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Patrick McKinley Brennan

The College of Law at Arizona State University

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MEANING'S EDGE, LOVE'S PRIORITY

Patrick McKinley Brennan*

THE EDGE OF MEANING. By *James Boyd White*. Chicago and London: The University of Chicago Press. 2001. Pp. xiv, 301. Cloth, \$25; paper, \$17.

The god did not exist; but all the cosmic and psychic forces, the attractions, the passions which took shape in him, the idea which the artist and his contemporaries conceived of him — all that was *present* in the statue, not in a physical sense but *in alio esse*, in another mode of existence, and after the manner of the presence of knowability. For the statue had been made precisely to make all that known, to communicate it. In our museums, this pagan content is asleep, but it is always there. Let some accident take place, an encounter with a soul itself sensitized by some unconscious content: contact is established; the pagan content will be awakened and will unforgettably wound that soul.

— Jacques Maritain¹

I. CONSTITUTION AND FAITH

The story is told of an American wending his way through the British Museum. Reaching the Rosetta Stone, he reached right over the railing, touched the scarred slab, and lamented: “It doesn’t *feel* meaningful.” Whereupon an old Briton was heard to mumble: “The poor American’s got this old thing confused with the Blarney Stone.”

A bully presses his case, but meaning is much more modest. Powerless to insist upon itself, meaning lies in wait of discovery. What distinguishes the Rosetta Stone from other rocks of the same kind and

* Vice Dean and Professor of Law, The College of Law at Arizona State University. B.A. 1988, Yale; J.D. 1993, University of California at Berkeley (Boalt Hall); M.A. 1999, University of Toronto. — Ed. Jack Coons and Steve Smith provided critical comments on a draft of this Review, for the acuity and generosity of which I am exceedingly grateful. Gratitude of another sort prompts me to dedicate this Review, first, to Michael Bossone, Tiffany Hamilton, Leslie Mamaghani, and Tammy Vavra, members of the ASU administration or staff whose competence and cheer make it possible for my writing and teaching to go forward despite the administrative burden we share; and, second, to Michael Berch, Jon Rose, and Owen Jones, colleagues at ASU whose friendship and exemplary professionalism make a pleasure of what would otherwise be the impossible. Additional thanks go to Trish White, than whom a more supportive Dean cannot. I would wager, be located. The last of these first words concerns my fiancée, Jaime Daddona, who daily shows me the lived meaning of love’s priority.

1. Jacques Maritain, *Language and the Theory of Sign*, in *FRONTIERS IN SEMIOTICS* 51, 53 (John N. Deely et al. eds., 1986).

size is that it was someone's — or rather a group's — act of meaning. But those who come later cannot count on the Stone to make that meaning known. Meaning, if it is to be found or made, first has to be desired. This desire and the method of its satisfaction are James Boyd White's² concern in *The Edge of Meaning*. And what is at issue, if White be correct, is human life itself:

I think that this is as deep a need as a human being has: a need of the mind or soul, the need for what we call meaning in life. When it becomes clear that there is no way of meeting it, a person may die, either by simply withering away or by suicide. (p. 7)

Sometimes White is said to be among those pursuing interdisciplinary studies in law. And to be sure, in this book as in White's earlier writings, one finds learning and insight that are of interest to lawyer, classicist, literary critic, philosopher, and theologian alike. But against the background of what is going forward (or backward) in the name of interdisciplinarity,³ to lump White in with the "interdisciplinary" is to miss the point. The typical interdisciplinary claim is that law, hitherto (seemingly) autonomous, needs to be supplemented by, or understood with the help of, something outside or beyond itself, such as economics, queer theory, moral philosophy, or the like.⁴ Indeed at one time White himself flirted with understanding his work as contributing "toward the definition of a new subject, with a new method, linking the fields of law and literature and perhaps classics and anthropology as well."⁵ But White resisted this categorization because the world opened to him by reading texts as he does is a world he "see[s] as one."⁶ In *The Edge of Meaning*, as in his earlier books, White cuts across the borders that artificially divide disciplines and their methods, by cutting below to the very method by which humans create and discover meaning, across the breadth of human living, law included.

The Edge of Meaning is an idea brilliantly conceived, magisterially realized. Its pedagogy is the one White has perfected over the last third of a century, viz., a self-conscious and theoretically original, but fluid and fluent movement among all kinds of acts of meaning, all of it

2. L. Hart Wright Collegiate Professor of Law, Professor of English, Adjunct Professor of Classical Studies, University of Michigan.

3. See Kathleen M. Sullivan, *Foreword: Interdisciplinarity*, 100 MICH. L. REV. 1217 (2002).

4. See Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, 100 HARV. L. REV. 761 (1987).

5. JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY* xiii (1985) [hereinafter WHITE, *WHEN WORDS LOSE THEIR MEANING*].

6. See *id.*

with an eye to the deepest human sources and springs of meaning.⁷ In this graceful study, we encounter with White texts of Plato, Thoreau, Twain, Homer, Frost, and Herbert, as well as paintings of Vermeer and Rembrandt. In addition, interspersed among these encounters are a chapter on how one learns to read a foreign language (here, ancient Greek), another on how what we call the “sentence” structures our experience, and finally one on the place of composition in law’s making. These are all principally occasions for learning by doing, in response to the bidding of a challenging guide.

White is not about getting some “information” across (we are too used to reducing life’s moments to FYI points), he is not willing to attempt to bore us into submission.⁸ Rather, he hopes — the book is full of hope — to improve us. The hope need not be in vain. Readers who choose to travel with White through *The Edge of Meaning* will be a little transformed: into persons who better understand how they desire meaning and make it together in their common but imperfect languages. I use the word ‘transformed’ advisedly. While it risks portending a Great Awakening that cannot occur, it telegraphs that for White, what he shares with us would contribute to who we shall be. The meaning we make and discover is, in the idiom White has made familiar, *constitutive* of who we are, both as individuals and as community.⁹ Yes, meanings have a communicative function, but they inevitably also exercise a constitutive function.

[E]ach moment is the opportunity for a new sentence, remaking one’s language and culture, remaking one’s relations with others, redefining one’s own mind and character. This is the essence of moral life; its irreducibility to rules or principles of imitation. This is a point at which we engage in creation. (pp. 128-29)

So much for speed reading.

Given that White hopes to affect and alter us, we should wish to make up our minds about who this James Boyd White — who the publisher informs us is Hart Wright Professor of Law, professor of English, and adjunct professor of classical studies in the University of Michigan — really is. Reaching a judgment about White’s character is

7. See, e.g., JAMES BOYD WHITE, *ACTS OF HOPE: CREATING AUTHORITY IN LITERATURE, LAW, AND POLITICS* (1994); JAMES BOYD WHITE, *FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW AND LEGAL EDUCATION* (1999) [hereinafter WHITE, *FROM EXPECTATION TO EXPERIENCE*]; JAMES BOYD WHITE, *HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* (1985); JAMES BOYD WHITE, *JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM* (1990) [hereinafter WHITE, *JUSTICE AS TRANSLATION*]; JAMES BOYD WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (1973); WHITE, *WHEN WORDS LOSE THEIR MEANING*, *supra* note 5.

8. On boring one’s audience into submission, see Paul F. Campos, *A Heterodox Catechism*, in *AGAINST THE LAW* 7, 11 (Paul F. Campos et al. eds., 1996).

