

understanding of legal argument and legal thinking compare, or contrast, with traditional legalist accounts?

James Boyd White, *Law and Literature: No Manifesto*

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With what hopes and expectations should a lawyer turn to the reading of imaginative literature? To books and articles that purport to connect that literature in some way with the law? In particular, is "law and literature" . . . to be thought of as an academic "field" like law and psychiatry, say, or law and economics? If so, what can it purport to teach us? If not, how is it to be thought of?

To some it may sound odd even to suggest that meaningful connections could be drawn between two such different things as law and literature.

"How can literature have anything to say to lawyers," such a one might ask, "when literature is inherently about the expression of individual feelings and perceptions, to be tested by the criteria of authenticity and aesthetics, while law is about the exercise of political power, to be tested by the criteria of rationality and justice?" To reduce the law to its merely literary aspect would seem to erase the dimensions of politics, authority, responsibility, and power — the whole sense that the law is about real consequences — and to substitute for it a kind of empty aestheticism, a celebration of style over substance. Is this what those who speak of "law and literature" wish to do?

It is mainly to these familiar and perfectly understandable questions that my remarks here will be addressed, but I will touch on others as well, buried in them as assumptions: What do, or can, we mean by the categories "literature" and "law" themselves, and by the distinction between them? What do we mean by "power," "political," and "aesthetic"? By "style" and its correlative "substance"? . . .

In thinking about what lawyers may hope to learn from another discipline, it is natural for us to speak in terms of what I have elsewhere called "findings" or "methods." That is, we are accustomed by the conventions of social science to look to another discipline either for the propositions that it establishes about the world (its "findings"), which we can import directly into the law and found arguments upon, or for its techniques of analysis (its "methods"), which again we can import into the law and put to our own use. Obviously, the different social sciences speak to us on different subjects, and offer findings of somewhat different kinds, but as we approach any of them one of our hopes is to learn a set of propositions about the world — propositions about the working of the human psyche, about class formation, about the true incidence of a particular tax, about the rigidity with which social prejudices are held, and so on. Likewise, we hope to learn from these sciences methods of analysis which we can ourselves employ when presented with questions that can be thought about in those terms.

Whatever the merits of these ways of thinking about what the social sciences can offer . . . they can obviously be of little value in forming the hopes and expectations that we should bring to imaginative literature, for no one I think turns to literature

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for propositions of fact upon which new policies can be based or for methods of interpretation to be employed by lawyers. It is not that literature has nothing to teach us about the world or about the analysis of texts, but that it teaches in a different way: it expands one's sympathy, it complicates one's sense of oneself and the world, it humiliates the instrumentally calculating forms of reason so dominant in our culture (by demonstrating their dependence on other forms of thought and expression), and the like. It is one of the deepest characteristics of literary texts to throw into question the nature of the language in which they are written; this necessarily throws into question as well the nature of any language in which they might be talked about or into which they might be translated. This in turn means that these texts are in a deep sense about the inadequacies of the propositional view of language, so dominant in our academic culture, upon which our talk about "findings" necessarily rests. Literature is art, and its form is essential to its meaning. What it teaches us is indeed about the world, but it is also about ourselves—our minds and languages — and it is not translatable into propositions of moral or social truth.

Think how differently "learning" is conceived of and talked about in the language of "findings" and in the language of a literary (or legal) education. When I look for the "findings" of the natural or social sciences, I think of myself as seeking to acquire information that will add to my present stock. This information may shift the sufficiency of the information I already have, but I do not expect it to change me. In thinking this way I see myself as an observer, for the most part unchanged by the process of observation, making records and reports of what I see. Literary texts do not work this way at all: they offer engagements the point of which is to change the self — to transform one's sense of language, of the mind, and of the world — and to do this in ways that systematically resist conversion into other forms of discourse.

To say that literature offers us neither "findings" nor "methods" of the social scientific type is not to say that it offers us nothing, or that what it offers can be relegated to some trivial side of life, as a kind of entertainment or décor — as if what it offered were about "style" rather than "substance" or "feeling" rather than "thought." It would be pathetic to think that we had "nothing to learn" from Sophocles or Shakespeare, for example, simply because they did not offer us "findings" or "methods" that we could use in the analysis of legal issues. This would erase the whole value of our high culture both to us as people and to our profession. To say that we have "much to learn from literature," but "only as people, not as lawyers" would imply an equally sorry view of the law and of ourselves, for it suggests that what we do with our minds and feelings all day is a mere technique, unaffected by our deepest understandings, and a technique that calls on no significant aspects of the self. On that view, who would want to become a lawyer?

But to say this is not to claim that it is easy to talk about what a literary education can offer the lawyer or the law. If we are not to use a language of methods and findings, how are we to speak? If neither law nor literature is to be regarded as a kind of intellectual technology, how are they to be thought of?

These are difficult questions — one could easily devote a lifetime to them — to which we should not expect any easy or short-hand answers. Literature teaches through the engagement of one mind with the work of another. What it teaches will

emerge not in new propositions but in the life of the learning mind, in the kinds of engagements it offers to others. One cannot hope to make an adequate summary statement of that life, those engagements.

