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# "After The Final No There Comes A Yes": A Law Teacher's Report

**Margaret Jane Radin**

For the past five or six years I have included six poems by Wallace Stevens in the readings for a required first-year law course. They are the only poems I teach in the course.

Thomas Grey's thoughtful essay<sup>1</sup> raises a seemingly unlikely question. Should Stevens's poetry be considered part of the legal canon? Do his poems possess legal authority? That in answer some kind of a "yes" or "maybe" might seriously be considered may at first surprise even the Stevens fans among legal academics. Yet why do I have the firm intuition that the poems are useful, relevant, important for law students to know? Why do they strike me as somehow deeply law-related?

Professor Grey's question about poetry and legal authority prompts me to reflect upon and try to clarify my intuitions about law and Wallace Stevens. I share these reflections because those whose interest is aroused by Professor Grey's question might possibly be interested also in one personal and partial answer: how one teacher has found Stevens essential in one practical legal context, the training of law students in the ways of legal thought. So I offer this report from practice.

## I.

Let me first confess that the required first-year course I will talk about is not Contracts, Torts, or Property, but rather, Law, Language and Ethics ("LL & E"), a course that was introduced at the University of Southern California in the curricular reforms of the 1960's.<sup>2</sup> Though LL & E does not fit any traditional pigeonholes, if it has to be labeled it is an unorthodox jurisprudence course.

Now some traditional lawyers might think, "Aha! Of course, poetry is just as much related to law [by which they mean, the practice of law in the real world] as is jurisprudence: not much." But the point of LL & E

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1. Grey, *Steel Against Intimation: The Motive for Metaphor of Wallace Stevens, Esq.*, 2 Yale J.L. & Humanities 231 (1990).

2. My materials are M. Radin, *Words and Values: An Introduction to Jurisprudence* (unpublished manuscript 1988) (copy on file with the author). My materials owe a debt to the text of the course's founders, W. Bishin & C. Stone, *Law, Language and Ethics* (1972). I owe a debt as well to the unpublished course materials of Michael S. Moore. I brought Wallace Stevens into the LL & E canon.

is to show that jurisprudence broadly construed is the center of the law, not the periphery, to show that practical legal culture's traditional dismissal of intellectual culture is wrong. Rightly understood, and well practiced, law cannot do without an understanding of how it is permeated and shaped by its intellectual context. Law, language, and ethics are deeply linked. The education of practicing lawyers should include the problems of metaphysics, epistemology, and moral philosophy,<sup>3</sup> not just because it is desirable to ornament legal technicians with a veneer of humane letters, but because lawyers truly, practically, cannot practice law well without an understanding of these interconnections. Traditional legal education has often left students on their own to find these interconnections. The good lawyers, if they were indeed good lawyers, always did so, although mostly implicitly and tacitly. LL & E takes on the responsibility of teaching explicitly the intellectual interpenetration of law and philosophy and the practical importance of this interpenetration.

Many law students begin as naive legal positivists and philosophical foundationalists. These students are predisposed to think they will function professionally as technicians bound by rules. ("Legal decision is following the rules authoritatively laid down; rule-application is self-evident when the rule and particulars are juxtaposed; we lawyers are not concerned with rule-creation.") Many other law students begin as naive legal realists and philosophical skeptics. These students are predisposed to think they will function professionally as manipulators of the system at their clients' wishes. ("Legal decisions depend upon what the judge had for breakfast; the justifying rhetoric is completely manipulable, and merely papers over decisions made on essentially arbitrary grounds or subjective political convictions; we lawyers are not concerned with the goodness of legal decisions.")

The mission of LL & E is to show how both positions, naive legal positivism and naive legal realism, ironclad foundationalism and brute skepticism, are out of step with the intellectual tenor of our times. There are certainties (for here and now) and there is always a potential openness of meaning. Equally, the mission is to show why both naive positions are morally bankrupt. Neither the lawyer as rule-applying technical functionary nor the lawyer as crafty rhetorical manipulator conceives herself as a morally responsible actor. Each can say, "I only do what they tell me to." The lawyer as agent in this sense is not a moral agent.

