Law, Imagination and Poetry

Using Poetry as a Means of Learning

Bald de Vries[*]

> *'Listen closely to the great man talk so sweet,*
> *It's small fish that sea monsters eat'*
> (Reinoud, 2016)

1. Introduction

Law students are taught to develop a problem-solving orientation. Through the case study method, they are presented with a (fictional) scenario from which they distil a legal problem. They subsequently 'solve' the problem by referring to the law in the books – legislation and case law. The particular course they take directs them to the appropriate legal field, be it private law, criminal law, company law or otherwise. We, as lecturers, teach them a technique and how well they have learnt this technique is tested in an examination, with which a course is concluded.
This didactic approach is prevalent in many law curricula and in itself there is nothing wrong with it – it is how black letter law is studied and how the students' analytical competences are trained. Indeed, James Boyd White (1986, p. 155), the American legal and philosophical scholar, refers to this didactic approach as '*a method of exploration and dialectic, a technique for discovering what is problematic in the law*'. But he also laments the way the approach is soon perceived by students as the be-all-and-end-all of studying law; that there is nothing more than this (1986, p. 155):

> The implied contract between the student and teacher shifts focus: our insistence to the student that 'You are responsible for these texts [the law in the books] 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'.

* Dr Bald de Vries is lecturer at the Department of Jurisprudence, Constitutional and Administrative Law of the Faculty of Law (JCAL), Utrecht University, Utrecht, The Netherlands, u.devries@uu.nl.

Although prevalent, it would be a caricature, as White himself admits, of the law school to limit the study of law to this approach only. In many curricula, students also engage in what can be termed reflexive courses on law, such as jurisprudence, legal theory, sociology of law and law and literature. These courses, as I argue with Van Klink (Van Klink & De Vries, 2016) are valuable because they allow students to take a different perspective, enabling students to challenges law's (self-evident) assumptions and foundations. They contribute to developing a critical view on law, showing students that law is embedded in a wider societal and normative framework. Also, as Bleeker (2016, p. 313) writes in *Academic Learning in Law*: 'Framing law as an active and intellectual activity rather than an exercise of reproduction triggers and maintains the student's curiosity'.

Nevertheless, as a lecturer in legal theory, I often hear the complaint from students that these reflexive courses are rather vague (by which students mean abstract). They find it difficult to grasp the theoretical literature, which in my courses relevant for this article includes primary texts in political philosophy. They often find it difficult to recognise the relevance of these texts because they do not teach the law (in the books). These courses and texts pose too many questions rather than providing a clear-cut answer to a particular problem or dilemma. At the same time, many students do acknowledge that in these courses they are 'allowed to think' and 'allowed to have an opinion'. It is up to us as lecturers to show that these courses are relevant and to coach students to deal with the level of abstraction.

To tackle the 'double problem' of vagueness and irrelevance, I conducted an experiment, inspired by James Boyd White, in which students were asked to report on a philosophical text by means of a poem, in which they had to project the essence of the text unto contemporary (world) politics. The experiment had a dual goal: I sought to challenge students to *read* a philosophical text differently with the aim of challenging students to *think* about the text differently, more critically, and analyse its relevance to contemporary problems in (world) politics and law, to discover their own position – their sovereign voice.

The article starts with a description of the experiment (para. 2). It explains the context in which the experiment took place and summarises how students experienced the experiment, also pointing to some of the obstacles I, as a lecturer, encountered. Some of the poems will also be featured. In the second part (para. 3), I seek to draw a theoretical sketch, 'contextualising' the experiment in a broader theoretical framework as to how we can think about studying law and its environment. In the concluding paragraph I highlight, as an aspect for further research and experimentation, the importance of 'subjectification' (finding one's own voice), when it comes to academic learning, of which this experiment is but a minor illustration.

2. The Experiment – 'Small Fish'

The experiment was carried out in a course taught at University College Utrecht, which offers a general arts and science bachelor programme and attracts an international mix of students. I teach a first-year course, *Law, Society and Justice*, attended by first-year students as well as second and third-year students. Many students take the course as a mandatory part of their law track (students must 'major' in at least two tracks, from the humanities, social sciences or science) or as a mandatory part of the double degree programme (in cooperation with the Utrecht school of law), in which they would add a fourth year to their bachelor studies at the law school to also obtain an LLB.

