Michigan Law Review

Volume 83 | Issue 4

1985

Worlds Beyond Theory: Toward the Expression of an Integrative Ethic for Self and Culture

Peter Read Teachout
Vermont Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

Part of the [Law and Society Commons](#)

Recommended Citation

Peter R. Teachout, *Worlds Beyond Theory: Toward the Expression of an Integrative Ethic for Self and Culture*, 83 MICH. L. REV. 849 (1985).

Available at: <https://repository.law.umich.edu/mlr/vol83/iss4/19>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

WORLDS BEYOND THEORY: TOWARD THE EXPRESSION OF AN INTEGRATIVE ETHIC FOR SELF AND CULTURE

*Peter Read Teachout**

WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND
RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY.
By *James Boyd White*. Chicago: The University of Chicago Press.
1984. Pp. xvi, 377. \$25.

*Whatever one reads with close attention to the words and also to the
things the words mean is the instrument of a liberal culture; whatever one
reads otherwise, whether philosophy or history or poetry, is not.*

Leo Stein¹

*Tradition is to preserve, to refresh, to transmit, and to increase our insight
into what men have done as men, in their art, their learning, their poetry,
their religion, their politics, their science . . . [It is to] understand what is
happening to us, to talk to one another, to relate one thing to another, to
find the great themes which organize our experience and give it meaning.
It is what makes us human.*

J. Robert Oppenheimer²

James Boyd White's *When Words Lose Their Meaning* is a work of great and refreshing originality. I can think of no other work by a legal scholar within the past decade that addresses more thoughtfully or intelligently the fundamental conditions of our existence in the law. White's book is a fascinating inquiry into the role of argument in culture — into the way in which the imaginative employment of the "rhetorical resources" of a culture can operate to criticize and transform that culture. Nor is this merely an academic inquiry. White addresses here in the most immediate way the central issue that has preoccupied American legal scholarship for the past two decades and almost singly given rise to the law and theory movement: the problem of discovering a coherent ethical perspective from which to view the activity of law in culture. The heart of White's effort is to forge out of a critical reading of the traditional classics of our literature a truly integrated "ethic": a critical mode of approaching experience that will stand us

* Professor of Law, Vermont Law School. B.A. 1962, Amherst College; J.D. 1965, Harvard University; M.A. 1967, University of Sussex. — Ed.

1. L. STEIN, APPRECIATION: PAINTING, POETRY AND PROSE 23 (1947).

2. Oppenheimer, *The Future of Civilization in the Scientific Age*, 17 FRANCE-ASIE 1807, 1808-09 (1961).

in good stead at every level of endeavor — in our understanding and use of language, in the conduct of our personal and professional lives, and in our efforts to comprehend and improve upon our inherited culture.

In both its method and thrust, this is a work quite unlike anything we have seen before in the law. It is not a work of theory but something quite different, a work that proceeds upon the critical exposition of a series of classic texts: Homer's *Iliad*, Thucydides' *History*, and Plato's *Gorgias* from early Greek literature; Swift's *Tale of a Tub*, Johnson's *Rambler* essays, Austen's *Emma*, and Burke's *Reflections* from eighteenth century English literature; and, from our own early constitutional period, the Declaration of Independence, the Constitution, and Marshall's classic opinion in *McCulloch v. Maryland*. It is not accidental that the works White has selected are not works of theory but rather, for the most part, examples of what we call imaginative literature, nor is it accidental that White's development of his thesis takes this peculiar form, not of theory, but of a composition of critical readings. For, as we shall see, it is one of White's purposes to show that imaginative literature of this sort offers possibilities for the criticism and transformation of culture that theory does not, and that critical reading itself can be a disciplined art capable of powerfully illuminating who we are and the conditions of our existence. Indeed, it is one measure of the achievement of this extraordinary work that it pushes beyond the bounds of theory, carving out entire new fields of play for the critical and creative intelligence.

When Words Lose Their Meaning is one of those truly complex works that operates simultaneously at many different levels, and it must be read and taken that way to be understood. At one level, White's book is a highly original "essay" (in the classical sense of that term) in critical reading, a demonstration of the way in which critical reading can be an important if not indispensable instrument of one's liberal and legal education. At another, it is a masterful exposition of the ways in which language, character, and culture are inextricably bound together. A central aim of White's book is to show us how the critical and creative employment of inherited language can serve as a powerful force for the "reconstitution" of both self and community. The relationship we establish to words, White makes clear, very much determines who we are — not only as individuals but as a culture. At a third level, White's book can be seen as an important statement of conscience. What I mean by this is something that can be made clear only as we go on, but for now let me say simply that the entire movement of the work is toward the expression of a truly complex ethical perspective, one that unites both method and vision in an integrated view of the world. It is of the essence of what White sets out to do here, moreover, that we come away from this work somehow better equipped to know and judge the "character" not only of ourselves and

of what we write, but of the culture of which we are a part. Finally, White's book is a composition in its own right, with its own powerful design and movement. This is one of those rare works that "realizes" the values it advocates not only in the exposition but in its own performance.

It might be thought that a "literary" book like this, a book that purports to be about reading the classics, would have little to do with the important philosophical and political questions with which contemporary legal scholarship deals. But that is not true. In fact what White does here has direct and pervasive relevance to the major issues which currently occupy the field of jurisprudential writing. White's essay on Thucydides' *History*, for example, sheds powerful light on the disintegrative tendencies underlying the effort by some economic theorists to transform the traditional language of legal discourse into the terms of the utilitarian cost-benefit calculus. And, collectively, his essays on the eighteenth century English writers make clear what is wrong with the response of the radical communitarian theorists to the challenge posed by classical economic theory. Indeed, it could be argued that the entire movement of his work is toward the provocative redefinition of the ethical responsibilities of the lawyer in our culture.³ But this somewhat misstates the book's essence, for in a very real sense these problems, at least as they have conventionally been formulated in the ethical and theoretical literature, are not White's problems. Yet in transformed guise they are omnipresent, and what White has to say here has important implications for how we approach them. In other words, this little book about reading and writing turns out in the end to be a work with inescapable political and ideological implications. *When Words Lose Their Meaning* is a book finally about the shape of our culture, not only what it is, but what it ought to be.

I. BASIC THEME AND STRUCTURE

White takes his central theme from a passage in *The History of the Peloponnesian War* in which Thucydides is describing the terrible dissolution of the Hellenic world under the pressures of war and revolution. It is a passage that dramatically depicts the consequences for self and culture "when words lose their meaning":

The sufferings which revolution entailed upon the cities were many and

3. White puts it this way in his preface:

[T]his book, despite appearances, is really about law from beginning to end. Indeed, one of its objects . . . is to set forth a rather different conception of law from those that presently prevail in academic circles: as an art essentially literary and rhetorical in nature, a way of establishing meaning and constituting community in language.

P. xi. The ethical implications for the lawyer of regarding language and experience as White proposes are addressed in the last chapter of the book and elaborated in a separately published essay, White, *The Ethics of Argument: Plato's Gorgias and The Modern Lawyer*, 50 U. CHI. L. REV. 849 (1983).

terrible, such as have occurred and always will occur, as long as the nature of mankind remains the same . . . [W]ar takes away the easy supply of daily wants, and so proves a rough master, that brings most men's characters to a level with their fortunes. Revolution thus ran its course from city to city, and the places which it arrived at last . . . carried to a still greater excess the refinement of their inventions, as manifested in the cunning of their enterprises and the atrocity of their reprisals. *Words had to change their ordinary meaning and to take that which was now given them.* Reckless audacity came to be considered the courage of a loyal ally; prudent hesitation, specious cowardice, moderation was held to be a cloak for unmanliness; ability to see all sides of a question inaptness to act on any. Frantic violence became the attribute of manliness; cautious plotting, a justifiable means of self-defense. The advocate of extreme measures was always trustworthy; his opponent a man to be suspected.⁴

The importance of this passage lies in the critical insight it offers into the complex relationship of reciprocity that exists between the language of a culture and the integrity and stability of the culture itself. To destroy the integrity of a shared cultural language, Thucydides suggests, undermines the stability of the culture, and if carried far enough can ultimately lead to its disintegration and collapse.

The words Thucydides describes here as having lost their meaning — words such as “courage” and “prudence” and “moderation” — were not simply tangential words in Hellenic culture, White points out, but “key terms of value” (p. 3); their corruption made it virtually impossible for the culture to go on as before. The corruption of its language effectively deprived the Greek world of vital rhetorical resources necessary to sustain its sense of worth, direction, and meaning — its sense of its own character — and that more than anything else led to its ultimate dissolution. What is involved, White stresses, is not a simple cause-and-effect relationship, but a complex dynamic of reciprocity involving all three elements: language, individual character, and culture. The subtle corruption of one undermines the integrity of the other, which in turn leads to a subtle erosion of the third, and so a destructive downward spiral begins.

What Thucydides is describing here is not an isolated historical phenomenon but a universal human predicament which will recur “as long as the nature of mankind remains the same”; thus his observation has continuing relevance for us. What do we do when the language of our own culture seems to be undergoing the kind of erosion or corruption that Thucydides describes? More importantly, what possibilities exist for “reconstituting” language thus corrupted and, with it, the culture itself in more vital and enduring terms?