Students are perhaps superficially attracted to the amorality of these positions, yet their better selves are not. (I trust that they have better selves that are not.) The mission of LL & E is to make it possible for students to realize (to make real for themselves) that they must embrace moral responsibility for their actions in practicing and [re]creating the

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3. See Bishin, *Law, Language and Ethics*, 38 S. Cal. L. Rev. 499 (1965).

law, and that neither foundations and formal rules nor skepticism and cynical distance can insulate them from never-ending moral dilemmas.

Moreover, this condition of ever-present moral dilemma and potential openness of meaning should be embraced, for unless we do, it is hard to see how we can lead unalienated lives as lawyers. As long as one is committed to moral agency as central to one's humanity, one cannot wholeheartedly accept a self-conception either as a helpless rule-implementer or as a cynical hired gun. If either of these images does describe oneself *qua* lawyer, then the rest of oneself, one's deeper self, must shrink from one's work as a lawyer. One must either relinquish one's humanity or resign oneself to alienation—a condition in which the self is estranged from the work through which it strives to express and create itself. My hope of finding a way to make possible a life of integrity in the law is what motivates me, in LL & E, to try to disabuse students of both naive formalism and naive legal realism.

## II.

But what does this have to do with Wallace Stevens? Like the gentleman who spoke prose without realizing it, many beginning law students do not know they have philosophical positions. Stevens can lead us to know it. Stevens can lead us to how knowing feels: what it feels like to recognize our philosophical commitments, what it feels like to be committed to positions that paradoxically conflict, what it feels like to change our philosophical commitments. He allows us to affirm our yearning for the formally complete, yet also affirm our experience of essential incompleteness, without falling into an impotent skepticism. He allows us to find a pragmatic way of affirmation.

### A. *Theory And Ontology*

In a section of the course materials entitled "Existence of Facts: Is There Something Out There at All?" I present excerpts from Thomas Kuhn<sup>4</sup> and Richard Rorty,<sup>5</sup> as well as two Stevens poems: "The Ultimate Poem Is Abstract"<sup>6</sup> and "Description Without Place."<sup>7</sup> The task here is for people who are naive philosophical realists—people who "know" there must be metaphysical foundations—to come to understand the implications of Kuhn's and Rorty's pragmatism. Rorty urges that no objects are out there independent of us, waiting to be found. What there is is somehow dependent upon our conversation about what there is. Our conversa-

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4. T. Kuhn, *The Structure of Scientific Revolutions* (2d ed. 1970).

5. R. Rorty, *Philosophy and the Mirror of Nature* (1979).

6. *The Collected Poems of Wallace Stevens* 429 (1980) [hereinafter CP]. (Copyright 1954 by Wallace Stevens. Subsequent excerpts from Stevens's poetry reprinted by permission of Alfred A. Knopf, Inc.)

7. *Id.* at 339.

tion cannot be grounded.<sup>8</sup> Similarly, Kuhn denies that there are natural objects which pre-exist our theories and which it is the task of theory to describe accurately.<sup>9</sup> Kuhn takes the typical pragmatic position that later scientific theories are “better” than earlier ones because they are better at solving certain puzzles our life situation presents to us, not because they better correspond to “reality.”<sup>10</sup>

What can the student who is tacitly committed to foundationalism make of this? It is one thing to understand an argument superficially, almost as a curiosity, separate from oneself and one’s own web of beliefs; it is another thing to understand deeply, feeling reverberations for one’s own being. Deep understanding is a kind of conversion. To “see” what the change of philosophical view from foundationalism to pragmatism must mean takes a kind of conversion experience, a kind of epiphany. The new view means that we see always and only through paradigms, through our theories and descriptions. It means that the distinction between appearance and reality, between seeming and being, must break down. The understanding of truth as correspondence to a pre-existing reality must give way to an understanding in which our theories and our ontological commitments (what “things” there “are”) are intertwined and shifting.

1. *“It is a world of words to the end of it”*

Epiphanies do not happen upon demand. But they seem to happen more often with poetry than with philosophical prose; poetry can often move us to a deeper understanding. I turn to Stevens because he grants me an epiphany about the connection between our words (conversation, theory) and our reality (metaphysics, what there is), and it turns out that what he grants me he grants many of my students as well. I think the lesson of Kuhn and Rorty is one possible reading to be found in “Description Without Place,” though it is a poem of many complexities. In the opening lines, we can think, for example, of the paradigm shift from the Ptolemaic to the Copernican universe:

It is possible that to seem—it is to be,  
As the sun is something seeming and it is.

