”⁸

The book is both burdened and liberated by the era in which it was written. Because there have been no changes to the text — this anniversary edition is a reprint, not a revision — the reader will often notice how different things were in 1973. The book is concerned with all the ways that language does not work the way we want it to. But with the passage of time, this gap between what we mean and what we say is as obvious from the book itself as from the examples it uses to illustrate the point. Although it often questions the assumptions and biases inherent in the language of the law, the book has its own blind spots. For example, as the author acknowledges with embarrassment in the new Foreword, the book uses only male pronouns “to refer to all human beings.”⁹ This stylistic choice feels outdated, as does racial terminology that is used throughout. Indeed, the book’s treatment of race may at times make the modern reader uncomfortable, since it can feel reductive and insensitive even as it argues that the language we use about race needs to be nuanced and thoughtful. The book’s focus in many places on the overt racism of the past — slavery and segregation — now feels less useful than an interrogation of modern institutional racism would be. And the book often uses golf, football, church, and private clubs as examples even though that language will not resonate with many readers.

But the book also engages debates that today feel calcified by politics but that were still fresh and perhaps less partisan in 1973, such as abortion, the death penalty, incarceration, mental illness, policing, sentencing, and surveillance. It is enlivening to remember that there are many questions to ask about these topics and

⁸ *Id.* at 801.

⁹ *Id.* at xxiii.

many angles from which to consider them. And some of the more anachronistic pieces are useful in how far removed they feel from the current cultural moment. There is a *Wall Street Journal* article from 1969 about “hippies” that the book asks the reader to analyze for how it caricatures its subjects. The book asks: “Would ‘psychedelic shirts and dangling beads’ put your ‘nerves on edge’? What would they do to you? How do you respond to such apparel, and how would you respond if you were a judge?”¹⁰ The modern reader will benefit from thinking about the cultural assumptions that were different 45 years ago and trying to find analogies to today.

At its best, this book inspires the reader to think about the practice of law as a way to engage with language, imagination, and our world. The book explains: “The law makes a world. It is our task to acquire the art of reading and speaking the language of that world.”¹¹ The book asks and even implores the reader to think about what the law is and how it could be better. These questions are as important now as they were in 1973 — so much so that a true update of this text, to make it more modern and inclusive, would be a tremendous contribution to our current discourse. Our law and culture have changed so much in 45 years that an updated edition of *The Legal Imagination* would be invaluable. The modern reader is left to imagine how such a book would treat the topics of corporate speech, gay marriage, mass incarceration, and digital privacy, to name only a few. These are all topics that resonate with and complicate the subjects in the book’s anniversary edition. As an expression of the gravity and complexity of being a lawyer and a person, the book in this original version — at almost 1,000 pages — is important, but still incomplete.

¹⁰ *Id.* at 392.

¹¹ *Id.* at xxii.