# Reading, Writing, and Imagining the Law: Using James Boyd White's Theories as an Approach to Analyzing Legal Rhetoric

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Scholars from both law and communication express growing interest not only in ways practicing attorneys make arguments but also in bringing a rhetorical perspective to the reading of legal texts. Although his many books and essays describe the complexities of language, culture, and rhetoric as related to the practice of law, James Boyd White also brings a useful rhetorical perspective to the reading of legal texts. White's scholarly work, which spans over four decades, has inspired a number of academic books and published articles, even though scholars have paid limited attention to White in the last ten or twelve years. For example, the 1991 *Rhetoric Society Quarterly* special edition devoted entirely to his work includes contributions from White himself as well as philosopher Eugene Garver and communication experts William Lewis, John S. Nelson, Joseph Dellapenna, Kathleen Ferrell, and Leigh Holmes. White's perspective on rhetoric and law also provides a conceptual basis for the anthologies *The Rhetoric of Law* (Austin Sarat and Thomas R. Kearns, editors, 1996) and *Law's Stories: Narrative and Rhetoric in the Law* (Peter Brooks and Paul Gewirtz, editors, 1998).

This year, the International Society for the History of Rhetoric will hold its biennial conference in Bologna; the conference organizers have chosen "Rhetoric and Law" as the theme for this meeting. Given that one of the most important professional organizations in rhetoric has chosen "Rhetoric and Law" as a key subject for rhetoricians around the world, this essay seeks to make a timely contribution to a conversation on this subject, first by revisiting some of White's work and, second by showing ways to apply White's rhetorical approach to different legal

discourses. Specifically, White offers several questions that a rhetorician can use as a heuristic for analyzing a variety of legally and legally-related texts. Whereas White himself has applied his ideas to genres specific to the legal profession, I show how scholars can use him for other kinds of legal rhetoric necessarily occurring outside the courtroom. To illustrate White's value in such instances, the last section of this essay presents a rhetorical analysis of Abraham Lincoln's "Dred Scott" speech as an example of legal rhetoric in a public arena.

**Rhetoric and Imagination/Rhetorical Imagining/Rhetorical Imagination**

J.B. White's theories have given rise to the *law and literature* movement, and as Ian Ward explains, White stands as its most committed advocate (6). White and other scholars explain that law and literature can be described as either law *in* literature or law *as* literature. Law *in* literature considers the potential or possible relevance of literary texts, especially those texts telling a legal story (e.g., Kafka's *The Trial*), as artifacts worthy of legal scholars' attention (Ward 3). Law *as* literature, on the other hand, is the application of the techniques of literary criticism to legal texts (Ward 3). Ward argues that a complementary relation exists here, stating that "it is not always possible to sharply delineate the two approaches" (3). Ward notes, though, that law *as* literature clearly emerges as White's primary interest (7).

White's perspective on law as literature suggests that one can read legal documents, treatises, and even constitutions just as he or she reads poetry, prose, or drama. In numerous instances, he parallels a process of reading legal texts with a process of reading literature; he analyzes literary masterpieces ranging from Sophocles' *Philoctetes* to the Platonic dialogues, such as the *Gorgias*, to John Keats's "Ode on a Grecian Urn" to Jane Austen's *Emma* – all these among others. White argues that when one reads text, he or she envisions the world the writer has created, and by doing so, the reader is engaged in a process of imagining. He contends that

lawyers and judges can approach legal texts in a similar way. The speaker of a poem imagines the world in a certain way, and he or she wants to "think of the flower…the bird…the butterfly…as being like him, as actors with feelings with which he can identify—feelings of safety, danger, sympathy with others, feelings that will confirm the reality and importance of his own. He tries, that is, to imagine nature as a world of fellow feeling" (White, "Imagining the Law," 31). In short, the speaker of a legal text also imagines his or her world much like a speaker of a poem or a character in a play. Imagining, as White describes it, also encourages the legal practitioner to see the profession as a culture of argument and as an inherently rhetorical enterprise.