The sun is an example. What it seems  
It is and in such seemings all things are.<sup>11</sup>

“What it seems/It is”: Apollo crossing the sky in his chariot; or a hot

8. See R. Rorty, *supra* note 5, Part III.

9. See T. Kuhn, *supra* note 4, at 206 (“There is, I think, no theory-independent way to reconstruct phrases like ‘really there’; the notion of a match between the ontology of a theory and its ‘real’ counterpart in nature now seems to me illusive in principle.”)

10. *Id.* at 35-42; 205-06.

11. CP, *supra* note 6, at 339.

body circling the earth; or a small star anchoring a minor planetary system; or something else. But in order to be, the sun must seem to be *something*—must have a place in one of our paradigms. The alternative to seeing in one paradigm is not some kind of isolated fixed vision, but rather seeing in another paradigm.<sup>12</sup> And as the sun, so too everything that is—"in such seemings all things are."

Later the poem speaks of description as "A little different from reality:/ The difference that we make in what we see." Paradoxically, we both can and cannot understand there to be a "reality" different from what we see. We are drawn to the notion of a pure reality separate from us, as we are drawn to postulate metaphysical foundations, yet even these notions must depend upon the words in which we formulate and know them. At least, Stevens says, we are not to be dismayed by the theory-ladenness of everything, by the difference that we make in what we see. Rather we should take joy in it. Description is revelation, reconciliation, the logos at the beginning of the world.

Description is revelation. It is not  
The thing described, nor false facsimile.

It is an artificial thing that exists,  
In its own seeming, plainly visible,

Yet not too closely the double of our lives,  
Intenser than any actual life could be,

A text we should be born that we might read,  
More explicit than the experience of sun

And moon, the book of reconciliation,  
Book of a concept only possible

In description, canon central in itself,  
The thesis of the plentifullest John.<sup>13</sup>

We are profoundly theory-building creatures. We should affirm and not deny the connection between our nature as theory-makers and our world as theory-laden, between our nature as word users and our world as word-dependent. If "all that is solid melts into air,"<sup>14</sup> we should let our

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12. See T. Kuhn, *supra* note 4, at 128 (The alternative to seeing a swinging stone as a pendulum "is not some hypothetical 'fixed' vision, but vision through another paradigm, one which makes the swinging stone something else.")

13. CP, *supra* note 6, at 339.

14. K. Marx & F. Engels, *Manifesto of the Communist Party*, in *The Marx-Engels Reader* 473, 476 (R. Tucker 2d ed. 1978).

recognition of this word-dependent insolidity permeate our conceptions of ourselves and our world.

Thus the theory of description matters most.  
It is the theory of the word for those

For whom the word is the making of the world,  
The buzzing world and lipping firmament.

It is a world of words to the end of it,  
In which nothing solid is its solid self.<sup>15</sup>

## 2. "*Helplessly at the edge*"

It is frightening to give up the notion of a mind-independent unchanging objective reality, and it is frightening to give up the correspondence theory of truth. It makes students angry at first even to be asked to try to understand the philosophical commitment that denies these things. So I bring in "The Ultimate Poem Is Abstract," read as a commentary on coherence theory. (In coherence theory our beliefs are not tested one by one against an external reality, but rather hang together as a whole; I sometimes refer to coherence as the theory that everything is everything.) Why do we, or some of us, find the everything-is-everything theory profoundly unsatisfying? Maybe because we cannot "see" everything at once, cannot comprehend any one thing in all its relationships to everything.

It is an intellect  
Of windings round and dodges to and fro,

Writhings in wrong obliques and distances,  
Not an intellect in which we are fleet: present  
Everywhere in space at once, cloud-pole

Of communication. It would be enough  
If we were ever, just once, at the middle, fixed  
In This Beautiful World of Ours and not as now,

Helplessly at the edge, enough to be  
Complete, because at the middle, if only in sense,  
And in that enormous sense, merely enjoy.<sup>16</sup>

Maybe we cannot quite give up foundationalism, even though we can no longer take literally the notion of an unmediated reality different from our descriptions. But even if—or in those moments when—we can yield up

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15. CP, *supra* note 6, at 339.

16. *Id.* at 429.

our mythological foundations, we still cannot be at the center of the web of words. We cannot gather everything into an order, even if it is only the order of the moment. In other words, we cannot achieve complete coherence. (If we could, for Stevens that would be the ultimate poem.)

