

# Foreword

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It is my honor to introduce twelve essays, themselves honoring the 50<sup>th</sup> anniversary of James Boyd White’s momentous *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*.<sup>1</sup> The weightiness of the 1000-page, hardcopy, 45<sup>th</sup> Anniversary Edition (2018) is matched only by the wisdom and wittiness of its author.<sup>2</sup> In his introduction to the September 2023 Symposium *Fifty Years of the Legal Imagination: A Symposium in Honor of James Boyd White*, White explains the moments, the questions, the tensions, and the conjunctions that in younger days led him to his teaching of law and humanities. As both his introduction and the essays that follow attest, his work is above all a contribution to the learning of law. I mean that in a double sense: the “learning of law” as how one comes to know law and also as what law knows. Over and over, White invites us to recognize the many ways in which knowing and doing law are matters of language, which one can always learn to do better.

*The Legal Imagination* differs from more conventional casebooks whose selections are often designed to lead law students to a standard rule and its justification and critique. The questions that accompany the wide range of historical, literary, philosophical and legal entries in what White calls “a kind of work book” (xxiii) provoke expansive thinking about the possibilities of law, its language, and its meaning-making power.<sup>3</sup> Like the rest of White’s corpus, the text challenges the purported authority of positivist jurisprudence, law and economics, and sociolegal study, and takes them to task for their neglect of how languages work and how they are inherited and used among persons of varying capacities and commitments in a changing world. White’s work shows how law expresses aspirations—or imagination—and it insists that those who approach or engage with or in law note, consider, and reflect on their own stances and those of others vis-à-vis such expressions.

At the broadest level, the articles that follow reflect on such expressions.

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1. JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (1973).

2. JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (45th Anniversary ed. 2018).

3. WHITE, *supra* note 2, at xxiii.

Drawing on *The Legal Imagination*, as well as on White's other works, they explore how law is done and what law does through activities or performances in which words are shared—not always amicably or successfully, much less justly. The articles show how some persons, institutions or texts aspire and strive for “integrity” (as White following Dworkin calls it), with varying kinds of success. The articles also show how some may not try, or not be perceived as trying, at all—which leads one to wonder, with White, what prevents them, and oneself, from doing so? And how might one be enabled to do so?

White's work speaks of and to the judge (Gaaker, Mezey, Murray, Johnson), the dissenter (Binder, Kaveny), the bureaucrat (Baltan, B. Sullivan), the law student (Stolzenberg, Kenny, Johnson), and the legal practitioner (W. Sullivan), and even the everyday reader (Kenny, Rajah), in actuality as in fiction (W. Sullivan, Rajah), film (B. Sullivan), and poetry (Mezey). Itself locatable within various histories, including a tradition of Protestant liberalism, protest and reform (Stolzenberg) and of professional legal academia (Kenny, Stern), *The Legal Imagination* offers insights into the pathologies of legal speech (Baltan, Murray) and the limits of modern law (Stolzenberg, W. Sullivan), positivist jurisprudence (Binder), and neo-liberalism (several). For some, *The Legal Imagination* marks the beginning of the development of law and literature as a field (Stern). For others, White's work has as much to say about civil-law decision-making as about common law (Gaaker). It reveals the work and the wonder of writing (Gaaker), celebrating texts in many-a-genre that say and do things in a manner that is worthy of what they say (Mezey, Stern). In “penetrat[ing] the numbness and denial of the crumbling present situation,” White's work may also come to resemble the lament of the legal prophet (Kevany). It permits the essayist to reflect on links between poverty, pesticides, and pharmaceuticals following a 1997 murder case (Murray). It instructs historians interested in the mid-20<sup>th</sup>-century development of administrative policies around displaced persons (Baltan). It encourages one to find alternatives to law-for-profit in novelistic depictions of attitudes of and toward enslaved persons during the Triangle trade (Rajah) and to find sacred law in Trollope's fictional barrister Dove's rendering of nineteenth century inheritance law (W. Sullivan). It prompts contemplations and revisions of “life” as one nears death (B. Sullivan, Kevany). Its rhetorical understanding of law as transacted among persons recognizes “dissent” as respectful of—and even necessary to—a legal authority that does not simply command (Binder). And “imagination” and “integrity” name what is at play in wonderful Canadian-Indigenous law innovations (Johnson).

White has long counseled open-mindedness. One is struck, throughout these essays, by their affirmation of genuine engagement with others and corresponding refusal of what is variously figured as sovereignty, royal

consciousness, rigidity, instrumentalism, and narrow reading. Emphasizing law as language and exploring what the language of law can and cannot do, has and has not done, may and may well not do, the essays counter former mistaken tendencies to characterize White's approach to law as romantic or communitarian. In recent years, White cautions with increased urgency that we may be living in "a time when integrity itself sometimes seems to be threatened as a value."<sup>4</sup> As these essays convey both the need and the difficulties in ascertaining, maintaining, and transmitting the value of integrity, they remind us that the quests White sets out on—for leading a meaningful life, for meaning in the life of law, and for what law calls justice—are aspects of the human condition.

The very quick references above cannot do justice to this kaleidoscope of essays, nor to White's own contributions to the thinking of law—again, as the ever-changing thinking that goes by the name of law and as the ever-transformative thinking that we may do about law. Rather than concluding then, let me invite you to learn more from this sample of essays, coming as they do from a community of readers who have been affected by, and inspired to exercise their own imaginations and thinking in appreciation of, the work of James Boyd White.

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4. WHITE, *supra* note 2, at xxii.