

University of Michigan Law School

University of Michigan Law School Scholarship Repository

Articles

Faculty Scholarship

1996

Meaning in the Life of the Lawyer

James Boyd White

University of Michigan Law School, jbwhite@umich.edu

Available at: <https://repository.law.umich.edu/articles/2074>

Follow this and additional works at: <https://repository.law.umich.edu/articles>



Part of the [Legal Profession Commons](#)

Recommended Citation

White, James Boyd. "Meaning in the Life of the Lawyer." *Cumb. L. Rev.* 26, no. 3 (1996): 763-71.

This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

MEANING IN THE LIFE OF THE LAWYER

JAMES BOYD WHITE*

First let me say what a pleasure it is to be here on such an occasion.¹ Dean Kronman is an old and valued friend, and I am very glad to be able to visit your school, of which I have heard many good things. In the remarks that follow I shall respond to Dean Kronman's eloquent and elegiac account of "civility" in our culture, and in the law, not so much by marking agreement or disagreement as by offering a few loosely connected reflections on the topics he raises.

I.

The first of these has to do with the appeal of a life of civic responsibility and action, or "civility." This seems to me to lie not only in the necessarily vain, but deeply human, hope of immortality, as Dean Kronman suggested, but to have a more immediate ground or basis as well: in one's need to belong to a larger community and to have a place within it, as a participant and not merely an observer. This need is in turn based partly on another, equally interesting and important: the need to claim meaning for our shared experience. Thus we see an elected politician, or candidate running for office, saying over and over again, "This is how we are situated; this is how we got here; this is what we need." In doing this he tells a story of the polity, giving it both a character and a role in a narrative, and he gives the story itself a meaning: "America: the land of equality," or "opportunity"; "Birmingham: the city of steel," or "tradition"; "the University: center of research," or "teaching." The activities of public life in this way attempt to meet our need to claim meaning for our existence, both as individuals and as a larger community; and they do this not only when we agree with the meanings claimed and find them comfortable, but also at the worst and most awful moments in our shared life: when a tyrant comes to power, for example, or someone starts a civil war. The need to claim meaning for

* A.B., Amherst, 1960; A.M., Harvard, 1961; LL.B., Harvard, 1964. Hart Wright Professor of Law, Professor of English, and Adjunct Professor of Classical Studies, The University of Michigan.

¹ These remarks were originally prepared for presentation at the Ray Rushton Distinguished Lecturer Series, February 29 through March 1, 1996 at the Cumberland School of Law at Samford University.

experience is not inherently benign, that is, but a force of human nature capable of great good or evil.

What is true in this general way about public action is true in specific and strong ways in the life of the lawyer, and it is about this that I mainly wish to speak. The lawyer is perpetually claiming meaning, both for the events with which she deals and for the law itself. In the former case, she faces the intractable tension between the hard reality of human experience and the necessarily inadequate languages into which it is her task to translate it, a challenge worthy of any mind. In the latter case, when deciding what the law should mean, she must put herself in the special position that the law offers those who construe it, namely that of one who when he reads law, makes law.

For reading a statute or opinion cannot be reduced to a process of reading commands, as a political subordinate reads the orders of his superior, since the meaning of the law is not simply there, in the texts; rather, it must be construed by the lawyers, in light of larger purposes and values. And the process of construction is not a simple question of legislative will, as though one could see through the words to such a thing, but takes quite a different form: In the case of a statute, the question is not "what the legislature intended," but "what this statute should be taken to mean," given not only the words of the statute and whatever legislative history exists, but the whole fabric of prior law, including other legislation, the common law background against which it was assumed to be written, fundamental commitments of value in constitutional documents and other texts construing them, and so forth. The legal text in this way always calls upon its reader to integrate its meaning with the other texts that make up the law; this means that the smallest or most trivial case may present the lawyer with the opportunity of speaking to the very largest questions of public meaning and value.

If the heart of the life of civic responsibility and action is the making of laws, as Dean Kronman suggests, the lawyer engages in this activity all the time. Every time she construes a piece of legislation, an opinion, a regulation, or a contract, she is participating in the making of law, and this is equally true when she argues a case, when she decides it as a judge, or when she advises her client that the law permits or forbids a certain course of conduct.