### B. *Discourse And Perception*

Many beginning law students assume that there is a world of hard facts out there waiting to be observed. Especially for the naive legal positivist, hard facts are needed to plug into the formalist equation: Rules + Facts = Decision. In the formalist equation, both rules and facts must be found objects, not malleable creations dependent upon who is observing them and the process of observation. Logical empiricism appeals to these students; they find intuitively appealing Bertrand Russell's ontological commitment to the existence of raw sense data. But the naive commonsensical view that sense data are just there for the witness to observe is dangerous for lawyers. Lawyers need to know that the idea that there is a canonical set of facts out there for us to perceive is mythological, even if it is a myth that common sense cherishes, and even if frequently for good reason.

Lawyers need to know that perception is an active process, always dependent upon the person doing the perceiving and the social construction of the context in which she perceives. Perception depends upon [pre]conception. We tend to see what will make sense to us in light of our conceptions and in light of what we expect to see. Perception can also depend upon educational and class background, one's job or profession, and much else.<sup>17</sup>

Lawyers need to know that the level of generality under which a situation is perceived matters, and that there is no canonical way to choose the right level of generality. A general description of an accident (for example) will make it foreseeable and support tort liability. The more the unique details are seen as part of the "facts" of the case, the less the accident will appear foreseeable. Which details should be included in the description of the "facts" is not dictated to us by the "facts" themselves. If a statement by a witness is thought to be the kind of generalization that is normal in daily life, it will be an admissible statement of "fact"; otherwise it will be an inadmissible "conclusion." The level of generality of the witness's testimony does not simply announce itself to us as fact or conclusion.<sup>18</sup>

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17. See, e.g., E. Loftus & J. Doyle, *Eyewitness Testimony: Civil and Criminal* (1982); J. Marshall, *Law and Psychology in Conflict* (2d ed. 1980).

18. In one case, two boys who were struck by a car while crossing from the center divider to the edge of a divided highway wished to testify that the driver of a bus that was stopped next to the divider had "motioned us to cross." This was stricken as a conclusion. The boys could only testify that "he were [sic] moving his hand diagonally faster to the east curb than he was to the west curb." *Smith v. Bocklitz*, 344 S.W.2d 97, 99 (Mo. 1961). I am fond of asking my students which statement they think was more directly a report of the witness's perceptions, and which one they think required an



## 1. "To be without a description of to be"

To present the conflicting views on whether or not there can be elementary, immediate sense data, I present excerpts by Bertrand Russell<sup>19</sup> and Norman Malcolm.<sup>20</sup> (I might just as well use John Dewey's argument against elementary sense data instead.<sup>21</sup>) Russell postulates the existence of elementary sense data, moving spots and planes of color, that we perceive and construe into objects. Malcolm, a follower of Wittgenstein, argues that for humans there is no seeing that is not "seeing as" something relevant to our situation. "We perceive people under mental descriptions (as impatient, sad, affectionate) and we respond accordingly."<sup>22</sup> Moreover, we cannot reduce mental to physical descriptions. When we perceive someone as elated, that is not reducible to a perception that her step is a fraction of a second quicker than usual and her smile some millimeters wider. Mental descriptions and "seeing as" are response patterns that make us human rather than something else.

What is the searcher after objectivity and certainty to make of our inability to escape from "seeing as"? It may seem that we are in bondage to the influences that have formed our perceptual biases, so that we simply cannot trust that what anyone sees is "really" there. I present "The Latest Freed Man"<sup>23</sup> as an opportunity to reflect on what it would be like if we really were able to receive unmediated elementary sense data. If we could be rid of our filtering "descriptions," our shaping "doctrines," perhaps we would be "freed."

It was how the sun came shining into his room:  
 To be without a description of to be,  
 For a moment on rising, at the edge of the bed, to be,  
 To have the ant of the self changed to an ox  
 With its organic boomings, to be changed  
 From a doctor into an ox, before standing up,  
 To know that the change and that the ox-like struggle  
 Come from the strength that is the strength of the sun,  
 Whether it comes directly or from the sun.  
 It was how he was free. It was how his freedom came.  
 It was being without description, being an ox.

Would we really wish to have the ant of the self changed to an ox? Would we really wish to be without description? Perhaps we can understand this yearning, understand the source of the mythology of unmediated sensory

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inference or conclusion.