“Culture” as it is used here may mean culture writ large, of course,

4. THUCYDIDES, *THE HISTORY OF THE PELOPONNESIAN WAR* 189 (Modern Library 1951) (emphasis added).

but it may also refer to a more specific social, institutional, or professional culture. And the "collapse" itself may also take a number of different forms. In the paradigmatic situation we encounter in Thucydides' *History*, the collapse is vivid and dramatic, brought on by the awful pressures of plague, revolution and war. But the words of a culture can also lose their meaning as a consequence of a much more subtle play of forces, for example as the result of constant misuse, so that words that once had real vitality and meaning are reduced to mere platitude or otherwise become so debased that they lose much of their original discriminating power.⁵ They become in a very real sense "meaning"-less. It is the struggle of the human imagination in the face of this universal predicament that is White's subject in this book.⁶

In seeking to illuminate this predicament and the possibilities for response to it, White does not embark upon a theoretical inquiry into the relationship of language to culture, but turns instead to the classics of imaginative literature identified above. Each chapter of his book forms a separate self-contained essay on a particular classic text, and in each essay White pursues the central question: what possibilities are represented here for transforming or revitalizing inherited culture through the imaginative reconstitution of its rhetorical resources? By taking this approach White is able to show us the individual imagination at work in a wide variety of contexts, first criticizing the existing culture and its language and exposing its inadequacies, and then forging out of those inherited materials a new cultural language which offers restored or enriched possibilities for the realization of self and

5. In contemporary jurisprudential literature, the collapse of language is most visibly reflected in the writings of the linguistic nihilists within the Critical Legal Studies movement. It is impossible not to be acutely aware of the extent to which "words have lost their meaning" in the recent interchange between Professors Peter Gabel and Duncan Kennedy. Gabel & Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984). Both Kennedy and Gabel are ultimately reduced to using language as something like a brick to throw in the direction of the reality that each wants to express. Gabel can find no other way to talk about what he clearly regards as the most important human relationships except by using terms like "unalienated relatedness," *id.* at 1, 4, or "authentic connectedness," *id.* at 30; and Kennedy about those that he regards that way as "intersubjective zap." *Id.* at 4, 6, 11. These words all become utterly interchangeable, all "formulae" for the same thing. See *id.* at 4-5. This is not what one would describe as a moral language of extraordinary range and discriminating power.

It may be that Kennedy and Gabel have reached the limits of inherited cultural language and their difficulties here are a reflection of their effort to press beyond those limits. But there is little evidence of that in their transcribed conversation.

Some see the Critical Legal Studies movement as a leftist revolutionary movement committed to the struggle of peoples everywhere against oppression and injustice, but the kind of talk we encounter in the Kennedy/Gabel dialogue clearly has more affinity with the "dadaist" movement in art in its nihilistic and self-mocking tendencies. What is most striking about Critical Legal Studies writing is the extent to which it forms a self-regarding literature whose central characteristic is that of looking at itself in the mirror. Others have noted the essentially "platitudinous" quality of the Critical Legal Studies literature. Johnson, *Do You Sincerely Want to be Radical?*, 36 STAN. L. REV. 247, 283 (1984).

6. For a powerfully moving portrayal of the struggle to make sense out of a world in which words have lost their meaning, see the award winning novel about life in postwar communist Poland, C. MIŁOZ, *THE SEIZURE OF POWER* (1955).

community. One important consequence of taking such an approach is that the focus is not so much on the reconstituted culture itself (in any case, not on that culture as the static embodiment of a particular set of values) as on the capacities of mind and character required to transform inherited language and culture in this way.

However, to see White's book simply as a series of discrete, self-contained essays is to ignore its most impressive aspect. For *When Words Lose Their Meaning* is a remarkable composition in its own right, with its own complex pattern and movement, its own deep integrity. The fact is that White's reading of each classic text is informed by his reading of all the others — and self-consciously so. As a consequence, there is a certain cumulative perspective at work at any particular point in the book that one cannot fully appreciate until one has read the entire work through. It is as if White has woven eight separate tapestries out of the same basic material, in each case the woof strand being supplied by the text immediately at hand with the weft strands supplied by those classic texts dealt with in the other chapters. Or perhaps it is like eight windows, or doorways, opening into the same large room. There is a kind of integrity to the whole that would be missed entirely by viewing each chapter as involving simply the discrete critical treatment of a particular text.

But even this imagery fails to suggest the basic structure of White's work, which is in some respects like that of a picaresque novel.⁷ Our central experience here consists of a series of encounters with distinct worlds — here represented by particular classic texts — out of which a complex and coherent ethical vision gradually emerges. Each world stands for a particular community of traditions and values and aspirations — for a particular way of dealing with experience, of making sense out of it. Each offers us an important education and, more than that, the possibility of real friendship and community. But there is a sense in which none of these communities can be a final resting point, for it is an essential part of the character of the picaresque hero that he resist the stasis of ultimate embrace by any particular community. A very important aspect of his education is learning to make his own way. His predicament, as Saul Bellow's Augie March once said, is how to have "[a]n independent fate, and love too."⁸ But if this is a predicament, it is also a challenge, and one addressed directly by White in this book: how to have a world in which genuine community is not only possible but central, in which one's commitments can be deep and lasting, and yet in which the possibilities for the development

7. See generally R. ALTER, *ROGUE'S PROGRESS: STUDIES IN THE PICAESQUE NOVEL* (1964); A. BLACKBURN, *THE MYTH OF THE PICARO: CONTINUITY AND TRANSFORMATION OF THE PICAESQUE NOVEL, 1554-1954* (1979); S. MILLER, *THE PICAESQUE NOVEL* (1967).

8. S. BELLOW, *THE ADVENTURES OF AUGIE MARCH* 401 (1953).

of self and community are not closed in by system but ultimately characterized by a certain poetic open-endedness.

A. *The Greek Trilogy: The Transformation of Culture Through The Imaginative Reconstitution of Inherited Language*

White begins with separate chapters on three Greek classics: Homer's *Iliad*, Thucydides' *History of the Peloponnesian War*, and Plato's *Gorgias*. His approach to these texts is deeply influenced by the view that each represents a literary and ethical *performance*. White is not concerned with extracting from these texts some poetical paraphrase of truths that can be as easily stated in the abstract language of theory. The real "meaning" of these works, he insists, lies at the level of performance itself. Put somewhat differently, to appreciate fully the ethical vision in each of these works, we must understand how the explicit claims made at the surface fit into the larger imaginative design of the work. We must look for the expression of ethical vision in the way words and sentences are put together, in the literary forms that are employed, and in the pattern and movement of the work as a whole.

1. *Homer's Iliad: Awakening Complexities in the Human Heart*

Homer's *Iliad*, as White views it, is a culture-transforming work. The poem moves us from an ethical perspective bounded by the values and expectations of heroic culture to a more complex awareness of possibilities for self and community. Working entirely with the materials of heroic culture, White claims, Homer not only finds a way to get critical distance on that culture but succeeds in giving expression to a vision of human relationships "seemingly inexpressible in inherited terms" (p. 93).

White elaborates upon two central characteristics of the world we encounter in the early moments of the poem. First, it is a world shaped by the values and expectations of heroic culture, the great aim of which is the acquisition and maintenance of "honor" expressed primarily in the form of battle prizes. Second, it is a deeply unstable world: "a world that trembles on the edge of dissolution" (p. 31). This instability is reflected in part in the nature of the cultural language itself; in part in the character and conduct of the leader of the Achean forces, Agamemnon; and, perhaps most dramatically of all, in the breakdown of community that results from the argument between Achilles and Agamemnon over the slave girl, Briseis. The fact that this seemingly manageable dispute cannot be resolved or contained, White argues, reflects a fundamental defect in the culture's "rhetorical resources" (p. 37). In this case, the argument is concluded when Agamemnon simply asserts his prerogative as leader to take the girl. Achilles, deeply dishonored, stalks off angrily to his tents, vowing never to return to the aid of the Achaeans. In this part of the poem,

White shows us, the dominant imagery is of instability and disintegration.

Achilles' departure from the Achean community, White maintains, represents a literary and cultural moment of enormous significance. Achilles "cannot be wholly part of his world, yet he cannot wholly leave it; . . . [thus] he becomes a figure on the edge of things" (p. 38). We suddenly find ourselves with Achilles looking at heroic culture from the outside; we are in effect forced to become critics of that culture. Nothing less is involved in this important literary moment, White insists, "than the beginning of social awareness and criticism" (p. 39).

The most significant moment in the second major section of the poem is Achilles' dramatic rejection of Agamemnon's attempt to effect reconciliation. The Achaeans have been beaten back to their ships, and a repentant Agamemnon sends a delegation to Achilles to try to persuade him to return to the battle. He offers Achilles opulent gifts in accordance with the conventions of the culture. In rejecting the appeals of the Achean delegation, White shows us, Achilles is led to reject the values of heroic culture itself. The enormous force of this moment comes in part from the fact that it occurs in the context of this epic poem, in a literary narrative. The world of the *Iliad*, as White brings us into contact with it here, is as vivid and immediate as experience itself.

Achilles' dilemma is that, having rejected the values of heroic culture, he is unable to articulate any coherent alternative. This is reflected, White observes, in the internal confusion of his rejection speech:

The problem is that [Achilles] has, as it were, no other place to go, no language other than his inherited one in which to establish himself and his motives. He lacks the resources with which to make a coherent and intelligible statement The statement he does make is one of anger and rejection rather than invention and reformulation. [P. 49.]