In the essay "Imagining the Law," from *The Rhetoric of Law* (1996), White distinguishes between "law as machine" and "law as rhetoric" by arguing that the legal profession has privileged the former thereby overlooking the law as first a social and linguistic endeavor. While White does not necessarily seek to displace "law as machine" with "law as rhetoric," he encourages members of the legal profession to consider law as an activity of speech and imagination occurring in a social world ("Imagining the Law," 35). In other words, instead of thinking of law as a social machine or a technical system of regulations and applying its rules in a mechanical way, lawyers should reflect upon the law as an interaction of authoritative texts and as a process of legal thought and argument ("Imagining the Law," 55). By asking the legal profession to consider law as rhetoric, White emphasizes the socially constitutive nature of language. "Law as rhetoric," therefore, represents a critique of law as machine: the view and subsequent practice of law as only a system of rules and regulations that lawyers and judges mechanistically apply to cases. In *When Words Lose Their Meaning*, White makes this point by claiming that "the law is best regarded not so much as a set of rules and doctrines or as a

bureaucratic system or as an instrument for societal control but as a culture, for the most part a culture of argument. It is a way of making a world with a life and a value of its own" (267).

In continuing this exposition, White juxtaposes the "rhetoric of writing law" and the "rhetoric of reading law." He explains that the "rhetoric of writing law" requires attorneys to imagine situations, roles, actors, and contingencies when drafting legal instruments. In drafting a marital separation agreement, for instance, a lawyer must ask his or her client to realize the limits to a given situation. In other words, a person simply will not obtain everything he or she wants in a settlement; moreover, White argues that the lawyer should ask the client to recognize that "essential fairness is important to both sides" and that such an agreement cannot resolve every issue or address every possible pitfall or shortcoming (40).

White, however, uses the marital separation agreement example to illustrate something much more fundamental to his theory. He argues that the agreement does not simply stipulate rules the parties will either obey or disobey; it creates roles for husband and wife, even, in some cases, "gives them lines to say" (41). This process of imagining speakers, roles, situations, constituencies, and contingency becomes integral to writing any legal text (e.g., statute establishing an administrative agency, a Supreme Court opinion, or a business contract). White then asks his intended audience of lawyers (possibly law students) a battery of questions:

> How will the text define the various actors it speaks about and what relation among them will it create? Will the text specify every contingency, or will it grant lawmaking and fact-finding power subject to general standards? What are the consequences of one form over another? How indeed will the text try to see to it that the parties continue to regard it as the relevant authority? For all the provisions of the document are wasted unless they are consulted. (41)

He concludes this section of this particular essay by declaring that "the person doing a good job of drafting the document engages in an activity of the dramatic imagination" (41). The lawyer

must ask him or herself how the "language might be used, or abused, by one of the parties or another, how it will function as a charter for this set of human relations" (41). Here, White's questions also provide lawyers and law students with a heuristic. Law students, for example, learning to write legal documents can use these questions in drafting different legal genres (e.g., contracts, appeals).

White argues that the "rhetoric of reading law," like the "rhetoric of writing law," also becomes "inherently an act of imagination" because deriving meaning from any text requires the reader imagine the world and its actors; the act of reading also necessitates imagining both the text and the context from which it emerged (42). In using the U.S. Constitution as an illustration for the "rhetoric of reading law," White notes that only imagining the U.S. Constitution as a "set of authoritarian commands" results in a "highly legalistic and time-bound way to think of this document and, in an extreme form, utterly impossible to live with" (41-2). He suggests that U.S. citizens can conceive of their constitution more than one way and that "competing possibilities" exist for interpretation. He raises the possibility that U.S. citizens can "imagine the framers of the Constitution as creating a document full of ambiguity and uncertainty, in the confidence that other people—those given roles, places, and occasions of speech by this document—will later resolve the meaning of this language wisely" (42). He goes on to mention that in the historical context of imagining the U.S. Constitution, its framers argued over whether or not it should serve as a contract among the states thereby representing a compromise among actors "still present on the scene" (42). However, one can also imagine the U.S. Constitution as a "kind of mystical document, composed not as a matter of political compromise by still existing states, but as a unified expression of political wisdom by the Framers, of sanctified memory, who spoke for a

momentarily unified people" (42). In short, White says that a person, in his or her reading of the document, can imagine the U.S. Constitution in multiple ways.