2.1. The Course and Its Readings

Law, Society and Justice uncovers some fundamental issues concerning law, presented in twelve questions. The course is not about the law in the books. It takes a critical perspective about how we can think about law, power, society and justice. In doing so, students study law in the context of other disciplines, in particular political philosophy and social theory.[1] The first part of the course is concerned with questions about law and power, addressing the issue of whether order can exist without law and how law relates to authority. We ask ourselves why societies have something we call law and how it can be conceptualised. The second part concerns questions about the relationship between law and justice. The final part of the course familiarises students with conceptualising society theoretically, using the theory of risk society as an illustration, to show what such a theoretical view on society means for thinking about law, power and justice.

Students meet twice a week for a two-hour seminar during one semester. Each seminar requires that they do the readings, including primary or fundamental texts. In the seminars they are actively involved in discussing and understanding the literature. As part of their assessment, they write papers, give presentations and sit a final exam. There is also a participation grade, based on class attendance, preparation and in-class attitude. To challenge them to do their readings, I set short assignments that they have to e-mail me prior to class. One assignment, for example, may involve, having read an article on informal social control, writing a 100-word reflection on the article, specifically what students gained from the text. (These reflections are then discussed in class.) One other assignment is for them to formulate a (formal) research question or central thesis of a scholarly text, in this case, of Chapter 2 of Locke's *Second Treatise*. Another assignment is to look for articles that offer a critique on the prescribed text.

In the third week of the course, students tell me they are struggling with the texts they have to read. They could distil the essence of the text but struggle with its relevance. And so, three years ago, I came up with the poetry assignment, inspired

1 Such a contextual approach can be complementary to or integrated with a 'traditional' law course; see also Van Klink & De Vries (2016).

by a lecture of James Boyd White – 'Intellectual Integration' (1987), which I will explain further in paragraph 3.

2.2. The Poetry Assignment

For this third week, they have to read – for the first seminar – Chapters XIII, XIV and XVII of Hobbes' *The Leviathan* (original version). I ask them to write a 100-word reflection, which they should e-mail me prior to class. These chapters explain the state of nature and the equality of men (chapter XIII), the right of nature and the laws of nature, and the idea of contract (chapter XIV), the common wealth and the sovereign (chapter XVII). Students could all get the 'message' that a strong state is necessary to put an end to the 'war of every man against every man'. But what is the relevance of this theory? Is it necessarily true? Does the current political landscape seem to suggest this or are we misled? Students struggled with these questions as well as with the question why Hobbes is, at the same time, considered to be a *modern* thinker.

For the second seminar, then, I asked students to read a column by John Gray (2012), 'Hobbes, Our Great Contemporary'. In it, Gray takes issue with Hobbes' idea that political problems, like mathematical problems, 'can be easily solved' and that, in the end, although a modern thinker, rejecting a divine or natural right to rule, Hobbes did not believe in liberty and democracy as ends in themselves. I then asked students to tie the two texts together by way of a poem, in which they were asked to link Hobbes' ideas about law, order and power to our contemporary world. The instruction was as follows:

> Hobbes theory, as Gray points out in his column, is still relevant in today's world, considering the threat to security that seems so imminent in many places of the world, like Syria for example. It is also visible in the rise of authoritarianism, with leaders like Putin, Erdogan and even Trump. When we feel uncertain, insecure and not safe we tend to demand strong leadership and are prepared to give up freedom, as freedom implies per definition uncertainty and hence insecurity.
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> But the call for strong, despotic, leadership may be short-sighted and unwarranted, as this in itself will invariably lead to a new state of uncertainty and insecurity. We may first want to get hold on the actual problem before taking rash measures, like giving up freedom. But how to do this? As we are immersed in academic activity (rather than finding concrete solutions), let's think and write… a poem.