But if Achilles is unable to carve out an alternative place to stand, that is not true of Homer. In a highly illuminating analysis, White shows us how Homer succeeds in doing so, primarily through employment of what White calls the "art of juxtaposition" (p. 39). One manifestation of this art is Homer's technique of carrying us, in the course of the narrative, back and forth between opposing camps. By describing the experience of the Achaeans and that of the Trojans "in identical terms, expressive of identical feelings" (p. 39), White observes, Homer creates an "extraordinary sense of equity"⁹ and makes it possible for the poem's audience to escape the narrow partisanship required by heroic culture. By constantly juxtaposing alternative perspectives on the

9. P. 39 (quoting S. Weil, *L'Iliade ou le poème de la force*, CAHIERS DU SUD (Dec. 1940-Jan. 1941)).

war, Homer manages to achieve "the recognition of the equal humanity of the people who must suffer on both sides" (pp. 39-40).

Homer's art of juxtaposition is reflected as well in his use of domestic and pastoral similes to describe the experience of the war. At one point, for example, Homer compares the watchfires of war to "stars seen on a clear, still night by a shepherd, whose heart they make glad" (p. 40). This juxtaposition of pastoral image and martial description, which recurs throughout the *Iliad*, is not simply accident, White argues, nor is it simply the reflection of requirements of poetic form. Rather it serves a plain and important artistic function: to awaken complexities in the human heart (pp. 41-43).

All of this, White continues, prepares us for the powerful and deeply poignant moment of reconciliation between Achilles and Priam that takes place in the closing episode of the poem. In a rare act of courage, Priam, the aged father of Hector, comes alone in the night to Achilles' tent to plead for the return of his son's body for burial. It is a tension-charged moment because Priam's son, Hector, has killed Achilles' only close friend, Patroclus, on the battlefield, and Achilles in revenge has slaughtered Hector and in unquenchable anger attempted to mutilate his body. Yet Achilles responds to the old man's request not with anger but with sympathy. He not only grants Priam's request, but invites him to share food and drink before departing. The old man and the warrior then embrace, weeping together over the loss and suffering that each recognizes in the other. The transcendent impulse in this moment is not that of heroic partisanship, but the recognition of shared humanity. For just a brief moment, Priam and Achilles meet not as enemies but as fellow beings — forming, in White's words, "a precarious and momentary society of two in an alien world" (p. 53).

What is most significant about White's reading of this moment is what he refuses to make out of it. The great power of Homer's poem, White insists, derives from the fact that the vision ultimately expressed is not a sentimental one. It is not as if the world itself has changed, as if Priam and Achilles could-walk off together into the sunset. Priam will carry Hector's body back to Troy, and after a decent interval the war and bloodshed will begin again. The peculiar power of this closing moment derives from the fact that the momentary reconciliation between Priam and Achilles is achieved in the context of knowing that war and life will go on as before (p. 54).

The anti-sentimental or anti-utopian theme in White's reading of the *Iliad* bears stressing. The great strength of the *Iliad*, White insists, lies in its movement toward a more complex understanding of experience:

The poem does not operate as a string of unconnected appeals from the bad to the good but as a process of statement and counterstatement, a set of appeals and qualifications by which one event or statement or attitude

is placed in a context of others; and it is through the relationships so established that the poem gives meaning to its material. . . .

. . . .
 . . . In creating responses of these opposed kinds, one after the other, the poet puts the reader in a position where no single response can work for him. [Pp. 43-44.]

In the introductory section to this review, I spoke of the "integrated ethic" that emerges from White's readings of these classics, one important strand of which is expressed here. The center of Homer's achievement, White argues, is "a kind of friendship" (p. 57), the kind that comes from teaching and learning how to get on in a complex world. Homer's poem does not offer a theoretical or ideological "system" for dealing with experience, but something ultimately much more valuable. It teaches us by its own performance what is required for "imaginative disengagement" (p. 57) from one's inherited culture, and what is involved in "exten[sion of] sympathy" (p. 57). The great strength of the poem is that it does not hold out the prospect of a utopian world where one day all our problems will be solved, but rather seeks to instruct us in how to get on in a world where the "universal vision" of shared humanity can ever at most be imperfectly attained, where learning will be followed by forgetting (p. 58). The movement of the *Iliad*, in the end, is from a simple to a complex appreciation of the conditions of our existence and of possibilities for response.

2. *Thucydides' History: The Disintegrative Consequences of Adopting an Exclusive Rhetoric of Expediency and Self-Interest*

Thucydides' *History of the Peloponnesian War* can be seen as the story of how "words lost their meaning" as Athens came increasingly to embrace the exclusive rhetoric of expediency and self-interest, and of the tragic consequences of this development for Athenian character and culture. White's chapter on the *History* is a searching effort to understand what Thucydides has to tell us about the complex dynamic of reciprocity that exists between the rhetoric of a culture and the stability and vitality of the culture itself.

The "culture of argument" (p. 59) we encounter in the early parts of Thucydides' *History*, White observes, is a relatively complex and sophisticated one. Our first major exposure to this rhetorical culture is in the Corcyrean debate. Corcyra and Corinth are engaged in a struggle over control of the colony at Epidamnus, and both sides send a delegation to appeal for Athens' support. The arguments of both sides to this debate are highly sophisticated; they are centered in appeals to three basic values, justice, expediency, and gratitude, woven together to form a "highly coherent discourse" (p. 65).

In this context, White suggests, there is nothing inherently wrong with the appeals to expediency and self-interest; indeed, there is a sense in which such appeals serve to keep the discourse honest. They reflect the reality that "people are moved by self-interest, in this and every age, as the Athenians are here" (p. 67). What is crucial is that appeals to self-interest are advanced here not in isolation but in the context of a webwork of cultural traditions (embodying values such as justice, gratitude, and other community norms) which provide limitation and meaning.

As the war progresses, however, the rhetoric of self-interest, originally only one strand of a larger cultural rhetoric, becomes increasingly dominant and exclusive. We watch as it grows out of control like a malignant tumor, destroying the surrounding tissue of the cultural fabric in which we first encounter it, and consuming as it does the very resources that gave Athens its original vitality and character.

A pivotal moment in this development, as White's highly perceptive analysis shows us, is the Mytilenian Debate. At this point in the war, Athens has just successfully put down a revolt by the Mytilenian leaders (the people themselves were not involved), and the Athenians are called upon in public assembly to decide what shall be done. Initially they determine to put all the adult males to death and sell the women and children into slavery. By the following day, however, there is growing sentiment that this judgment may have been too harsh. Thus a second assembly is called, at which Cleon and Diodotus stake out the two basic positions available to Athens. These two speeches are particularly significant, White insists, because they "define two contrasting ways in which [Athens] might conceive of herself and her situation, two languages of motive and value, of character and choice" (p. 72).

Cleon, the first to speak, argues that Athens should stick to its initial determination, advocating a primitive "justice as vengeance" position. His argument is based, White shows us, in part on self-interest and in part on an appeal to the instinct for vengeance. At the heart of Cleon's speech is the notion that the Athenian empire *is* a tyranny, and should not pretend to be anything else.¹⁰ In essence, Cleon invites his audience to jettison the inherited cultural rhetoric and the values

10. Cleon recognizes the close interrelationship that exists between practices of reciprocity and the creation of conditions of equality which make genuine community possible, but the thrust of his argument is to deny the application of those practices here. His argument is based, White points out, on the view that

the allies are permanent enemies, to be ruled by force, not members of an alliance to be managed through claims of justice, expediency, and gratitude. The practices of reciprocity, of agreement . . . about justice, indeed of compassion and gratitude, can have no place where one city rules the others, for those practices are all premised on equality. But Athens can still use a language of justice, though of a primitive kind: repayment of injury by injury.

P. 73.

and traditions it embodies in favor of a primitive rhetoric of justice as vengeance.

One might expect then that when Diodotus rises to speak, he will take the opposite course, that he will try to reintroduce the cultural values that Cleon has discarded. But, as White shows us, Diodotus explicitly rejects such an appeal and argues instead simply from considerations of expediency and self-interest. It is against Athens' interest to punish the people of Mytilene along with its leaders, Diodotus argues, because such a course "would not serve as a deterrent to keep others from rebellion and would in fact harden the people to continue with a revolt once it had begun" (p. 74). It is not simply that Diodotus fails to seize the occasion to reassert a complex multi-valued rhetoric, but that he reduces the scope of rhetorical appeal to a point beyond which even Cleon was not prepared to go: "Diodotus concedes that arguments from justice and compassion for the Mytilenians are irrelevant; he rests his case solely on rationality and self-interest. But in this case a proper calculation of interests shows that the right course is the one that would usually be called merciful" (p. 74). Human compassion at this moment is reduced to a mere function of the pursuit of self-interest.

In the end, Diodotus' argument prevails, and the Athenians send a ship countermanding their earlier sentence. But that does not undo the real damage that has been done here, White argues. For by embracing Diodotus' appeal Athens has in effect collaborated in the radical contraction of her own rhetorical resources and, as a consequence, worked a tragic reduction in her own possibilities for justification and self-definition.

To give up the practice of redressing felt injuries and the language of rights and wrongs, of blame and mercy, for a language of pure self-interest is to give up a very great deal. Such a discourse can have no basis in sentiment, and no stable commitment to ideas; it must rest on what seems best at the moment. [P. 76.]

