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Doctrine In A Vacuum: Reflections On What A Law School Ought (And Ought Not) To Be

James Boyd White

I have written earlier in these pages about the expectations—the fears and hopes—that one can appropriately bring to law school.¹ In this paper I speak to those who are immersed in the process of legal education, on one side of the podium or the other, and wish to say something of what I think it is, and can be, all about.

The Caricature

I want to begin with a common caricature of what legal education has become. As a description of a particular course or student or teacher this account is of course false, but it is widely believed and has enough truth in it to make it worth our attention, if only as a cultural artifact. According to this version of our experience, the first year of law school is a great success. During it the students learn the basic methods of legal analysis: how to read a case, a little about how to read a statute, how to write legal memoranda and briefs, and how to take exams. From the student's point of view, this year is exciting, often transforming. Pushed by their circumstances and by themselves as perhaps they have never been pushed before, they find resources they did not know they had and discover themselves undergoing a profound change: from bright young students to bright young lawyers, ready to go to work in the world. They have at last found something that they can actually *do*, and many of them have summer jobs in which they learn that people are willing to pay them for doing it. From the faculty's point of view, the first year classes are said to be full of life and questioning and energy, a pleasure to teach. This is, after all, the moment at which we help people move into our profession—in which they become like us—and this is bound to be gratifying.

According to this caricature the glorious first year is everything law school should be. It is followed, however, by two years of rather dismal failure. For some reason the courses seem to become boring and routine and

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1. James Boyd White, *The Study of Law as an Intellectual Activity*, 32 J. Legal Educ. 1 (1982).

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students lose interest and become passive. They focus their attention first on getting a job and second on learning the doctrinal material that they think will prepare them in a practical way for the world they are about to enter. The result, at its worst, is a kind of contempt: for the courses, for the theoretical conception of law that their teachers seem to have, and for the intellectual process in which they are themselves engaged. We see this in the attempts by some students to turn our courses into bar review courses, which can adequately be "studied for" by mastering a Gilbert's Outline or some such "study aid." In the words of one student, words that provide my title, on premises such as these a law school education becomes a process of exposure to "doctrine in a vacuum." Classes that fit this stereotype are marked by passivity or resistance, unconcern, inattention, and a kind of disguised hostility on both sides of the podium.

Is this caricature true? Not in any easy sense, I believe, for most of the law students I at least have known, including those in the upper classes, have been intellectually engaged and open, receptive to experimentation, and both patient and generous with the efforts of their teachers in the classroom. And in many schools I have seen faculties whose intellectual liveliness, openness, and energy scarcely fit the mold of the caricature. But in another sense the caricature is true, for even if it is descriptively false it in some way represents a set of expectations against which both faculty and students report that they must struggle. One hears both teachers and students talk as if the caricature were real, and this in a way makes it real. I think, then, that while it may not be an accurate picture of a particular law school, or of law schools more generally, it is an accurate picture of forces at work within law schools, perhaps at work in each of us, and there is value in thinking about its origins and implications.

The Case Method and Its Collapse

To begin with the question of origins, one common explanation for what happens in the last two years of law school is that we are all, students and teachers alike, the victims of our success. On this view, what we call the "case method" of law teaching works very well when it is new and transforming, but by the time it has been adequately mastered by the students, its use becomes repetitive, boring, and routine. A wonderfully exciting educational experience degenerates into a mechanical and empty ritual that robs it of almost all value, a transformation in which both sides are complicitous.

One might put it this way: In the first year of law school, the student discovers that she will be responsible for reading the peculiar texts that define the law as she has perhaps never been responsible for anything before. She must make sense of these cases on her own, and from many points of view, and to do that she must learn to pay a new kind of attention to the material before her. Much of the life of her education lies in the process by which she comes to see the text in new ways: to be read not for the main idea or general principle, but reconstructively and imaginatively; to be taken apart and put together again; to be treated as a piece of the alien legal world in which she will shortly have to make her way. The text is made to

yield every drop of evidence about that life that the imagination can make it yield. What is more, the texts must be arranged in patterns of significance, patterns that work surprising changes in the meaning of the individual texts themselves. This education works in the first instance by directing the attention to a series of texts and holding it there: making these texts the object of seemingly unlimited questioning.