Initially, students were taken aback, as they were drawn out of their comfort zone. Particularly when I told them we would read and discuss the poems in class next seminar. I offered them the choice of handing in their poems anonymously, but in the end, everyone (in the three years that I have done this) had his or her name

on it. Most students (90%) would hand in a poem. I would edit the poems into a volume – a PDF file – which I printed (booklet style) and handed out in class.

2.3. The Poems, and Then…?

My collection of poems over the past three years now totals about seventy. Most of these poems clearly reflect, at least in my view, the themes Hobbes addressed in *The Leviathan*, indicating that students were able to 'translate' these themes into another language, while having an eye for contemporary life. Students referred to Putin or Erdogan, IS, the NSA and surveillance, and even Mark Rutte (the Dutch prime minister) and later also to Trump. A good many poems also stood out for their poetic quality. (However, it is not the end-result that proved to be important but rather the process, to which I turn later.) First, three examples of poems that stood out to me.[2]

SMALL FISH
(Reinoud)

A man sits in a golden tower and foretells of greatness.
Strong he claims to protect us from all the horrors outside the gate.
Walls and work are promised in this Leviathan state.
He promises to release us from the boring and tasteless.

Fake hair and fake news, suddenly politics excites.
We all participate and everything's history in the making.
Yeah that is the pretty truth, our new world is one of fights.
But are you sure it's not us that he's faking?

Listen closely to the great man talk so sweet,
It's small fish that sea monsters eat.

BRICKS
(Eva)

With building blocks, they run across the land to raise
A tremendously strong shield, to protect, secure.
The orders were to make cement, to stiffen
Their insecurities, to keep out what they fear.

2 The copyright of the poems lies with the students, whose written permission I have obtained to feature their poems in this article, including the authorship.

This strength is what they envied,
what they wished to be guided by. So they keep building,
But their worries don't seem to ease.
Their insecurity increases, when they realise
Their control is lost, sucked up by this great wall
That was supposed to protect.

But now the bricks are up, and their freedom,
used as cement, is locked in their construction
They realise, there is no way left to go,
But for this narrow space, defined by the dictator
Of this great big wall.

ELITE
(Gheorghe)

They said that reason over passion rules,
Free world is dangerous, for us fools
We should be controlled, constrained
And liberty should not be treasured or obtained,

They gave a bread and called it meat,
They promised war will not repeat,
While all along we live on streets,
And sing our praise to the elite,
But now, secretly we read at night,
While praying to the lord in fading lights.

It was by means of a conversation with my students that we ascertained how the goals of the assignment were met. This proved to be the most difficult part of the experiment. In the first year of the experiment, we did a reading of the poems but were stuck with what to do next, as if there was no closure to the assignment. Students also indicated that they would have loved to have some comments on the poetic quality of their poems (which I was not able to provide, as poetic quality goes beyond 'taste'). A colleague of mine, an established poet, advised me to give more structure to the readings and to introduce a competitive element. As to the structure, I asked students to discuss each other's poems in small groups of four with reference to the key elements in Hobbes theory they had studied and explain to each other the contemporary examples they had used in their poems. As to the competitive element, my colleague would read the poems next time and pick the top three for poetic quality. The winner would be awarded a copy of Hobbes' *The Leviathan*.

So when I taught the course in 2017 (and last year), we were better equipped to find closure by means of an intense conversation about the poems, their worth and the relevance of political philosophy to an understanding of our contemporary world and the role of law in relation to power. The students also found quite a degree of consensus, or approval, of the top three, selected by my colleague. Furthermore, in informal panel discussions (when evaluating the whole course) most, if not all, students indicated that they had never studied a text so intensely as when they had to write a poem about it. They had taken the assignment quite seriously and felt responsible, owing in part to the vulnerability they had to show in class (exposing their thoughts to one another by way of a poem). They were proud of their poetic efforts and felt a sense of ownership as if they had added a new perspective to the debate.