Just how much Athens has lost by accepting Diodotus' position is brought home, White goes on to show, in the famous Melian dialogue. Later in the war, Athens sends an expedition to the tiny island of Melos. Before attacking, the Athenians invite the Melians to surrender to avoid the necessity of a protracted siege. When the Melians attempt to invoke considerations of justice, they are rudely cut off by the Athenians who insist that the language of justice is irrelevant. The Melians' argument that Athens should be concerned about the way her actions will be perceived by the larger community are also cynically dismissed. To the Athenians, it all comes down to the brute exercise of power. In the end, the Melians refuse to surrender on the grounds that to do so would betray deeply embedded traditions of liberty for which the city has stood for seven centuries. The Athenians lay siege and, after de-

feating the Melians, kill all the adult males and sell the women and children into slavery.

The lesson White draws from all of this is a provocative one. There are some, of course, who will read Thucydides' *History* as offering a simple ideological lesson: namely, that to pursue self-interest is by itself destructive and wrong, and that a culture based in the pursuit of self-interest should be replaced with an alternative culture centered in the radical embrace of some opposite value such as "altruism"¹¹ or "solidarity" and "love."¹² Such an ideological reading of the *History*, White suggests, would utterly miss the point, for the very essence of the friendship that Thucydides offers us in this work lies in his insistence that there are no such simplistic solutions. What Thucydides offers, White argues, is not a system but an "education in statesmanship" (p. 88).

At the very heart of that education lies a critically important insight into the way language operates in a stable culture. A sound and vital culture, Thucydides suggests, cannot be based on the radical embrace of any particular value or set of values. A stable culture (like a stable ecological system) has to be a complex one, in which contrary or opposed values and impulses must exist suspended as it were in a kind of perpetual "tension" (p. 91). This complexity must be reflected in the cultural rhetoric as well, since the integrity and stability of the one is ultimately dependent upon the integrity and stability of the other. What Thucydides ultimately teaches us, White argues, is that "it is as irrational to speak of self-interest without recognizing the claims of justice as it is to speak of justice without recognizing the claims of self-interest" (p. 91). The claims of both must exist in a relationship of mutual reciprocity:

Justice and self-interest can . . . be seen as two sides of the same thing, as topics each of which necessarily implies the existence and validity of the other (as "form and substance" do, or "straight and curved"). There is a structural tension between them and a temptation to abandon one in favor of the other . . . But it is only in the tension between them that a coherent world of social action and meaning can be made. It is that tension — that reciprocal recognition of claim and limit — that makes possible the adjustments by which a culture can change without collapsing. [P. 91.]

11. For a discussion of individualism versus altruism as a basis for a legal and social order, see Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976). Kennedy has since "recanted" this dichotomy. See Gabel & Kennedy, *supra* note 5, at 36.

12. This describes the essential thrust of Roberto Unger's anti-liberal jurisprudence, R. UNGER, *KNOWLEDGE AND POLITICS* (1975), see text at notes 35-55 *infra*, and something like this vision is implicit in Morton Horwitz's anti-liberal historiography, M. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860* (1978). The same idea is reflected in writings of others allied with or sympathetic to the Critical Legal Studies movement. See, e.g., Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 549-50 (1984) (supporting "radical transformation" of society to one centered in "love, trust, and support of others").

3. *Plato's Gorgias: Forging an Ethically Integrated Rhetoric*

Plato's *Gorgias* plays an extremely important role in White's work because it is grounded in the insistence that the ethical integration of language is essential to the achievement of integrity of self. The other two Greek texts are also concerned with relationship between language and character and culture, but here there is an added element of *conscious* transformation. One of Plato's great achievements in this work, White contends, is that he shows us how the language of one's culture and with it the basic relationships within that culture "can be consciously and deliberately changed by the individual mind" (p. 93).

Plato's central effort in the *Gorgias*, White explains, is to redefine certain key terms of value in Greek language and culture. More specifically, it is to transform in a fundamental way the notion of what it means "to excel." The task Plato sets for Socrates in the dialogue is to take the inherited language of Greek culture in which words of "excellence" were divorced from words of "virtue" and, through a dialectical process, to remake the language into one in which the achievement of excellence is inextricably tied to the pursuit of virtue. The task, in short, is to develop an ethically integrated language.¹³

This chapter is significant in part because it introduces us to the activity of dialectic — an activity which comes to play a very important role in White's work. Dialectic, as it is performed in the *Gorgias*, consists of two major steps. The first step is that of "refutation," the aim of which is to shake the interlocutor free from a comfortable or uncritical relationship to the language of his culture. Through a series of simple questions, he is first disoriented and then led to embrace seemingly "paradoxical" propositions. The second step involves the conscious "reconstitution" of language so that in the end words mean something quite different from that which they originally meant. The experience itself thus coincides with the basic pattern of experience we encountered in the *Iliad*: first there is the rejection of the existing conventions of the culture, then the disorientation or confusion, and finally a reconciliation of sorts, although now on altered terms.

The *Gorgias* begins with Socrates putting a series of questions to Gorgias, one of the leading rhetoricians of the day. Socrates is particularly concerned with the potential misuse of the power of persuasion — with the rhetorician's employment of rhetoric as a "hired gun"

13. White points out that there is a sense in which Plato's struggle in the *Gorgias* cannot be understood in translation, so closely tied is it to the meaning of particular Greek terms of value: An English translation of this text . . . tends to have an unreal and goody-goody quality, which makes one wonder how the questions the dialogue addresses could possibly interest a serious person. In Greek, by contrast, the argument is vital and threatening, gripping the mind through its very language. Indeed, the reason why, in the dialogues, people turn away from Socrates, and why, in the world, he was killed, is not that what he says is too vapid but that it is too real and threatening.

without regard to the justice or injustice of the cause being advocated. Socrates makes at this point a crucial distinction between rhetoric and dialectic. Rhetoric, he argues, involves the manipulation of the uncritical response of the audience, but dialectic creates a relationship of mutual trust and respect, since it invites critical response at every step along the way. As we proceed, however, it becomes clear that the real problem is not rhetoric, but rhetoric conceived in a particularly narrow and manipulative way. Thus when Gorgias admits it is part of his responsibility to teach students of rhetoric about justice, White observes, Socrates lets him off the hook since he has conceded the need for an ethically integrated conception of the art of rhetoric.

As the dialogue continues, Socrates brings first Polus and then Callicles to confront the unintelligibility of the manipulative and ethically unintegrated conception of rhetoric that each initially was prepared to defend. He does so in part through the assertion of a set of seemingly paradoxical propositions (for example, that it is better to suffer an injustice than to do one), which are paradoxical, White helps us to see, only if one comes at them from the earlier unintegrated way of organizing language and experience. If instead one adopts an ethically integrated approach to language and experience, these propositions make perfectly good sense. These paradoxes force us, if we want to continue to make sense of the world, to take refuge in the ethically integrated language reconstituted by Socrates in the course of the dialogue. To continue living and talking in the "old way," Socrates teaches, is to live in a world of internal contradictions and absurdities; it is to live a "discordant" life (p. 103). The dialogue ends with an invitation by Socrates to join with him in establishing a world where "rhetoric should always be used toward the end of justice, as should every other activity" (p. 101), and where the pursuit of excellence is inextricably tied by an ethically integrated language to the pursuit of truth.

Plato's performance in this text is an integrative one, White stresses, in another sense as well. The language in which Socrates and his interlocutors speak is not for the most part the abstract language of logic or theory, but the language of ordinary discourse.¹⁴ The dialogue is full of concrete and domestic imagery, and it is expressive of the full range of human response: humor, embarrassment, doggedness, arrogance, frustration, inspiration, cleverness, the list goes on. Moreover, some of Socrates' most telling points are made through the employment of literary techniques such as his use of the famous parable of the leaky jars. It is because the *Gorgias* proceeds in this "liter-

14. The importance of making sense out of experience in the terms of "ordinary" discourse forms a central theme in White's work, running from his theme-setting discussion of Thucydides' observation about how "words had to change their *ordinary* meaning," see text at note 4 *supra*, to his concluding chapter on the significance of the use of "ordinary" language as the foundation for our own constitutional culture. See text following note 24 *infra*.

ary" way, White suggests, that Plato is able to give expression to a truly integrated vision of experience he could not have reached through the avenue of abstract theory alone (p. 108).

White's most provocative claim in this chapter is directly related to this view of the *Gorgias* as a literary and ethical performance rather than a work of theory, and it has to do with how we should deal with the problem of Socrates himself. Socrates *is* a problem in the *Gorgias* because although we cannot help but admire his mastery of dialectic, there are times when he leaves us feeling strangely uneasy. It is as if we cannot fully trust him: at times he seems to play the bully, at other times to get away with arguments that seem strained or phony, at still other times to be elusive. "[S]ome of the arguments he makes are plainly specious," White notes, "and others one suspects to be so" (p. 94). What is Plato up to here?

It is a mistake to read the *Gorgias*, White suggests, as if Plato and Socrates were interchangeable. Rather we must distinguish between Plato, the composer of the text, and Socrates, the performer within it. The proper way to regard Socrates is not as an infallible guru to whom we should reverentially defer, but rather as a sort of *persona* deployed by Plato in the text to train our critical and ethical capabilities. Those aspects of Socrates' performance that trouble us, in other words, *ought to trouble us*. The very purpose of the text — like the purpose of dialectic itself — is to force us at every point to make independent critical judgments, not simply about the performances of Socrates' interlocutors, but about Socrates' own performance as well.

It is this idea that finally shapes White's reading of the *Gorgias*. Plato's text does not offer, White argues, some permanent set of ethical truths that we can cart away and convert to at our leisure. Rather it offers a real friendship by inviting us to struggle with, and sometimes against, Socrates in the pursuit of truth and justice, and in the activity of forging out of inherited materials an ethically integrated language and view of experience. The essence of this friendship is the active struggle that dialectic requires of the reader, for it is the struggle itself that in the end serves to help us develop our own capacities for independent critical and ethical judgment.

