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Notes from the Editorial Advisory Board

James Boyd White
University of Michigan Law School, jbwhite@umich.edu

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The tenth anniversary of this *Journal* is an occasion not only for celebrating its remarkable achievements, but also for thinking again about the nature and premises of the work it reflects. One way to begin might be with its two central terms, "law" and "humanities" (or the obvious alternative to the second, "literature").

"Law" is a term we lawyers think we understand clearly enough, but those who are not trained as we are puzzle a good deal over the word, and not without reason. Does it mean a set of rules, a set of authoritative texts, certain modes of interpretation, a forum for the resolution of conflicts, a way of carrying on disputes, a set of techniques of argument or analysis, a cluster of institutions in the world, the instrument for the expression of political power, or what? The law is all of the above and more, we say: At its center, it is a set of intellectual and social practices, defined and taught by a community of lawyers, professors, and judges. It is in this sense like a language. And these practices, like those of any language, are in the process of their own revision, which means that what the lawyer learns is not only certain modes of thought and expression, but ways of plying them to particular situations, appropriating them to his or her own mind, and in the process transforming them. This is what we teach and what we learn; it is because it is so complex and uncertain, so alive and full of surprise, that law is so interesting, and it is for the same reason that it has the power, endurance, and value that it does as a social and ethical institution.

When I studied law, perhaps more than is the case now, legal practices were seen as discrete, with an ethical and aesthetic significance of their own. The law was not "autonomous," in the sense of existing independently from every other cultural form, but it did have a distinctive identity and role, and we knew it could not simply be collapsed into other forces, genres, or practices. As an activity that transforms the material of life into another form, with a different kind of meaning, it has the essential characteristics of an art.

How about "humanities" or "literature"? I will begin with the second and perhaps more modest term, which presents difficulties comparable to "law." The main danger of "literature" is that it seems to invoke a canon of high literature embodying a certain set of old-fashioned social and political views. But thinking of my own ex-

* L. Hart Wright Professor of Law, Professor of English, and Adjunct Professor of Classical Studies, University of Michigan.

perience when I was working on *The Legal Imagination*[1] more than twenty-five years ago, I did not think of the literature I invoked as a fixed set of texts, and certainly not one that taught a certain morality or politics. For me "literature" was really a set of questions, learned partly from my reading, partly from my teachers, questions one could bring to virtually any text. Some texts rewarded this kind of attention wonderfully, others much less so; the former were "literary," but the difference was not much related to whether the particular text had been "canonized." The questions that the word "literature" defined were practices, in this a bit like law; and their true object was not a set of sacred objects, but life itself: the world of language and expression and meaning in which we constantly live.

What I think of as literary questions were of two general sorts, which I will call "ethical" and "intellectual." The first begins with the speaker: Who is speaking here, in what dramatic situation, in what tones of voice, to whom, and with what effect? Is this an admirable definition of self and other, one that the reader might wish to imitate or appropriate, or not? This kind of reading is a training of the ear, and its most important application is not to one's reading, but to one's own writing: Who am I here, using what tones of voice, speaking to whom, and with what effect? There are lots of negative possibilities against which to be on guard, and it is difficult to define positive ones.

The second set of questions has to do with the language used, its force and implication, and the kind of relation the speaker establishes with it. Do you simply replicate your forms of speech, speaking just as others do, or do you find a way to make them your own, and if so, do you do so in a good or a bad way? What are the forms or genres with which you work, and what are their significances? How do you give meaning to your terms, as they are used relative to each other? Here language becomes continuous with culture and the question arises how far one's mind is made by its inheritance; how far—and how—it can remake it.

Speaking of my own experience, then, when I turned to "literature," it was not to a public Western canon, but to a set of questions, a set of practices, which could be brought to any text. Hence the appearance, in my early book, of passages from Emily Post, Prison Rules, Fowler's *Modern English Usage*, and so on. And in my view, the most important texts to which these questions were to be brought were those produced by the student, and by me, in class

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

and in the rest of life. "Literature" is in the end not a matter of high culture, but of a certain kind of attention to human expressions.

"Humanities" is obviously a much broader term than "literature," and presents a different danger: that it will invoke a set of established disciplines, such as art history, classics, philosophy, music, architecture, and so on; and all as if they were entities that the law could somehow incorporate or in some unproblematic way learn from. There is a related risk that one will think that the academic fields are more real or important than the painting or architecture or music itself; the method more important than the material of study. Actually, the lawyer can and should direct attention both to the primary works of expression and to the ways of reading them that characterize different disciplines. With respect to the latter, the task is to establish relations between distinctive communities of discourse; with respect to the former, it is to find a way to talk about works whose expressive action has already been completed. As I have elsewhere argued, both tasks present a problem of translation, in facing which one must address the differences, in some sense unbridgeable differences, between languages, between forms of expression, and between cultures and selves.

On the other hand, there are unifying questions or themes running through the primary works and the disciplines too. Though I know this is a contested position, for me the key element that unites the humanities—it is at work in a pronounced way in "literature"—is a shared interest in meaning: the meaning of what we say, the meaning of our languages and what we do with them, the meaning of the relations we establish with each other through language. Of course we live in a material universe, but it is not self-interpreting or self-signifying, and neither is our social world. The question at the center of the humanities, then, is what this artifact or that—this poem or temple or sonata or novel or ritual or linguistic pattern—should be taken to mean. This is also the central question of law, beyond the immediate issue of rule or result: What does it mean that this happened, or that, or that we decide the case this way or that? That is the deepest question for the judge, and for the lawyer too, for it is at the center of his argument: "If you decide this way it will mean . . . ."

In both the law and the humanities we are constantly asking questions of meaning, yet without knowing fully what we are doing when we do so. It is with this question—what we are doing when we ask questions of meaning—that our future work might best concern itself, both in our writing and in our teaching.