9. See, e.g., WHITE, *JUSTICE AS TRANSLATION*, *supra* note 7, at xiv, 101-02; WHITE, *WHEN WORDS LOSE THEIR MEANING*, *supra* note 5, at 266-67.

not extracurricular, an ad hominem frolic and detour. Yes, this is a book review; but the book is a person's speech, and what we should make of someone's speech turns in part on the character of the speaker whose act of meaning it is. The mendacious may mouth the same sounds as those of which the sincere also are capable, but the meanings beyond the sounds are *toto caelo* apart; and it is we, not the mendacious, who become silly if we do not bother to ask whether it is mendacity or sincerity we face.

Ponder then, in this light, what White reveals of his own self as he plumbs the poetry of the seventeenth-century Anglican divine George Herbert:

I think the question at the center of [all Herbert's poetry] is not whether his Lord is a God of love, but whether he can imagine that he himself, with all his faults of mind and character, is loved. As readers of the book we know of course that he can, for at least in my experience it is not possible to read through this sincere and intelligent and scathingly honest verse of self-searching without in some sense feeling love for the person who speaks to us in such a courageous and open way. (p. 216)

In this passage White manifests in a moment the self one feels one comes to know from the heights and depths he reaches not only throughout *The Edge of Meaning* but in all his many writings — a person who himself is sincere, intelligent, honest, courageous, open. Throughout *The Edge of Meaning*, White again gently but arrestingly distinguishes himself as one of this generation's great teachers — not just about how to think about Greek philosophy, American poetry, or the judicial opinion, but about how to think about all these and so many other subjects and disciplines, because of what he teaches us about how we stand, or should stand, in relation to one another. From White we learn that meaning is as fragile as it is important, and that even what we should value most is always "subject to threat" (p. 281), including the threat that is our own indifference or unwillingness. White shows us how it is up to us to constitute ourselves as more than brute beasts, by creating meaning and valuing the valuable. If I have a worry about where White stands, it concerns whether in his well-placed insistence on meaning he has slighted value — I return to this concern below.

The notion that we are being constituted through sharing meaning is strong medicine for those who fancy themselves nicely constituted as they already stand (or slouch), but there is still more medicine. What White says about faith in other areas of human inquiry, he would apply to law exemplarily:

In looking at paintings for their meaning, as in reading poems, we focus upon details, then shift to structure, then return to details, then shift our perspective, asking other questions, then return to where we began, and so forth, in an endless process. It is a search for meaning; it rests upon a faith that the picture, or the text, will yield meaning, in the form of its

various meanings and beyond them too. It is the same faith, I believe, with which the biologist studies the cell, the astronomer the stars; a faith that the universe has meaning and that we can apprehend it, *seeing what is really there*; even more, that as parts of the universe, parts of the creation, we too are bearers of meaning. (p. 287; emphasis added)

White turns out, then, to be a case in point in Steven Smith's portentous observation that "it may now be possible, for the first time in a long time, to consider the possibility of a jurisprudence that understands law as an expression of faith."¹⁰

II. METHOD AND MEANING

Facing up to the place of faith in law is risky business, for, as Smith observes, "[i]n modern academic discourse, 'faith' is sometimes understood not in terms of what it *is*, but rather in terms of what it supposedly is *not* — that is, 'reason.' So 'faith' becomes almost by definition a form of irrational, or at best, nonrational belief."¹¹ But a great virtue of White's work is that it shows us that what we do in law, at least when we do it well, makes sense, even if it turns out that the center holds through acts of (what we refer to as) faith, rather than through, say, the feats of Ronald Dworkin's Hercules.¹² I shall return below to faith's place in law. I mention Hercules here in order to call attention to the fact that we are used to the idea (even if we sometimes resist it) that we can understand what we do in law by thinking about how someone superhuman would do the job. But John Noonan was surely right to observe, "It is strange to talk of Hercules when your starting point is Harry Blackmun."¹³ Quite simply, Dworkin's superhuman "judge of method"¹⁴ is a distraction from the hard facts about the human methods by which we can, if we would choose, order our living so as to create meaning and instantiate value. Acceding to this plea for a human touchstone in legal thinking, we might then hasten to agree with Steven Winter that "law is no different than any other product of human cognition."¹⁵ But have we bothered to get to know our own cognitive ways and means? Alas, Joseph Vining remains right: "We hardly know ourselves."¹⁶ Happily for us, White (like Vining himself) is an exception to the usual lawyerly lack of self-awareness, and he has written this new book in aid of our satisfying the imperative given at

10. Steven D. Smith, *Believing Like a Lawyer*, 40 B.C. L. REV. 1041, 1048 (1999).

11. *Id.* at 1098.

12. See RONALD DWORKIN, *LAW'S EMPIRE* 239 (1986).

13. JOHN T. NOONAN, JR., *PERSONS AND MASKS OF THE LAW* 174 (1976).

14. DWORKIN, *supra* note 12, at 240.

15. Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stake for Law*, 137 U. PA. L. REV. 1105, 1106 (1989).

16. JOSEPH VINING, *FROM NEWTON'S SLEEP* 344 (1995).

Delphi. Reading White, we get to know White; we also get to know ourselves, and, in particular, something of the method by which we avoid madness.

In jurisprudential circles today, method has something of a bad reputation, associated as it is with the "legal process" movement that failed even on its own terms.¹⁷ But White must be credited with the insights that it is through a cognitive *method*, rather than through the shortcut of an epiphanic moment of cognitive magic or mystery, that we humans create and discover meaning; and that that method is the very way of being of the properly human self. White, I should note, prefers the word process to refer to what I shall call a method; but, for reasons to which I shall come, I think that what White has in mind is more reliably signaled by the word method, and that conceiving of what is at issue more clearly as method helps avoid strains on White's thinking. White begins to call attention to this method/process as he offers his reasons for the diversity of works he explores:

One of the points of this diversity is to make it easier for us to see, and begin to analyze, the process at work in all of them; another is to begin to show how different people, located in different cultural contexts and working in different genres, address in significantly different ways the possibilities and difficulties inherent in the process in which we are all engaged. (p. xi)

White then offers the following phenomenology of that method/process:

I think that in each of us there is a part of our being that is the source of mental life and imagination; that, without our being wholly aware of it, in this part of the self we are constantly asking a *set of questions* about the world, of which *the deepest is the question of meaning* as I have defined it above, namely, whether we can find or make an adequate way of imagining the world, and the self and others within it; that to ask this *question* is to involve us in trying to respond to it, which in turn brings us to face the adequacies and inadequacies of the languages we are given to speak, of the cultures we inhabit, and the constraints imposed on us by nature as well; that our engagement with these *questions* is for the most part unconscious, but can be made the object of attention and thought, particularly through the careful reading and study of certain works of literature and other forms of art, including the art of law; indeed that to make us aware of this process and our own participation in it, and to teach us how to think about and criticize our own performances of it, is one of the central functions of art; and, finally, that we pursue these *questions* not alone but in relation to others, with whom we make real whatever we manage to learn. The process to which I am drawing attention is thus one in which we all engage, all the time, but do so for the most part outside the

17. See William N. Eskridge, Jr. & Philip P. Frickey, *Introduction* to HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW* cxiii (William N. Eskridge, Jr. & Phillip P. Frickey eds., 1994).

field of conscious awareness — it is a piece of that rich and complex life that takes place in the ocean of the mind, beneath the surface on which we consciously live. But it does manifest itself constantly in what we say and do; not explicitly, but in our performances with language and each other. (pp. xi-xii; emphasis added)