Before proceeding, it is important to appreciate the extent to which the underlying movement of this section on the Greek texts reflects in amplified form the basic movement of the *Iliad* itself. The *Iliad* provides, as it were, the basic "imaginative design" that shapes not only the internal composition formed by White's three chapters on the Greek texts but the larger movement and pattern of his work. Thus we began this section with the *Iliad*, a text in which the hatred of Achilles and his rejection of inherited culture forms the dominant theme. In moving to Thucydides' *History*, we moved to a work that is centrally about the disintegration of culture and cultural rhetoric; even

the narrative voice employed by Thucydides in this work, White shows us, is not a fully integrated one. Plato's *Gorgias* is by contrast a work of friendship and reconciliation; it serves in a sense to pick up the pieces. It is a demonstration of possibilities for consciously transforming culture through the activity of dialectic, through refutation and reconstitution of the key terms of value of a culture. The larger movement of this segment of White's work, then, is from the rejection and disintegration of an unstable culture to the conscious activity of reconstituting culture in more vital and stable terms. This basic movement — from rejection to reconciliation, from anger and hatred to friendship — is one that, as we shall see, reflects and anticipates the larger movement of White's composition as a whole.

B. *The English Quartet: Elaboration and Expansion of the Integrative Ethic*

In his chapters on the four works from eighteenth century English literature — Swift's *Tale of a Tub*, Johnson's *Rambler* Essays, Austen's *Emma*, and Burke's *Reflections on the Revolution in France* — White continues the literary and ethical endeavor begun with the Greek texts. Themes and counterthemes introduced earlier are amplified and complicated in ways that can at most be only suggested here. The basic movement of these four chapters is a double one: We move from the world of literary fiction to the world of political reality, and at the same time from the expression of an ethic that has primary application to the community of two formed by writer and reader to the expression of a cultural ethos which embraces the entire political and cultural life of a people.

1. *Swift's Tale of a Tub: Beyond the Antithetical Organization of Ethical Experience*

It might seem that in moving from Plato's *Gorgias* to Swift's *Tale of a Tub*, we are being asked to make an arbitrary if not impossible leap across time and culture. But in fact, as White shows us, there are remarkable similarities in the operation of these two works. Like Plato's *Gorgias*, Swift's *Tale* is one of those texts that makes us do all the work, but in doing so serves to develop and refine our ethical capabilities. Swift presents us in the *Tale* with a seemingly "mad" narrative which, like Plato's paradoxical propositions, we can make sense of only by approaching what we read from the vantage of an ethically sound perspective.

The structure of Swift's *Tale* is complex, but at its center is an allegorical tale about a father and his three sons: Peter, Jack, and Martin. The narrative is interrupted by a series of digressions which deal with a wide range of subjects from "criticks" to "madness." The tale itself addresses "corruptions" in religion; the digressions, those in

learning. Our problem, White points out, stems from the fact that the entire work seems to have been written by a "mad" narrator (or several mad narrators), and thus we can never be certain about which statements should be taken seriously. The basic task set for us by this text is to figure out where Swift himself really stands or, more accurately, *where we should stand*. In order to make sense out of the *Tale*, we are forced to develop an ethically sound position from which to view it, one that will allow us to explain consistently how it is we *know* how to take any particular assertion in the text. This position, White shows us in a deeply illuminating analysis, is not a simple but a complex one.

One of the central problems of language and character with which Swift forces us to deal in the *Tale* is the problem of the false antithesis. Stated in the abstract, the problem is reflected in our tendency to regard ethical experience in terms of sets of radically opposed "values."¹⁵ The basic movement of the *Tale* is from a world where antithetical thinking of this sort still helps us make sense out of what we are reading to one where it no longer does.

In the beginning of the tale, the father writes a will in which he leaves each of his three sons a set of clothes which "with good wearing" will last them "fresh and sound" as long as they live (p. 122). The language of the will, White points out, is a perfect reflection of the character of the father: plain, simple, and direct. The will commands very clearly that the sons are "not to add to, or diminish from their Coats, one Thread" upon pain of the "greatest Penalties" (p. 122).

As time goes on, however, "shoulder knots" come into fashion, and the sons, wanting to be fashionable, go to the will to see what it has to say about adding shoulder knots. The character of the three sons is reflected not simply in their inability to resist succumbing to passing fashions but in the way they set about circumventing the clear prohibitions of the will. The short of it is that they find a way to interpret the will that allows them to attach the shoulder knots. As other fashions make their appearance, the sons invoke an entire range of specious techniques of interpretation to allow alteration and embellishment of the once simple clothes, in clear contradiction of the simple mandate of the father's will.

Thus far, White observes, we have no difficulty in knowing what is good and what is bad. "Plain" represented by the father and the language of the will is good; "fancy" represented by passing fashions and clever interpretation is bad. The antithetical imagination works perfectly well here to indicate what we should embrace and what reject.

Therefore when we come to Swift's famous "Digression on Mad-

15. This is a distinctive characteristic of the way in which radical communitarian writers, such as Morton Horwitz and Roberto Unger, organize language and experience. See Teachout, Book Review, 53 N.Y.U. L. REV. 241, 241-47, 272-78 (1978).

ness," White points out, the habits of antithetical thinking are thoroughly engrained. But here the narrative enters a new level of complication. We enter a world where the antithetical imagination becomes a positive hindrance as the reader enters a labyrinth of irony and seeming contradiction in which it is easy to become disoriented and lost. We have entered the "confusion" phase of our ethical education. In order to make sense of Swift's text at this point, we are forced to develop a different, more refined way of organizing experience, an entirely new rhetoric that allows us to make the kind of literary and ethical distinctions that need to be made. The key to understanding the operation of the Digression, White shows us, is to appreciate "that the opposite of the false views presented here are also false" (p. 132). The Digression forces us to recognize that it is not the values themselves, or our adoption or rejection of them, that determines who we are, but rather the relationships we establish to them (and between or among them) in a particular context. The heart of ethical judgment lies not in choosing between contrasting values but in "the way of making the contrast itself" (p. 132). Thus when Swifts says

that "Imagination is of Cuffs with the Senses" and a "man's Fancy gets *astride* on his Reason," what is wrong is not with Imagination or Sense or Fancy or Reason but with the relationship expressed between them: "at Cuffs." It would be just as bad if man's Reason got "*astride*" on his Fancy. . . . Another way to put it is to say that the questions on which the passage is organized are false ones: credulous *vs.* curious, surface *vs.* depth, truth *vs.* fiction, memory *vs.* imagination, nature *vs.* art, and so on.¹⁶

The only way to escape the trap of the "false question," White insists, is to change the question itself. Rather than asking whether we should embrace this set of values *over* that set of values, we must ask the much more difficult question of what kind of relationship we should establish to this or that value relative to others in this particular circumstance.

This is a critical moment in White's work; implicit in it is the rejection of the ethical structure underlying much of radical communitarian theory.¹⁷ To follow Swift and White at this point is to leave behind

16. P. 132 (emphasis in original).

17. For example, the radical communitarians posit a radical opposition between a world of values centered in "justice" and one centered in "efficiency." See generally Teachout, *supra* note 15. As White has suggested earlier in his treatment of Thucydides' *History*, and as he goes on to elaborate in these chapters on the 18th century English texts, to think and write about the world of experience this way involves a "false division"; it

is a form of disease, a division of the self and culture that amounts to a kind of madness.

For to divide this way is to deform; it denies, by falsely resolving them, structural tensions that are central to human life and experience. Acceptance of them is essential to maturity and health.

P. 135. This in part may explain why Morton Horwitz's historiography so consistently fails to do justice to the complexity of experience of both the 18th and 19th centuries. See Schwartz, *Tort Law and The Economy in Nineteenth-Century America: A Reinterpretation*, 90 YALE L.J. 1717

"systems" ethics, in particular those based on antithetical embrace of value, and enter a world where the development and employment of discriminating judgment is essential. And that, White argues, is ultimately the only basis for a sound ethic:

Our experience of this text thus teaches that the tension between the imagination and fancy and wit, on the one hand, and plain and direct speech on the other, which here is presented with such extraordinary fullness, cannot be resolved by a choice of one thing over the other but only by learning to live with both. The imagination is as necessary to ward off the madness of pure rationality as reason is to ward off that of pure fantasy; either one alone, like "justice" or "expediency" in Thucydides, is a delusion that denies the truth.¹⁸

Swift's *Tale*, White argues in conclusion, brings us to appreciate with new immediacy the critical linkages that exist between language and character. Even beyond this, the experience of the text itself offers a special kind of ethical training:

Just as the *Tale* is dialectical in the responsibility it places upon the reader, it is ethical in its central concern with character. . . . [T]o read it at all one must constantly be assessing character as it is manifested in language. The defects that appear in the text as delusion, false questions, withdrawals from reality, unlimited ambitions, failures to connect, and the like are not merely intellectual or cognitive deficiencies but diseases of character, the only remedy for which is the kind of wholeness and health Swift seeks to stimulate in the reader. To read sensibly, to write sensibly, and to be sensible are, for Swift, intimately connected. [P. 136.]

This kind of ethical training, White maintains, is Swift's "greatest gift" to the reader: "Anyone who reads the *Tale* well will be forever different, alert in new ways to faults and defects of the self as they exhibit themselves in speech or writing" (p. 136).

