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Generating Law: Learning How to Take Care of What One Has Started

Thomas D. Eisele

The middle span of life is under the dominance of the universal human need and strength which I have come to subsume under the term generativity. I have said that in this stage a man and a woman must have defined for themselves what and whom they have come to care for, what they care to do well, and how they plan to take care of what they have started and created.

—ERIK ERIKSON¹

Starting to Practice Law

After graduating from law school, I started practicing law with a Chicago law firm comprising more than eighty attorneys. The firm was collegial, not cutthroat. Most of the firm's partners and associates with whom I came in contact (with some of whom, I worked closely) actively sought to help me turn myself into a competent lawyer. This would seem to be a recipe for professional success, but for me it was not.

I found, instead, that I was struggling. I wanted to be a success—who does not? I tried very hard to be a competent professional. Yet I found my initial attempts at the work that I was asked to do, to be disconcertingly difficult and the results distressingly poor. Mostly, I did average legal work of marginal quality. It was nothing to be proud of. Where was I going wrong, and why?

I could do the basics of legal research and writing: I located the cases, found the applicable statutes, made some progress with the rules and administrative regulations, and after a fashion I could put together a reasonable memorandum of law, or draft a passable complaint or answer. But little or none of my legal work breathed life. Much of it came from form books, or from the available models of previous work done by others in the law firm; and the instruments or documents that I accordingly drafted remained theirs, not mine. The instruments that I was drafting, and the memos that I was writing, and the advisory letters that I was trying to craft, were not so much mute as they were forgeries: to the extent that they spoke, it was not with my voice, but someone else's (usually, that of a ghost from the law firm's past). Or, worse yet, the legal instruments that I created enunciated their words in a nonhuman voice, some kind of mechanical vocalization which seemed to me to represent a deadened form of the law. Nothing vital came out of my legal work: not the law, not the problem at hand, not the document or instrument that I was crafting. And certainly nothing of myself—not my persona, not my mind—was expressed in my legal writings.

Then, out of the blue, a fresh copy of *The Legal Imagination*² came to me, and the book changed my relationship to the law. Jim White's book had been sent to me by a law review with which I had had no prior contact. The law review invited me to read and review White's book, an invitation that I accepted with alacrity.

Quizzical at the large volume bound in rich yellow covers, I began perusing it, first skeptically, then with increasing interest and excitement. Quickly, a new legal landscape unfolded, stretching before me. This land of the law was not a country of settled forms and ancient documents, to be replicated and reduced to repetitive iterations of the same old solutions to the same old problems. No, it was a more vivid geography confronting me. Here, problems of, say, how to approach a traffic accident, or what the meaning and significance of the death penalty might be in today's world, or how to sort out the claims between participants in a bar fight, or how to handle someone's dying (perhaps a person very close to me, perhaps even myself)—all of these questions (and many more) were posed to me, and left with me. How would I deal with them?

To help me think this responsibility through, there were poems, and historical accounts, and some literary criticism, and political tracts, and philosophical writings, and short stories, and humorous tales, and tragic odes, and more—put together attentively, in such a way so as to resonate within their juxtapositions. The writers of these texts had been confronted with problems typical of human experience in this confusing world of ours. Here were the texts that they managed to fashion in response to those problems, those mysteries, those opportunities, those trials. Now, what was I to make of these resources, these achievements, in view of the fact that there always exists the ever-attractive option that humans have to stand mute in the face of their experiences and frustrations, or to live in denial of them?

Two passages on death come to mind here. In Henry Adams's *Education*, he recalls his wrenching conversion from innocence to experience, when his sister died of tetanus. "The last lesson—the sum and term of education—began then."³ Before this experience, Henry had only seen the "sugar-coating" that nature, that life, shows to youth. Now the horror of human mortality confronted him. And he rejects it. "Society, being immortal, could put on immortality at will. Adams, being mortal, felt only the mortality."⁴ His sister died "after ten days of fiendish torture," torn by convulsions as her muscles grew rigid, yet her mind remained conscious of everything around her. For Henry Adams, there is no consolation. He is angry, bitter, at his sister's fate. "She faced death, as women mostly do, bravely and even gaily, racked slowly to unconsciousness, but yielding only to violence, as a soldier sabred in battle. For many thousands of years, on these hills and plains, Nature had gone on sabring men and women with the same air of sensual pleasure."⁵

Contrast with this passage, one from Macauley's *History of England*, where he recounts the execution of Monmouth, who had failed at trying to overthrow the

Catholic king, James II. “The hour drew near; all hope was over; and Monmouth had passed from pusillanimous fear to the apathy of despair.... He alone was unmoved.”⁶ There is in Monmouth’s response to his own death another form of human determination, related to Adams’s rejection of our fate at the hands of nature, yet different. Monmouth becomes resigned to his own mortality. “I will make no speeches,” Monmouth exclaimed; instead, he bade the executioner, “Do not hack me as you did my Lord Russell.... My servant will give you some more gold if you do the work well.”⁷ Monmouth’s forlorn hope at this stage is not for survival, but for surcease.