White's own book is an offering of a piece of art that has among its purposes the knowing of the self: "At the place or moment to which art can in this way lead us, we naturally find ourselves asking questions of many kinds, about the world, about language, and about the self" (p. 4). White continues:

The deepest question, I think, the one at the center of it all, unites all three topics: it is whether we can find, or make, a way of imagining the self and the world and others within it that will fit with our experience — enable us to have experience — in such a way as to make possible coherent and valuable forms of speech and thought and action. The major aim of this book will be to focus attention on this question, showing how certain writers have addressed it and made it available to us, and in this way to make it the object of thought. (p. 4)

The Edge of Meaning, then, is animated by a "deepest question," (p. 4; internal quotation marks omitted) and concerns the "part of the self" (p. xii) in (or by) which "we are constantly asking a set of questions" (p. xii). White thus contributes a desperately needed corrective to the underappreciation of the place of *the question* in human living. The operative assumption, subject to the rare exception, is that the asking of questions is epiphenomenal to human knowing, the latter occurring (if at all) by the mind's eye's taking a sort of mental look. The usual, if unarticulated, thinking is that knowing occurs by the mind's getting its version of 20/20 vision — "the view from nowhere," with nothing allowed to obnubilate the mental looks. But notice this stark fact: the mind that asks no questions, reaches no answers. In other words, gazing at the Rosetta Stone gets you nowhere. Without asking, "What does this mean?" or "What should I do?," I shall not know. Period. But I do ask such questions, all the time, as do you. (Do you not?) We ask these questions because we desire to know. In calling attention to the foundational position of our questioning, White stands in the tradition of Aristotle, who began his *Metaphysics* with a wondrous observation: "All men by nature desire to know."¹⁸ As one contemporary commentator explains, "This radical dynamism, both longing and capacity, without which we would never be drawn to know anything, is inborn within us, defining our nature as

18. 1 ARISTOTLE, *METAPHYSICS* 114 (W.D. Ross ed., 1924); see also 2 ARISTOTLE, *POSTERIOR ANALYTICS* 175 (Hugh Tredennick ed. & trans., 1960) ("There are four kinds of question that we ask, and they correspond to the kinds of things that we know. They are: the question of fact, the question of reason or cause, the question of existence, and the question of essence These are the four kinds of question which we ask and the four kinds of knowledge which we have when we have discovered the answers.").

human and not merely animal.”¹⁹ And another twentieth-century philosopher, Bernard Lonergan, refines the point as he develops the implications of Aristotle’s locating erotic desire at the root of our human knowing: “[Our] primordial drive [to understand] is the pure question. It is prior to any insights, any concepts, any words, for insights, concepts, words, have to do with answers; and before we look for answers, we want them; such wanting is the pure question.”²⁰

We want to be knowers, even know-it-alls. To be sure, we can be lazy, and often we are even proud. So, at times we attend more to answers previously amassed than to the normative significance of our insatiable asking of the fresh questions in our quest for new answers. Eager to take a rest, we codify our answers, transmuting questions’ answers into collections of propositions. There is wisdom in organizing and perhaps appropriating what we have received (a point to which I shall return below), but there is sloth in pointing to the encyclopedia or the Restatement (Seventh) of Everything. A mischievous Yale Divinity student was on the trail of this anaesthesia of intelligence when he tacked to his door an advertisement for Thomas Aquinas’s *Summa Theologiae* that included this vaunt: “Contains the sum-total of philosophical and theological wisdom.” The advertising was false in at least the following two respects. The first is obvious: there is more to be learnt. The second proves harder to live with: wisdom or knowledge, when it exists, is in the mind, not in the black marks on the printed page.

I do not mean that the black marks necessarily mean nothing whatever. The claim, rather, is an instance of the more general point that while the truth is independent of us, even the truth is not so objective as to be able to get by without the mind of the human subject.²¹ Some readers of the *Summa* are dull and blunt, others insightful and acute. What the reader brings as tools for understanding makes a critical difference. The mind and meaning of Aquinas fare better in the mind of a John of Saint Thomas than in the mind of a dullard. As philosopher Joseph Flanagan explains, “It is not language that explains knowing, but knowing that explains language. . . . [M]eanings, while carried in words, depend primarily not on the words themselves, but on the prior acts of knowing that explain and ground the acts of meaning.”²² And as knowing, it is, as I have been suggesting, neither more nor less than asking questions and answering them. “Knowing

19. W. NORRIS CLARKE, *THE ONE AND THE MANY* 14 (2001).

20. BERNARD J.F. LONERGAN, *INSIGHT: A STUDY OF HUMAN UNDERSTANDING* 9 (3d ed. 1970) [hereinafter LONERGAN, *INSIGHT*].

21. BERNARD J.F. LONERGAN, *Introduction to A SECOND COLLECTION* (1974) (fifth page of unpaginated introduction).

22. JOSEPH FLANAGAN, *QUEST FOR SELF-KNOWLEDGE: AN ESSAY IN LONERGAN’S PHILOSOPHY* 182 (1997).

consists in answering questions. Meaningless questions and meaningless answers are neither questions nor answers. If our knowledge is constituted by answering questions, our knowledge is constituted by meaning."²³ It is meaning all the way down, or it's gibberish. (The meaning concerns something real or imagined; but that something real or imagined can be, but is not necessarily, itself meaning).

To be sure, all this will seem very paradoxical to the common strain of thought that identifies our knowing with something like perception or sensation, and, on that basis, accords the greatest (or only) reality to what we can see or touch. But knowing does not come to pass thanks only to seeing or touching. If all you do is gape or touch, your experience will be meaningless, as the poor American disappointed by the Rosetta Stone half realized. Meaning has no spatial location, but without it we wither. And it is thus that it is a mark of the passage from childish ways to adulthood to discover that there is no consolation in the puerile wish: "Sticks and stones will break my bones, but names will never hurt me." A life free from sticks and stones but lacking meaning, is hardly a human life. It is only slight overstatement to say, "[h]uman living really is a struggle for meaning, an effort, because meaning is constituent of human living. The effort to live is fundamentally the struggle for meaning."²⁴ And law, of course, when there is any, is not sticks and stones (though it may both use these and try to prevent their use), but (in part) meaning, of a certain sort. As Lonergan observes:

[I]f you want to do a study of law courts and go in with a machine that will measure the decibels of the sounds made by the different speakers or the arrangement of people in the room on different sides and places, and so on, you will not understand anything about the law court."²⁵

What you will have missed is the meaning of it all. But if law is constituted (in part) by meaning, of a certain sort, then law is the product of asking and answering certain questions, in a certain way.

It is a demerit of much of work in law that it blunders forward without ever getting clear on how we know what it is we claim, in law, to know. Professor Glendon may be right that many of our best legal minds are so busy doing law well that they do not stop to describe

23. 6 BERNARD J.F. LONERGAN, *The Analogy of Meaning*, in COLLECTED WORKS OF BERNARD LONERGAN: PHILOSOPHICAL AND THEOLOGICAL PAPERS 1958-1964, at 183, 198-99 (Robert C. Croken et al. eds., 1996) [hereinafter LONERGAN, *The Analogy of Meaning*].

24. 6 BERNARD J.F. LONERGAN, *Time and Meaning*, in COLLECTED WORKS OF BERNARD LONERGAN: PHILOSOPHICAL AND THEOLOGICAL PAPERS, *supra* note 23, at 94, 106.