But we do know that what literature teaches will be different for each of us, and that we must accept responsibility for what we make of our educations of this kind, just as we accept responsibility for our other conduct, and for our characters more generally. Of people working in this field we should thus expect not uniformity but variety: in voice, style, and direction of thought; in political positions; and in fundamental concerns. Beyond the shared commitment to engage with literary and legal texts (and with each other) in a whole-minded way, there should be no Manifesto of a law and literature movement. . . .

For me the main direction of literary teaching leads . . . us first towards incrementally more complete, but never wholly adequate, understandings of other people and other minds, of other ways of thinking and being and imagining the world; these understandings in turn lead us toward a literary rather than conceptual understanding of language and to the mind, and affect our reading not only of "literature" but of all the texts that make up our world. For again and again in our reading of literature we discover at work what I call a literary understanding of language — one that recognizes its incompleteness, its inadequacies, its gaps and its imperfections, and does this largely by the continual recognition of other possibilities. In literature our language itself is put into question, and with it the habits of thought and feeling (and the social and political relations reinforced by those habits) that we have theretofore taken as natural. This affects our reading not only of "literature" but of all the texts we confront in life; and the literature from which we can learn, once we begin to learn how to do it, includes the literatures we make and read in our ordinary lives.

What I think literature has most to teach, then, is a way of reading, and reading not only "literature" but all kinds of texts and expressions: a way of focusing our attention on the languages we use, on the relations we establish with them, and on the definition of self and other that is enacted in every expression. It teaches a way of reading that becomes a way of writing too.

Literature lives through language, and so must we: the question is by what art is this possible, and it is at this point that literature speaks most directly to the lawyer, who is herself an artist of this kind. Some talk about "law and literature" proceeds on the assumption that what literature has to offer is a form of high consumption, the sort of pleasure we refer to as "aesthetic," with that word preceded, by implication at least, by a word like "merely." It can have no inherent moral or political significance. Think of the cultivated Nazis reading and enjoying exquisite poetry while simultaneously degrading their culture, and their polity, and destroying human beings, in almost unimaginable ways. Perhaps literature may teach us something about "style," regarded as the dressing in which we clothe our thoughts — perhaps, for lawyers, with overtones of flattery or seduction — but surely nothing substantive. In my view this position deeply misunderstands reading in general and literature in particular, for the literary texts here marginalized as merely "aesthetic" are deeply imbued with political and ethical meanings, meanings we must be prepared to understand and to judge. But these meanings

coercive — they do not force themselves on every unwilling mind with equal force — and our readings can be perverted or twisted, just as our other activities can. It is no argument against poetry that evil men have sometimes loved what they found there. We are responsible for the ways in which we attune ourselves to what we read, for how we judge it, and for who we become in relation to it.

But the pressure of any literature worthy of the name is always against such abuse. The maker of literature uses the language of his culture to create something new, a new set of experiences, or a new place, from which that language and the culture itself can be seen afresh and criticized. The effort is to bring the reader to the edge of language, where it can, sometimes, be seen by the mind that uses it in the split second before it dominates the world. In this fundamental sense literature is integrative: insisting upon the incorporation of what a particular language or tradition or set of ideas leaves out, upon unstated or opposing truths. It thus inherently values a multiplicity of voices and the self that can hear them. Multivocality is not merely an aesthetic value, but a political one; literature is accordingly anti-systematic, anti-bureaucratic, and anti-authoritarian by nature. In this sense its true “lessons” are very nearly the opposite of what some people hope from it, those who speak as if the “wisdom of the past” will tell us what to do. It is a degradation to reduce the reading of such texts to a form of high consumption.

The view that what literature has to teach us, as people or as lawyers, is reducible to “style” is an empty one too, for what is here dismissed as mere “style” is actually central to the intellectual substance of a text. It is here, in the transformations of language, in the establishment of relations with the reader, that everything of value in the text actually happens. To claim that “the lawyer has nothing to learn from literature except with respect to style” would in my view demean all the central terms of that sentence — “lawyer” (and “law”), “literature,” “learn,” and “style” — and with them our own capacities for thought and life. The real question is, “Who are we in our relations to our languages and to each other?” The answer, the deepest kind of “substance,” is to be found only in our “style,” in our actual performances.

A related mistake is to claim that the literary view of law fails to see that law is about power. Actually, to learn to read in the way I describe is to expose the root of power, which is linguistic and ideological in nature. Whoever controls our languages has the greatest power of all. Think, for example, of what we think of as state power, the exercise of physical force or violence by the police or the army, the kind of “real power” to which the literary mind is supposed to be blind. This is a physical power, only because it is a political power, that is, only because people agree to inhabit a particular linguistic universe and to be controlled by it. In some sense, of course, power comes from the muzzle of a gun; but this power is dependent upon another, which lies in the social arrangements by which people organize guns and themselves with respect to guns. This kind of power is rhetorical, a form of persuasion and acquiescence; it always rests upon texts of one kind or another; and it can be studied, as it is exercised, linguistically and culturally.

