

# The Origins of the Legal Imagination

**James Boyd White\***

I want to say at the outset that I feel honored beyond imagining at this celebration of the fiftieth anniversary of my book, and all the more because it is you who have set this up—so many beloved friends over the years and others who will surely become friends. I thank you deeply.

As I wondered about what I might say this morning, I thought perhaps you would be interested in where this truly odd book, with its 986 pages of readings and questions, came from.

## 1. WALDEN

The first source was Thoreau's *Walden*. When I was thirteen, I read somewhere about the man who went to live by a pond in the woods, and I just had to have it. I ordered it at the bookstore without telling anyone and paid for it with savings from my own small allowance. Of course, much of it was beyond me, but I was transfixed by what was not. I think that *Walden* made me feel that I too could become a person looking for meaning in the world, with my own values and methods.

I became a reader, and I am grateful

## 2. ENGLISH 1-2

The second source was a required writing course I took when I was a freshman at Amherst College. Classes were small and intense, meeting three times a week, with a paper assigned for each class. The teacher chose two or three papers out of each batch, which, when duplicated in whole or in part, would become the subject of the next session. Our subject was, in this sense, truly our writing. When we got our papers back, there were comments, and person-to-person remarks, but no grades.

The assignments were like nothing I had ever seen. I had always regarded writing in school as an effort to meet the expectations of the teacher in both style and substance. A set of clichés would do the job. I certainly did not have to be present as a mind or person in my writing. It was ultimately an exercise in imitation.

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You can perhaps imagine how bewildered I was to read this as my first assignment:

*Assignment One*

During the last few days you have been asked a great many questions by a lot of people. Try to recall exactly what some of these questions were by making a list of those you can remember. Look the questions over and ask yourself what all this questioning has been about.

- a) Select 5 questions from your list, ranging from foolish to interesting, marking the most foolish with a # and the interesting with a \*.
- b) Why do you apply the adjectives “foolish” and “interesting” to these particular questions?
- c) What has all this questioning been about? How do you explain this social manifestation? After all you can go to lots of places, to a hotel, to a country club, and not be subjected to such persistent questioning. What’s going on here?

I had no idea how to respond to that assignment. I wrote something at once confident and vacuous.

What was so unfamiliar? The assignment was an invitation to actual thought of a kind no one had ever asked of me—and thought about my own experience to boot. It also assumed that I had the capacity to have real interests.

There was certainly no right answer. The real question for each of us was what we could make out of this opportunity. We found we could not just use stock phrases but were responsible for our language. This is how I learned to ask questions.

I became a writer. I am grateful.

### 3. GRAD SCHOOL

Having concentrated on classical and English literature in college, I decided to go to grad school to become an English professor. I would ground my life in reading and teaching the books I loved. This was the third source of my book.

My experience in grad school was unhappy from the outset. Almost no one seemed to have the intense feeling for what literature is and can do, how deeply it can affect us and the world, that we acquired at Amherst. Most of what was done by my teachers was historical. I was bored.

Also, I found myself being competitive about my writing and reading in a way I had never felt before, and I did not like it. I was becoming a professional about things with respect to which I had always been an

amateur in the deepest sense, driven by love. I did not want to become competitive about my readings of literature.

But a side of me did want to engage in the larger world with all the competition that entails. I felt especially stimulated by the energy of the Kennedy campaign.

I talked with my brother about his experience at law school and found it intriguing. I went to some classes in the law school which were challenging and exciting.

This sense was intensified when I heard a moot court argument. The case seemingly involved nothing of interest or importance. The question was whether the Georgia tax agency had made an error when it imposed sales tax not only on items actually sold but on expenditures contributing to their sale, including rather expensive display racks. But when the students argued, suddenly, the room came alive. What is the appropriate role of an administrative agency like this: does it simply enforce a statute, or can it promulgate rules within its jurisdiction? What does--what should--this particular regulation mean? What does the statute in question say, and what should it be taken to mean? What if the rules are unclear? What does justice require? Great questions. I was excited.

I left graduate school. I am grateful.

#### 4. LAW SCHOOL

I went to law school, the fourth source.

As I said, I found law exciting, but I was anxious about my own ability to do it since I had never taken a political science or economics course or thought about the larger world of political action. People in class tossed around terms like “legislative function,” which meant nothing to me. But as the year went on I became more confident. It turned out that I had an ability of my own: I had learned in my literature classes how to pay attention to texts and their possible meanings. In doing this in law school, I discovered that meaning was the heart of a lawyer’s life. I was excited and worked harder than I ever had.