19. B. Russell, *The Problems of Philosophy* (1912).

20. N. Malcolm, *Problems of Mind* (1971).

21. J. Dewey, *Experience and Nature* ch. III (2d ed. 1929).

22. N. Malcolm, *supra* note 20, at 100.

23. CP, *supra* note 6, at 204.

experience, yet at the same time willingly accept that we are doctors, not oxen; we are doctors and cannot ever be without doctrine. But perhaps our acceptance cannot be so willing. Clearly we are missing something if these moments of breakthrough to what seems like unmediated reality—the moments that poets evoke, the moments that make us wish we were poets—do not happen to us from time to time.

## 2. "The A B C of being"

When we give up naive foundationalism, and when we give up the view that objective facts are out there waiting to be found, we may find ourselves pulled toward skepticism, toward naive legal realism. We cannot be without doctrine, and we may feel that what doctrine we have is contingent and arbitrary. But although we may feel the skeptical pull, we should not let skepticism become a permanent resting place. Thorough skepticism denies our humanity by denying the possibility both that we can conceive a better world and that we can act so as to make progress toward achieving it.<sup>24</sup>

It is not enough, then, merely to accept that we cannot ever be without doctrine. We must learn to criticize our doctrines. When we "see as," we incorporate preconceptions that we may come to see as prejudices. We incorporate a political and social construction of reality that is an old description of the world. Through criticism and political struggle we may come to see that the old description is in need of change.

Some men see young women "as" provocative. Some whites see young blacks "as" menacing. This seeing is just as "really there" for the beholder as any hard fact or object. Yet, because of the struggles of the oppressed, we are coming to understand that it is a seeing that must be questioned. I raise these issues by presenting materials on race and perception (including the case of Bernhard Goetz<sup>25</sup>), and gender and perception (including work of Catharine MacKinnon<sup>26</sup> and Martha Minow<sup>27</sup>). Goetz shot four black youths in a New York City subway who he believed were attempting to rob him. Was Goetz justified in shooting if he honestly perceived young blacks "as" menacing? Some men have sexual intercourse with women who are saying no, under circumstances in which the men believe no means yes. Are these men rapists if they honestly perceive women "as" consenting? How do we know when our perceptions, real

24. In a passage that I include in the final segment of LL & E, Hilary Putnam argues in this way against relativism. See H. Putnam, Reason, Truth and History 119-24 (1981). See also Hilary Putnam's recent remark that pragmatism walks a "knife edge" between essentialism and skepticism. Proceedings of the Symposium on "The Renaissance of Pragmatism on American Legal Thought" (forthcoming in the 1990 Southern California Law Review).

25. *People v. Goetz*, 68 N.Y.2d 96 (1986); see Carter, *When Victims Happen To Be Black*, 97 Yale L.J. 420 (1988).

26. C. MacKinnon, *Feminism Unmodified* (1987).

27. Minow, *Foreword: Justice Engendered*, 101 Harv. L. Rev. 10 (1987).

and direct though they seem to us, should be discounted because they foster complacency and help us hide oppression or subordination of others?

One way to understand stereotypical “seeing as” is to see it as objectionable metaphor: a woman “is” a sex object; a black man “is” a menacing person. I bring up “The Motive for Metaphor”<sup>28</sup> to consider whether and how metaphor might be objectionable.

The obscure moon lighting an obscure world  
Of things that would never be quite expressed,  
Where you yourself were never quite yourself  
And did not want nor have to be,

Desiring the exhilarations of changes:  
The motive for metaphor, shrinking from  
The weight of primary noon,  
The A B C of being,

The ruddy temper, the hammer  
Of red and blue, the hard sound—  
Steel against intimation—the sharp flash,  
The vital, arrogant, fatal, dominant X.

Sometimes the obscurity of metaphor provides comfort to oppression. Under cover of “seeing as” we need not quite express the relationship of oppression and we need not see ourselves as the oppressors we sometimes are. We may desire the exhilarations of changes, seeing our situation in various ways, yet always shrink from a hard truth, the truth from the perspective of the other, the truth written on the bodies and souls of those who are hurt merely by how we see them.