2. Johnson's *Rambler Essays: The Ethical Imagination in Performance*

Johnson's central concern in the *Rambler* essays is essentially the same as Swift's in the *Tale*: it is with expressing and shaping character through the activity of writing and reading. Unlike Swift, however, Johnson does not send his reader out into a maze or minefield of irony and parody, but rather does the labor himself. In doing so, Johnson demonstrates certain critical and ethical capacities that form major strands of the ethic to which White himself ultimately gives expression.

On the surface, Johnson's *Rambler* essays are a series of "moral" essays, but if we read them simply for the paraphrasable moral lesson at the end, White warns, we will miss the most valuable thing they

(1981); Simpson, *The Horwitz Thesis and the History of Contracts*, 46 U. CHI. L. REV. 533 (1979).

18. Pp. 134-35 (footnote omitted).

have to offer. For the heart of these essays lies, he argues, in the record they provide of Johnson's own struggle to make sense out of the world, to push beyond platitude and commonplace toward the expression of more fundamental and stable truths. What we should look for when we read Johnson's essays, in other words, is not a transportable set of moral truths but the reflection of the ethical imagination in performance.

In Johnson's world as in our own, White observes, one consequence of the fact that language is common property is that both language and the truth it expresses are constantly subject to "pressures toward thoughtlessness" (p. 144). Any statement of truth, no matter once how vital, will tend to become vitiated, drained of impact and meaning as a result of the wear and tear of constant use and misuse. Our task, therefore, is the endless one of rescuing such truths from the condition into which they have fallen.

Perhaps the most significant characteristic of the ethical language that Johnson carves out in these essays is its open-endedness. This, to White, is a powerful and underappreciated virtue. When we look at Johnson's essays as a whole, White argues, what is most noticeable is the extent to which the conclusions reached in any particular essay "are themselves subject to reexamination and complication, to a further process of thought; they are not offered as building blocks of a theoretical system" (pp. 152-53). A central virtue of the ethical language that Johnson adopts, then, is that it serves to remind us of the "precariousness" of truth (p. 153).

Johnson's achievement in the *Rambler* essays is to make out of "inherited materials a moral language of extraordinary range, discrimination, and coherence" (p. 163). The heart of the education provided by these essays lies in the encounters they offer with certain critically important character-shaping "activities of mind" that

comprise a steady pressure to correct and complicate; a constant openness to new facts or ideas; a repeated turning from system or theory to experience; and a hunger for balance, for the capaciousness of mind that can retain at once two opposing tendencies in their full force.¹⁹

It is from observing these aspects of Johnson's language *in action* that we can learn the most, White suggests. And it is these capacities — the "steady pressure to correct and complicate"; the "openness"; the turning from "theory to experience"; the "hunger for balance" and the "capaciousness of a mind that can retain at once two opposing tendencies in their full force" — that are in the end absolutely essential to the establishment of a sound ethic for self and culture. Johnson's *Rambler* Essays expand our sense of ethical possibilities by demonstrating the integrative potential of the discriminating and complicating imagination.

19. P. 152 (footnote omitted).

3. *Austen's Emma: Toward the Creation of a World with an Ethical Center in Friendship*

Austen's *Emma* is the story of the education of a young woman who, through a series of encounters, is gradually led from a sentimental to a more complex way of making sense of her life. The novel itself is a rich and subtle exploration of the relationship between language and character and, like most of the other works considered so far, moves toward the development of a truly integrated way of talking about and making sense out of the world.

The characters who are the objects of Emma's affection in the opening moments of the novel, White points out, represent in one way or another the sentimental ethic. There is, for example, Emma's "affectionate, indulgent" father (p. 165), and Miss Taylor, her governess, "who had such affection as could never find fault."²⁰ Emma's own relationship to such characters is also governed by sentimentality. In a sense, these characters are embodiments of a particular aspect of her own character, which they bring out in her dealings with them.

Here, as in the other works we have considered, there is an intimate relationship between language and character. Who one *is* — what one's ethical possibilities are — is vitally determined by how one uses words. Indeed, as we become familiar with the way Austen's novel operates, it becomes possible to recognize the distinct ethical "voices" represented by each of the characters in their every gesture and in every nuance of speech.

White shows us how this works in the way Emma uses language in the early moments of the novel. In her internal reveries and conversations with others, Emma puts "affection" and "fondness" on one side of the ethical fence, and "restraint" and "authority" on the other (p. 165). Emma's is a world, in other words, in which value terms such as these are placed in a simplistic opposition, the one set of terms being "good," the other "bad" — a condition, as we have seen, that makes the development of a truly coherent understanding of experience impossible. "Friendship" at this point in Emma's development is equivalent to "affection," and "affection" cannot be distinguished from "indulgence." A friend *is* what Miss Taylor is to Emma: it is one who has "such affection as could never find fault." What is wrong with such language, White explains, "is that it has no internal opposition, no tension to give it life and to make meaning possible. The terms just run into one another without contrast or definition" (p. 166). The language lacks "the contrasting other term that makes thought possible" (p. 166).

As the novel proceeds, White shows us, Emma gradually comes to develop a more critical and complex way of thinking and talking about

20. P. 166 (quoting J. AUSTEN, *EMMA* 6 (R. Chapman ed. 3d ed. 1933)).

herself and others. Her education is formed in part through a series of painful and embarrassing encounters, and in part through her developing relationship with Mr. Knightley. If Emma sometimes seems to represent imagination insufficiently grounded in judgment, Mr. Knightley can be seen to represent the opposite tendency. The relationship between these two develops largely through a series of conversations in which Mr. Knightley often plays the critical role, and Emma the playful spirit. As White points out, both Mr. Knightley and Emma learn from these conversations. Emma's freshness and playful intelligence draw Knightley out of what one suspects might otherwise have become a settled condition, and Knightley teaches Emma that a large part of friendship is learning not only how to be critical but how to take the criticism of others as well. White gives great stress to the critical role played by friendship in Emma's literary and ethical development:

Emma learns not so much from her errors as from her experience of becoming, in conversation with another, an improved version of herself. The movement of the novel is thus only partly the correction of error through experience; it is more deeply the development of self through friendship. [P. 184.]

By the end of the novel, Emma has left behind her earlier tendency to utopian reverie and fantasy, and the sentimental and manipulative language with which she gave it expression, to confront reality in all its problematic complexity. Her language has changed as well: no longer is it sentimental, but a language, in White's terms, "congruent with the essential conditions of her existence" (p. 189). Emma's language "has become both a way of directly facing circumstances that cannot be changed . . . and a way of making a better world upon them if the opportunity offers" (p. 189). The novel closes with the coming together of Emma and Mr. Knightley — the union of imagination and judgment in a relationship of critical friendship that is maturing into love.

In this novel a number of themes important to the development of White's ethical vision and the composition of his own work converge: the view that ethical development takes the form of the movement toward a more complex and integrated way of thinking and talking about experience; the idea of an ethic centered in a relationship of critical friendship; and the notion that the conversational form represents important possibilities for ethical development.

4. *Burke's Reflections: The "Compositional" Versus the "Theoretical" Organization of Language and Experience*

Burke's *Reflections on the Revolution in France* represents an expansion of the sphere of the ethically integrated perspective to embrace the political and cultural life of a people. It plays in this respect a critical transitional role in White's work because it carries us from

the world of fiction into the world of political reality and action. Burke's is a remarkable achievement in many respects, White makes us see, but chief among them is the capacity of the rhetoric he carves out to pull into an integrated perspective not only the complex aspects of individual character, but those aspects as they are reflected in the character of an entire culture. White's analysis of the interrelationships between Burke's integrative vision of English constitutionalism and the way in which Burke's work itself functions as an integrative composition brings us to appreciate Burke's real achievement in this work.

One important aspect of Burke's performance, White argues, is his insistence upon developing an ethical language in which terms of value (such as "liberty") are regarded "not in isolation or abstraction," nor in a relationship of simplistic opposition to other terms, but in "combination" (p. 200). When Burke is asked, for example, whether or not he is for "liberty," he responds as follows:

I cannot stand forward, and give praise or blame to any thing which relates to human actions, and human concerns, on a simple view of the object, as it stands stripped of every relation, in all the nakedness and solitude of metaphysical abstraction. Circumstances . . . give in reality to every political principle its distinguishing colour, and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind. . . .

. . . I should therefore suspend my congratulations on the new liberty of France, until I was informed how it had been combined with government; with public force; with armies; with the collection of an effective and well-distributed revenue; with morality and religion; with the solidity of property; with peace and order; with civil and social manners. [P. 200.]

Burke's development of a complex ethical discourse of "combination" is extremely important to White, because in his view it is the only type of ethical discourse that can provide a foundation for a stable culture. Burke is right, White insists, to refuse "to use 'liberty' as a single unqualified term of praise or blame. . . . The real task is not the isolated definition of values but their combination, their composition into a whole" (p. 201).

White goes on to show us how Burke's central activity in the *Reflections* is the elaboration of two different cultures, each of which epitomizes a particular way of organizing language and experience. On the one hand there is the culture of the English Constitution, which embodies the compositional ethic of uniting "into a consistent whole the various anomalies and contending principles that are found in the minds and affairs of men."²¹ On the other, there is the culture of the

21. P. 201 (quoting E. BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE AND ON THE PROCEEDINGS IN CERTAIN SOCIETIES IN LONDON RELATIVE TO THAT EVENT* 89-91 (C. O'Brien ed. 1969)).