In this process, at least in its ideal form, the student is treated not as a student, in the old-fashioned sense of one who is to acquire information, but as an active mind, presented with difficulties she must address herself, to which there is no "answer." At the best, she is treated as a composer, a maker of compositions, as one who must use the disparate materials of legal discourse to create meaning for herself and for others. She must do this under the guidance not of some external figure, some set of right or wrong answers, but of her own developing sense of autonomy and capacity and responsibility. When this works well, the student feels that in learning law she is engaged in something truly important and knows that her teachers feel this way too. Indeed, what could be more important than learning to engage the mind at that point where intellect and power meet to face the perpetual question of what justice should mean? When it works well, the student feels a related sense of ethical significance as well: that learning to be intelligent, scrupulous, and creative in the service at once of one's client and of the larger community is to acquire a character worth having, one's own version of the character of the trustworthy and competent lawyer. (This is, at its best, what the classroom drill about precision and accuracy in stating facts, holdings, and so forth is really about.) The heart of this education is learning to be responsible in a new way for what one thinks and says. The student has to make sense of it all herself, for no one can do it for her. She has to think for herself in circumstances forever new, to reach conclusions for which she is responsible, to decide for herself what is worth saying and what is not. This constitutes an active education, a learning-to-do, not a passive acquisition of knowledge; when it works well, it tests the limits of one's mind and the imagination.

At the end of the first year, or perhaps during it, everything seems to shift, and the negative version of law school I described above seems to come into existence or, for some, simply into prominence. Like the ideal account of the first year, this version is not in any simple way "true," but it does seem to catch some of the feelings that many people have, at least from time to time. What can explain this shift?

One important change, I think, is that our relation with our students shifts as we become their examiners. We score and rank their performances on tests. For at least half of the class—the bottom half—this is a dreadful experience. As they struggle to improve their performances, students in this situation often discover both that the standard law-school examination tests a rather limited range of abilities and that substantial improvement in examination grades may not be possible for them. This discovery is likely to lead them to think that improvement of their minds in other ways is not possible either (in law school at least) and that they must accept a lower rank in the world, and in their own esteem, than they had hoped or expected

to have. This is a serious blow; it frequently results in a decision to wait out the whole process of law school, looking forward instead to the new competitive tests that life itself will offer; sometimes it results in a kind of basic demoralization. The disappointed student is in fact caught in a serious dilemma: he cannot change his position in the hierarchy but he cannot reject it either—for to reject it would also be to reject much of what his remaining self-esteem paradoxically rests upon, i.e., wonderful grades in the past, high scores on the LSAT, perhaps his present status at a high prestige school, and so on. Those who do well on these exams are from a long-range point of view not much better off, for they are invited to have a rather exaggerated sense of what their capacity to perform on these tests actually means: about their minds, about their need for a more general and thorough-going education, and about their likely success in the world.

In fact, we all know that examinations of the traditional sort do test for certain capacities of mind (and to some degree for certain qualities of character as well—industry, for example) and that one can properly take a certain pleasure in doing well or a certain disappointment in doing badly on such tests. But both the pleasure and the disappointment should be far more severely qualified than they usually are because we also know that these tests do not test everything that matters, nor, by a very long shot, even everything that matters in the practice of law; and that the purely competitive impulses stimulated by such tests are a very poor basis upon which to rest a professional life or one's professional satisfaction.