25. LONERGAN, *The Analogy of Meaning*, *supra* note 23, at 204. For a marvelous deconstruction of an attempt to treat knowing law as simple "seeing," see PAUL KAHN, *THE REIGN OF LAW* 222-29 (1997).

their method;²⁶ but Professor Posner is also right that we are much too used to cottoning to propositions, even “neutral principles,” in light of their appearing under the West or Foundation imprimatur, their having been authored by Professor Sterling of the Elite Law School.²⁷ Thanks to Legal Realism’s airing the possibility that Sterling is in reality a Gilding, questions of legal justification are getting raised all the time. Frequently and familiarly, they are answered with a more or less thoroughgoing skepticism (itself lacking epistemic warrant, of course) — whereupon law is shown the exit as “policy science” is ushered in on a sedan chair. The ensuing response assumes any number of forms, all of which would work a reconstructive miracle courtesy of various epistemic wonders, the range of which has been catalogued and deconstructed by Pierre Schlag.²⁸ The result, as Steven Smith has shown splendidly, is that much of what we say in law seems, upon sober reflection, to be nonsense²⁹ — so we avoid sobriety.

But in White’s work, there is no nonsense, but instead an honest appropriation of what we are doing when we are making and discovering meaning, including meaning that amounts to law. White cuts through all the nonsense by going to the root of both problem and solution. As White shows time and again — from the meaning of a Greek sentence to the meaning of a statute — the criteria for giving (or withholding) assent or consent are given on the side of the human subject. Nothing is evident, let alone self-evident, except to a mind that has satisfied, as to the issue in question, its desire to know. When propositions are not self-authenticating, when starting points are not self-moving marionettes, when reality isn’t forcing itself upon us (and it never forces itself upon the mind, we can always deceive ourselves) — then, we are remitted to the process of asking and answering questions, answers being achieved only by the subject’s satisfying the desire to know. “It is,” White says, “a matter of having questions, and pursuing them as far as one can” (p. 101).

If this insistence, that knowing is through question-and-answer, still seems otiose (distinctions without real difference), notice that the spectacular success of modern science is the result of the working out of the logic of question-and-answer. The scientist does not simply see or otherwise sense. Science is generated by the asking and answering of questions. The scientist questions his experience (What does this mean?), interprets those experiences, makes a formulation of that understanding of experience, and then reaches a judgment about

26. MARY ANN GLENDON, *A NATION UNDER LAWYERS* 231 (1994).

27. See RICHARD A. POSNER, *OVERCOMING LAW* 70-71 (1995).

28. See Pierre J. Schlag, *The Problem of the Subject*, 69 *TEXAS L. REV.* 1627 (1991); see also PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* (1998).

29. STEVEN D. SMITH, *LAW'S QUANDARY* (forthcoming 2004) (on file with author).

whether the data that are his experience support that understanding (Is this really so? How probable is this?). The questions one asks control what one can come to know; the person who does no more than experience or imagine will know nothing. Nor, moreover, will we know very much unless we allow our knowing to build on what others have already known. One cannot say this without the obligatory quoting of Newton: "If I have been able to see farther than others, it was because I stood on the shoulders of giants."³⁰ What allowed modern science to take off as it did was its becoming a *methodical* asking and answering of questions. "Method," as Lonergan explains, "is not a set of rules to be followed meticulously by a dolt,"³¹ turning out recipe-like the same result every time. Method is not a set of *rules* at all. Method is, rather, "a normative pattern of recurrent and related operations yielding progressive and cumulative results."³² When the asking and answering of a specific type of question occurs not episodically but repeatedly and in light of past answers to the same type of question, progressive and cumulative results become possible and then actual. "The wheel of method not only turns but also rolls along."³³ But none of this happens as it should unless we choose to allow it to happen; instead of choosing to be methodical we can drift or gawk. Which is why I prefer the label 'method' to White's 'process.' Process in modern parlance tends to denote what happens automatically; 'method', to my mind at least, signals the need to choose to be methodical if knowledge is to enter and grow.

So spectacular has been the success of modern science, that, alas, it has filled the common mind with the common nonsense that only in the natural sciences, and certainly not in the affairs of human living, can knowing occur and progress. But we do ask — and we likely try to avoid the company of those who do not ask — sincerely, the Socratic question: "What should I do?" Answers to the "What should I do?" question, like questions about protons, may be hard to arrive at; but the fact that knowledge makes "a bloody entrance"³⁴ proves not that knowledge is impossible, but that, if what is possible is to become actual, something is required of those who would reach it. No ques-

30. Quoted in ARTHUR KOESTELLER, *THE ACT OF CREATION: A STUDY OF THE CONSCIOUS AND UNCONSCIOUS PROCESSES OF HUMOR, SCIENTIFIC DISCOVERY, AND ART* 124 (Danube ed., 1976).

31. BERNARD J.F. LONERGAN, *METHOD IN THEOLOGY* xi (Seabury paperback ed., 1979) [hereinafter LONERGAN, *METHOD IN THEOLOGY*].

32. *Id.* at 4.

33. *Id.* at 5. For a compendious treatment of these issues, see Patrick McKinley Brennan, *Realizing the Rule of Law in the Human Subject*, 43 B.C. L. REV. 227, 277-83 (2002).

34. LONERGAN, *INSIGHT*, *supra* note 20, at 186. In his work nearly two decades later, philosopher Bernard Lonergan references knowledge's "bloody entrance" specifically in the context of the movement from ordinary language to theory. LONERGAN, *METHOD IN THEOLOGY*, *supra* note 31, at 85.

tions, no answers; no answers, no knowing. No building on (and correcting) what has been handed down, no possibility of progress. There are, to be sure, currents of thought that deny that there are answers to the Socratic question. But here we do well to recall the courageous honesty of that analytical philosopher of the last century, Elizabeth Anscombe. In her judgment, the person who would smartly assert nescience as to, say, the comparative worth of a piece of straw and a village of innocents, would show us all a "corrupt mind," a mind with which she would decline to have commerce.³⁵ Almost no one wants to reveal a corrupt mind. "[O]ne may be willing to play the buffoon, but one wants to do it intelligently."³⁶ Who will be heard to say, at least for long, that he knows nothing of an answer to the Socratic question? We answer this question all the time, as did our forebears; White shows us something of how it's done. And *that* it is done, makes all the difference:

The ultimate basis of our knowing is not necessity but contingent fact, and the fact is established, not prior to our engagement in knowing, but simultaneously with it. The sceptic, then, is not involved in a conflict with absolute necessity. He might not be; he might not be a knower. Contradiction arises when he utilizes cognitional process to deny it.³⁷

III. HUMANS ARE EQUAL?

One of the virtually unfailing contributions of White's work is an exorcising of the Platonism of Forms that operates undetected in so many of us so much of the time.³⁸ In *The Edge of Meaning* the exorcism is worked in every chapter; page by page we are delivered from the grip of the delusion that we can (if we would) see, and do not have to labor to discover, what is real, what is worthwhile. This liberating challenge is worked most pointedly at the heart of the book, through a rich reading of Plato's *Phaedrus*. Space doesn't allow justice to be done to that reading here, but White himself, as he turns from Plato to Frost and Herbert, offers this apt encapsulation of it:

