

REVIEW

The Legal Imagination, JAMES B. WHITE. Little, Brown and Company, Boston, Mass., 1973. Pp. xxxv, 986. \$18.50.

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In *The Legal Imagination* Professor James White probes the language of law. With that gentle skill born only of great charity, he also leads the readers to face the possibilities for life and death that law offers.

Because the book has already been cogently reviewed,¹ I shall not attempt another review here. Rather I shall undertake a reflective response to it, with special reference to the nature of legal education and the linkage, as I see it, of law, language, death, and life.

I. THE PROBLEM OF CHARACTERIZATION

The introduction to this book describes it as the text for a kind of "advanced course in reading and writing,"² a characterization which becomes revealing when Professor White explains that, in his view, "'reading and writing' [can] be said to cover the whole of one's education."³ Although I am not sure that the book is generally suitable as the text for a law school course, the author also hopes "that one can be interested simply in reading it through."⁴ One can indeed. As a book which stands independently it is a singular contribution—the script for perfected legal education.

The book contains six chapters, bearing such unassuming titles as "The Lawyer as Writer"⁵ and "Judgment and Explanation: The Legal Mind at Work."⁶ Each chapter is divided into groups of selected readings, commentary (at times extensive), and questions, which lead to writing assignments (twenty-one in all, plus alternatives). The readings, which precede and color the assignments and

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¹ Particularly to be recommended is White, Book Review, 60 VA. L. REV. 374 (1974). Another cogent review is Weisberg, Book Review, 74 COLUM. L. REV. 327 (1974). Also see Eisele, Book Review, 47 U. COLO. L. REV. 363 (1976); Fuller, Book Review, 63 GEO. L.J. 289 (1974); Vinson, Book Review, 2 FLA. ST. U.L. REV. 827 (1974).

² J. WHITE, *THE LEGAL IMAGINATION* xxxi (1973) [hereinafter cited as WHITE].

³ *Id.* at xix.

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.* at 623.

constitute the bulk of the volume, come from the author's notable familiarity with literature and the classics as well as law. They include, in addition to case opinions and statutes, poems, excerpts from novels, plays, and histories, and even a bit of Episcopal liturgy.⁷

The book's range of selections is certainly unusual for a casebook.⁸ Its organizing principle is more than unusual; it is a wholly fresh departure: Professor White involves the reader in a companionable, systematic venture of the mind, the ultimate goal of which is to foster responsible, imaginative lives in the practice of law. Toward this end, White defines and animates the so-called legal imagination by comparing it with other kinds of imagination.

This sort of comparison might seem alien to legal thinking. The supposed incapacity of the legal mind for such extra-legal comparison was fixed in a notorious dictum of Thomas Reed Powell, who alleged that when "you can think about something which is attached to something else without thinking about what it is attached to, then you have what is called a legal mind."⁹ It is not that lawyers have been thought incapable of making any connections at all: connections, even creative ones, are of course the coinage of the common law. It is rather that the range of connections has appeared circumscribed within a discrete, closed universe of discourse, the world of *stare decisis*. Other worlds intrude only to be transmuted into the terms of the legal one; outside connections are processed into a cash-and-case nexus.

One example of this reductionist conversion is an advertisement for the *Medical Atlas for Attorneys* which appeared in the *Journal of the American Bar Association* and which read in part:

More than 2000 drawings expose the entire anatomy—structure by structure from skin surface to skeleton. Brief marginal text notes alert you to the *possibilities* of your client's case; you see at a glance the potential implications.

Every part of the body is keyed with citations to cases, awards, ALR annotations, and other references which take you directly to the relevant law.¹⁰

⁷ *Id.* at 288 (quoting *The Form of Solemnization of Matrimony*).

⁸ Another unusual book with wide-reaching selections is W. BISHIN & C. STONE, *LAW, LANGUAGE, AND ETHICS* (1972). I hold that it is not as radically innovative as White's on the ground, among others, that it is a collection of readings in jurisprudence and not a casebook. *The Legal Imagination*, I will argue, is a casebook.