Why, then, does grading have such powerful effects on morale—if I am right that it does—and why is it so difficult for students to qualify their sense of satisfaction and disappointment in a realistic and appropriate way? Perhaps partly because the faculty really believes (or seems to believe) much more deeply in grading than it claims; perhaps partly because employers use (or seem to use) grades so rigidly in hiring; and perhaps partly because the examination process offers almost no information to the student beyond a grade. Other factors no doubt contribute to the change too: the cumulative effect of a kind of teaching that is intolerant of error (when everyone knows that the freedom to make mistakes is important to learning, essential to invention); the increasing sense that the faculty's claims (of which this article is one) to be interested in "process" or "thinking like a lawyer," not in the "rules," are in practice undercut, even rendered hypocritical, by our anxieties about "coverage" (which are, after all, not explicable in any language we speak to our students); the deadening effect of the repetition of our standard law-teaching moves, such as putting the burden of proof on another and remaining "skeptical" or "unpersuaded"; the loss of our own sense that what is at stake in our subject and in our classes is the nature of justice and the good community; our evident enjoyment of our position of power, not to say infallibility, in the classroom; and the increasingly apparent divergence between our own careers and those for which our students are for the most part preparing. Whatever the reason, one is often told that there is a felt transformation in the later years, with far-ranging consequences.

The case method, for example, is likely to be seen no longer as a method of exploration and dialectic, a technique for discovering what is

problematic in the law or in life, but as a way of distancing oneself from all that—a way of reducing experience to the level of the Gilbert's Outline. The implied contract between the student and teacher shifts its focus: our insistence to the student that "You are responsible for these texts as you have never been responsible for anything in your life" all too frequently entails the acceptance of a correlative as well, "and responsible for nothing else in the world." The focus on discrete texts and the chain of texts, which is the key to the first year, thus becomes a focus on doctrine in a vacuum. Such a class—I speak now of my own experience, as student and as teacher—is likely to proceed by plowing through a casebook at just the wrong speed, with just the wrong attitude: too fast to engage in real analysis of the cases or questions presented, too slowly to function as an overview. The teacher eagerly accepts responsibility for the running of the class—after all, this is his professional performance and he prides himself on his skill and showmanship—and the students cheerfully acquiesce in this assumption and agree to praise one teacher, or blame another, for the performance, almost as though he or she were a TV actor. "Good teaching" becomes related to the entertaining way one can "get material across." The student can reduce the course to the black-letter law, either through hornbook or the more laborious method of reading the cases; the teacher cannot prevent it, and his examination in any event seems to ask for nothing that a bright student cannot provide on the basis of hornbook reading.

Law school on such terms trivializes law and education alike. The traditional casebook form often reinforces this trivialization, for it presents severely edited opinions as if they were all that one needed to know. And it often does the same with nonlegal texts as well—presenting a paragraph each from Bentham, Kant, and Plato, for example, as if it were representative of the whole work of the philosopher in question. The whole thing can come to feel like a charade, a complex way of doing something that is at heart rather simple and unimportant. For me the core of the evil lies in the definition of roles and relations: the definition of the teacher as the powerful and knowledgeable manipulator; of the student as a kind of child or infant, without any responsibility beyond preparing for a routine examination; of the material as legal rules and principles embedded in cases or statutes. Legal education seems no longer to be learning to think like a lawyer but learning to think like a bar exam. Or so many of our students feel. That our students are our partners in this reduction of law school (and of themselves) becomes evident when one imagines the outcry that would be heard if they were told that they were to be examined on something not "covered" in class. (And listen to the way the word "pass" is often uttered, as if it were an accepted move in a game, like a bid at bridge.) Many teachers respond to this by becoming lecturers, a form of teaching and of life that has its own rewards.

Is the Caricature True?

I have presented a caricatured view of law school life with what may seem to the reader to be a constant shifting of signals as to whether or not I think it is "true." Those shifts have been deliberate because I think the caricature is in a sense both "true" and "false." Certainly no first year class lives up to

the ideal, and one hopes that no course in the later years fits my negative description either. For some students the sequence may well be reversed: first year may seem empty or trivial, mere game-playing, the later years full of useful substance. Certainly the faculty at many schools offer a wide range of courses that in substance and method vary greatly from the stereotype; and by all accounts many of the most successful courses are among the most "traditional." And let me repeat that my own experience of students has been very satisfactory indeed. What is true is that many of us carry something like this image in our mind. I think the reason is, as I said earlier, that this image expresses forces we feel at work in our classes and in ourselves. To some degree there are obvious causes: the newness of the first year cannot continue into the second; the large size of our classes, which does not interfere with first-year case analysis, may inhibit more suggestive, exploratory, or inventive methods of teaching in the later years; our students' concern with employment becomes increasingly dominant, for it is natural that their attention will be to some degree diverted from their present intellectual life to their un-lived future; and ranking by grades, as I suggested above, is a powerful blow to many, who take the rest of their work in a state of mind my colleague Rick Lempert calls a "mental pass-fail." If attention is elsewhere, education cannot go on.