The point about Plato's doctrine of the Eternal Forms, in this dialogue at least, is thus not to assert the truth of their existence, which can after all never be known or observed while we live, but to define, by their absence, what human life, as we actually know it, lacks. The myth is a way of drawing attention to the fact that knowledge of the Forms is denied us. We must live on conditions of radical uncertainty; and it is to show us how this might be done without collapsing into incoherence or despair that the dialogue exists (p. 189)

35. G.E.M. Anscombe, *Modern Moral Philosophy*, in 33 *PHILOSOPHY* 1 (1958).

36. LONERGAN, *The Analogy of Meaning*, *supra* note 23, at 224.

37. LONERGAN, *INSIGHT*, *supra* note 20, at 332.

38. On such Platonism in modern legal theory, see SMITH, *supra* note 29, at 241-50.

It is a question of fact, of course, whether we have access to a transcending Form of, say, justice, and each of us must answer for himself. My own judgment, as I have implied, is that I have been denied all such access; nor, as a matter in fact, do I know anyone else who will admit to thinking differently of his own case (though easy talk about “intuitions” of this or that should make the hearer nervous). Yet, from the absence of Forms there does not follow necessarily a living in “conditions of radical uncertainty.” Again, it is a question of fact. How uncertain *in fact* are the grounds of our choosing and deciding?

White does not exemplify “living on conditions of radical uncertainty,” at least not when it comes to some very important matters. One thing White seems to know is that we are, all of us, equals and worthy of treatment as equals. Evidence this sentence: “The proper object of human community is the recognition of the equal value of each person as a center of worth and meaning”³⁹ And this one:

There is nothing that I would hold to more dearly in our past than the language of the Declaration of Independence, “all men are created equal” Yet upon what does this value of equality rest? Is it self-evident? Certainly not, and one may find oneself in deep trouble trying to rest it upon independent philosophical foundations.⁴⁰

Notwithstanding the troubles, White affirms the equality of humans as a fact that should shape our conduct, and does so without evident equivocation or modality. What, then, would be the foundations on which White takes this firm stance? Is it the case that a linguistic lump, written more than two hundred years ago, is White’s last word on this topic?

White has suggested that the equality asserted in the Declaration, and put to work by Lincoln, may depend upon a Christian metaphysics of creation (the Declaration does, after all, have us “created” equal).⁴¹ Responding to those who would purge our common language of what cannot be sustained without religious supports, White continues:

To remit ourselves entirely to the language of twentieth-century political philosophy would I think involve a great loss of power and significance in our language of fundamental value. I at least would not want our legal and political language to be one in which the Declaration of Independence made no sense.⁴²

Language “of fundamental value” that fails to make sense, is (pernicious) nonsense — and White, as I have said, doesn’t go for nonsense. But given the truth is not so objective as to be able to get by without the mind of the human subject, there is intellectual work for us to do

39. WHITE, JUSTICE AS TRANSLATION, *supra* note 7, at 269.

40. WHITE, FROM EXPECTATION TO EXPERIENCE, *supra* note 7, at 145-46.

41. *Id.* at 146-47.

42. *Id.* at 147.

here, notwithstanding White's own confident (if precatory) assertions. Does the Declaration's assertion of equality make sense *to us*; and if it does, on what basis? Philosopher P. Christopher Smith grasps both horns of the dilemma: "Ostensibly, of course, logic's monological demonstration presents to silent onlookers the inferences to be drawn necessarily from any individual's insights into necessary and certain self-evident truths — see the starting point . . . of Jefferson's apparent demonstration, 'We hold these truths to be self-evident . . .'"⁴³ But in fact, Smith continues,

any attempt to substitute logical demonstration for rhetorical conviction only falsifies this circumstance [of assent] and opens the way for propagandistic manipulation in the guise of "objectivity." (Even Jefferson, whose goal is to win consent to a revolutionary act, finds himself constrained to disguise his rhetorical exhortation and defense as a demonstration seeking only assent to a proposition).⁴⁴

That White's embrace of the first substantive component of the Declaration — the equality of humans — is neither propaganda nor manipulation, emerges for me from what he culls from Mark Twain's *The Adventures of Huckleberry Finn*. On White's reading, Huck "comes to challenge race and slavery in his conduct, even while affirming [them] in his language and his 'conscience,'" by adopting the following method: "He learns to test everything by his own immediate experience" (p. 36). As White elaborates Huck's method: "The irresolvable inconsistencies between his two worlds" — the world of nature and the river, and the world of the city, Petersburg — "lead him to develop the habit of turning to his own experience, confused and untutored though it is, as the only possible standard of judgment" (p. 37). This method is the right one, according to White; which is not to say that it is infallible:

This practice naturally generates a mixture of error, superstition, and accurate perception, and he, naturally enough, does not know which is which. But to do this at all he must be resolutely, sometimes devastatingly, honest with himself, both in his perceptions and in his accounts of them. Although his marginality does not give him a firm place to stand, then, it does teach him to focus on his own experience, however flawed it may be, as a mode of thought and reflection. And while the conflicts between his two worlds do not reach the issues of race and slavery, the habit of mind and attention they stimulate will ultimately do so. (p. 37)

Huck does not become a philosopher, thank God. But the Huck Finn of White's sensitive reading does exemplify that part of the human self, of interest to White, that asks questions, and in answering them constitutes himself a person of a certain sort. White obscures the

43. P. CHRISTOPHER SMITH, *THE HERMENEUTICS OF ORIGINAL ARGUMENT: DEMONSTRATION, DIALECTIC, RHETORIC* 6-7 (1998).

44. *Id.* at 7.

point somewhat by suggesting that Huck *properly* treats his brute experience as the “standard of judgment.” But as White shows time and again, brute experience is a starting point, not a “standard of judgment.” It is by questioning experience, in the way White describes, that Huck is able to come to a judgment that he (and we?) regard as correct. And answering honestly — instead of “answering” with the language that might have been quick off the tongue, but not true to experience (which is always particularized) — Huck’s performance exemplifies White’s observation that, “When we are working at our best we do not just use words with preexisting meanings, but create relations among them that will give them meanings of a new kind” (pp. 111-12).

White demonstrates this by making sense of an expression that had always puzzled me upon earlier readings of *Huck Finn*. Huck declines law’s command to surrender Jim on the heels of a prompt from his “‘conscience’” to turn in “this nigger, which I had as good as helped to run away”⁴⁵ Promptly reflecting on his radical reversal of course, Huck — stuck between his judgment that he had “done wrong” and his contemporaneous judgment that had he “done right” he would have felt just as bad — concludes: “So I reckoned I wouldn’t bother no more about it, but after this always do whichever come handiest at the time” (p. 34). “Handiest” had always rankled in my mind as facile in a way Huck had just refused to be — and White shows why a reading such as mine is wrong. The (superlative) adjective “is given content by the kind of moral reflection and action in which Huck is engaging: it means . . . the course of conduct that conforms to one’s deepest moral and emotional intuitions” (p. 111). A dictionary-shopping Supreme Court, by contrast, would have Huck’s animadversion upon his great moment come to some version of the following (if, that is, the Court elected to consult *Random House Webster’s Unabridged Dictionary* in its Second Edition): a resolve to do what is most “within easy reach; conveniently available; accessible . . . convenient or useful . . . skillful with the hands; deft; dexterous . . . easily maneuvered”⁴⁶