French Revolution, which is based upon a theoretical approach to experience and is disintegrative in thrust (p. 201). At the heart of the differences between these two cultures, White explains, lie very different approaches to the organization of language:

a difficult and comprehensive language of combination and composition, which offers a way of putting things together into a whole, a way of constituting a culture and a community; and an easy language of theory and abstraction, which offers a way of taking things apart, a way of undoing order, which leads at last to chaos. The French process is dissolution; the British process — enacted for us in the composition of this text — is constitution. [Pp. 201-02.]

Burke does not simply advocate the advantages of the compositional ethic of English constitutionalism, White points out, he performs that ethic at every level of his own work. The “central characteristic” of the language Burke employs, White argues

is its integrative force: it is a language that unites fact, value, and reason; thought and emotion; the family and the crown; the social and the natural worlds; ethical motives and material results. It has an integrative force not only in the political and social world but in the reader himself. . . . [P. 208.]

All of this is not to say that White takes an uncritical view of the vision of the social and political order that Burke ultimately expresses. Indeed, White argues that Burke’s vision is “radically flawed” because it is “founded on inequality of an essential sort” (p. 228). And Burke’s own performance is flawed in a parallel way: at times he seems to engage in rhetorical domination of the reader in a way, White suggests, that is fundamentally inconsistent with a relationship of mutual trust and respect. Unlike dialectic as it is performed in Plato’s *Gorgias*, Burke’s rhetoric neither presupposes nor serves to establish conditions of essential equality (p. 228).

Notwithstanding these defects, White argues, Burke’s text offers an extraordinary education. Among other things, it teaches us that if we are serious about developing an ethically integrated view of self and culture, the language we use must be adequate to the task. The language we employ, White argues,

must be what I have called literary — merging fact, value, and reason, fusing the particular and the general, uniting thought and emotion, logic and image — rather than theoretical or conceptual. [P. 229.]

Burke’s text also teaches the crucial importance of taking a “complete” view of experience. When we are reading a text, for example, taking a “complete” view means looking beyond surface statement to understand how the work operates as a complete performance. That same endeavor should govern our approach to experience generally. Burke ultimately teaches us, White argues, that to understand the “full meaning” of an event

one must see it also from the point of view of those who are gone and

those yet to come. At each stage the central idea is that of completeness: the constitution is not the theory, the abstraction, but the complete way of life; the individual is not to be . . . spoken to . . . as a merely political or merely intellectual or merely emotional creature but as a complete person, knowing all that he knows, doing all that he does . . . [P. 229.]

In the next and final section of his book, White explores the employment of this complex cultural art in the context of the real world activity of establishing an American constitution.

C. *Three American Documents: Establishing a Constitutional Discourse in the Real World*

White's chapter on the three documents from the early American constitutional experience is perhaps the most provocative in his book.²² The idea of the chapter is a fascinating one. White brings to bear on three public documents from this early period of American constitutionalism — the Declaration of Independence, the Constitution of the United States, and Marshall's opinion in *McCulloch v. Maryland*²³ — the same method of analysis and the same critical perspective he has employed in reading the works of imaginative literature we have considered so far. In terms of the larger structure of his work, this chapter continues the movement begun with Burke's *Reflections* from the world of "fiction" into the world of political and legal reality, from the world of reflection into the world of action. It serves in a sense to make operational the ethical vision that White has developed so far largely in the context of imaginative literature. It is clear from everything that has come before that White could not simply stop with Burke's *Reflections* because the world Burke envisions is ultimately one based on conditions of fundamental inequality. And such conditions, White shows us, can never provide the foundation for a truly stable culture. Thus, moving from Burke's world to the world of the American constitutional experiment is important because the idea of equality, however imperfectly it was realized at the time, was at least a central shaping idea in the American experience.

White views these three American "constitutional" documents not

22. And the most problematic one. In my view this chapter is the least successful chapter in White's book. Exactly why this is so, I am not entirely sure, but it has in part to do with the fact that White attempts to compress far too much here into a very restricted space. The result is that, for all its interest, his treatment of American documents tends to be somewhat fragmented and superficial, and his suggestions about application of the education we have undergone to the actual practice of law so condensed that they are almost obscure. This would be of much greater concern if White had not demonstrated elsewhere the deep relevance of this kind of education to the understanding and practice of law. See J. WHITE, *THE LEGAL IMAGINATION* (1973); White, *supra* note 3. One should take White's final chapter for what it is intended to be: not as a detailed elaboration of how one might apply the education we have undertaken to the study and practice of law, but rather as a window that opens upon a set of unrealized possibilities.

23. 17 U.S. (4 Wheat.) 316 (1819).

as isolated events, but as forming together a significant pattern: we move from the "unstable constitution" represented by the Declaration of Independence (p. 231), to the "stable but inert" framework provided by the Constitution itself (p. 240), and finally, in Marshall's opinion in *McCulloch*, to the establishment of an integrated and vital constitutional community.

The Declaration of Independence could never provide the foundation for a stable culture, White argues. The instability of the world to which the Declaration gives expression is reflected in the almost schizophrenic division of "voices" in the document. In the opening passages we encounter the voice of prudence and moderation and high principle, but that gives way in the central "indictment" section to the voice of hatred and patriotic fervor.²⁴ Nowhere in the document, moreover, are these two voices fully reconciled or integrated.

At the same time, White recognizes that the Declaration does very successfully what it sets out to do; it moves the reader, without his ever fully realizing what is happening, "from his ordinary state of consciousness . . . into a willingness to pledge his all in a battle to save the country it has defined as his" (p. 239). But it does not offer "a basis on which to found a collective life more complex than that of national self-defense" (p. 239).

The Constitution, White argues, serves to do what the Declaration "neither attempted nor achieved: to establish and organize a national community not merely at a transcendent moment of crisis but in its ordinary existence and over time" (p. 240). In describing the structure and operation of the Constitution, White attaches great significance to the fact that its basic "rhetorical character" is like that of a trust: in certain respects it is very specific in the directives it provides, but in others it places "complete confidence in others to do what should be done" (p. 244). It is helpful in this respect, White suggests, to think of the Constitution as establishing a "rhetorical community" (p. 246). It not only defines the large terms upon which future constitutional conversations will proceed, but also sets forth the occasions that will give rise to such conversations and identifies who the responsible speakers will be. Yet, for all of this, the Constitution is "by its very nature lifeless and inert unless it is put to work . . . by the citizens who live under it" (p. 247).

The creation of a viable constitutional community itself cannot be achieved, White insists, without the participation of the Court. That is because "the Court can offer what no other branch can: the development, over time, of a self-reflective, self-corrective body of discourse that will bind its audience together by engaging them in a common

24. See p. 236. There is a sense in which the Declaration of Independence can be seen to replicate in the American experience Achilles' angry departure from the community of Achean warriors.

language and a common set of practices.” [P. 251.] The “character” of the language of constitutional discourse established by the Court thus becomes crucial, for it determines in the most fundamental way the character of the constitutional community itself.

This is where Marshall’s opinion in *McCulloch v. Maryland* holds such special attraction for White: Marshall in this opinion expresses a view of constitutional language that reflects a truly complex appreciation of the nature of language itself. In a classic passage on how to read the “necessary and proper clause,” Marshall sets out his view of the nature of constitutional rhetoric:

Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense — in that sense which common usage justifies. The word “necessary” is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and it is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. [P. 259.]

Marshall adopts here the view of language that lies at the heart of the literary ethic which has gradually emerged from White’s reading of these classics. Marshall aligns the activity of constitutional argument and decision with the classic traditions we have been considering. He “defines the language of the Constitution,” White claims, “as continuous with ordinary language and capable of the same richness, complexity, and variation — indeed, of the same capacity for inconsistency” (p. 260). This has enormous significance because it means the language of our constitutional discourse will be, in the sense in which we have developed those terms, “literary” and not “theoretical” (p. 260). What Marshall has done, of course, is not to end the constitutional conversation, but to establish the terms on which it will proceed. His opinion recognizes that the process of constitution and reconstitution will be carried on by others, including ourselves.

In a closing section, White considers the ethical possibilities that are opened up by the texts we have been considering for the modern lawyer. The lawyer is in a unique position, he suggests, to transform culture by forging out of inherited materials a more complex and integrated vision of human possibilities. In this sense, the lawyer’s central endeavor is not very different from that of the writers we have been considering. Moreover, there are important similarities between the activity in which lawyers engage in presenting and developing a case and the operation of dialectic. Both processes involve the activities of refutation and reconstitution, and both require the essential equality of

the participants if the process is to work. White is careful to point out, however, that he is neither describing nor attempting to justify "the actual operation and effect of our legal system, let alone our economic system, both of which in fact suffer from disgraceful injustices" (p. 274). Rather, his intention is "to suggest a set of possibilities implicit in the institution and its practices, to define the kind of aim that the lawyer can have for himself" (p. 274). This is where White's book ends: not with a system, but with a "set of possibilities."

We end up in this book a little like Huckleberry Finn at the end of his journey in Twain's novel. For if we put away for the moment concern with detail and ask the large question of where we have come in this extraordinary work, it is in such terms that we would have to describe our journey. We have come, in essence, from our origins as a civilization down the great river, through encounter and struggle, mistake and correction, to that moment when we have arrived in the new world, not at the end of our journey, but like Huck lighting out "for the territories," free to start all over. But we are free in an even greater sense because of the work and the struggle of those who have come before. We end not with Descartes, ready to raze everything to the ground and start from scratch, but with Burke and his deep sense of how much we owe to our traditions. We are left at the end of White's work, it is important to see, not locked into an ideological system but released, as it were, on our own. But if we are on our own, we are also, paradoxically, part of a larger community. We are central participants in the on-going cultural endeavor of forging out of inherited materials a constantly renewed vision of human possibilities — of reconstituting language and culture, as Plato would say, "always . . . toward the end of justice" (p. 101).