Professor Grey writes, and I agree, that Stevens knows that even if we wish to get rid of metaphor we cannot. The intimation and the steel are not just opposed but forever intertwined. We are creatures of metaphor to the core. We are doctors, not oxen. We can never be without doctrine, without description that makes a difference in what we see, nor should we want to be. At the same time, I read Stevens to say that we cannot, or cannot always, accept this condition with complacency. We can embrace our nature as creatures of the word, and our world as a world of words to the end of it, and yet not rest content with the descriptions, the doctrines, the metaphors we now possess. Sometimes—and only situated judgment can tell us when—we must be suspicious of what we are hiding. Even the A B C of being, the vital, arrogant, fatal, dominant X, is our construction. (Perhaps Stevens uses letters, the tools of our word-building, to remind us once more that it is a world of words to the end of it.) In order to change that X we must not shrink from seeing it nor find excuses not to name it.

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28. CP, *supra* note 6, at 288.

### C. *Affirmation Without Foundations*

When foundationalism fails, the two available alternatives seem to be skepticism and pragmatism. We know what skeptical lawyering and skeptical politics look like, and it is not an optimistic picture. In spite of the considerable body of recent work linking law and pragmatism,<sup>29</sup> we are not sure what pragmatic re-imagining would be like. I think it can be more optimistic.

In my view we must relinquish the traditional form of the ideal of the Rule of Law, without thinking that the only alternative is arbitrary political power.<sup>30</sup> We must relinquish the formalist equation and the notion that judges and lawyers merely passively apply all-inclusive pre-existing rules, without thinking that the only alternative is unchecked personal discretion. We must relinquish the idea that Truth or the Good is out there waiting to be found, without thinking that we cannot judge things as better or worse. We must understand that judgment is an activity that takes place in particular cases, and that we cannot substitute a wholesale theory of judgment for the myriad acts of judgment that make up the legal world.

To conclude LL & E I present materials I think are suggestive of a pragmatic reconstruction of law, including Robert Cover's "Nomos and Narrative"<sup>31</sup> and Duncan Kennedy's "Toward a Critical Phenomenology of Judging."<sup>32</sup> On the next-to-last page of the materials we read "Connoisseur of Chaos,"<sup>33</sup> and on the last page, "The Well Dressed Man with a Beard."<sup>34</sup> I hope these poems bring home that, although we should not deny the skeptical impulse, we need not take the skeptical way. We can affirm our responsibility, and our ability, to [re]create a better law.

#### 1. *"An old order is a violent one"*

In "Connoisseur of Chaos" Stevens says that the old order, the old construction of the world, is soothing but procrustean, and hides its violence and alienation. We cannot return to the old dichotomies of subject and object, fact and value, reason and emotion.

After all the pretty contrast of life and death  
Proves that these opposite things partake of one,  
At least that was the theory, when bishops' books  
Resolved the world. We cannot go back to that.

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29. See, e.g., Grey, *Holmes and Legal Pragmatism*, 41 Stan. L. Rev. 787 (1989); Stick, *Can Nihilism Be Pragmatic?*, 100 Harv. L. Rev. 332 (1986); Hantzis, *Tort Adjudication as Corrective Justice: A Pragmatic Justification for Tort Law* (forthcoming 1990 in Mich. L. Rev.)

30. See Radin, *Reconsidering the Rule of Law*, 69 B.U.L. Rev. 781 (1989).

31. Cover, *Foreword: Nomos and Narrative*, 97 Harv. L. Rev. 4 (1983).

32. Kennedy, *Toward a Critical Phenomenology of Judging*, in *The Rule of Law: Ideal or Ideology?* 141-67 (A. Hutchinson & P. Monahan ed. 1987).

33. CP, *supra* note 6, at 215.

34. *Id.* at 247.

The squirming facts exceed the squamous mind,  
If one may say so.<sup>35</sup>

That an old order is a violent one is only half of the truth, as Stevens says, for at the same time, "A great disorder is an order." If we seek not "the" truth, in theory, but many smaller truths, as we need them, we can, at least if we are "pensive," find a different kind of order.<sup>36</sup> It will not be the closed eternal order of dichotomous theoretical categories, but rather the open and time-bound order of discovery and growth. Pluralism and change are our best and only enduring order.<sup>37</sup>

2. "Out of a thing believed, a thing affirmed"

In "The Well Dressed Man with a Beard" we are reminded that the world depends upon our affirmation, our will to believe. Yet we are reminded that the skeptical impulse will always recur. The poem ends, "It can never be satisfied, the mind, never." Like Descartes, we can deny everything, but like him, we must find something to affirm if we are to continue.<sup>38</sup> We can remake our world but we must start somewhere; we must take something as infallible, as given.

If the rejected things, the things denied,  
Slid over the western cataract, yet one,  
One only, one thing that was firm, even  
No greater than a cricket's horn, no more  
Than a thought to be rehearsed all day, a speech  
Of the self that must sustain itself on speech,  
One thing remaining, infallible, would be  
Enough. Ah! douce campagna of that thing!<sup>39</sup>

Affirmation keeps things going: "The form on the pillow humming while one sleeps,/The aureole above the humming house . . ." In order for the world to keep humming along, we must keep conceiving it. We can change the way we conceive it, but we must recognize that we are conceiving it.

I see the beginning and ending of this poem as cyclical: we are pulled toward skepticism, and back again to affirmation. So I choose to use its

35. *Id.* at 215.

36. *See id.* at 216 ("The pensive man . . . He sees that eagle float/For which the intricate Alps are a single nest.")

37. I imagine this is the vision Robert Cover meant to invoke by using the first three lines of this poem as the epigraph to *Nomos and Narrative*, *supra* note 31:

A. A violent order is disorder; and  
B. A great disorder is an order. These  
Two things are one. (Pages of illustrations.)

38. Indeed, perhaps Descartes can be seen as the "Well Dressed Man with a Beard" of Stevens's title.

39. CP, *supra* note 6, at 247.

beginning as my ending, and in my last lecture leave my students with Stevens's words: "After the final no there comes a yes/And on that yes the future world depends."

### III.

Though my report from practice is ended, there is a little more to say about Professor Grey's question. What should we make of categories like "legal authority" and "legal canon" and the question whether Stevens is "inside" or "outside" them? In one sense, I have put six poems in the legal canon just by making them part of legal education. But of course the question is deeper. It seems that common sense tells us that poetry is not law, that law is constitutions, statutes, appellate precedents, administrative regulations. These things are the canon, these things possess legal authority. But it also seems that this common-sense view may be an old description of the world that is now problematic.

In a talk that Professor Grey recalls,<sup>40</sup> I cautioned against any easy metaphorical equation of law and literature, because of its tendency to obscure the violence of the law. Authoritative poetry can change our lives, but we are privileged to resist its invitation. Authoritative regulations command, not invite. They can take away our money, our source of livelihood, our personal liberty, and even our lives. Resistance is only very rarely an option.

And yet: the common-sense view seems inherited from positivism with its sharp separations. The central teaching of any pragmatic anti-positivist view is that there can be no bright line between law and not-law. The Constitution, for example, because it "constitutes" the polity, consists of more than the words on the document. The words would be meaningless without everything else in our moral/political culture that gives them their constitutive meaning. Some of the other things that make the Constitution what it is can be other written texts, like the Declaration of Independence, but some are unwritten basic premises of our moral and political world, like the principle of one person, one vote. Our other important documents and our unwritten basic premises all take meaning from the way we understand (and continue to reconstruct) the historical events surrounding the Founding and other salient points in our history. Statutes, regulations, and other common-sense legal artifacts are not authoritative in some way separable from their meaning, and their meaning is dependent on their entire social context. There is no place where the legal canon ends and the wherewithal for understanding it and acting upon it begins.

And yet, again: the pragmatist understands that we are not cloudpoles

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40. Radin, "Musing on Metaphor," delivered to the AALS Section on Law and Humanities, January 1989 (commenting on a talk by James Boyd White).

of communication. Even if everything is everything, we cannot grasp all of the picture at once. We must have some procedures, some categories, some everyday understandings of which things are close to the center of the map we are working on and which things are more peripheral. Though poetry is not irrelevant for the meaning and authority of law, there may be things more urgent to pay attention to than poetry in most specific cases where we seek to know what the law requires of us.

Thus my report comes down to the fact that I have found Stevens's poetry closer than other poetry I know to the center of the context we need in order to understand law in the best way available to us and do legal work as well as we can. The only answer I can give to Professor Grey's question—and it is a pragmatic answer—is that for me Stevens's poetry is in the legal canon because it functions, better than any other texts I could find, to make possible a deep understanding of the paradoxical intellectual structures we receive and create in the course of trying to know and practice law.