In many of us, these conflicting emotions of bitter rejection and subdued resignation reside side by side. We reject our mortality just as much as we are resigned to it. In many of us, the task of anticipating our own deaths is unimaginable, yet unavoidable. Faced with such conflicting emotions and concerns, we in the land of the law have only the estate plan with which to work. Enter the testator’s last will and testament. And enter the lawyer entrusted with the task of contending with our humanly mixed emotions. These are natural human emotions with which every lawyer who has ever drafted a will or a trust document, has had to contend—and to satisfy, if not to silence.

As it turned out, the readings in *The Legal Imagination* were not solutions to my problems of how to turn myself into a competent lawyer. Rather, the readings composing White’s book simply made my problems more pointed, or more poignant. The readings that White had put together in a certain sequence showed me slices of human life, varieties of experience and expression, possible choices grounded within an inherited body of some profession’s literature; but they did not guide me to a solution of the problems posed to me. They led me to experience the problems as my own, and they challenged me to find an adequate response, something commensurate with the weight and heft of the issues and concerns with which life presented each one of us. As an initiate of the profession, I had to come up with something adequate, even satisfying, something that a lawyer might responsibly say or professionally do in the face of such challenging matters. Simultaneously, I had to maintain my sense of myself as a person, as a human being, as well as my sense of myself as a competent professional. (Or else, if I did not maintain my self-conception under the pressures exerted within this crucible of experience, then I had to explain to myself this apparently irresistible impulse to change myself in the face of my duties, both professional and personal.)

White put the challenge his book posed to its reader in the following way: “The questions and assignments in this book ... are meant as occasions for the play of the individual mind and imagination, as ... an independent mind.”⁸ What did I make of these occasions?

Seeing Law as an Art or Craft

I do not believe that I had ever worked out for myself in law school, or in the beginnings of my legal practice, what I thought a lawyer was, or what a lawyer did. Perhaps I had not done so because the matter never seemed an open question (or was never put in question by anything I had encountered in law school). Instead, the matter seemed settled. Well, what is the role or task of the lawyer as a professional? I would say that one of the common attributes ascribed to the lawyer in our society envisions the lawyer as a kind of “hired gun.” On this view, a lawyer is a paid advocate who has learned certain complex and arcane legal terms and rules, a professional who manipulates those terms and rules on behalf of his client in order to reach a result favorable to that client. This makes the lawyer’s task a technical job, one encompassing the techniques and tools of the lawyer’s craft. There is enough truth to this view of a lawyer that it can be very difficult to shake free of, or to modify and cabin within useful limits. Yet such a view places the lawyer in relation to the law such that he or she is only a technician, engaged in not much more than sophistic manipulation of legal words and rules. A lawyer gets paid to use his or her tools at the behest of his or her client, and the client’s payment puts the lawyer in a kind of literary serfdom or servitude to the client.

If this portrait approximates the vision of lawyering that I brought to law school, I do not believe that I was ever helpfully cautioned against it (certainly never disabused of it) either during my career as a law student or during the opening years of my practice. In my experience, this picture of the legal profession, or something very close to it, was widely accepted. But White’s book explicitly questioned this picture of what it is to be a legal professional, and his book even countered this perhaps naïve conception by reconceiving the matter, and by inviting me to imagine how I might proceed differently.