I started the experiment as a simple idea, as something really fun to do with these groups of students enrolled in a liberal arts degree with a focus on law. And these students are interdisciplinarily focused, in the sense that they obtain different strands of disciplinary knowledge in which they connect the dots. This experiment seemed to transcend the disciplinary approach, both integrating different ways of thinking and challenging students to be vulnerable and to get out of their comfort zones. Perhaps we became aware that something is at stake: our identity and responsibility as citizens and professionals, be it as lawyer or otherwise. The experiment seems to have created a 'larger community' (White, 1987, p. 13), transcending discourses on law, philosophy and literature into something new.

It is this insight I took up to explore and, in doing so, drawing a rough theoretical (speculative) sketch sustaining the experiment.

3. Imagination, Narrative and Integration

We ordinarily understand law as a hierarchical system of different types of rules that govern social interaction at the individual, organisational and institutional level. It enables us to know what to expect in a normative sense and how to hold on to these normative expectations when they are not met (Luhmann, 2004). To understand law better, I would suggest that we must also understand its environment: modern or contemporary society, as there is a necessary operational relationship between law and society. Law serves society so to speak (De Vries, 2016). In this sense, law is the result of dealing with particular societal dilemmas, for example the dilemma of how we want to be governed. Law also rests on conflict: law generates societal conflicts in a particular way and in doing so provides the tools to address these conflicts. We often present this as a technique: the problem is translated into a legal problem, or question, answered by the appropriate legal rules: case resolved, the book can be closed. The 'solution' exists in deciding along the scheme lawful-unlawful. As lawyers, we tend to neglect the scope and nature of the problem and forget to imagine its societal context. The presumption here is that our understanding of society is not self-evident but the result of reasoning about society (or the societal context of a legal problem); we can reason about

power as democratic, autocratic, theocratic, etc. We can think about justice as moral deserts, fairness or welfare maximisation.
Such understanding and reasoning strengthen our thought processes when dealing with legal problems and dilemmas, opening different avenues for explanation, meaning and solution. It comes with theoretical and methodological rigour. It is the stuff of jurisprudence, legal theory, political philosophy and social theory.

3.1. In Defence of Poetry

Imagining is another way of thinking about how things are, can be or ought to be, for example a literary way. The latter is freer and more unencumbered, different from academic reasoning. Indeed, Shelley (2017, p. 635), the great English poet, points to these two types of '*mental action*' – reason and imagination – in his essay *A Defence of Poetry*. Reasoning, according to Shelley (2017, p. 635), is 'the act of contemplating the relations by one thought to another' It suggests a serial line of (logical) argumentation steps towards a particular conclusion. Imagining implies acting 'upon those thoughts, colouring them, leading to the composition of other thoughts', as an act of synthesis, rather than analysis, considering thoughts in their '*integral unity*' (2017, p. 635). Shelley saw in poetry the highest form of imagining, so much so that without poetry, without poets, reason, science and technological invention would not have flourished in the way they have (Hutchins & Adler, 1963, p. 241). Furthermore, in poets he saw the authors of morality and law. It is an elegant thought, and there is merit in Shelley's claim that 'poets are the unacknowledged legislators of the world', considering how we can be drawn to abstract poetic expressions of truth and beauty – to an 'image of life expressed in its eternal truth' (2017, pp. 660 and 640). Does his 'Declaration of Rights' (2017, pp. 557-560) not mirror the sentiment of Locke's Second Treatise (and warn us of the dangers of tyranny)?

> Man! Thou whose rights are here declared, be no longer forgetful of the loftiness of thy destination. Think of thy rights [...]
> *Awake! – arise! – or be for ever fallen*.[3]

Shelley's essay also points to something else. He suggests that imagination is a moral instrument for the improvement of man (Shelley, 2017, p. 642):

> It awakens and enlarges the mind itself by rendering it the receptacle of a thousand unapprehended combinations of thought. Poetry lifts the veil from the hidden beauty of the world, and makes familiar objects be as if they were not familiar.

3 Shelley refers here to Milton, Paradise Lost, 1, 330.

Poetry as a means of moral improvement is perhaps too hard a claim to make, but undeniably, the mental act of imagining, which poetry is, opens up possibilities of thinking about the world (and law) differently – the world that exists is perceived and expressed in a universal metaphorical language – a world of which we are an integral part. In doing so, poetic acts can create 'new materials of knowledge and engender in the mind a desire to reproduce and arrange them according to a certain rhythm and order' (Shelley, 2017, p. 655).