⁹ Quoted in Arnold, *Criminal Attempts—The Rise and Fall of an Abstraction*, 40 *YALE L.J.* 53, 58 (1930).

¹⁰ 52 *A.B.A.J.* (1966) (ad follows p. 788) (emphasis added).

The lawyer translates the human body from the world of nature into the world of courts just as Linda Lovelace translates it into the world of pornography: the body is made to seem incredible but is actually divested of mystery; it is seemingly opened to illimitable *possibilities* but is in fact reduced to an object denuded of wonder. The body loses the referents of a human world, to be analyzed into cases. Such is the paradigmatic fate of things and acts brought within the processes of law.

It is therefore singular that Professor White stimulates the reader to discover comparisons to worlds outside of law. His purpose is not to grind those other worlds through the wheels of law but to define the law by looking at it from the outside. The law thus defined can be controlled; one can invest the law, and one's life within it, with more deliberate, more creative responsibility. As he observes: "For some people, law leads to an ever duller and more restricting life, to drudgery and routine; for others, to a life by comparison free and self-expressive, which seems to yield and form itself to the controlling intelligence or imagination."¹¹ Professor White would have law render us a life of choice.

We have been reaching for a book like this, moving toward it by degrees for as long as we have reckoned with the truth that law is neither self-enclosed nor self-sufficient. Thus casebooks have dressed their cases with ever more generous dollops of economic theory and even theology.¹² Law schools have been developing courses like "Law and Literature" and "Law and Psychiatry"; the Harvard Law School together with the National Endowment for the Humanities has experimented with a program in law and the humanities. But *The Legal Imagination* is qualitatively different from such uncertain alliances. There is a lot of literature in this book, but it is not simply a law-and-literature book; it is rather a book about law *as* literature. There is a lot of imagination in this book, but it is not simply a book about law and the imagination; it is rather a book *of* the legal imagination.

II. TEACHING LAW AND TEACHING ITS MEANING

I have found myself treating this book like the manuscript for a play: imagining performances as I read. The performances are of pedagogical utopias. And, like any utopias, to borrow Mannheim's

¹¹ WHITE 49.

¹² See, e.g., E. HANKS, A. TARLOCK & J. HANKS, ENVIRONMENTAL LAW AND POLICY (1974) (economics is to be found throughout the book; theology at 82-88).

definition, they burst "asunder the bonds of the existing order."¹³ The book is not only the blueprint for an uncommon law school course but also a creative challenge to the existing legal curriculum.

My own present students come to law school willing to work. They do not always appreciate in advance how much work of what kind is involved, and they have not always been prepared for it, but they want to succeed. Good teaching nourishes this desire and helps it develop into a technical command and a respect for craftsmanship. Although this is a great, difficult, and rewarding job in and of itself, Professor White's book reminds me that there is a more complex and demanding responsibility: to seek the meaning of the rules, of law, of success in law.

A. A Joint Venture

The meaning of law is a subject not often raised in law school classrooms by either teachers or students, except perhaps sardonically. One of the more intriguing reasons advanced for this omission is that teachers themselves are uncertain about the meaning of law, its significance *sub specie aeternitatis*. This uncertainty is in turn perceived as symptomatic of a more general loss of direction, a pervasive loss of a sense of transcendence.

Professor White emboldens me to believe that the uncertainty may actually be turned to advantage and serve as a clue to the form and content of a renewed search for meaning. If one does not know the answers, he cannot teach them to students. But he is then free to seek answers with students. Uncertainty becomes an occasion not for abandonment of the study of the meaning of law but for a fresh approach to it. It becomes an occasion for a joint enterprise.

The collegial, relational form of such an undertaking itself has substantive importance and may be described as "educative friendship," a notion Professor White derives from Clarendon's *A True Historical Narration of the Rebellion and Civil Wars in England*.¹⁴ As White reads him approvingly, Clarendon expresses the art of life as an art of education for which there is no outline and which does not lie in the content of instruction because it is to be located in the relationship in which the process occurs: "education between friends."¹⁵ Accordingly, in the face of uncertainty "where the goal of life is inexpressible," one "can still point to the relationship from

¹³ K. MANNHEIM, *IDEOLOGY AND UTOPIA* 204 (L. Wirth & E. Shils trans. 1936).