Imagining Another Version

Can we imagine, or see around us, another sort of law school, in which the students go on from the first year not to contract but to expand their sense of responsibility for what they learn? In which they are offered courses that they can see as doing something other than presenting doctrine in a vacuum—courses in which the teacher need not be afraid of Gilbert's or some other aid, but actually encourages the use of whatever will help the student, because the teacher is confident that the course she gives and the examination she offers cannot be reduced to that level? In which students are spoken to—and welcome it—as if they had intellectual lives and agendas of their own, backgrounds and futures that are not fungible?

Imagine what it might be like to teach a graduate course in British nineteenth-century history, for example: we would not assume that everything that counted would be said or referred to—"covered"—in class, but rather that the class would treat a set of questions, chosen for their interest and importance, as examples of the historical mind at work. The students would be assumed to know much more, and to learn much more, about this period and its history than was ever said in class. Bibliographies too large for any one to read would be circulated. The idea would be that each student is different; that each is engaged in an educative process for which he is responsible; that each will be tested, not in a single examination, but by a comprehensive examination that will reveal his own pattern of strengths and weaknesses, and ultimately by the profession, by the quality of work that he can show that he can do across a lifetime. Such a history course would not teach facts or themes or doctrine in a vacuum: it would take place in a context, partly of the student's making—including prior reading, contemporaneous reading, and independent thought—and

speak to an imagined future intellectual life. Could law school work on such premises, such relations?

The object of this analogy with the (no doubt idealized) history course is to suggest that one can see what goes wrong in law school by thinking about another kind of triadic relation between the teacher, the student, and the material. Can we find a way to teach that recognizes that our students have different capacities, interests, and virtues? That we ourselves have different things to teach? That the subject "law" is no more the same in every classroom than is the subject "history"? And can the students find a way to assume more responsibility for their own education, conceiving of themselves as engaged in a project that has its own interest and importance to them, independent of its significance as prelicense training? Can their education be seen as truly a liberal education, i.e., as the development of their own individual capacities, not as a training into a sort of sameness? Put slightly differently, can we come to see that the law that we teach, and that we hold out as entitled to respect and authority, is not a set of rules to be learned but a set of ways of thinking and talking and acting together about questions of justice, a method and a community which it should be our task to exemplify and constitute?

The starting point would be to conceive of legal education not as professional training alone but as an education of the individual mind. In such an education courses would not be reducible to the bar review, the outline, or the set of rules (the doctrine taught), for the subject of the courses would not be "material" in that learnable sense but rather the mind of the student (and also, though it perhaps reveals a professional secret to say so, the mind of the teacher) in relation to that material. The materials of law would be contextualized by being made the object of individual thought, the character of which was the true subject of attention. This of course makes hard and practical professional sense, for the most valuable attainment that a student will carry with her from our law school into the great world is not intellectual baggage in the form of boxes and trunks full of rules, distinctions, arguments, and so on, but a more fully educated mind. And her mind is also the organ by which she will claim to find or make meaning (including moral meaning) in her life, the organ by which she will organize her own experience into a coherent and tolerable whole. The most "practical" education is perhaps not the most theoretical one, certainly not the most academic; but it is the most *intellectual* education one can obtain or imagine.

The student's mind is trained, of course, in a specific professional context—it is the language of the law, not of medicine or linguistics that the law student learns to understand, to recast, to remake—and this part of her training is also important. But this fact is secondary: the knowledge with which a true education is concerned is never repeatable data, but knowledge that entails a use or activity—a knowledge of practice that is a kind of action, including a kind of invention or creation. The practice of law is not the application of doctrine learned in law school to the facts of a client's case, for in one's practice the doctrine must be learned—and that means rethought, reconstructed—over and over again, from many points of view.