3.2. Intellectual Integration

James Boyd White (1987, p. 1) holds a similar view when he says that poetry can serve as a means '[to integrate] our culture and our minds'. It allows us to cross over so to speak, changing the nature of our disciplinary discourse. The legal discipline, like any other academic discipline, can be seen, as White does (1987, p. 10), as 'a community of discourse organized around its disagreements, its ways of disagreeing as well as its agreements'. The view it creates of the world, he says, is a view from its unique vantage point, with its purposes and aims, questions and methodology. Our findings are uniquely legal and difficult to translate.

It may well be that law students struggle with philosophical texts for this reason; that the 'findings' in these texts are those of the vantage point of philosophy that differ from the vantage point of law. Lawyers and philosophers also differ in what White refers to as the 'intellectual method' (1987, p. 11). Roughly, law is about the distinction between lawful and unlawful, whereas political philosophy (or even jurisprudence) is about power and opposition, just and unjust, or good and bad. Thus, when Thomas Hobbes talks about the state of nature, and the problem it poses (why to be governed and how), law students understand the solution – absolute rule – but struggle to conceptualise the problem and the reasons why Hobbes advocates, so to speak, absolute rule (and what the relevance still is for contemporary society) and how this pertains to law.

Our reflexive courses can be characterised as somehow interdisciplinary – law and philosophy, law and sociology, law and literature, etc. But the danger, as White (1987, p. 12) suggests, is that one disciplinary field 'simply absorbs or takes over another […]. All of them assume that when you put two things together only one is in any meaningful way changed'. In other words, we often use the other discipline instrumentally; we use it for the benefit of 'our own' discipline. White refers to it as a mechanistic picture. But, at bottom it is not un-useful, or so I would argue. To use sociological or psychological insights so as to be able to sharpen our notion of guilt and group behaviour is relevant in the domain of criminal law, for example. Using insights from different theories of justice sharpens our mind as to how law regulates the distribution of 'goods' and 'bads'. The point White makes is whether we can organise these different fields as a whole. This would be possible,

White suggests, if we include in this mechanistic picture the 'individual human mind' (1987, p. 12). What he means is (1987, p. 13) the following:

> If you think of [disciplinary] fields not as terrains or machines, but as communities of discourse, groups of people defined by their willingness to talk in certain ways, the question becomes: what kind of relationships can we establish among these various ways of talking, and the communities they define, and: in doing so, what *larger* community can we create? (Emphasis added.)

I understand this as a challenge for students (and, hence, for us as teachers) to look differently at law and how to study it. White challenges students too when teaching law and literature and have them imagine reading the law as a novel, for example. This is what White means by bringing in the individual human mind and imagination; to ask (1987, p. 14): 'what does it mean to devote your life to speaking such a language, in such forms, and with such voices?' The possibility of integration helps establish one's own voice in the law, a voice that is professionally exceptional and individually sovereign. Imagination and integration are means to develop, as individual students, an individual vision of law, discovering what view to take when confronted with dilemmas, legal or otherwise.

3.3. The Legal Imagination

So how does my experiment contribute to developing a sovereign voice. What makes this assignment so meaningful in understanding texts differently (rather than reading the text closely) in such a way that a student discovers his or her own voice?

White gives an answer in *The Legal Imagination* (1985, p. xiii), where he considers law to be a language, of 'habits of mind and expectations'. Knowing the law is more than knowing the rules and how to apply them. It is rather a 'kind of cultural competence' and its language is rhetorically coercive. It implies that talking about law, or being a lawyer, concerns how to relate to others: 'are other people collapsed into formulas and caricatures or are they treated as independent centers of meaning and value?' (White, 1985, p. xiv). In other words, law mediates in respect of social interactions between and among people in a particular way. Understanding law implies understanding the nature of social interaction, for example through imagination – each case is a story, a narrative.