¹⁴ WHITE 903-25.

¹⁵ *Id.* at 922.

which [life] derives its virtue, its power, and its meaning."¹⁶

This "educative friendship" has both pedagogical and jurisprudential implications. Pedagogically, it suggests law classes which are truly Socratic and in which students may be asked, in Professor White's words, "to speak not as . . . student(s) but as . . . independent mind(s)."¹⁷ Jurisprudentially, it indicates that law, like law teaching, is essentially relational, so that collegiality in the classroom is the form best suited to the content of law.¹⁸

While I may not finally be satisfied with the notion of "educative friendship," it is not preposterous and not a little intriguing, and it warrants further comment. First, the "friendship" involved here is not soft-headed or lax. Nietzsche claimed that in "a friend one should have one's best enemy."¹⁹ Professor White's students may, not altogether joyously, believe themselves possessed of such a friend. His requirements are searching, his expectations great. Second, by way of promoting collegiality, he adopts as an author a personal form of address ("I" and "you"); and as a teacher, he suggests that students exchange and criticize one another's written work before handing it in.²⁰ Competitive methods of teaching are disavowed.²¹

It bears noting that these are formal devices. Personal, collegial teaching does not just happen—it requires artifice and structure. What is true of the imaginative practice of law is true of the imaginative law class: while intuition plays a role, it must be accompanied by rigorous and sometimes painful discipline. Thus, while Professor White's book is personal and self-expressive and requires a personal and self-expressive response from the student, it exhibits and evokes artfulness.²² A collegial class is an artistic achievement

¹⁶ *Id.* at 922-23.

¹⁷ WHITE xxi.

¹⁸ I am certainly willing to entertain the possibility that the meaning of law can be expressed in terms of human relationships. The idea, of course, is not a new one. Montesquieu, for example, was persuaded that "[l]aws, in their most general signification, are the necessary relations arising from the nature of things." C. MONTESQUIEU, *THE SPIRIT OF THE LAWS*, in *GREAT BOOKS OF THE WESTERN WORLD*, No. 38, Bk. 1, ¶ 1, at 1 (T. Nugent trans. 1952). The Roman word *lex* originally meant intimate connection, "namely, something which connects two things or two partners whom external circumstances have brought together." H. ARENDT, *ON REVOLUTION* 188 (1965). *Lex* allowed former enemies to become friends or allies. Going back still further, the Hebraic Decalogue defines the mode for right relationships between a people and their God and, in consequence, among the people themselves.

¹⁹ F. NIETZSCHE, *THUS SPOKE ZARATHUSTRA*, in *THE PORTABLE NIETZSCHE* 103, 168 (W. Kaufmann trans. & ed. 1954).

²⁰ WHITE xxii.

²¹ *Id.*

²² "Shown to the public," Nicola Chiaromonte once remarked, "one's inner life always

impossible without technique. To speak of legal education as a joint endeavor, therefore, is to speak of it not as abandoning structure but as adopting a common, thoughtful discipline.

B. The Process

Legal education as traditionally conceived is largely static. Even the non-traditional mind thinks of Contracts and Torts as "blocks."²³ The casebooks, too, are blocks, tablets of stone that pile up until the student has constructed a base on which to erect a career. Professor White notes about legal education so conceived that the "implication is that there is in the world an identifiable thing or body of knowledge called 'law' which is transferred from teacher to student. The process of the classroom can be expressed in a transitive verb with a double accusative: 'I teach them law' is parallel to 'I give them soup.'"²⁴

There is another order of legal education, however—the kind that allowed Archibald MacLeish to discover that by no study better than that of law could one envision "the interminable journey of the human mind, the great tradition of the intellectual past which knows the bearings of the future."²⁵ Professor White's book is predicated on such a vision. Law and legal education are, for him, in movement: if they may be expressed in terms of relations, the relationships are dynamic.