What one learns in law school is not law in the sense of repeatable propositions, but how to learn law—that is, how to do it and how to make it. In an important sense “the law” one studies is thus the law that is actually made in the classroom, made out of the materials of case and statute as the class thinks and talks about particular questions. A good law school is thus a school of law-making. This means that the proper focus of attention is not on what the student is learning to repeat or to describe but what she is learning to see and to do; on the doctrine or language of the law not abstracted from experience, but embedded in it, as the object and medium of thought, expression, and intellectual action.

The moment of speech is the moment of our attention. Once you start rattling off those clichés your mind is running in a channel from which it will not easily shift, and so is the mind of your interlocutor, and that part of the world which you have the power to make, and the responsibility for making, becomes immeasurably poorer. Yet a moment of true speech by an individual voice speaking to others as they actually are about the facts of the world—at such a moment, whether in a poem or a legal argument or a classroom, the world is reborn.

The moment of speech, when knowledge is made active, is a moment that calls for art (rather than science or technology) because the circumstances to which one speaks are never those to which one has spoken before. The new lawyer is surprised to discover that in practice no case ever comes to him as a clean-cut paradigmatic case, but always has uncertainties, ambiguities, rough edges, and paradoxes built into it. This is so because the case comes from life, not from the exposition of a theory, and these are the qualities of actual human experience. To deal with the fact that circumstance and culture constantly change, the mind must have not a grid of established moves but the capacity to invent new moves. Lessons and advice wear quickly thin; no science exists upon which one’s cognition of the world can rest; the only possible guide is internal, a kind of gyroscope that enables the vessel to maintain stability and direction in a world that is entirely fluid and relative, without external landmarks—the capacities of an Odysseus, confident that he can meet a new situation with intelligence by focusing on what it actually is.

In this kind of legal education the student is defined not as a learner of facts and doctrines and rules, nor even as the learner of a set of rhetorical moves—the means of persuasion available to the lawyer—but as a speaker and writer, the maker of new compositions. Attention is focused on what the student can find (or make) to say and on the resources and limits of his mind and his language.²

2. Of course legal composition is of a special kind, for much of it is based upon interpretation, the working out of competing or alternative meanings for various authoritative texts—statutes, common law cases, constitutions—both alone and in connection with each other. The legal analyst thus is always saying: here is the set of relevant texts (recognizing that any one inclusion or exclusion may be challenged) and here is the meaning that each should have, that they all should have, the meaning that makes the best sense of each taken alone and all taken together. The result is a composition, a way of making sense and order of the material of the world. This is true not only at the level of analyzing legal texts, but also—perhaps more obviously—at the level of the organization of facts, the constitution of reality in negotiations, trials, and conversations.

This conception of the student is inherently egalitarian. If two people speak to each other as composers they must speak as fellow composers; no imaginable relation other than equality can exist between them, for they share a situation that is at root identical, and they focus their attention on what is common in their lot and life. To conceive of the student as composer is also to recognize his autonomy and individuality, for composition is of necessity an independent act done by individual minds. The student who learns to compose in legal language learns something of his own responsibility for what he does, of his own strengths and weaknesses, of his own place in the world. At best he makes a voice of his own: not a private voice, not the voice of any-person-talking-as-a-lawyer, but a voice of his own as a lawyer. In my own view, indeed, that could be taken as the central aim of a legal education.

This sort of education is also a kind of moral education, for it is a training in the responsibilities of the self that resists the contemporary tendencies towards nihilism and authoritarianism alike. The lawyer is trained to recognize and respect authorities external to the individual will or whim: the authority of the law and the authority of the experience of other people. This training takes place in the constant establishment of community with others—clients, other lawyers, judges—and in the maintenance of the language by which community itself is defined and made possible. From this point of view, the true significance of legal education—what makes it worth doing for the student and the teacher alike—is that it is inherently antibureaucratic and antiauthoritarian: it insists upon the reality both of the individual person and of the community at large.