Today, almost forty years after the event, while there are aspects of my five-year practice of law that are hazy or about which I have little or no memory, I still can recall the revelatory impact I felt reading White’s suggestion “that law is not a science—at least not the ‘social science’ some would call it—but an art. And this course is directed to you as an artist.”⁹ The lawyer an artist? Outrageous. Yet, strangely appealing, too. Such a conception took seriously the notion that we craft the law out of the materials we have at hand within the medium of (in my case) the Anglo-American common law tradition. Could that claim be true; could it be made plausible in the events and readings that would unfold in the pages to follow? White seemed to think so: “There is no body of rules expressing the art of the lawyer any more than that of the sculptor or painter. You are as free as they, and as responsible for what you do. It is true that one of the mediums of the lawyer’s art is rules, and the lawyer must know rules, and the other materials of the law, as the sculptor must know clay and the painter paint and canvas.”¹⁰ On White’s portrayal, the artistry of the lawyer is bound to specific resources in language and to specific ways of using language in formulating and expressing

one's thoughts. (One instance is what we call "rules"; White frequently refers to these media generically as various "forms of expression" used by lawyers.) The lawyer is a writer who works in and through the medium of written and spoken words. He or she uses texts and documents and rules and arguments and speeches throughout his or her professional life. And White adds to this central claim, several accompanying images in the book: such as, the judge as a kind of poet and the judicial opinion as a kind of poem; legal writing as narrative, as telling stories; statutes as setting the terms of cooperation among various people, including the writer and the audience; the need to appeal to one's imagination in finding or thinking through a possible legal response to a concrete situation in the world. These themes coalesce or aggregate to paint a portrait of the lawyer as an artist working within a medium, a medium generally consisting of our language; but, more specifically, a medium comprising its own literature of the law.

There is another challenge in all of this talk of artistry and craft, and Jim White does not flinch from making that challenge explicit: "In asking you to define for the moment the lawyer as writer, to regard yourself in that way, I am asking you ... to trust and follow your own curiosity; to work out in your imagination various future possibilities for yourself."¹¹ This remark puts the responsibility for our professional development on our own shoulders, asking us to craft ourselves and our careers out of the seemingly inert materials that the law makes available to us as workers within the medium of the law. I am being asked how I as a lawyer might relate myself and my concerns to the law and, through the law, to others, including my clients. The *Legal Imagination* seemed to me to show its reader possibilities of action and relationships the likes of which had not (in my experience or knowledge) been imagined or portrayed in the legal literature prior to its publication. So, White's question remains pending: "What can I manage to make out of these opportunities"?

The responsibility to respond fruitfully to this query rests with each of us independent souls. "The activity which I mean to encourage in defining as I do the lawyer as writer is an enterprise of the independent intelligence and imagination."¹² We are pinned to this duty even in our own independence, since our independent status implies that we have an option, that we can decline the invitation extended us by White, if we so choose.

Generating Law Out of Legal Media and Genres

White's emphasis on our "independent" status can be misleading, if his remarks are taken to betoken license without limits. Instead, White goes to great lengths to remind us that, as with any artist, we are working within a given tradition and within a given medium. Both of these make possible our making sense, but both of these also condition (through limitation, by imposing limits upon us) what can be said and meant in any particular place at any specific time. "What you must ultimately learn is what to do with rules and judicial opinions and all the other forms of expression that are the working stuff of a lawyer's life, just as the

sculptor must learn what to do with clay and marble. You may feel that you are constrained by your material, as indeed you are. But compare the pianist, who is told what notes to play, in what order, how long and how loud; yet art is surely possible there.”¹³ Any tradition, as any medium, empowers us and constrains us simultaneously. It is only because it does so that we can so much as utter a meaningful sound or make a meaningful mark. Any act of liberation still presumes or entails conditions for any further action—otherwise, it becomes wantonness; and wanton action leads to nihilism and nullity, not to freedom of expression that can be meaningful.

To show in detail how all of this takes place is beyond my capacity; there is a sense in which nothing can substitute for the experience of working one’s way through *The Legal Imagination* and seeing how things fit together, gaining resonance and coherence as one goes. But I can instance one aspect of how these matters work, as an example perhaps that might stand as a representative for the rest of the experience to be had in reading and assimilating White’s book.

In saying that we are to consider “the lawyer as a special sort of writer,”¹⁴ White prepares us for his further characterization of the law as a kind of literature to which the lawyer contributes and which the lawyer helps to create. Some readers may take this to mean that law, given its basis in language, is susceptible to being given a literary flair. But I take it that White intends his claim to carry us deeper into the media of the law. For example, he wants us to think of judicial opinions as being as much constructed out of words (and passages of words) as are poems. This means that judicial opinions are literary constructs—they are built by an author, and they are meant to be the way they are because of the sequential construction given them by their author. And, too, White wants us to see statutes as one way of establishing the terms of cooperation between the statute’s writers and the statute’s readers (its audience), and to realize that statutes are one possible device for organizing our future experience (and, thus, our futures). All of this leads us to see the law as comprising a vast literature, composed of diverse forms or genres: here a sequence of appellate court opinions; there a series of trials and their transcripts; over there a number of separate statutes, or perhaps a commodious codification of various legal rules (something like the Uniform Commercial Code, deriving both from judicial opinions and from statutory enactments); and yet further along a set of administrative rules and regulations. All of these legal media and linguistic formulations are types of legal material, created by authoritative bodies of the state and its officers and agents. But, then, too, there are private sources of law as well, generated by the work of individual private attorneys laboring on behalf of their clients. So, we also have the opinion letter; the will; the trust deed or indenture; the commercial contract; the real estate sales contract; the warranty deed; the quit-claim deed; and so on. These are the instruments and documents that lawyers use to make their meaning settled and clear; and to effect the actions that their clients wish taken. These documents and instruments are the