Professor White creates a sense of sheer movement from the start. The first reading in the book is taken from Mark Twain's *Life on the Mississippi*,²⁶ and it is immediately followed by other selections on the Mississippi and adventure. Throughout the book this suggestion of flow and exploration is never far below the textual surface. The book is summarized at one point as an attempt to enable the reader to look back at his life, to take a position from which to survey his education and to address the question: "Where do I go now?"²⁷ The final chapter then begins by advising: "You

seems simulated—or rather, only to the degree that it is well-feigned does it not seem so." N. CHIAROMONTE, *Antonin Artaud and His Theater*, in *THE WORM OF CONSCIOUSNESS AND OTHER ESSAYS* 112 (1976).

²³ One of the last selections in *The Legal Imagination* is an interview with Morris Abram, then President of Brandeis University, who is questioned about a proposal for a new law school. Experimental though his ideas are, Abram nevertheless speaks of the curriculum as including "the basic 'building block' courses . . ." WHITE 938, 940.

²⁴ *Id.* at 927. "Soup" is a polite substitute for what some of my students think I give them.

²⁵ MacLeish, *Apologia*, 85 HARV. L. REV. 1505, 1510 (1972).

²⁶ WHITE 10.

²⁷ *Id.* at xxi.

have been pushed off, as it were, to make your own way”²⁸ The reader is encouraged to make a new beginning, “to pull together what you have done in this course, and in law school, to put it into some sort of order, and move on.”²⁹ Thus the author engages the reader in a journey; the book is a passage.

As a teacher, Professor White achieves a sense of movement through the surprisingly simple device of the weekly writing assignments. These assignments serve several vital functions. For one, they draw the readings together and focus them. Typically, reference to the coming assignment is made in the introduction to each section and at scattered points later in the section. Consequently, the student reads to the particular end of producing a writing; he is encouraged to recognize in the selections a common, specifically useful resource, with the consequence that the selections appear neither so strange nor so disparate. A second function of the assignments is of course to make the students better writers, in command of the English language from having worked closely with it week in and week out.

A third function of the writing assignments—and the most noteworthy function—is to involve the student in the *process* of law. A basic premise of the course is that law is literature. The student, in the process of writing, becomes what Professor White says the lawyer is: a creator of literature, a translator of human activity and experience. The student creates the real subject matter of the course. His writings are subjected to case analysis: cross-examination and the drawing out of nuances, contradictions, and limitations. In this sense *The Legal Imagination* is a casebook which enables the reader, not to “parrot” back parts of a system, but to do for himself what he has seen being done by others.

This is clinical education in the best sense and should not be overlooked as such. My own students are anxious to plunge into the real world, and although I am not altogether willing to concede reality to the world they have in mind, I agree that law school is not the real world. Indeed, law schools are never so unsuccessful, it seems, as when they pretend that they are. Law school is really more like play, an analogy that does not at all assail its seriousness or importance. Like play, law school “is not life and affords . . . more of a chance for experimentation, a wider scope for the realization of . . . imagination than life itself.”³⁰ My point is not to denigrate

²⁸ *Id.* at 757.

²⁹ *Id.*

³⁰ K. EBLE, A PERFECT EDUCATION 10-11 (1966). The statement is made in the context of

traditional clinic-in-law programs, but only to call attention to the value of those academic clinics like Professor White's, which honor the spirit of play by inviting students to experiment in the creation of utopias. A student in White's course is asked, for example, to create an insanity defense.³¹ That is a utopian exercise.