Narrative represents another dimension to White's conception of imagining the law. In "Telling Stories in the Law and in Ordinary Life," from *Heracles Bow* (1985), he relates the cultural and legal significance of narrative while characterizing it as a primary way of structuring experience and constituting meaning (169). The story, as White explains, always carries with it linguistic and intellectual ramifications; a lawyer, for example, relates stories about other people and other situations in competition with other lawyers' stories with the understanding that each narrative lacks completeness (174). He contends, however, that narrative in legal discourse has broader implications in that an "array of competing stories drives the listener to the edge of language and of consciousness, to the moment of silence where transformation and invention can take place and a new story, perhaps in a new language, can be told" (174). The narrative manifests one's imagination/imagining, and it becomes important for engaging the rhetorics of writing and reading law.

In considering White's ideas and how his ideas might result in a framework for rhetorical analysis, one might recognize similarity between White's imagining and, for example, Kenneth Burke's dramatistic pentad particularly as related to White's continual references to "roles" and "actors." White, however, only references Burke in passing and draws no real connection between his ideas and imagining the law as rhetoric. Regardless, White's emphasis upon roles, actors, and narrative becomes quite comparable to Burke's thoughts on scenes, agents, and agencies. Furthermore, White's imagining might remind one of Burke's consubstantiation achieved through identification – particularly when White describes the relationship between

writer and reader or specifically the reader and the writer's or speaker's text. Such comparisons give way to thinking of White's theories as a lens for rhetorical criticism.

**Language and Culture or Language/Culture**

In *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (1984), White's paramount concern, as his title strongly suggests, lies in how languages constitute cultures – the "social universe," as he terms it. Several scholars who contributed to the 1991 *Rhetoric Society Quarterly* special edition point to *When Words Lose Their Meaning* as perhaps White's most seminal contribution because it "announces" White's method of rhetorical and cultural criticism (Dellapenna and Farrell 38). Eugene Garver explains that White dichotomizes language as either literary or conceptual (or poetic and scientific); according to Garver, White contends that "words lose their meaning when language becomes conceptual or scientific" (2). Scientific, conceptual language is instrumental because it becomes an instrument for accomplishing some end outside itself; furthermore, people use language to further purposes, including their own (Garver 2). White suggests that using language instrumentally, however, suggests a failure to acknowledge the humanity lying at the heart of law as a linguistic endeavor.

In the first chapter of *When Words Lose Their Meaning*, White poses the following questions about language:

1.) How is the world of nature defined and presented in this language?

2.) What social universe is constituted in this discourse, and how can it be understood?

3.) What are the central terms of meaning and value in this discourse, and how do they function with one another to create patterns of motive and significance?

4.) What forms and methods of reasoning are held out here as valid? What shifts or transitions does a particular text assume will pass unquestioned, and what does it recognize the need to defend? What kinds of arguments does it advance as authoritative? What is the place here, for example, of

> analogy, of deduction, of reasoning from general probability or from particular example? What is unanswerable, what unanswered? (10-12)

White goes on to say that his interest lies in the expectations that govern the way people use words in present-day interactions with one another and the way people have historically perceived of language and its uses in their respective cultures. For instance, he asks what might constitute an insult to an Achaean warrior or how should an English gentleman be sensitive to matters of delicacy. White summarizes his overall goal by describing the world of language that

> . . . mediates between the languageless within and the languageless without. But I do mean to direct attention to the fact that, whenever we speak or write, whether we know it or not and for good or ill, we contribute to the creation of culture, and we do so both in the way we reconstitute our language and in the relation we establish with the other person who is our reader. Every way of reading is a way of being and acting in the world. (*When Words Lose their Meaning* 21)

White remains ultimately concerned with how language constitutes a subculture (e.g., the legal disciplinary culture) and how that culture influences society. In other words, he concerns himself with not only language but also "what lies beyond it"; White explains his interest "in the ways in which worlds of meaning and value are constituted by people as they speak and write—in knowledge of another kind—and in these processes the lines between value and fact and reason cannot be rigidly maintained" (22). White wants to know the consequences of using language but also what happens when language cannot maintain the boundaries between fact, reason, and value.

While one might label White a philosophical constructivist or social constructionist, he explains, however, in his essay, "Reading Law and Reading Literature: Law as Language" from *Heracles Bow* (1985), that making all meaning the function of community becomes problematic for two reasons, stating that one "version of the statement is wrong, another meaningless." (He also states, in *When Words Lose their Meaning*, that he does not wish to suggest all questions

become questions of language.) First, making all meaning the function of community suggests that if its members can create whatever meaning they wish from a text – be it a legal treatise or regulatory document or a great work of literature – then the idea assumes that the particular text does not affect the community of readers. In other words, readers cannot arbitrarily redefine the purpose and/or identity of a specific text. White notes, for example, that "no one would confuse the Fifth Amendment to the United States Constitution with the Public Utility Holding Company Act of 1935" ("Reading Law and Reading Literature" 99). The text itself has power outside of the community in that each text carries with it a distinct meaning and quality.