IV. GETTING IT RIGHT

Of course, the Supreme Court does not read novels; but the Justices of the Court do read a lot (not to mention write), and the consequences of the Justices’ reading skills affect how we all stand in relation to one another. White has much to say about how the Justices should read (and write), about, specifically, how being constituted as a

45. P. 34 (internal citation omitted); MARK TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* 98 (1985).

46. RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 867 (2d ed. 2001).

court (or rather, *this* Court) should inform what one reads *for*. A concomitant of White's sound insistence on law as (in part) constitutive conversation is the affirmation that we have (ineluctably but also by intelligent design) our different roles in the conversation, positions that themselves have to be claimed and argued for, this on the basis of texts the authority of which itself needs justifying.⁴⁷ Speaking of a lawyer who has hewed to the method White clarifies and commends, and who then finds herself faced say with two lines of cases pointing in opposite directions, White concedes, "[y]ou are in a sense free to choose whichever way you want to go . . ." Then, however, he adds immediately: "[B]ut that hardly helps, for the question remains: How should you exercise the freedom you have?" (p. 251). This, the Socratic question, won't go away, at least not for more than a moment at a time. And its answer, White continues,

certainly ought not rest on whim or untutored reactions, but rather on a process of thought and reflection, as you seek to organize the material on both sides into a manageable whole, in light of what you take to be the central values expressed in [the relevant text] and in the cases decided under it. The end of the process will not be a moment of perfect clarification, but an action on your part, a decision, with its roots in the world beyond words, ultimately a mystery even to you. (pp. 251-52)

What White here refers to as "a process of thought and reflection," White elsewhere elaborates in these terms: "[T]he law is nothing if it is not a way of paying attention and respect to what is outside of ourselves: to texts made by others in the past, which we regard as authoritative, and to texts made in the present by our fellow citizens, to which we listen" (p. 91). White specifies the aim of that "way of paying attention and respect," but not exhaustively.

The object of law is justice; but the law teaches us, over and over again, that we do not have unmediated access to the pure idea of justice in the heavens, which we can apply directly and with confidence, but rather live in a world in which everything has to be thought about, argued out, and reimagined afresh. (pp. 250-51)

47. White writes:

In the law . . . every speaker is particularly located, both rhetorically and socially. He or she is a lawyer or a judge, a judge of a state or a federal court, a lawyer arguing to a jury or making a motion to a judge, and in every instance is situated as well with reference to a set of prior and arguably authoritative texts: constitutions, statutes, earlier cases, and the like. This is the context in which "policy" questions are discussed in law, and these conversations receive their proper shape from that context. The authority of the legal actor is never self-established, but always rests, at least in argument, upon prior texts, which provide the standards that govern the authority they establish. This means, among other things, that the legal speaker must always look outside himself for his source of authority; that his every action rests upon a claimed interpretation of those sources of authority; and that these interpretations, of necessity, are compositions to which he asks that authority be given.

I suggested above that White's work combats the Platonism that threatens to skew our thinking heavenward, and the above passage is something of a case in point. But it strikes me as itself laden with a trace of latent Platonism. Justice is reified, and then we are merely cautioned only that "we do not have unmediated access to the pure idea of justice in the heavens" (p. 250). Having been reminded that the heavens are off limits, this reader hoped for an insistent reminder that it is, then, to the earth and its inhabitants, in all their amplitude, that we can and must look to settle how we should stand to one another. Yes, in "the world beyond words," but *in the world* (p. 1). Even if God grants revelation, He grants it to us here where we live; he does not, so far as I know, invite any of us to Heaven for (mediated) fireside chats and then send us back down here to do what we have been told to do. And if God does reveal instructions for human living (in, say, Ten Commandments given at Sinai), these too, like the Rosetta Stone, await their being read and interpreted. *Even* truth that purports to be divine, is not so objective as to be able to get by without the mind of the human subject. White knows this, but on occasion in his writing, justice seems to assume a form to which it is not, I think, entitled.

I return to a larger-than-life example of this in the final Section, but first I call attention to another element of the passage just quoted. Initially, White tells us that we "live in a world in which everything has to be thought about, argued out, and reimagined afresh" (p. 251). Is there in this observation a whiff of the modern rationalist of whom Michael Oakeshott says: "[H]e strives to live each day as if it were his first."⁴⁸ We know White better than that. White is a self-conscious participant in an intergenerational conversation, both learning from and adding to, possibly even correcting, what has been handed down. By picking up where others left off, rather than striving to live every day as if it were his first, the inquiring mind doesn't have to start from scratch, though of course one may have occasion to correct what one has inherited. Again Newton tumbles to mind. Trouble is, whereas in the natural sciences we are ready to grant that what is inherited is not dead weight but a helpful starting point, with regard to questions about how to live, many among us are poised to deny tradition any positive role whatever. We imagine that scientific method's success owes nothing to its being a particular form and deployment of the cognitive *method* by which our knowing occurs. We fail to live in accord with the (apparent) fact that our learning comes to pass discursively (rather than spasmodically) — building up from experience to judgment by way of the interpretations we are able creatively and correctly to give that experience. White's work shows on every page how our thinking about our living, including in law, is shaped by the

48. MICHAEL OAKESHOTT, *Rationalism in Politics*, in RATIONALISM IN POLITICS 1, 3 (1962).

languages and learning we inherit, and that our learning and the value of our living can grow by building on, and correcting where necessary, what we have received.⁴⁹

Having made this case for the (potential) value to us of our intellectual inheritance, it would do us well to recall that the person overly concerned to conserve what he has received will petrify and thus cease to be relevant. It is easy to talk the talk we have heard talked, easy to apply without thinking about them the rules handed down on an earlier occasion, for another case. But doing so is not only dull, but also unsatisfying. White's genius is to see that our radically personal, nondelegable desire for meaning is satisfied only by our making up our own minds, each of us for himself. Our desire for meaning is satisfied only by reaching our own judgments. We can be mistaken in these judgments, but this only proves that we can be correct as well. White makes this point as he describes how we reach the meanings of several pictures by Rembrandt, but he could just as well have taken as his example the meanings of Vermeer's paintings, Homer's *Iliad*, or the lover's smile:

Sometimes of course we are misled or otherwise make a misjudgment, but this fact merely confirms the power and accuracy of our judgment as a general matter. Yet exactly how we read each other's appearance is a mystery: no objective rules, say interpreting the shape of the skull or the distance between the eyes or the fullness of lips, will work. This is a capacity we have and use, but one that is not wholly accessible to the conscious mind. (p. 282-83)

White's work helps us bring this capacity to the reader's consciousness, and what it reveals is that we constitute ourselves, we constitute our world by the judgments we reach. As Professor Thomas Kohler says, in a fine little essay that complements, from a more strictly philosophical angle, White's position:

[T]he act of judging represents a personal commitment and entails personal responsibility. When we judge, we assert or deny something about the character of reality, or the worth of a certain course of action. We thereby literally commit ourselves to a certain understanding of the world and its meaning. . . . We do not come to an understanding of reality or the good by "viewing" it, but by making correct judgments about it. At the same time, we constitute ourselves through our judgments and determine through them the sort of people we become.⁵⁰

White vindicates against unjustified demands for "certainty," the kind of knowing we do all the time that does not admit of the sort of

49. My stance on the place of tradition and self-correction in law is indebted to Mary Ann Glendon, *Knowledge Makes a Noisy Entrance: The Struggle for Self-Appropriation in Law*, in 10 LONERGAN WORKSHOP 119 (Fred Lawrence ed., 1994).