The ultimate goal of encouraging such play is perhaps so grand as to attract ridicule: it has been said that whenever "the utopia disappears, history ceases to be a process leading to an ultimate end. The frame of reference according to which we evaluate facts vanishes,"³² and we are at last brought "to a 'matter-of-factness' which ultimately would mean the decay of the human will."³³ In short, without utopias and some opportunity to engage in creating them, a law student will simply not be as adequately equipped for either judgment or improvement of the world.³⁴

C. The Method: Cases, Policies, and Fundamental Questions

"How odd it may seem," Professor White remarks almost casually at one point, "that law school does not begin with, or perhaps consist of, a course on the subject of justice: what it is and how it can be achieved."³⁵ However, as he knows³⁶ and as another has observed, the "beginning is not what one finds first: the point of departure must be reached, it must be won."³⁷ In law school the beginning of justice and meaning is won by wrestling with the cases and rules.

These make for a good start. There are ancient appeal, fascination, and fun in them; they are rich in tragedy, antagonism, and high as well as low comedy. No student would want to miss the fertile octogenarian³⁸ and the unborn widow³⁹ of the Rule Against Perpetuities. Nor, in studying rescission, the mistake about the infertility of the cow Rose 2d of Aberlone.⁴⁰ Nor the pleasurable words

a discussion about public schools.

³¹ WHITE 360.

³² K. MANNHEIM, *supra* note 13, at 253.

³³ *Id.* at 262.

³⁴ "The essential conclusion is that the proponent of a Utopia, be he philosopher, intellectual, or mere conscious protester, does not want to rule or to be a counselor of the prince, but simply to convince those who share his condition and his dissatisfaction with the present state of affairs." N. CHIAROMONTE, *Modern Tyranny*, in *THE WORM OF CONSCIOUSNESS AND OTHER ESSAYS* 231 (1976).

³⁵ WHITE 631.

³⁶ I infer his knowledge from the context of the question about a course on justice. It is asked in conjunction with discussion of excerpts from Plato.

³⁷ P. RICOEUR, *THE SYMBOLISM OF EVIL* 348 (1967).

³⁸ See *Jee v. Audley*, 29 Eng. Rep. 1186 (Ch. 1787).

³⁹ See *Loring v. Blake*, 98 Mass. 253, 259 (1867).

⁴⁰ See *Sherwood v. Walker*, 66 Mich. 568, 33 N.W. 919 (1887).

themselves: feoffors and feoffees, the assize of novel disseisin, and fee tail female specials. Rules and cases prevent the aggressive error of always pressing the fundamental questions and nothing but the fundamental questions.

Soon after the cases come the policies and purposes that offer provisional explanations for the way rule and precedent are deployed in given settings. *The Legal Imagination* brings policy discussion to the fore. In doing so, it reflects an established trend, but Professor White takes the trend a step further: policy is important, but it is penultimate. The ultimate question is "how an intelligent and educated person can possibly spend his life working with the law, when life is short and there is so much else to do."⁴¹ This is a question about the meaning of law which becomes, in his hands, personal and concrete. Yet the question is not for him a separate inquiry. It is part and parcel of the law school curriculum.

The subchapter on the insanity defense illustrates his general approach.⁴² After a brief introduction to the subject about to be traversed, the subchapter opens carefully by setting out the Modern Penal Code proposals for formulation of the insanity defense.⁴³ It is straightforward material, which is then drawn through a series of cases and questions in the received case-method style. But while the method itself is conventional, its application and results are not.

One innovation is White's treatment of the insanity defense as a label or caricature to be analyzed, case-method style, as language: Is the defense as generally articulated an adequate description of the person or phenomenon sought to be described? What is its function in the institution which employs it, and what does it intimate about that institution? What does it imply about the people on the jury to whom it is addressed, and what does it tell us about those (judges, psychiatrists, and lawyers) who invoke it? Because the reader himself has spoken or may in the future speak in the tongue of the insanity defense, the question finally becomes: What do you mean when you talk that way, and what do you say about yourself? Why? Professor White thus exposes rule, policy, and fundamental meaning by subjecting the insanity defense—as a case of language—to traditional case-method analysis. As a result he opens up a new line of questions about the insanity defense, about the law, and about us.

The other innovation is his selection of "cases" that draw out

⁴¹ WHITE xxxii.

⁴² See *id.* at 317-63.

⁴³ *Id.* at 319-24.

the insanity defense or are played against it and that precipitate his questions. Some are the standard fare of judicial opinions. Others are not. The latter include Marais on the "well-known yellow South African weaver bird," baboons, otters, Namaqua partridges, and blindfolded men and boys;⁴⁴ and Lévi-Strauss as a "note case."⁴⁵ If judicial opinions on the insanity defense can be characterized as cases of language, then other cases of language, though non-legal, may be set down helpfully alongside them.

For one example, *Ferrin v. People*⁴⁶ is followed by Emily Dickinson's "A Bird Came down the Walk."⁴⁷ *Ferrin* concerned a child who inexplicably shot his younger brother to death. The poem begins:

A Bird came down the Walk—
He did not know I saw—
He bit an Angeworm in halves
And ate the fellow, raw,
And then he drank a Dew
From a convenient Grass—
And then hopped sidewise to the Wall
To let a Beetle pass—⁴⁸

The juxtaposition of the two selections suggests an answer to the question that precedes them: "Is it perhaps only a failure of imagination that makes us believe that the man in the dock has a mind that is directly comprehensible, that it has workings that can be measured and tested?"⁴⁹ The reader is made to realize how much the label of insanity may conceal, not altogether unmercifully, and he is ultimately better equipped to understand and use the insanity defense.

A second example of this unconventional "case" method is found in White's discussion of the *M'Naghten* rule.⁵⁰ There he introduces, as though it were effortlessly natural to do so, a luminous paragraph on Marlowe's *Doctor Faustus*. The *M'Naghten* rule would prevent the punishment of a person who, through mental illness, does not know that what he is doing is wrong; in *Doctor Faustus*, the protagonist is condemned to eternal punishment:

⁴⁴ *Id.* at 329-33.

⁴⁵ *Id.* at 334.

⁴⁶ 164 Colo. 130, 433 P.2d 108 (1967). The case is reproduced in digested form in WHITE 335.

⁴⁷ WHITE 336.

⁴⁸ *Id.*

⁴⁹ *Id.* at 335.

⁵⁰ *Id.* at 325-27.

[H]e blasphemes a God he knows to exist and to be omnipotent. He is presented as knowing as fully as one could that what he is doing is wrong; and at the last moment before death he is offered a chance to repent, which he rejects. Is this the criminal or the insane mind? The theological answer is damnation. The answer of the play seems to be that such a damnation is a hideous wrong. This is not a play in which the author says he disbelieves in God, but that he hates him.⁵¹

This is not only a striking way to teach the *M'Naghten* rule but also a fruitful, artful introduction to prior fundamental issues. The *M'Naghten* rule cannot thereafter be viewed as simply a legal rule.

Professor White's book is comprised, then, of cases, albeit some unorthodox ones. It is basically, I submit, a casebook. It does not ask that students study anything but cases by any means other than the case method. It teaches law, not some other subject, and it seeks to educate lawyers and not some other professionals—literary critics, say, or philosophers. It makes its appeal to the possibility—important to my success-oriented students—that it may assist the student to become a more authentic lawyer, better at what he or she chooses to do. It moves through rules and policies toward fundamental questions and back again, not in order to discard the rules and policies, but to illuminate them and enlighten those who would use them.

The Legal Imagination leads one to consider—to engage in, really—the interaction between, on the one hand, law and one's practice of it, and on the other hand, the theory, as it were, of one's life. To say the same thing in a different way, I find in this book encouragement to study, to practice, and to teach in three dimensions: that of rules and cases and their sometimes inherent fascination; that of rules and cases in relation to policies; and, most notably, that of rules, cases, and policies in relation to what one imagines his life ultimately to be about.