Giving Doctrine a Context: As a Language

One way to describe the effect of this kind of education is to say that it gives doctrine a context, a context internal to the student and the teachers. The language of the law is not regarded as a discrete entity, a world of its own, but as a language that must be used—and remade—by this individual mind or that one, functioning in one actual or imagined situation or another. The rules are not studied as though they were of interest in themselves but as the material for speech in real or imagined circumstances. This focus of attention leads the mind directly to its sense of itself, to its nature, to its cultural circumstances, to the possibilities and limits of speech and understanding, to the recognition of others similarly situated, and so on. This conception of law as an expressive and rhetorical activity is not reducible to learning how to manipulate doctrine, as the lawyer's life is so often thought to be. It is not enough to move sentences about on the page or in the mind in shifting patterns, inserting "nots" and "buts" in new places, recasting the materials of the cases, and so on. The mind must be a source of its own energy, of invention, of what the rhetoricians called *ingenium*: the power to make something new. This has at least two sides: the power to ask new questions of the world, of the client and the witnesses and the files—to ask questions that will generate new material; and the capacity to organize it all in new ways, as a new story, with its own starting point, direction, movement, and ending—to recreate or represent the world in language.

How is the power of invention to be stimulated? Partly by repeatedly presenting the problems the lawyer faces as problems for speech and argument, for individual responsibility and judgment—this will bring to bear the students' ordinary-life capacity for speaking and judging, for inventing, in new circumstances. Partly by our own writing and speech: can we find ways to write as law teachers which meet the standards I suggest, of showing our individual minds at work in a professional literature? But perhaps most by an explicit resistance to the assumptions upon which the caricature I described above necessarily rests.

The first assumption that should go is that everything of importance in the field, or for the exam, will be covered in class. We should feel free to treat our students as grown-ups, able to read and think on their own. We should give them books and articles they might read before the course begins (and perhaps even examine them on that reading as a kind of qualification for the course); we should identify material we expect them to read on their own during the course, including casebook material; we should offer them guidance to useful summaries of doctrine and the like. This would enable us to proceed at a pace slow enough to make some real progress in analyzing particular texts or sequences of texts and to make the way we engage with those texts, not their "substantive content," our true subject. We could thus be more explicitly exploratory, self-reflective, and critical. But this would also require us to give up the claim that we "teach it all," or that our courses are necessary for passing a bar exam. (We should actually welcome the proliferation of bar review courses, for they make it easier for us to make clear to our students that our job is different from that one.) It may seem impossible to do the kind of work we and our students are ready to do in classes as large as those we currently teach. This sense of frustration, if real enough, might lead to reductions in class size. In the interim, we should think about doing some kinds of teaching to huge classes in order to make another kind of teaching, to smaller classes, also possible.

Giving Doctrine a Context: By Comparison

So far I have suggested that doctrine can be given a context by being regarded, in any course, as a language that the student must learn to use, and to remake, in individual cases. The context is that of the mind faced with its own limits and those of its resources, and this kind of context-making could go on in any course, if teacher and student took the time and paid the attention necessary to it. But there is another kind of contextualization that may both give legal doctrine meaning and encourage the development of the capacity for invention, one that would require a new course or set of courses. This is the study of intellectual analogies to law. If we can contrast legal language, legal methods of thought, and legal communities with others, we may gain an insight and purchase that will make invention and reform thinkable and possible. One field of analogy, already suggested, is ordinary life: in talking about contracts we should not forget, and we should invite our students to remember, what we know of promises and expectations in ordinary life; likewise, when we talk in the criminal law of "blameworthiness" or "desert" we should remind ourselves of our own practices of blaming and judging of desert; when we think about

“vagueness” we should think about what makes expressions clear and unclear in ordinary life; and so on.