Second, White argues that no single community member can necessarily refuse to acknowledge the validity of any interpretation of any text and yet claim his or her own view as reasonable (99). In "Reading Law and Reading Literature," he distinguishes between two different types of communities, and he explains that these communities are faced with differing constraints. On the one hand, he argues that the view that meaning derives from community fails to acknowledge distinctions between various types of communities; for example, a group starting a business, founding a college, or "planning a clambake" sees itself free "to do whatever it will with its own" (99) whereas on the other hand, another community might see itself as "bound by external fidelities or authorities" (99-100). White indicates that the members of some communities may be restricted by the "meaning of corporate documents or university statutes or of the customs regulating certain ritual observances, or of a literary text" (100). More than once, he makes it clear that meaning is not solely derived from the linguistic negotiations of community members, and moreover, he claims that this view negates a very valuable distinction between these two different kinds of communities.

**Using White's Approach to Rhetorical Criticism**

In considering how White can inform approaches to rhetorical criticism, it is important to recognize that he has inspired at least one theoretical perspective in the rhetoric of law. Marouf Hasian explains the assumptions underlying "critical legal rhetoric," assumptions that represent one attempt, at least in part, to apply White's theories to legal texts. Hasian notes that critical legal rhetoric assumes that legal formalism, the antithesis of a rhetorical perspective of law, denies the constitutive nature of judicial rules and norms (4). In addition, empowered elites "profit from the denial that law is rhetorical," and furthermore, many other possible views of justice and equity have necessarily lost out or been cast aside (4). Hasian also explains that a "vernacular voice for those alternative views" and the "supposed misinterpretations of laws that are written by laypersons" should possess as much legitimacy as the "correct rulings in judicial opinions" (4-5). The philosophical underpinnings of critical legal rhetoric can help guide scholarship in this area as researchers attempt to illuminate arguments in legal texts as well as uncover arguments missing from, for example, formal judicial opinions.

Critical legal rhetoric becomes one way in which White's theories can help inform studies of legal rhetoric; however, scholars can also look to White's texts themselves for guidance in conducting their studies. In April 2009, at the Association for the Study of Law, Culture, and Humanities Conference in Boston, Mercer University Law Professor Linda Berger described how her approach to analysis

> . . . follows an approach suggested by James Boyd White, for whom rhetoric is "the central art by which community and culture are established, maintained, and transformed." As a way to analyze a legal text and to provide a basis for comparing one analysis to another, White proposes the following:

> First, examine the inherited context underlying the text: what is the language or culture within which this writer is working? what is the writer's role and background? how does that affect the kind of language, authority, values, arguments, and materials the writer will use?
>
> Next, study the art of the text: how has the writer used, modified, or rearranged the language or culture that was inherited? what effect does the reworking have? is the writing internally coherent? is it externally coherent?
>
> Finally, describe the rhetorical community created: what kind of person is speaking here? to what kind of person? what kind of voice is used? what kind of response is invited or allowed? where do I fit in this community?
>
> The first of these questions is primarily a historical and cultural analysis (context); the second is primarily a literary analysis (close reading); the final question is primarily an ethical one. In working through a White analysis, the reader learns that the interaction of law and culture is "a way in which the community educates itself over time."

Berger's summary of White is very useful because it helps define how scholars can adopt methods and approaches to rhetorical analysis inspired by his theories. I would only add to Berger's discussion White's imagining and imagination, which are critical for applying his theories in efforts to develop approaches to rhetorical analysis.