ways in which lawyers traditionally have found their voices, managing to say what they mean and mean what they say.

It remains equally true, of course, that a substantial portion of the vitality of such instruments and documents resides in the fact that their initial meaning is not—and cannot be—their eventual or final meaning. Any good contract foresees that an ongoing relationship between the parties to that contract (a lease of real estate, for example, where landlord and tenant are bound to one another for the course of the leasehold) invites, indeed requires, each party to return again and again to the terms of this contractual relationship, renewing or revising those terms and their envisioned relations to the extent that the parties have (and can exercise) the energy, the vision, and the power to enact such renewal and revision. The initial contract continues to live only in so far as it is reinvented and reinvigorated.

How, specifically, does any of this meaningful activity take place? It exists in the actual enactment of meaning within the instrumental or the documentary genres that the Anglo-American common law tradition makes available to us. Law is an activity of making meaning in concert with others through the use and recreation (re-creation) of the forms of law inherited from the traditional linguistic and legal media carried with us, generation after generation.¹⁵

What I discovered, as a young lawyer in Chicago during the 1970s, is that, if we view our legal forms and formulations as literary genres existing within the medium of the law as literature, then it is possible to find vitality within such confines. I do not say that this discovery is necessary or inevitable; only, that it is possible. It happened for me, back then, back there, during those times in those circumstances.

Viewing the law as literature, and taking the contracts that I was being asked to draft, or the wills and trusts that I was seeking to create, as genres within which I had the literary license (and constraint) to make my meaning manifest (and the meaning of my client), the documents lived—and I thrived—as never before in my short career as a lawyer. Perhaps more than anything else, I found that I had been treating the inherited forms of the law (the forms in the form books, the models in the law firm's archives) as though they answered from the beginning the legal problem confronting me. Or, perhaps it is more accurate to say that I had thought of the form as though it were predesigned and predetermined to solve problems that were already known and defined, already fixed and determinate. In such a state of mind, however, there is no actual work remaining for the lawyer to do, because both the problem, and the instrument (or the document) responding to the problem, are taken to be settled. On such a deadened understanding, the instruments or the documents did not require any work or contribution from me, their supposed drafter, because the instruments or documents already were known and finished, before I had even applied myself to the matter at hand. A finished piece of work prior to the application of the artist's

hand is a dead artifact. How can that be humanly interesting, engaging, or enlivening work? Such a conception asks us as lawyers to do essentially nothing.

With the help of White's instruction, and my self-tutelage gained from working through the materials amassed in *The Legal Imagination*, I came to realize that there was no preset or prescribed solution to any legal problem—until I had fashioned it for myself, by myself, out of the materials the law made available to me. The problems posed to me by my clients' affairs and concerns were pressingly real and unresolved, unless I had the professional wherewithal with which to resolve those problems. So I needed to engage with the problems, and with the genres available to me, in a creative way—that is, in a way that created a solution for the problems posed. (I should note, to be sure, that my employing law firm remained a community of colleagues. While my work contributed my voice to the mix, my work in no way overrode or negated the fact that other voices, other selves, would be added to the product of our collective activities as lawyers in league with one another, exercising and expressing our collegial judgements.)