III. LAW AS METAPHOR

Lawyers speak a reductive language. They do so necessarily, for the disposition of cases requires it. Tort litigation, for example, is possible only if the human body is analyzed into parts keyed to cases. Paradoxically, this alchemy which reduces life to the immediate needs of courtroom judgment is meant ultimately to augment

⁵¹ *Id.* at 327.

and humanize life. As Archibald MacLeish has said, the "business of the law is to make sense of the confusion of what we call human life—to reduce it to order *but at the same time* to give it possibility, scope, even dignity."⁵² The law is marked by a pull in opposite directions, a simultaneity of reduction and augmentation. The themes and emphases of Professor White's book come together in recognizing this tension in the law and recognizing it as the very stuff of metaphor.⁵³

Metaphor, Robert Frost submitted, is "saying one thing and meaning another, saying one thing in terms of another."⁵⁴ If law is a metaphor, what is it a metaphor of? What is the other thing meant when we talk in terms of the law? Professor White notes how "one has the feeling about a legal argument that it involves everything,"⁵⁵ When we speak the language of law, we may mean *everything*: law may be a metaphor of life and death.

Law is a metaphor of death⁵⁶ when the practice of it is dull,

⁵² Macleish, *supra* note 25, at 1508 (emphasis added).

⁵³ See also WHITE 64, 761, 956.

White describes the judicial opinion as metaphor. The judge speaks of life in terms of law in his opinions and expresses his own thoughts in traditional judicial language. Furthermore, the judicial ritual, he proposes, may be regarded as a kind of social metaphor. *Id.* at 773-74.

Lon Fuller addressed the subject of the use of metaphor in law. L. FULLER, LEGAL FICTIONS 24-27 (1967). Professor White's central notion is that law not only employs metaphor but also that it is itself a metaphor.

The University of Chicago Law School enjoys a certain claim to pre-eminence in the exposition of the relations of law and trope. Fuller's book was first published as a series of articles in the *Illinois Law Review*, which was then edited as a joint venture by students from the University of Chicago, the University of Illinois, and Northwestern University. 25 U. ILL. L. REV. 363, 513, 877 (1930-31). Then Edward Levi of the school drew attention to the manner in which law proceeds by analogy (legal reasoning as reasoning by example). E. LEVI, AN INTRODUCTION TO LEGAL REASONING (1949) (first published at 15 U. CHI. L. REV. 501 (1948)). It is parabolic that Professor White's advance from metaphor and analogy in law to law as metaphor should continue at the same school.

⁵⁴ Frost, *The Constant Symbol*, quoted in WHITE 766, 773, 956.

⁵⁵ WHITE xxxiii. See also *id.* at 807.

⁵⁶ White reserves to the reader the final, explicit realization that law can be a metaphor of death but inches one toward the discovery by spending much of the first couple of hundred pages on death: The first writing assignment, for example, is on death, WHITE 34; and an early subchapter contrasts the legal language of death with other modes of talking about death. *Id.* at 83-187. Later, he also notes how institutions, like individuals, are mortal. *Id.* at 303.

Consideration of the connection between law and death is neither easy nor popular. William Stringfellow is one of the few to have addressed the issue directly. In the course of an exposition of death as a pervasive moral category, Stringfellow writes:

Human beings do not readily recognize their victim status in relation to the principalities. To illustrate concretely: the American legal system, a principality, has seemed to me—a white, middle-class, Harvard-educated lawyer—to be civil and fair; to be viable, both theoretically and, *so far as I have been concerned*, practically

. . . How must this same American legal system have seemed to George Jackson,

restrictive, a routine drudgery, despairing.⁵⁷ In this event, it is a metaphor of the attorney's death. Law is a metaphor of death, too, when it crushes the troubled and the troubling or oppresses the powerless. In this circumstance it is a metaphor of the society's death.