Another source of analogy is the field defined by other intellectual disciplines. The object of the kind of study I have in mind would not be that the lawyer would acquire the “insights” or “information” generated by other experts, but that we would study the intellectual activities that others engage in and contrast them with our own. Not law *and* sociology for example, or law *and* history, but law *as* each of these: what kind of sociology does this court unwittingly practice, what kind of history? What other possibilities for thought and expression, suggested by the practices of historians and sociologists, should the law consider? What is truly distinctive about law? Similar questions can be asked of other disciplines: anthropology, literature, economics, philosophy, and the like. These contrasts and comparisons, like those with ordinary life, should suggest new possibilities for thought and argument, new analogies upon which to draw in inventing lines of thought and speech. This is a different view of interdisciplinary work from the usual models, for each of the disciplines would be looked at as I suggest law should be looked at: with an eye to its special resources and to its limits as well. An important consequence of this kind of study is that it would bring to the center of consciousness, where they could be studied and criticized, the assumptions underlying the culture of law and of our larger culture; this in turn might enable us better to perform our lawyers’ functions of cultural criticism and transformation.

Let me give just one example of what such a study might take as a specific subject. I have from the beginning of this article been describing something called law school, or my own law school, in a way that I have marked as uncertain or unusual by calling it a caricature. I have said that it is partly true and partly false: perhaps it is true in the way a myth or an ideology is true, or true as an expression of feelings of anxiety or fear—perhaps momentary feelings, perhaps structural ones. But it is also false: as an account of this course, this faculty, this student body. And certainly my account has been less than satisfactory to me and I suppose to you. What *is* the truth of it? What special kind of truth may such a caricature have in general? Here we face a version of a question that is present whenever we speak as lawyers (or as law professors) about our world—about what happens when “cops” arrest “suspects,” for example; about the fear of crime in our cities; about the nature of progress (or the reverse) in our treatment of the environment; or about civil rights, or labor justice, or the securities markets. What would good sociologists, anthropologists, psychologists, economists, and historians say about the caricature I have presented here? What questions would they ask? What story would they tell?

I have said that doctrine should be removed from its “vacuum” and placed in a “context,” and you may wonder why I have not suggested what many would think obvious, that we place it in the context of the “real world.” My point here is that there is no one “real world” that can serve as a context, but a variety of often wildly differing constructs of reality. The process by which we and others create social realities is in fact the central subject of such a course or program as I describe.

When this emphasis is combined with the conception of legal education as legal literacy described above, something else flows from these comparisons: recognition of the individuality of our sources of meaning and authority. In a course such as I describe we could not aim, any more than the historians could, for a single view of what law is and of its relations to all the other disciplines; each student, and each teacher, would have to draw his or her own connections and make them vivid and persuasive in compositions of his or her own. If carried over to the field of formal legal writing, it would mean the end of dead and inauthentic references—like Chief Justice Burger's reference to Wittgenstein's *Philosophical Investigations*,³ made as if the reference were to his own reading and that of his audience, and like the dreadful canned history that appears in many opinions and briefs, reflecting no work by the writer, no knowledge of history, no engagement in the process of historical judgment, but a simple cut-and-paste job from other texts—as if all learning could be reduced to the model of universally available and comprehensible precedents. If it worked well, this sort of training in analogous disciplines would create a group of voices speaking authentically about the analogies they drew; and it would further break down the stereotype that authority is dead and universal, rather than living and recreated on the page.

How might this be done, practically speaking? One possibility would be to start with an experimental voluntary second track of legal education in the third year (or perhaps the second and third year) which would be explicitly organized to create a different relationship among teacher, student, and material. The aim would be the contextualization of doctrine: internally, by recognizing it as a language that one must learn to use; and externally, by attention to analogous disciplines. Such a program could include a central core course, devoted to the comparison of legal and other disciplines; the teaching of doctrine through lecture and reading; the careful exploration of a small number of cases, viewed as the occasion for the discovery of the resources and limits of legal speech; all with the idea of developing a sense of autonomy, individuality, competence, responsibility, and a capacity to invent. This curriculum might especially attract students who are academically inclined, but I think it would also prove its value as purely professional training. Certainly it would do so if it increased the students' sense of the importance and interest of what they were doing in law school and thus drew their attention to their present lives, away from their future ones; if it broke down the sense, in faculty and students alike, that we are engaged in an intellectual routine; if it seemed to build upon rather than repeat the first year; and if it seemed in some sense to be about the character that a just community, and a trustworthy lawyer, should have.

3. See *United States v. Ceccolini*, 435 U.S. 268, 284 (1978) (Burger, C. J., concurring).