In *When Words Lose Their Meaning*, White explains that the reader's conception of a relationship between him or herself and the writer is the first step in analyzing text; however, he cautions against making judgments about texts and cultures at "the purely conceptual level" because "these judgments are not purely rational or logical" (13). White hopes, though, to establish gradually a common language "in which generalization is possible" (13). He summarizes his basic idea by stating that "in each text the writer establishes a relation with his or her reader, a community of two that can be understood and judged in terms that are not bound by the language and culture in which the text is composed; this community can become a basis for judging the writer's culture and his own relation to it. . . ." (13-14). The rhetorical critic should

ask the same questions that White poses in his first chapter of *When Words Lose Their Meaning*. How is the world of nature defined and presented in this language? What social universe is constituted in this discourse? How can that social universe be understood? What are the central themes of meaning and value in this discourse, and how do they function with one another to create patterns of motive, significance? What forms and methods of reasoning are assumed valid? What kinds of arguments are advanced as authoritative? But when engaging in rhetorical analysis, the scholar cannot neglect another important facet of White's thinking. Imagination or imagining plays a vital role in conducting analyses according to White's theories. As a result, other questions might include:

- How has the writer or author imagined his or her "social universe"?
- What contingencies has he or she envisioned or ignored?
- What roles do the actors play in the writer's imagining or imagination?
- How does the critic, as a reader, view the text? The writer? The writer's culture?
- What is the speaker's narrative? Do multiple narratives exist?

These questions represent the beginnings of a heuristic the critic can use for analyzing texts according to White's theories. The following section presents a case for rhetorical analysis of one of Abraham Lincoln's speeches, a speech that has received little scholarly attention. His "Dred Scott Speech" of 1857 reflects his particular imagining of the law through narrative, rhetoric, and language that constitutes a social universe.

**Imagining Abraham Lincoln's 1857 "Dred Scott Speech"**

Upon his master's death in 1843, slave Dred Scott petitioned the Missouri Circuit Court for his freedom, arguing that he had lived in the free state of Illinois for three years (Ronald White, *A. Lincoln* 234). Scott lost the first trial but won a second trial in 1850 when the court

ruled that a slave was considered free once he left Missouri (234). His former master's widow, however, appealed the court's decision to the United States Supreme Court in December 1856 (234). Attorney Montgomery Blair agreed to represent Scott for no fee, and in doing so, he argued before the Court that Scott's master had emancipated Scott by taking him into Illinois and the Louisiana Territory, near present-day Minneapolis-St. Paul, between 1833 and 1838 (234).

In February 1857, the Court began hearing oral arguments in *Scott v. Sandford*, and one month later, it ruled against Scott by a 7 to 2 margin (Ronald White 236). In his reading of the decision, Chief Justice Roger Taney, who voted with the majority, cited the following:

1.) Blacks are long regarded as inferior to and unfit to associate with whites.
2.) The U.S. Congress's presumption of authority to exclude slavery from the federal territories was unconstitutional (e.g., Northwest Ordinance of 1787).
3.) Scott was and would always be a slave according to Missouri state law. (Ronald White 236)

Stephen Douglas, Abe Lincoln's longtime political adversary, argued in support of the Court's decision on June 7, 1857 at the U.S. District Court House in Springfield, Illinois. He contended that Scott could not be a U.S. citizen because he descended from slaves, and moreover, Douglas denied that the Declaration of Independence "pledged equality for African-Americans" (Ronald White 238).

According to Ronald C. White, Lincoln "was roused" by Douglas's speech and spent two weeks preparing his response by studying at the Illinois Supreme Court's library (238). He read the justices' written opinions, paying particular attention to the dissent of Associate Justice Benjamin Curtis (238). (McLean was the other dissenting justice.) After "thorough and thoughtful preparation," Lincoln spoke publicly at the Illinois statehouse on June 26, 1857 (Ronald White 238).

J.B. White says that court cases require lawyers and judges to imagine, for example, the experiences of plaintiffs, defendants, police officers, and judicial officials as well as imagine the major texts brought to bear in the case (e.g., Bill of Rights, U.S. Constitution) and the court's role in interpreting that text ("Imagining the Law," 48). In addressing *Scott v. Sandford*, Lincoln, a lawyer, imagines the experiences of both Dred Scott the slave and the slave experiences of the black race:

> All the powers of earth seem rapidly combining against him. Mammon is after him; ambition follows, philosophy follows, and the Theology of the day is fast joining the cry. They have him in his prison house; they have searched his person, and left no prying instrument with him. One after another they have closed the heavy iron doors upon him, and now they have him, as it were, bolted in with a lock of a hundred keys, which can never be unlocked without the concurrence of every key; the keys in the hands of a hundred different men, and they scattered to a hundred different and distant places; and they stand musing as to what invention, in all dominions of mind and matter, can be produced to make the impossibility of his escape more complete than it is. (404)

Lincoln imagines the slave experience by constructing a narrative depicting the slave locked in a prison behind "heavy iron doors" and "bolted in with a lock of a hundred keys, which can never be unlocked without the concurrence of every key." Here, he suggests that the Dred decision becomes only the latest indicator of the pejorative nature of the slave experience; by painting a vivid picture with language, Lincoln impresses upon his audience the impossibility of the slave's escape.