50. Thomas C. Kohler, *The Integrity of Unrestricted Desire: Community, Values, and the Problem of Personhood*, in AUTONOMY AND ORDER: A COMMUNITARIAN ANTHOLOGY 57, 58 (2000).

demonstration the scientist would be interested in. And while sometimes White's opposition to the certainists leads to assertions that we live and decide in conditions of radical uncertainty, White also calls attention to the ways in which, amidst uncertainty that may seem radical, we reach judgments that are correct. (Sometimes correct judgments will be judgments of probability, but a judgment of a probability is not a mere meaningless guess.) At the beginning I quoted White as saying that the search for meaning always requires "faith" on the part of the searcher. The assertion is provocative, but what does it come to? It is the *fact* of our knowing both meaning and value, not a nonrational hope for such knowing, that gives us reason both to hope and believe that our deep desire to know will again be satisfied. To the common strain of thought that persists in identifying knowing with seeing, all this will continue to seem spooky. The slogan has it that seeing is believing. But seeing is only seeing; and knowing consists in answering questions. Sometimes we answer our questions by relying on the knowings of others we know or believe to be trustworthy; the alternative, doubting everything one has not seen for oneself, is as silly as it is impossible. While White *says* (in the passage I quoted at the beginning) that we all have faith in our capacity for "seeing what is really there" in the universe, what White *shows* is the method by which we know even what we cannot see, the world of meaning and value. Never do we *see* meaning or value, but, at least sometimes, each of us knows them. To call such knowing 'faith' because it involves (as known) what one cannot see, does not work a linguistic sin. But the better course, I think, is to affirm forthrightly that the world we *know* is not exhausted by the world we can see.

V. FALL IN LOVE, IF YOU ARE ABLE

I have emphasized, because it is the emphasis of White's book, that humans desire meaning and when they lack meaning they tend to become less than human. What this obscures, however, is that meaning is not enough. Our deepest desire extends beyond meaning to value.⁵¹ Which means that, first, we want to know what things are really worth, second, we want our lives to instantiate the truly worthy. A piece of straw may mean the world to me, but if I prefer it to the lover's gaze, to food on the table, or to a reliable system of distribution of commodities of value to humans' living, then so much the worse for me (and alas, perhaps for the neighbors as well). We ask questions about what is; we ask also about what is valuable, what is worth doing, what relationships or states of affairs are worth bringing into existence.

51. White catches this nicely in his suggestion that "the desire to understand, to make sense, to imagine coherently includes, or better ripens into, a desire for what Thoreau would call a sincere relation with another — for friendship, ultimately for love." Pp. 69-70.

Questions of the latter sort are versions of what I have referred to as the Socratic question. "Our answers to these questions of worth make up part of the moral reality in which we live. It is through them, to paraphrase the rabbis, that we cooperate in the completion of creation."⁵²

Value as what we desire, and valuing as something we do in response to a nondelegable desire to realize or instantiate the valuable — these, White too thinly thematizes. Value does not occur in his index, and when value makes the occasional explicit appearance, its significance is hard to gauge, as when White observes at the beginning of his final chapter: "In this book I have worked through a series of texts in which a mind can be seen as trying to imagine the world, and the self within it, in such a way as to make possible coherent speech and valuable action"(p. 257). And again:

[W]e are collectively not very clear about exactly what it is we point to in [our many] uses of the word *meaning*. One way of putting it — which I know can be only the slightest of sketches, and which it is the aim of the rest of the book to complete — is to say that each of us constantly seeks to imagine the world, and the self and others within it, in such a way as to enable us to engage in coherent and intelligible speech, valuable and effective action. We want, that is, a way of imagining life as a whole, on which our own action and thought and speech, our own relations with others, can sensibly and effectively be based. (p. xi)

We should agree with White that discovering ways of living that are meaningful requires the creativity that begins in imagination. But we should observe at once that we are not satisfied by castles in the sky, imagined ways of living that enthrone the worthless (while suppressing the valuable). "When children play by building sand castles, these castles are truly castles for them. If you trample them, the children will cry with rage and indignation. But once their play is at an end, what were castles are only sand."⁵³ Adults play, but when adults endue things with meaning and accord them value they will not bear, we doubt their wisdom and, at the limit, their sanity. We may and must use our imagination to discover how to realize and instantiate value, but we must recall at our peril, that real value is not imagined. White knows much and shares much about what is truly valuable. In *The Edge of Meaning* it is perhaps above all in his interpretation of Vermeer, to which I called attention at the beginning, that he reveals his awareness that a worthwhile human life not only includes meaning, but also instantiates value. But the whole book breathes an apprehension of value, and this reader, at least, looked for a more elaborated recognition that our basic human eros, about which White reveals so much, is for the whole truth: the true that is, *and* the

52. Kohler, *supra* note 50, at 63.

53. Maritain, *supra* note 1, at 59-60.

true that as valuable can become the proper aim of our choosing and acting and living. We constitute ourselves not only by what we say, but also by what we choose and do. So it is, for example, that we pity or mock the younger Lord Brideshead when Evelyn Waugh reveals that his Jesuitical character occupies himself most satisfiedly in collecting matchboxes (and met his future wife through the connection of her late husband, the consummate collector of the same little treasures). "One's judgments of value are revealed as the door to one's fulfilment or to one's loss."⁵⁴

Justice, it has been said, is the institutional approximation of love, and it is a saying that becomes the more adequate the more equity emerges as justice's other part. But such justice — even the judge doing equity's bidding, what the legislature would have done had it had in mind the case sub judice — professes nothing of love. White speaks to us of justice, he shows us how we desire, seek, and sometimes instantiate justice; but White, as I observed in beginning, also speaks to us of love. And it is here more than anywhere else, I think, that White lays bare his true thinking about what I have referred to as 'value' and how we can come to know it:

The lawyer lives on the edge of language, where meaning is made, and just like the poet and philosopher he must work constantly with the inadequacies of his inherited ways of talking, the defects of his own mind, the fundamental uncertainties of the world, the incomplete knowability of the experience of others; and he may well find his most secure ground of confidence and belief to lie in the activity of law itself, which stimulates and works by a kind of love, less for another person than for the possibility of justice itself. (p. 258)

Love for the possibility of justice itself, more than for the person — this is hard to get the non-Platonic mind around.⁵⁵ The word 'love' is used (as Aristotle might say) "in many ways," and there is much in what White writes that helps in sorting out and clarifying the several Greek senses of the reality that, in English, we refer to as 'love.' But when White directs our attention to what he calls his own "love" for the Herbert who doubts God's willingness to love such a one, I think I get a sense of what White means by love, and it is something that eluded the Greek theorists. What White bears toward Herbert is not erotic love, nor even the love that is, simple but wonderful, friendship, *philia*. It is the love called in the Greek of the New Testament *agape*. This is reverence of the person, a reverence that would lead to service

54. LONERGAN, *supra* note 31, at 39.

55. Another example of the Platonism of Forms seems to creep into White's work:

[Vermeer] makes us desire perfection and security, at the same time teaching us that all that we can value is perpetually subject to threat. All of this may remind us of Plato and the famous myth: Vermeer stimulates in his viewer a kind of love, love for these images of women, which becomes not a love for any person — there is no person there at all — but of beauty itself, and of the vitality and volatility of human life. P. 287.

because of the value of the person that has been known and consequently affirmed.

That this is the love White knows is at work when law succeeds (by, among other aims, recognizing "the equal value of each person as a center of worth and meaning"⁵⁶) is reinforced in what White says of the causes of Huck's transformation: "The self [Huck] makes by speaking and thinking [as he does], insisting upon the truth of his experience, becomes, in the end, a self capable of giving and receiving love" (p. 42). Huck comes to affirm Jim's equal value as a human thanks to Jim's capacity "for love and truthfulness." Huck becomes capable of loving, of affirming Jim's equal value, through "the active and transforming presence of another person" (p. 44). While White goes on to observe that the obtaining social structures gave Jim and Huck no opportunity to go on living together in the way they had discovered they deeply stood and deeply wanted to stand to each other, withal it was the experience of person, in what we call *agape*, that worked the personal change and simultaneously brought an indictment of the social structure.⁵⁷

This exemplifies what John Noonan said in encapsulating the thesis of his study of the proper application of rules *to the person* in the name of the law: "Only in the response of person to person can Augustine's sublime fusion be achieved, in which justice is defined as 'love serving only the one loved.'" ⁵⁸ It is love for the person that enables Huck to make a declaration, not of independence, but of equality. What White occludes for me with the quoted suggestion that the lawyer succeeds more through the love of the possibility of justice itself than for the person, Noonan reveals and releases. It is love of the person that moves us to serve as best we can — sometimes taking the form of justice, sometimes taking the form of supererogation. Love precedes or is a precondition of true justice, of seeing people as they are and treating them as what they are, what they are worth.⁵⁹

Each of the chapters of *The Edge of Meaning* is followed by paragraphs or pages that contain snippets of the author's moral autobiography. In them White shows us something of how he came to know the world he shares with, and commends to, his readers. In the last of these nine windows opened to us, White relates something concerning a young girl with whom he, as a part of a team of five people working

56. WHITE, JUSTICE AS TRANSLATION, *supra* note 7, at 269.

57. On the relationship between *agape* and equality (or equal regard), see GENE OUTKA, AGAPE: AN ETHICAL ANALYSIS 9-23, 257-312 (1972).

58. NOONAN, *supra* note 13, at xii.

59. See TIMOTHY P. JACKSON, THE PRIORITY OF LOVE: CHRISTIAN CHARITY AND SOCIAL JUSTICE 8-11, 68-69 (2003). On the foundational place of "natural love" in our knowing things as they are and giving them what in justice they deserve, see HANS URS VON BALTHASAR, THEO-LOGIC 77-78 (Adrian J. Walker trans., 2000).

to help children who were having trouble in school, met once a week for a couple years. “Here is this child beside me, I thought,” having just heard that two of Elizabeth’s relatives had been killed,

suffering what no child should suffer. She is a fragment of God’s presence on earth, as real and as important as any other, calling out for what I cannot provide, what no one can provide. What can I give her? Not my mind, or my professional expertise, or my intellectual life; only my presence, for whatever it might be worth.

That and one other thing: it occurred to me that she might have trouble understanding what reading is because she had never been read to. So in our lessons I began reading to her from her book, then she would read, then I would read again. It became something we did together. (p. 288)

In this, White was, or so it seems to me, doing justice (or what exceeds justice): acting not for justice’s sake, but because he loved the person.

Much thinking about law, much application of law, leaves love out. But once love’s place in law has been recognized for what it should be, it is hard to disagree with Noonan’s claim that “the central problem . . . of the legal enterprise is the relation of love to power.”⁶⁰ The core of “the central problem,” in turn, concerns whether we can, whether we have reason to, love one another. *Agape* is not an idealizing act: it looks to the other as he or she is.⁶¹ If we humans are just natural processes, meat with brain function — are we loveable? Does our being capable of loving one another depend on our being, as White said of Elizabeth, “a fragment of God’s presence on earth?” *That* would make *true* faith a necessity. If we affirm, with Huck Finn and James Boyd White and others, the equal worth of humans, on what basis can we do this? Nonsense should be avoided,⁶² but its avoidance is by no means automatic: “Any proposition to us about ourselves we are in a position utterly to deny — it being always remembered that what the proposition is, if we grant the other is like ourselves, remains always a live question and that words, the words of the proposition, do not define themselves.”⁶³

60. NOONAN, *supra* note 13, at xii.

61. See GLENN TINDER, *THE POLITICAL MEANING OF CHRISTIANITY: AN INTERPRETATION* 42-44 (1989).

62. On the difficulties and importance of affirming the equality of humans, see JOHN E. COONS & PATRICK M. BRENNAN, *BY NATURE EQUAL: THE ANATOMY OF A WESTERN INSIGHT* (1999), and Patrick McKinley Brennan, *Arguing for Human Equality*, 18 J.L. & RELIGION 99 (2002).

63. JOSEPH VINING, *THE HUMANITY OF SCIENCE: SCIENCE AND SPIRIT AFTER THE 20TH CENTURY* 168 (forthcoming 2003) (manuscript at 168, on file with author). Judge John Noonan’s polemic against Judge Richard Posner’s *The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637 (1998), concludes with a statement of the place of love in law that deeply informs my own thinking. But Noonan’s otherwise flawless analysis loses strength by treating the issue of knowing the value of another human being as a matter of “seeing”:

The question who is to be included within humanity is crucial. You cannot convince an op-

“Law can often look largely irrelevant to the self.”⁶⁴ Yes it can, and White shows us why such an appearance of law is to be resisted. Law, when it obtains, is (in part) meaning about value, which itself is the fruit of the methodical asking and answering of questions. If what goes forward in the name of law answers no questions of ours, it is no law of ours. “What, then,” asks White,

can be done by such creatures as we are, with such instruments as our languages? It is upon their own performances that [both Frost and Herbert] come in the end to rely: not upon creed, not upon denial, but upon their capacity, the human capacity to make meaning in a universe that is deeply uncertain. The self exists in a world it does not wholly understand, cannot wholly understand, and for which no language is adequate Something [like what these poets, and Plato, too, do], I believe is true of the judge and lawyer as well. The law can be seen as a collective enterprise the aim of which is to work out actual possibilities for thought about justice in the difficult conditions in which we find ourselves. (p. 251)

Any justifying of law quickly moves, if it is to satisfy the inquiring mind, from law-as-rules to legal method, establishing the terms of the interdependence of law and the method that makes it what it is. And legal method, for its part, if it can command obedience (rather than, say, simple compliance), issues from the method that is human intelligence: experiencing, and then by questioning that experience reaching meaning and value first in our judgments, then in our living. As Joseph Vining says, “The question what the law ‘is’ is not so very different from the question what we ‘are,’ ”⁶⁵ and again in *The Edge of Meaning*, James Boyd White irradiates for our benefit something of who we are, and how through literature and poetry, and even law, we can become who we should wish to be. There is a method to it, and falling in love, if you can, helps.

ponent of the humanity of another by argument — on that fundamental point Posner is right. But you can ask another human being to look harder, to “see.” Posner denies that you can, suggesting that mere sight will change nothing if your intuitions are in disagreement. Seeing, however, is more than a second glance. It is taking into account, intellectually, affectively, and physically, all that there is in another member of our species.

John T. Noonan, Jr., *Posner's Problematics*, 111 HARV. L. REV. 1768, 1774 (1998).

64. KEVIN M. CROTTY, LAW'S INTERIOR 90 (2001).

65. VINING, *supra* note 16, at 128.