One might think, reading the foregoing, that this is a very modest adjustment in one's view of the law, somehow making old forms come alive out of some mysterious view of the law as a literary enterprise. I can only report what I know (which is limited, I acknowledge). What from one angle can appear to be a modest insight, a very slight alteration or variation of perception, still can mean a lot to the person absorbing that insight or perception. (An analogous situation or experience, perhaps, may be the way in which, in part II of the *Philosophical Investigations*,¹⁶ Wittgenstein asks us to look at a primitive drawing, first as a duck, then as a rabbit; and the ensuing rapid vacillation between those two equally possible ways of reading this primitive figure can seem—can be—revelatory.) What I learned was that it was deadening for me to imagine that the settled forms of the law (settled though they be) already solved the problems of transacting business through a contract, say, or passing title to a house, or devising one's property at death. Instead, it was my business to unsettle the forms and then re-settle them. I came to realize that I could make these things happen for my clients—or fail to happen—only in so far as I designed the document that way, with specific words, and warranties, and promises, or limitations, and caveats, and the like. Nothing happened in the law for me or my clients until I made it happen. And I could make it happen only by using the right words in the correct document in the proper context or circumstances. What made my words the "right" ones, or the document I used the "correct" one, or the circumstances "proper" for my words and actions, was not something already determined prior to my actions in engaging with these materials and fashioning something adequate out of them. All of these deeply normative matters (of rightness, correctness, propriety) were to be divined by me in my individual and independent professional engagement with these matters and materials, always in view of the interests and concerns expressed by my client. The competent legal solution did not exist a priori in these forms or these genres or these

formulations; it could be made manifest only out of what I managed to create through my mastery of these professional means and media.

This was my responsibility, and my professional doing—or undoing. I would have to try it and see where it led me, whether I prospered or failed as a professional.

Learning How to Take Care of What One Has Started

For me, this book was a postgraduate form of education. After law school, this was my introduction to lawyering as an art or craft. I learned the art of adding to the literature of the law in a form that would be simultaneously my own contribution, and yet also acceptable to the profession at large, recognizable by other legal professionals as being a part of the professional literature, an addition or contribution to the law as it exists at the time that one is trying to enter the profession and become a dues-paying member.

What makes such an education possible at this stage in one's life, when one has finished with law school and is trying to make one's way within the profession itself? Or perhaps I should ask, "What makes it necessary"? In my epigram to this essay, I reference a remark by Erik Erikson, which suggests that at a certain stage in life there is a universal human need for coming to some understanding of what one cares about most in life and how one intends to take care of that passion. Erikson calls this need, "generativity."

His is a term of art, so of course it collects meanings and associations in Erikson's work that are out of bounds in this essay. The term does suggest, however, that Erikson is pointing to our human need to generate descendants, people who (or things which) will succeed and survive us, who will carry on our identity and our persona into the unknowable future. Plato famously spoke of our writings as being attempts by human beings to achieve immortality, as our progeny (in a sense). Legal documents and legal instruments, too, reach into the future and outlive their drafter, their creator. Are they an attempt to grasp legal immortality? I wonder.

In this essay, I have been sketching in brief my own journey of generativity. In my case, "generativity" stands for the ability of a person to generate recognizably authentic legal instruments and documents, ones that speak to the difficulties and complexities of life in which the lawyer and his or her clients find themselves. In this regard, finding the ability to generate my own responses to matters presented to me, responses at once individual and also credited (if not always wholly accepted) by other legal professionals, was how I came to fulfill this universal human need in my own career as a lawyer.

This discovery for myself of a way in which to practice authentically a life in the profession of law within the American common law system had several important implications (or consequences). I might try to specify, in closing, what some of

those implications and consequences were, in terms recalling Herbert Fingarette's observation on how a human being comes to take responsibility for something in his or her life: "In truth, acceptance, commitment, concern are aspects of what, from a different vantage point, may be seen as conduct which realizes in the concrete the possibilities defined by the socially given forms. It is, one discovers, a matter of emphasis and not of separate existence."¹⁷

Having gone through law school, I had inherited the "socially given forms" of the Anglo-American common law tradition. But I had not accepted them, I had not realized concretely their manifold possibilities, in my practice of law, until I had struggled with those forms for two years or more, and then had come into fruitful contact with *The Legal Imagination*, with its wonderful yet daunting challenges for its reader.

One consequence was that I came to understand that professional work is still my own work as a person—something that I possess and for which I am responsible—in a way more direct and immediate than I had previously thought. Taking it personally was my way of taking my work professionally. Yes, the law imposes constraints on me. Yes, there are limits to what I, or any lawyer, can do with the law. Yes, I am bound by the conventions, rules, principles, and precedents of our legal system. Yet the same is true of the artist. He too is constrained by his medium of words or paint or plaster or whatever. He too is limited as to what he can do or achieve with his materials. He too is bound by fidelity to the conventions, rules, principles, and precedents, histories, and traditions, of his art, his profession. Still, to say this—any or all of it—is not to excuse us from acting, from having to act effectively as a lawyer or an artist. Rather, it pins us down exactly to our responsibilities to act as a professional lawyer or professional artist does. These constraints, these limits, these bonds, define us exactly, us and our position, from which we must act. The challenge to action, the duty to act, is the same for lawyer and artist: what can he or she do from within this particular set of circumstances and with these materials?