On the other hand, it is important to see that the work of the lawyer in reading and making law cannot be reduced to

mere policy judgments, for in the law no choice is wholly free of constraint. Every actor must ask himself not only what he thinks the best result (or the best policy) would be; he must ask to what judgments authoritatively made by others he must accord respect, and why. It is not simply the question, "How should this case be decided?" that he must answer as judge, then, or to which he must argue as lawyer, but—parallel to the question he must ask in reading a statute—"How should this case be decided, given this array of prior cases, legislation, constitutional provisions, and the like?" each of which must be read and construed.

In both the identification of texts and their construction, then, the lawyer is engaged in the special kind of lawmaking that respects certain judgments made by others. This means that virtually all the intellectual and moral capacities and virtues appropriate to law-making of this kind are called upon in nearly every aspect of his daily life. One could hardly imagine a richer life, or one more naturally public and civic in its nature, than that offered by a profession in which one constantly gives meaning not only to the immediate experience of others but to our shared past and present. In doing this one in fact gives "meaning," in another sense of the term, to one's own life.

II.

Yet when we ask our students how they imagine their futures, or when we talk to our graduates about what they do, we often hear a different story, marked by a note of discouragement or disappointment. One question is why. Part of the answer, no doubt, lies in the commercialization of law practice, by which I mean a professional life in which attention is focussed not on the meaning of what the lawyer is actually doing, as a lawyer, so much as upon the market for his services. This in turn reflects a larger reconception of the nature of human life, especially our shared life, as an essentially economic activity, a process often described as one in which self-interested actors rationally pursue their goals, seeking to gratify whatever tastes or preferences they bring to the process. Thus success for the nation is measured in terms of G.N.P., not human flourishing or human rights; the student in the university is imagined as a customer, whose felt needs or desires it is our task to gratify, rather than as a person who needs an education; and medicine is conceived of as the "delivery" of something called "health care services," rather

than as a profession devoted to giving sick people proper medical attention—all as though the meaning of what we do can be reduced to a commodity transferred for money. Of course there is an economic element in each of the situations I describe above, and an economic analysis of them may be fruitful; but there is also more than that, and that “more” is crucial to the value and meaning of the activity in question. We do ourselves a disservice when we allow one feature of our experience, and one language, to dominate others; in particular we erode our capacity to meet the need that public life and the professions partly exist to satisfy, the need to claim adequate meaning for our shared existence.

In the law the process of deprofessionalization I describe is also fed, I think, by the modern law school, when it focusses so exclusively upon the law as a set of policy choices, themselves frequently cast in economic terms. What I have characterized as the central feature of the lawyer’s life, the claiming of meaning through the reading of authoritative texts, was once the center of a legal education; but it is no longer; and one consequence of the shift is that we are no longer training our students to see and realize the possibilities for meaningful action and life that are present at the center of the profession they have chosen.

In fact, the lawyer’s professional judgments cannot be reduced to economic form or to economic analysis, and this for two reasons: first, because economics has no way to respect authority external to itself, which is the root of legal thought; second, because law concerns itself in large part with what economics takes for granted, namely, what economists call the formation of “taste” or “preferences”—and what others call the fundamental questions of individual and collective human life: what we should value, who we should be. As a method of analysis, economics assumes that those choices have been made; it then pursues the question how they can be harmonized or otherwise interact to mutual benefit. But there are questions prior to economics, questions of value and being, that it cannot address, and these are central to every legal argument.

I think, then, that the true nature and possibilities of legal practice are to some extent obscured both by the dominant economic conception of our shared life and by the dominant focus in our law schools on law as policy, rather than on law as the art of making choices that are at once partly con-

strained and guided by an authoritative culture, partly open to our present judgment.

* * *

How, under these circumstances, is law as a profession properly to be taught? Not without economics, or politics, or psychology, or history, for all have much to contribute to legal thought and debate; but not *as* any of these things. Rather, law should be taught as a discipline of thought and argument with its own structure, its own elements, at the center of which is the activity of claiming meaning for human experience, at the individual and collective level, and doing so in a language that is at once a source of authority and itself subject to perpetual revision. It can best be taught I think through a revived case method; one in which the case is seen not, as apparently Langdell thought, as a particular instance to be scientifically subsumed under a general rule, but in an even more old-fashioned way: as a kind of prospective apprenticeship, in which the student learns by doing. What the lawyer will face in her professional life is a series of cases, after all; a legal education can be conceived of as training her how to deal with cases, which, if looked at clearly enough, almost invariably have a quality of freshness or newness, testing the adequacy of prior formulations and calling for present invention. They involve her directly in the process described above, of claiming meaning for experience in an authoritative language that is made by others but open to transformation at her hands. What she can learn is the kind of complex thought and argument, at once general and particular, at once interpretive and creative, at once respectful of the past and responsive to the present, that characterizes the law at its best.

III.

Everything I have said is related to meaning in the second sense in which I have used the term, the meaning of a professional life. In this connection, I want to make the point that the satisfactions I am describing are in principle available throughout the profession, not merely in certain elite firms. In fact, I think the life of the small city or small-town lawyer offers remarkable possibilities along the lines both Dean Kronman and I have suggested. Here, one can make a decent living; maintain professional standards; live and work with many of the same people, both as lawyers and as clients, over

a lifetime; serve one's community in various explicit ways, perhaps on a school board or zoning commission; have a place in one's church or synagogue; have a real relation with one's spouse and children; and in doing all of this, engage powerfully in the processes by which the community claims meaning for its experience. A rich life of many dimensions, public and private. Of course, this life is not for everyone, and some big firms and big cities offer unique opportunities of other kinds; but the life I describe does seem to me a good one.

If I am right, why do our students not line up for the kind of life I describe above, especially when it seems to fit with many of their own values? Part of it, I think, has to do with their socialization: they have so far proceeded from prestigious institution to prestigious institution, and this is the model on which it is natural for them to take the next step. To do anything else is for some of them literally unthinkable. Part of it, too, is once more the fault of the law schools, for all too often we encourage our students to imagine the practice of law hierarchically, with certain big firms in certain big cities at the top, smaller firms in smaller towns near the bottom. This is most unfortunate, I think, because it leads our students towards practices that may not fit with their own values, and often without their considering the alternatives at all.

But there is also something larger, touched on by Dean Kronman, namely the nature of experience in a mass media age. People sometimes choose the big city because it has an existence in what might be called "the news," and the big firm for parallel reasons, because it has an existence in the professional news. If I go to Los Angeles or Chicago I am going to a place everyone has heard of; of course they have not heard of me, but that does not matter; I identify with the team I have joined. I think it used to be different, and suspect that in the South it still is. People used to think that where they came from was real, and mattered, and was as full of the drama of life as any other place, maybe fuller; that it too had wise people and fools, saints and evil ones, and real possibilities for life. People used to think, that is, that their own experience was real and that it mattered. If there is an educational task we should take seriously, it is helping our students conceive of their own experience, and that of other individual human beings, as real and important.

The dissipated sense of the reality of one's own experience may be at work in the practice of law itself, and in a way that is connected to the commercialization described above. It used

to be quite common for the lawyer to think of himself as very different from his clients; it was to his profession, as much as to his clients, that his loyalties extended. Now lawyers all too often imagine themselves as simply selling services in a world in which the customer is king. Instead of feeling that they in some ways elevate the experience of their clients, as they translate it into the language of the law and claim for it a new kind of meaning, they often feel that they reduce the law, and what it could mean, to a system of manipulation. In doing so, they lose much of what a profession means.

For a comparison, think of the transport of goods for sale: what could be more plainly a business, merely commercial, than that? Yet think also of what Joseph Conrad and others have been able to make of the meaning of the life of the sea, which was, from an economic point of view, simply the transport of goods. This is in part a question of imagination: how do you imagine yourself and what you are doing? It is partly, too, a question of material and social limitation, for one cannot make an art, or a profession, out of just anything. Listen to what Conrad says in *The Mirror of the Sea*:

I think I can lay my finger upon the difference between the seamen of yesterday, who are still with us, and the seamen of tomorrow, already entered upon the possession of their inheritance. History repeats itself, but the special call of an art which has passed away is never reproduced. It is as utterly gone out of the world as the song of a destroyed wild bird. Nothing will awaken the same response of pleasurable emotion or conscientious endeavour. And the sailing of any vessel afloat is an art whose fine form seems already receding from us on its way to the overshadowed Valley of Oblivion. The taking of a modern steamship about the world (though one would not minimize its responsibilities) has not the same quality of intimacy with nature, which, after all, is an indispensable condition to the building up of an art. It is less personal and a more exact calling; less arduous, but also less gratifying in the lack of close communion between the artist and the medium of his art. It is, in short, less a matter of love. Its effects are measured exactly in time and space as no effect of an art can be. It is an occupation which a man not desperately subject to sea-sickness can be imagined to follow with content, without enthusiasm, with industry, without affection. Punctuality is its watchword. The incertitude which attends closely every artistic endeavour is absent from its regulated enterprise. It has no great moments of self-confidence, or moments not less great of doubt and heart-searching. It is an industry which, like other industries, has its romance, its honour, and its rewards, its bitter anxieties and its hours of ease. But such sea-going has not the artistic quality of a single-handed struggle with something much greater than yourself; it is not the labori-

ous, absorbing practice of an art whose ultimate result remains on the knees of the gods. It is not an individual, temperamental achievement, but simply the skilled use of a captured force, merely another step forward upon the way of universal conquest.²

* * *

The law is transformative. It acts upon certain material—the problem or dispute or trouble brought by the client to the lawyer—which has one principle of organization and intelligibility, and converts it into something that has to be understood in very different ways. In a case like *Cohen v. California*,³ for example, it converts a dispute about a vulgar motto on a jacket into a consideration of the fundamental nature of political speech in our society. In converting its material, the law converts us as well, both speakers and listeners, as we come to inhabit the world this language and culture define. Conversion of this kind is a radical form of human activity, for which our word is art: we convert earth and oil into paintings that may change the imagination; pleasing sounds into music, not always pleasing, but sometimes of incredible power and beauty; human actors and costumes and words into another dimension of reality, on the stage, with another claim on our attention altogether. So too, in the law: we convert immediate experience into the subject of thought of a particular kind, which has at its center the question of meaning: what this event means, and should mean, in the language of the law; and what that language itself means, as a way in which we articulate our deepest values and attain collective being. The life that gives meaning in such a way is itself a life of meaning.

There are deep traditions that conceive of law in such ways, and we should do our best to keep them alive. I am reminded, for example, of Solomon: when he became King, the Lord appeared to him in a dream and said: "Ask what I shall give thee." Solomon replied: "Give unto thy servant an understanding heart to judge thy people, that I may discern between good and bad."⁴ He did not ask for money, or long life, or the death of his enemies, but for a wise and understanding heart; or, as Dante put it when he retold the story in

² JOSEPH CONRAD, *THE MIRROR OF THE SEA* 30-33 (J.M. Dent, 1946 ed.).

³ 403 U.S. 15 (1971).

⁴ 1 *Kings* 3:5-9 (King James).

the *Paradiso*, he asked not to know how many spheres there were in heaven, or whether necessity conditioned by contingency is true necessity, or whether one can make a triangle in a semicircle that does not have a right angle, but, anticipating one of Dean Kronman's favorite words, he asked for royal prudence, *regal prudenza*.⁵

It is important to see that this is a quality of the individual mind, of individual experience. "Whenever you are uncertain," Dante says, "put lead on your feet, to make you slow to reach either Yes or No: for a quick judgment often takes the wrong way; and then the feelings bind the intellect"—that is, your capacity for thought is impaired by your emotional commitment to the decision you have hastily made.⁶

For a lawyer, this is very good advice indeed. And one can see what its premise is: that excellence of judgment is the work of the whole mind, including the affections, including the capacity to suspend conclusion. This in turn means that excellence of this kind is to be attained only by the development of the individual mind; not by a mass education, or by the experience of groups or classes, but through sustained attention to individual experience of intellectual and affective life. In the development of such capacities—which lie at the heart of the profession of the law—there is ground for hope that some of the tendencies of our world identified by Dean Kronman can be resisted. For "I have often seen," wrote Dante, "a thorn bush stand fierce and rigid all winter long," as if it were stark and lifeless; "then, in the spring, bear a rose at its crest."⁷

⁵ THE DIVINE COMEDY OF DANTE ALIGHIERI, III, PARADISO 191-95 (John D. Sinclair trans., 1948).

⁶ *Id.* at 195.

⁷ *Id.*