If White poses the question what it means to devote your life to 'such language', Bruner (2002, p. 12), the American psychologist and cognitive theorist, cites Robert Cover (1983, pp. 4-5), who remarked in his 'Nomos and Narrative':

> No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.

Indeed, Bruner (2002, p. 8) too recognises that narrative, fictional or non-fictional, enables us to give 'shape to things in the real world and often bestows on them a title to reality'. We see this also in the case study method and hence in court. We 'make up' stories and construct narratives based on the facts of a case. So suddenly a huge mobile shovel is depicted as a monster deterring children from coming closer, only because of its menacing roaring presence. Or the shovel, what it does and how it looks, becomes an alluring big toy, irresistible for young children unaware of its dangerous qualities, until it is too late. And the court judges that owing to its qualities, the driver is or is not responsible for ensuing tragedy.[4]
Political philosophical texts have their own narrative and language, which we seek to control and understand. Reading, for example, Hobbes' *Leviathan*, we seek to come to terms with his description of the state of nature, as if it were a folk tale, of a state of war of all against all, where the life of men is 'solitary, poor, nasty, brutish and short'. And we try to understand why life is depicted as such by Hobbes, and for what political philosophical reason? The narrative we, as readers, can construct based on such text is what Bruner (2002, p. 15) refers to as a 'dialectic between what was expected and what came to pass'.
Asking my students to do this by means of a poem allowed them to construct a narrative on their own, adding their own voice to what they have learned and reflected on.

4. Conclusion: Unrecognised Poets

What academic legal learning comes down to, if this rough theoretical sketch is somewhat convincing, is to be able, I would suggest, to look beyond the law and tie in the law with other fields, such as political philosophy, in a way that helps understand the law differently. In other words, we can understand law (better) if we also study it *in the context* of other disciplines such as political philosophy. It calls for a particular didactic concept about which we should think in much more detail (and is for me the topic of further research and experimentation). But being confronted with a group of students whom I sought to engage in a discussion on law and power, reading Hobbes, the idea of poetry just came to mind, more or less out of the blue, as an implicit integration of thoughts I apparently had as to how to engage my students more meaningfully.
Thus, the 'trick' I used to bridge the two fields of knowledge – to integrate them – is to read philosophy differently, not as a lawyer but as an individual human mind, using poetry as a tool; to poetise or versify the essence of a philosophical text. I do not mean to say that this is only way to read and study a text; obviously not. Rather, it is a tool to help students overcome a sense of uncertainty and insecurity when confronted with a text of another discipline. It also helps them to find a sovereign voice.

4 Based on the so-called Shovel case – Laadschoparrest – decided by the Dutch Supreme Court, 25 September 1981 (HR 25-09-1981, NJ 1982, 254, VR 1982, 29).

I think that we, as lecturers in law, do find it important that law students are more than being able to know and apply the law; that they are aware of how law relates to its environment (and vice versa) and how law rests on decisions about what the right thing is to do. In other words, following Biesta (2013, p. 4), law students have to 'come into the world', mastering the act of freedom and responsibility, as (potential) legal professionals and as human beings. Qualification and socialisation are not enough; '*subjectification*' (to be able to become a person in the world – to be emancipated and free, with the responsibility this implies) is important too (Biesta, 2013, p. 4).[5] Imagination can contribute to the development of the reflexivity needed for this. Poetry can be used as a didactic tool for this pedagogy. So, to conclude this discussion, one more poem, which can be illustrated by the work of Craigie Horsfield, Broadway 14th day 18 minutes after dusk (2012). Picturing too can serve this purpose.

EITHER

"Trade some freedom for safety and now you have neither,
we can make the war on terror end!
For the usual in return, there's privacy to lend"
But those who trade Liberty for Freedom deserves neither

Hacking and spying, all for the greater good
Our Leviathan, the NSA, is merely misunderstood
Reading emails to keep towers from falling
But who hears the voice of Liberty calling?

5 Biesta's pedagogic theory is outside the scope of this article but underpins, philosophically, my view on education, in which we teach students not merely to become lawyers, qualified and socialised to fit the realm of legal practice but also to become free and responsible adults, able to deal with the world and its challenges.

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