In early September of the second year came the fifth source, a phone call from John Knott, a friend in the English Department. (Remember his name). He was the head graduate student for a big lecture course in the college, “Epic and Drama.” One of his TAs was no longer able to do it, so he asked if I would take it on. I said yes, knowing that I already had more to do in law school than I could possibly do, but the idea of teaching this subject was just too alluring. I had been missing the side of myself that was absorbed in literature, and here it was promised a life of its own.

Somehow, I managed to deal with the overload in a more or less satisfactory way, taking care never to shortchange my students. I loved law

school, but I also loved teaching these great books.

The next year, John asked me to continue teaching, and I did, thus keeping alive the tension between two sides of myself during my last two years in law school and even my first year of law practice.

I loved law practice but felt that I was losing the side of myself that was present in my experience of teaching epic poetry and stage plays. While law was immensely interesting, I came to realize that this happened by a kind of luck or accident in my assignments—it just so happened that the questions that were important to our clients were interesting to me. But in teaching, I thought I could pursue what interested me because it interested me, not by accident.

And what interested me most was the tension between my two selves.

I became at once a law student and a teacher of literature. I am grateful.

## 6. LAW TEACHING

I looked into law teaching and found myself going to the University of Colorado Law School--a fine school that valued teaching very highly, which fit with my own sense of myself: I knew I wanted to teach, but I was not at all sure I wanted to write, especially in the rather dead form of the law review article.

But I continued to be in a kind of crisis: am I really a law person or a literary person? A part of me was one, another part the other. I could feel the reality of both in tension. I was afraid I was a split being who would never be healed. Could both parts have their place at the same time in a kind of unity? Certainly, most people I talked to seemed to think they were separated by an abyss. What do poems and judicial opinions have to say to each other?

At the end of my first year, I asked the course committee if I could teach a course that, as I described it, was like English 1-2 for law students, called "The Nature of Legal Expression." I was told, "of course; but on an overload basis."

That was fine with me. The course was about meaning in the law, using literary material throughout, and I was free to do the course as I wanted to do, including weekly papers, copied and used anonymously in class, just as we had done in English 1-2. The course enabled me to engage both with law and with literature, at the same time and in much the same way, thus establishing connections between them.

So I sailed into my course, whole-heartedly inventing it as I went, then revising it over the summer. I found that the questions were real, the connections real, and together, they demanded of me everything I had. This was the sixth source.

As I taught this class, I came to the conclusion that these two different

things, law and humanities, belonged in my class together, in my writing, and in my person —where instead of being opposed, they could work in cooperation.

I became a writer and teacher, the maker of a book and course uniting my interests in law and humanities. I am grateful.

My students were my only audience, and I had no idea of publishing these materials as a book until the third summer when I felt they were in good form and that I should turn to something else. I sent it to several publishers, all but one of whom turned me down, most of them politely. Little, Brown did not respond at all. When I called them, the editor said of course no one had looked at my MS because I did not send it to a particular person. He searched around and found it behind a door and sent it out for readers—readers who were very supportive: Herb Packer from Stanford and Harry Kalven from Chicago. Upon their approval, the publisher went ahead with this huge book that could not possibly make them money because they admired it and wanted their name to be associated with it. They were wonderful to work with, as few publishers can be today. Their editing took a full year.

One of the forces that shaped the book was the fact that both the students and I were concerned with the question of what a life in the law can be and mean. The fundamental question I wanted my students to be asking themselves went something like this: “What will it mean to me, to my mind, to my values, to my self if I learn to think and speak like a lawyer—if I make the language of the law my language?” As we worked, I hoped we could change the question, for each of us, from “What will it mean?” to “What can I make it mean?” *The Legal Imagination* says to them, “This is a question you address implicitly every day as you do your law work, and explicitly in every one of your papers. The outcome is largely up to you. The issue in part is how you come to terms with the language of the law, which you will speak every day. Can you find ways to control it, or will it control you? The hope of the course is that as we work together each of you can write yourself into your own solution of this problem.”

In a way, I was urging my students to realize that as lawyers we do law and literature at the same time. The legal case itself is a kind of story from beginning to end. The lawyer has to choose a language, a way of talking, for telling the story, and maybe change it too. They have to find a way to understand and talk about each of the witnesses, and the relevant history of the law itself. All of these things have to be done as well as possible—and well both in the sense of professional success and in the sense of being the kind of person they want to be. What a wonderful prospect!

When I finished the book, I had the sense that it contained my entire education. I was going to have to find something else to do. When I showed up at Michigan ten years later, the Chair of the English department asked

me to join them as a teacher of poetry. Another gift from John Knott, and I am grateful.<sup>1</sup>

I have continued to live in the happy tension between the law I love and the books I love. I am grateful.

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1. John was a good friend indeed who I am sorry to say passed away last winter.