Lincoln also connects such images to physical *and* spiritual forces, or the "dominions of mind and matter," committed to the slave's incarceration. His reference to *mammon* alludes to two different significant literary works, both of which would be familiar to nineteenth-century American audiences. First, *mammon* evokes New Testament scriptural passages in which Christ cautions against serving two masters: "No servant can serve two masters: for either he will hate

the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and *mammon*" (Matthew 6:24, Luke 16:13). In summarizing his knowledge of the Bible, Susan Martinez explains that Lincoln

> . . . had a better command of the Bible than most of his sanctimonious (and inaccurate) critics. From his mother's earliest indoctrination, he knew many verses of scripture by heart, enjoyed reciting them out loud, and never hesitated to publicly avow his acceptance of fundamental truths in the Bible. In private, however, Lincoln continued to scoff at Christian clerics, commenting bitterly on the preachers and their followers, who, pretending to be God-fearing Christians, "yet by their votes demonstrated that they cared not whether slavery was voted up or down." In short, he gleaned from the Bible its wisdom, and ignored its defects and dogmas. (49)

That Lincoln would choose the word *mammon* deliberately becomes a very viable proposition given his sensitivity to Biblical scripture. And by alluding to Christ's words, Lincoln implies that this particular master and servant relation has disrupted the spiritual realm; that is, those committed to the slave's incarceration clearly serve money and wealth, not God. Second, the *mammon* reference also appears in John Milton's *Paradise Lost*, a work Americans of the day would also likely know:

> Mammon led them on –
> Mammon, the least erected Spirit that fell
> From Heaven; for even in Heaven his looks and thoughts
> Were always downward bent, admiring more
> The riches of heaven's pavement, trodden gold,
> Than aught divine or holy else enjoyed
> In vision beatific. By him first
> Men also, and by his suggestion taught,
> Ransacked the centre, and with impious hands
> Rifled the bowels of their mother Earth

> For treasures better hid.
>
> Soon had his crew
>
> Opened into the hill a spacious wound,
>
> And digged out ribs of gold . . . (*Paradise Lost*, Book i, 678-690)

Milton's words depict *mammon* as a demon offering temptations of gold and wealth causing men to commit heinous acts. Lincoln's one-word reference, on the other hand, conjures a variety of images ranging from hypocritical slave owners to those falling out of favor with God to mythical demonic figures causing men to succumb to avarice.

Using J.B. White's theories in a close reading of Lincoln's "Dred Scott Speech" helps to bring about a unique understanding of this artifact. First, the speech reveals Lincoln's imagining of a social universe in which slaves suffer the most oppressive and restrictive incarceration; he achieves this imagining through vivid linguistic depictions that create specific mental pictures. He also imagines a universe in which complex political, economic, and legal forces have kept the slave imprisoned in a cell with virtually no hope of escape. In addition, Lincoln envisions contingencies and actors in this story; he refrains from specifically naming one person or group, but he nevertheless encourages the audience to see their leaders as responsible for falling victim to greed even to a point of asking them to view slave proponents as falling prey to demonic temptation. Finally, the reader or critic can begin to see the culture of the time through Lincoln's narrative. His reference to *mammon*, for instance, aids the critic in understanding the culture of the time and, specifically, the context in which Lincoln gave this speech.