Law need not mean death; it can be made a metaphor of life. It becomes a metaphor of life when it is, as White teaches, an enterprise of the imagination, a language which, controlled, is a vehicle of self-expression. This is to claim that the lawyer, with law as the given term of the metaphor, can define for himself the meaning of the other term, without having to accept such meaning as may be assigned by others, by the law itself, by any institution, or by default. In White's vision, the lawyer works out an identity for himself: "You define a mind and character, very much as the historian or poet or novelist might be said to do. At the end of thirty years you will be able to look at shelves of briefs, think back on negotiations and arguments . . . and say, 'Here is what I have found it possible to say.'"⁵⁸

In writing those briefs and conducting those negotiations and arguments, one will experience, White notes, "the central frustration of writer and lawyer, the perpetual breaking down of language in your hands as you try to use it."⁵⁹ No language, he adds, "can

who died under such ambiguous circumstances in San Quentin after a dozen years confinement issuing from conviction of a theft of \$70 . . . American blacks have consistently, for all the generations in which there have been American blacks, been dealt with by the legal system in the same way that this principality disposed of George Jackson. . . . There is no other honest way to describe the relation between the law in America and American blacks . . . than in terms of the aggressions of the legal system against human life. . . .

. . . If the American legal system seems viable for me and other white Americans but is not so for citizens who are black, or for any others, then *how*, . . . in the name of humanity, can it be affirmed as viable for me or for any human being?

W. STRINGFELLOW, *AN ETHIC FOR CHRISTIANS AND OTHER ALIENS IN A STRANGE LAND* 84-86 (1973). He adds: "Every sanction or weapon or policy or procedure—including law where law survives distinct from authority—which the State commands against both human beings and against the other principalities carries the connotation of death, implicitly threatens death, derives from and symbolizes death." *Id.* at 110.

⁵⁷ The supposed lifelessness of legal education has a substantial history. The young James Madison, for example, once wrote a letter of commiseration to a friend:

I was afraid you would not easily have loosened your Affections from the Belles Lettres. A Delicate Taste and warm imagination like yours must find it hard to give up such refined & exquisite enjoyments for the coarse and dry study of the Law: It is like leaving a pleasant flourishing field for a barren desert

J. Madison, Letter to William Bradford of January 24, 1774, in *I THE PAPERS OF JAMES MADISON* 104, 105 (W. Hutchinson & M. Rachal eds. 1962).

⁵⁸ WHITE 760.

⁵⁹ *Id.*

bear the stresses of our demands for truth and order and justice.”⁶⁰ To make law mean life will be, accordingly, a continual struggle with words, an ongoing exploration of language.

In the course of this exploration, the lawyer does work out an identity for himself and so gives expression to his life. But his is not the only self involved. What the lawyer says, he says on behalf of clients. His struggle with words is an attempt to translate their grievances into judicially cognizable terms. Finding, as a lawyer, “what it is possible to say” is finding words that work for others. The more such words the lawyer finds, the more he will have made law mean life, his own life and that of others.

This translation which constitutes the most essential but humble task of the legal profession requires two faculties. The lawyer must be able to use legal language, the medium of translation, competently and creatively.⁶¹ But another capacity is of equal, even more critical, importance. The lawyer must not only conjure legal arguments; he must also be able to hear those, like the poor, whose grievances cry out to be translated. These faculties, insofar as they require more than imagination, may be said to depend upon conscience, or heart. Professor White has taught us to animate the imagination. How to inspire the hear is another question, a question antecedent to “educative friendship.” An answer to it would burst asunder the bonds of the existing legal curriculum.

POSTSCRIPT

The beguiling yellow binding of *The Legal Imagination* refuses to be left for long among the funereal browns and midnight blues of my other casebooks. I cannot keep my hands off it. As I would affirm in the heat of any seduction, even its imperfections—*especially* its imperfections—hold attraction. Its contents are recurrent cause for celebration, and its publication is ground for thanks to Little, Brown.

Professor White says that the most remarkable expression of Clarendon’s ideal of educative friendship is the writing of the *History*. The *History* is a book written “to us out of friendship.”⁶² So is *The Legal Imagination*. I have wanted to respond in kind. And in tribute.

⁶⁰ *Id.*

⁶¹ The original use of legal words and legal forms of thought is the function, in Professor White’s phrase, of a “controlling intelligence or imagination.” See text at note 11 *supra*.

⁶² WHITE 925.