Law as an art implies both that the practice of law bears a certain kind of relation to the media and materials in which it takes place, and that it itself constitutes a kind of human activity, a species of human action. As to these two points, I simply wish to say the following. The relation of the lawyer to his or her media and materials is a reciprocal one, by which I mean that legal materials serve and create (re-create) the lawyer just as he serves and creates (re-creates) them. What these materials are and can become (what they mean) is in part dependent upon what the lawyer makes of them, and makes them be and mean. And vice versa: what the lawyer is and can become (what he or she means) is in part dependent upon what these media and materials make of him or her, and make him or her be and mean. Each unsettles the other, and then seeks re-settlement; this is one aspect of what it means to become, to be, a member of a learned profession.

Before I had read Jim White's book, I had allowed myself to be dictated to by the legal forms I had used. In this respect, I placed myself outside the law. I was subject to its dictates, but I was not one of its initiates; I was not an insider with an insider's knowledge of how things worked within the profession. What seems wrong with the view of law as being a structure of inflexible techniques and tools and rules that one must learn, and then to which one must conform as one learns to manipulate them in argument, is that the law student or young lawyer, on this view, is external to the law.

What is wrong with this view of law is not that it subordinates us to the law in a certain sense—because I think that this implication or suggestion, rightly understood, is accurate. Correctly understood, we are servants of the law, perfect indentured servants working off the indenture we have freely imposed upon ourselves by becoming initiates of the profession. It is bigger than we are—yet it lives through us. We become a contributor by further fashioning and enriching the medium of the law, the institution of the law, of which we are a part.

This form of servitude is not enacted toward a client or the interests of a client, so much as it enacts a form of servitude to a tradition and an institution, a medium of thought and expression. This form of servitude is not the kind of servitude to a client that the “lawyer-as-hired-gun” vision of law implies for the law student or lawyer. Even in its depiction of “manipulation” of the law, one does not gain a sense from the latter of an artist immersing himself or herself in the medium of the law and working from within to fashion a solution to a given legal problem.

White's book portrays the practice of law differently. The voices in which lawyers may speak, and the forms of speech in which their vocables take shape and resonance, are multifarious. White's book seems to me to release to us the knowledge that, most often in a legal dispute, there is a range of acceptable results, a range of acceptable readings or interpretations, a range of acceptable strategies. Not just any expression, and not every instrument, will count as law; not just any remark, or any document, will serve a legal function. But more than one can count as legally recognizable, more than one can serve a legal function. The law does not force you as a student or a practitioner into a straitjacket, unless you yourself insist on trying on such a jacket for size and parading around in it.

This indicates a second strand of White's work that influenced me. His vision of law as an art throws you back on yourself, as the primary or initial (but not the sole or final) touchstone for the adequacy and persuasiveness of your legal judgments. You yourself are the generator and judge of your work as a lawyer. Rightly understood, this thought again increases one's responsibility. The more autonomy over one's work that is permitted, then the more one becomes answerable for everything he or she does.

White's vision of the law places the responsibility for each professional's growth and maturation squarely where it belongs, on his or her own head and shoulders. What can each of us manage to generate from such a position?

¹ E. Erikson, *Gandhi's Truth: On the Origins of Militant Nonviolence* (New York: W. W. Norton, 1968), 395

² J. B. White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little, Brown & Company, 1973).

³ White, *The Legal Imagination*, 110.

⁴ White, *The Legal Imagination*, 111.

⁵ White, *The Legal Imagination*, 111.

⁶ White, *The Legal Imagination*, 111.

⁷ White, *The Legal Imagination*, 112.

⁸ White, *The Legal Imagination*, xxi.

⁹ White, *The Legal Imagination*, xxxiv–xxxv.

¹⁰ White, *The Legal Imagination*, xxxv.

¹¹ White, *The Legal Imagination*, xxxv.

¹² White, *The Legal Imagination*, xx.

¹³ White, *The Legal Imagination*, xxxv.

¹⁴ White, *The Legal Imagination*, 3.

¹⁵ See J. B. White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984).

¹⁶ L. Wittgenstein, *Philosophical Investigations* (Oxford: Basil Blackwell, 1953), II, xi, 193–94.

¹⁷ H. Fingarette, *On Responsibility* (New York: Basic Books, 1967), 13.