Another pertinent example from Lincoln's speech lies in his remarks addressing his opponents' view of the Declaration of Independence and the rights of blacks. He explains that Chief Justice Taney "admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not

intend to include negroes, by the fact that they did not at once, actually place them on an equality with the whites" (405). Lincoln's response effectively illustrates how he imagines the authority of the Declaration of Independence:

> I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal – equal in "certain inalienable rights, among which are life, liberty, and the pursuit of happiness." This they said, and this meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. (405-6)

The passage not only shows the obvious conflict between Lincoln's view of the law and the view of his opponents, but it also reveals differing imaginings over the *intent* of the law. Again, Lincoln constructs a narrative in which he gives a voice to the framer's to build his case. In other words, he explains what the authors of the Declaration meant by "All men are created equal…" but he must also relate their experiences in making an argument about intent:

> The assertion that "all men are created equal" was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, not for that, but for future use. Its authors meant it to be, thank God, it is now proving itself, a stumbling block to those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should re-appear in this fair land and commence their vocation they should find left for them at least one hard nut to crack. (406)

Lincoln argues that the Declaration's authors had experienced, or borne witness to, the negative effects of the growth of the British Empire, and to guard against prosperity breeding tyrants, they posited that "all men are created equal" to protect people from the "hateful paths of despotism." The argument requires that Lincoln imagine, not only the authority of the Declaration, but also the authors' experiences that resulted in the statement "all men are created equal."

**Conclusion**

This brief study of Lincoln's speech exemplifies how scholars can use White's theories in pursuing the rhetoric of law. Furthermore, it also illustrates how critics can apply his ideas to artifacts other than traditional legal genres; this case offers a close reading of Lincoln's speech regarding a significant U.S. Supreme Court decision, thereby showing how the critic can apply White's theories to discourses other than those native to the legal profession (e.g. written judicial opinions, legal briefs). In this speech, Lincoln imagines the Dred decision by taking the law out of the courtroom and situating it in a public arena, thereby providing a different kind of legal rhetoric suitable to the actors in the case, the time, and a non-mechanistic approach to legal language.

The value of James Boyd White's work lies in the multiple dimensions in which he asks scholars to consider text. In the "Dred Scott Speech," one can see how Lincoln has told the story of slavery in the U.S. and imagined the social world of his time as well as how he has considered contingencies and the different actors representing those contingencies. That is, White's theories encourage the reader to take into account all of these factors in thinking of law as a linguistic and rhetorical enterprise. The artifact only becomes one instance of "law as rhetoric" in a wider realm of the legal profession as a culture of argument. Rhetoricians should continue, therefore, to

pursue his ideas and consider how White can inform close readings of legal rhetoric taking place both inside and outside the courtroom.

## Works Cited


Berger, Linda L. *Association for the Study of Law, Culture, and Humanities Conference*. Suffolk University Law School, Boston, MA. 2 April 2009. "King Solomon: Narrative, Metaphor, and Trial Court Judges with Discretion."

Dellapenna, Joseph W., and Kathleen Farrell. "Law and the Language of Community: On the Contributions of James Boyd White." *Rhetoric Society Quarterly* 21.3 (1991): 38-58. Print.

Garver, Eugene. "He Does the Police in Different Voices: James Boyd White on the Rhetoric of Criminal Law." *Rhetoric Society Quarterly* 21.3 (1991): 1-10. Print.

Hasian, Marouf, Jr. *Legal Memories and Amnesias in America's Rhetorical Culture*. Boulder, CO: Westview Press, 2000. Print.

Lincoln, Abraham. "Speech at Springfield, Illinois [The Dred Scott Speech]." *The Collected Works of Abraham Lincoln, Book II*. Ed. Roy Basler. New Brunswick: Rutgers University Press, 1953. 398-410. Print.

Martinez, Susan. *The Psychic Life of Abraham Lincoln*. Pompton Plains: New Page Books, 2007. Print.

Ward, Ian. *Law and Literature: Possibilities and Perspectives*. Cambridge: Cambridge University Press, 1995. Print.

White, James Boyd. "Imagining the Law." *The Rhetoric of Law*. Eds. Austin Sarat and Thomas R. Kearns. Ann Arbor: The University of Michigan Press, 1996. 29-55. Print.

---. "Reading Law and Reading Literature: Law as Language." *Heracles Bow: Essays on the Rhetoric and Poetics of the Law*. Madison: The University of Wisconsin Press, 1985. 77-106. Print.

---, "Telling Stories in the Law and in Ordinary Life: The *Oresteia* and 'Noon Wine.'" *Heracles Bow: Essays on the Rhetoric and Poetics of the Law*. Madison: The University of Wisconsin Press, 1985. 168-191. Print.

---. *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community*. Chicago: The University of Chicago Press, 1984. Print.

White, Ronald C., Jr. *A. Lincoln*: *A Biography*. New York: Random House, 2009. Print.