In this sense power is of course everywhere. What is special and important about legal power is that it is a claim to authority, that is, a claim to exercise power that is itself justified by arrangements external to the actor. This is what distinguishes

it from violence. This is a distinction that those who look through meaning to the simple act of force cannot perceive or express, yet it is the distinction upon which legitimate government rests. There is a difference between a judge and a thug, between a marshal carrying out an arrest under a warrant and a lynch mob; it is the difference between legal force and mere violence; and it is the difference that lies, at bottom, in the respect that is paid to decisions made by others, or to what I have called arrangements external to the actors themselves. These arrangements are always texts, or treated as texts, and, as Joseph Vining has so powerfully shown: for their authority to be real — rather than merely a brutal authoritarian order — these texts must be both conceived of and read in certain specific ways, in the ways of the law. In this sense the true test of authority is literary in character. Of course legal texts are not “merely aesthetic” texts, to be read for sheer delight, but neither are literary texts in my view simply that; of course legal texts involve the exercise of power by one person over another, as poems do not, but the criteria by which we can judge such exercises is in a deep sense literary, for it is in the reading of the texts that one may find the meaning of the verbal act, including as an act of power, most fully illuminated. The central question for us as lawyers is how legal power ought to be exercised: upon what conception of oneself, of the litigants, of one’s audience, of the prior texts that bear upon the case, of the culture of argument that is the law. Real-world answers to such questions cannot be merely theoretical in character, but must be performative, actual enactments in the texts; criticism must be particular too, the analysis of the textual and political communities that a particular argument or opinion creates in its performances of language.

But upon what can our criticism be grounded? Not upon a universally shared ontology, certainly not upon a theoretical system, but upon the identities and relations we ourselves create in our written and other conversations with each other. We can try to look to the reality of the world “out there,” perhaps using the languages of social science or common sense — or even literature, in a different mode — to do so. But the reality we see is not uncreated, not language-free, and we are as responsible for what we see and say when we look out to the world as we are when we speak as lawyers and judges. There is no basis external to ourselves and our communities upon which we can rest. The ground of judgment must be created by each of us, and by us collectively, in the way we talk with each other; this talking must itself be criticized in the terms we propose to criticize others. In this sense not only our questions, but our answers, should be literary.

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What the habitual reading of literature offers is not a set of propositions or a method leading to a set of results, but the experience of directing one’s attention to a plane or dimension of reality that is normally difficult or impossible to focus upon, namely the ethical and linguistic plane, where we remake in our texts both our languages and ourselves. To the literary mind language is not simply transparent, a way of talking about objects or concepts in the world, but is itself a part of the world; language is not an instrument that “I” use in communicating ideas to “you” but a way in which I am, or make myself, in relation to you. The literary text offers its reader not information or ideas but an experience of language, a contact with a living mind, of a sort that will erode forever the confidence with which we are otherwise likely to talk about “information” or “ideas” or “communication.” The

texts that do this are not only those taught in "literature" courses — some of which are in this sense not literary at all — but all texts that lead us to the point of self-consciousness about our language and the relations we create in our use of them. It is not so much literary theory, which often operates on nonliterary premises, that will teach us in this active way, but literary practice, the practice of reading, and of writing.

When our attention is once drawn to this dimension of life, we come to see that the heart of justice is not the distribution of nonlinguistic items in the world, but ethical and relational: it lies in the attitude, and in the capacity of mind, by which authoritative texts are read and interpreted; in the kind of attention given to opposing claims and to the experiences of opposing parties; in the quality of openness (or closedness) to new formulations, new voices; in the sense that the judicial or legal opinion is an ethical and political, as well as an intellectual, text for which the mind composing it is responsible. Thought of this kind does not by itself tell us how to read a particular case or statute, and in that sense does not dictate results; instead, it keeps us aware of the degree to which results are not dictated but chosen, and can be chosen for well or ill, and of the importance to us, greater than any series of judicial votes, of a legal culture that is engaged in the process of educating itself and the public by the sincere and self-critical way it addresses the questions that come before it. Attention of this kind surely will lead to different results, but not mechanically so; and it will lead as well to different ways of finding meaning in the results we do reach.

Therefore we cannot expect the "law and literature movement" to tell us how to decide cases, or to teach us lessons, or to offer us a technology that might supplant the law. We should instead expect, or hope, for variety, for the distinct sounds of a thousand voices, for the perpetual affirmation of the individual mind as it seeks community with others. This kind of work cannot be done bureaucratically, mechanistically, or incrementally. It must be done anew each time.

I began this Introduction by asking this question, meant to capture the essence of many such questions I have heard: "How can literature have anything to say to lawyers when literature is inherently about the expression of individual feelings and perceptions, to be tested by the criteria of authenticity and aesthetics, while law is about the exercise of political power, to be tested by the criteria of rationality and justice?" I hope the reader can now see something of what I mean when I say that this question misstates everything it touches. Literature and law are both about reason and emotion, politics and aesthetics; they both promise to integrate what that question falsely separates, and to do so by drawing attention to what is at stake whenever one person writes or talks to another.

Consider the following response to White's account of the Law and Literature movement: