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## Acts of hope. James Boyd White, *Acts of hope: creating authority in literature, law, and politics*

### Abstract

I approached writing this review with a measure of anxiety. James Boyd White is a friend whose encouragement and hospitality I have much reason to be grateful for. His is a generous and punctilious intellect, and as a scholar he models courteous and decent behaviour to his juniors as well as his peers. He is also without question the scholar who has thus far done most to advance interdisciplinary scholarship in law and humanities in the 'main stream' of the legal academy and the legal profession. That said, we work in different traditions: his the liberal humanist; mine the feminist poststructuralist. And so we judge and value differently. Which is to say that I disagree with many of his conclusions in this collection of essays, and almost all of the volume's assumptions and methodology. And thus that reviewing *Acts of Hope* in an ethical manner loomed as a knotty problem, for Boyd White's hope and my transformative politics are not two sides of the same coin, but insigne of radically different degrees of satisfaction with the present dispensation, and with those men - many of them, like Boyd White, decent, democratic, thoughtful men - who in the main speak and write the law.

# Acts of Hope

JAMES BOYD WHITE, *ACTS OF HOPE: CREATING AUTHORITY IN LITERATURE, LAW, AND POLITICS*

*Penny Pether*

I approached writing this review with a measure of anxiety. James Boyd White is a friend whose encouragement and hospitality I have much reason to be grateful for. His is a generous and punctilious intellect, and as a scholar he models courteous and decent behaviour to his juniors as well as his peers. He is also without question the scholar who has thus far done most to advance interdisciplinary scholarship in law and humanities in the 'main stream' of the legal academy and the legal profession. That said, we work in different traditions: his the liberal humanist; mine the feminist poststructuralist. And so we judge and value differently. Which is to say that I disagree with many of his conclusions in this collection of essays, and almost all of the volume's assumptions and methodology. And thus that reviewing *Acts of Hope* in an ethical manner loomed as a knotty problem, for Boyd White's hope and my transformative politics are not two sides of the same coin, but insigne of radically different degrees of satisfaction with the present dispensation, and with those men — many of them, like Boyd White, decent, democratic, thoughtful men — who in the main speak and write the law.

Two things finally made that task possible. The first was the subtitle of this, Boyd White's most recent book. It suggested to me that Boyd White and I are talking about two different things when we talk about the law — his focus is authority; mine power, in all its postFoucaudian possibilities.

The second was the history against which I read the book. I began it as the Australian press reported on the latest of a wave of scandals which have beset the US military establishment — Tailhook, Okinawa, and finally Annapolis — and the evidence of unregenerate institutionalised corruption

with which residents of New South Wales are uncomfortably familiar. I finished it against the horror engendered by Pauline Hanson's blinkered, ingrained, terrifyingly unselfconscious and ill-informed racism, and as the (unsuccessful) Republican candidate for the U.S. presidency apparently took a leaf out of the Howard Government's book on immigration and race in a last-ditch attempt to woo middle America. Boyd White and I both are, I think I am correct in saying, appalled by such manifestations of our culture. But we read them differently. The difference is that he conceives of them as aberrations; I as a current norm. He sees the potentially transformative rhetoric of those members of a well-educated elite in positions of authority as enabling 'a ... collapse of confidence in the language of the larger culture.... and by doing so to open up new possibilities of thought and life.' I see that the rhetoric of the Mabo decision and the history — before and after — of race relations in this country tell us nothing except that the price of cultural reconstruction is eternal vigilance, and that (hate) discourse has consequences.

Boyd White's description of his project in this collection of essays is to explicate or at least exemplify — and the distinction is a critical one — the 'art' which would 'appropriately recognize ... and resist ..., claim ... and create ...' claims to authority, and thus to enable us to distinguish between good and bad authority. The volume's opening with a reading of the *Crito* is signal, for *Acts of Hope* is the text of a participant in a master-class in liberal humanist ethics, remarkable evidence of what Ian Hunter has described as English Studies' mission of 'ethical self-shaping,' 'constructed around the teacher-student dyad. For Boyd White the way to read the *Crito* is 'not as a string of propositions but as "literature,"' that is, 'with an eye to possibilities of meaning richer and more complex than the propositional; ... in part in the hope of being instructed in the falseness of the way we habitually distinguish between' the philosophical and the literary.

The principal difficulty with the text, read on its own terms, and thus leaving aside its acontextual reading strategies and its unselfconscious assumptions about the universality of its perspectives, its assumptions about the discoverability of coherent textual meaning and about what 'literature' might be, is that Boyd White nowhere explicates his method or accounts for his magisterial readings of his texts: by Plato and Shakespeare, Hooker and Hale, Austen and Dickinson, the U.S. Supreme Court, Lincoln, and Mandela. *Acts of Hope* is, then, itself an exercising of moralised intellectual authority which implicitly sees its kind of practice, modelled on the discourse of the common law adversary trial and the wise and fair judge (so effectively problematised by Peter Goodrich), as a better kind of authority

than that constituted by 'positive law'. I have trouble in telling any essential difference between them, although I might approve of particular examples of the exercising of both kinds of power more than others. But then — with apologies to Mandy Rice-Davies — I would, wouldn't I?

But there are things to be admired in this volume. Boyd White's intellectual strength is akin to Frank Kermode's. He evinces a familiarity with and sometimes engages with the various technologies in use in the humanities and human sciences which are included under the umbrella of 'critical theory'; unlike Kermode, however, he does not explicitly articulate his reasons for rejecting them, although this reflects disciplinary and cultural differences rather than constituting a wilful or negligent omission. In this text, too, as elsewhere in his writing and teaching, he goes a significant way to 'establish the value of thinking and talking about what we ought to be and do collectively, as a polity, and not merely as individuals; to establish, that is, the legitimacy of discourse about the nature of just community.' I suspect, too, that this erudite and wide-ranging master-text might speak more clearly and effectively to those who are I suspect its intended audience, lawmakers in democracies at home and abroad, than it does to me.

And it is in Boyd White's explicit discourse of community, which elides populace and polity, muffles the discordant cadences of women and people of colour, that the underpinning faith which engenders his hope for authority resides: in the glorious democratic fiction which is 'the legacy America,' 'always, somehow, bafflingly out of reach. This fiction becomes most stretched and threadbare in Boyd White's final chapter, which juxtaposes readings of Mandela's dock speech and Lincoln's second inaugural address, is forced into its contexts and into history, and when we consider the voices of power, of dissonance, and of persuasion which clamour in the 'popular' culture so notably absent from this volume, and which constitute modern nations increasingly productive of despair.