II. THE MEANING AND SIGNIFICANCE OF WHITE'S *WHEN WORDS LOSE THEIR MEANING*

Contemporary jurisprudential literature proceeds in large part upon two commonly held assumptions: first, that if we are serious about developing a "coherent" or "integrated" view of law in culture, we must resort to theory;²⁵ second, that within the realm of theory it ultimately comes down to a choice between two competing grand ide-

25. If there is an *idée fixe* around which the current generation of legal scholars has gathered, it is that truly serious discourse about the law must take the form of theory — indeed, that the most important truths are those that lend themselves to expression in theoretical terms. See, e.g., Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 281 (D. Kairys ed. 1982); Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 *J. LEGAL ED.* 437 (1983). This basic assumption seems to have gained uncritical acceptance across the entire academic and ideological spectrum.

At one end of the spectrum are the market ideologues. For example, Richard Posner has advocated transforming traditional common law discourse into the language of economic theory on the ground that such a development will lead to the development of an internally coherent body of jurisprudence. See, e.g., R. POSNER, *THE ECONOMICS OF JUSTICE* (1981); Posner, *Eco-*

ologies: market ideology on the one hand and radical communitarian ideology on the other.²⁶ White's book calls into fundamental question both of these assumptions.

One cannot express a truly integrated view of the world, White insists, in the language of theory, and without such a view it is impossible to establish the conditions that make genuine community possible. The development and expression of an integrative ethic for self and culture calls upon a much more complex compositional activity of the sort performed in the works of imaginative literature we have been considering. What these works offer is not a "system" or a fixed set of ideological truths, but a series of ethical performances from which we can learn a great deal. They offer an education in the "cultural art" of constitution (p. 229) — a difficult and creative art that calls upon every resource of judgment and imagination.

To understand the significance of White's book, it is necessary to understand the meaning he gives to two central terms: "integrated" and "community." "Integrated," it is clear, is something radically different from what the economic theorists intend when they talk about "internal coherence" and from what the communitarian theorists envision when they refer to an "integrated" ideology. And the "community" that is performed in White's work is of altogether a different character from that which we encounter in the literature of the radical communitarian writers. Understanding what these terms mean as they are performed here is critical because the whole movement of White's book is in a sense toward the expression of an integrated view of the world and, simultaneously, the establishment of conditions that make genuine community possible.

nomics, Politics, and the Reading of Statutes and the Constitution, 49 U. CHI. L. REV. 263 (1982).

At the other end of the spectrum are the radical communitarian (or "anti-liberal") theorists. This group includes those who believe that the rise of "classical liberal" theory (in this context, market theory) has led to the disintegration of self and community, and that only some form of communitarian theory can restore a truly integrated sense of self and culture. This group includes a core of radical communitarians, see M. HORWITZ, *supra* note 12; R. UNGER, *KNOWLEDGE AND POLITICS* (1975), and a larger and more diffuse group of anti-liberal scholars who cluster under the heading of Critical Legal Studies theorists. See *Critical Legal Studies Symposium*, 36 STAN. L. REV. 1 (1984).

At the middle of the spectrum are those who look to theory to provide a coherence felt to be lacking in the traditional approach. Frank Michelman seems to use "theory" in a very broad sense to include all extralegal disciplinary perspectives on the law, but it is significant nevertheless that he tends to view such perspectives as at the core "theoretical" ones. See Michelman, *The Parts and the Whole: Non-Euclidean Curricular Geometry*, 32 J. LEGAL ED. 352, 353 (1982). Bruce Ackerman would draw a brighter line between non-theoretical modes of discourse and theoretical ones, and clearly sees great significance in the shift in legal discourse to the theoretical mode. See B. ACKERMAN, *RECONSTRUCTING AMERICAN LAW* (1984); *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980); *PRIVATE PROPERTY AND THE CONSTITUTION* (1977); Ackerman, *Four Questions for Legal Theory*, in *PROPERTY* 351 (J. Pennock & J. Chapman eds.) (Nomos No. 22, 1980).

26. See, e.g., Tushnet, Book Review, 78 MICH. L. REV. 694, 696 (1980) (The "central issue in political philosophy today" is "which social-economic system, capitalism or socialism, justice demands.").

A. *Patterns of Meaning*

If there is any one lesson to be taken from White's book, it is that to discern the true meaning of a work we must attend not simply to surface statement but to the work as a complete performance. We must seek the vision that is performed, not just in the claims that are made and in the "ideas" that are expressed, but in the way words are used, in the way sentences and paragraphs are put together, and in the larger movement and pattern of the work as a composition — in short in the work's imaginative design.

What is it possible to say about the "meaning" of White's own work if we approach it from this perspective? I suggested at the outset that the basic structure of White's work is in some respects like that of a picaresque novel.²⁷ It is so both in that our central experience in this work involves a passage or journey through a series of distinct worlds, each of which forms an essential link in our overall ethical education, and in that we do not end up in a particular world or community but are left to continue our ethical journey, somehow better prepared to do so by the education we have acquired.

There is a real difficulty in talking about an ethical vision that assumes this particular form, because if we talk about it as an internally coherent "system" or "body of thought," that critical element of open-endedness recedes into the background, yet if we stress the open-endedness then we fail to do justice to the fact that what we are dealing with *is* a coherent and describable vision with its own deep integrity. White's version of the world, in other words, is in certain important respects like Burke's. While there may lie buried deep within White's performance here something that might be called an "ethical system," the chances of extracting it in that form are slight. But, by the same token, to treat that performance simply as a group of *ad hoc* perceptions would utterly fail to recognize the coherence of the vision expressed. What Chapman said of Burke applies, I think, with almost equal force to White in this respect. He belongs to a great English tradition of "amphibious" writers, Chapman said: "poetically open in his thinking, broadly practical in his poetry, whose diffuse and many-mansioned thought seems always implicit with a coherent and synthetic system which, however, is never achieved."²⁸ And, as an essential aspect of his vision of the world, *can* never be achieved, at least not in any final sense.

If the organization of White's work resembles that of a picaresque novel, it also falls into the classic pattern of dialectic. This happens actually at two levels. Not only can one clearly discern in White's reading of each of the classics the major phases of dialectic as it is

27. See text at note 7 *supra*.

28. G. CHAPMAN, EDMUND BURKE: THE PRACTICAL IMAGINATION 1 (1967).

classically performed, with a "refutation" phase, a "paradoxical" phase, and a "reconstitution" of the world on permanently altered terms, but the classic pattern of dialectic shapes the overall design of White's work as well. It is not accidental in this respect that in the first two works we encounter, Homer's *Iliad* and Thucydides' *History*, the dominant impulses are those of instability, disintegration and rejection, coinciding with the "refutation" phase of dialectic. As we move into Plato's *Gorgias* and Swift's *Tale*, we move into a world in which the dominant note is that of confusion; our central experience here is the kind of disorientation that the paradoxical phase of dialectic is designed to produce. It is only when we reach Johnson's *Rambler* Essays that we begin to sense that the world is being put back together again, although now in newly reconstituted terms. And this activity of "reconstitution" becomes an increasingly significant aspect of our experience as we proceed first to Austen's *Emma*, then to Burke's *Reflections*, where "constitution" is not only the central theme but also a central aspect of Burke's own performance, and finally to the "real world" activity of establishing a constitution in White's chapter on the American constitutional experience.

Thus when we get to that point in his argument where White defines the responsibility of the lawyer in essentially dialectical terms — where he claims that our central role is to take the inherited materials of our culture and reconstitute them in this dialectical way — we *know* what he means in part because he has exposed us to a series of classic performances in dialectic, and also because he himself has performed dialectic in the large patterns of his own composition.

Neither "dialectic" nor "reconstitution," as they are used here, are content-empty terms to be filled up willy-nilly however we please. As White's chapter on the *Gorgias* demonstrates, the very employment of dialectic implies a commitment to the kind of relationship dialectic requires for its successful operation: that of mutual trust and respect. Inherent in the choice of form is a commitment to a substantive vision of human relationships in which equality, autonomy, and a sense of shared endeavor are key elements.

By the time we are through with White's work we have a very definite, although complex, understanding of what the term "reconstitution" means, not as supplied by a dictionary, but from the actual performances of reconstitution we have witnessed. It is, for example, what Homer does in the *Iliad* when he moves from a simple to a more complex understanding of the human predicament and of possibilities for self and community. It is what Austen does when she carries us from a world characterized by the sentimental organization of language and experience into a world in which a more complex organization of these things opens up possibilities for genuine friendship and community. It is what Burke does, almost heroically, in the *Reflec-*

tions, when he carves out that highly complex and deeply integrative vision of English constitutionalism which embraces virtually every aspect and level and dimension of human experience.

If each of these performances by itself represents a complex achievement from which we can learn a great deal, together they open up an almost staggeringly rich set of possibilities for reconstituting our language and our world. What they all share in common is a movement toward a more complex and integrated organization of language and experience. And it is that movement that defines, at least at the level of lowest common denominator, what reconstitution of one's world "means" in this work.

B. *The "Coherence" of Radical Economic Theory as a Force for Disintegration*

It is critically important to see that what is meant by an "integrated vision of experience" here is not at all the same as "internal coherence of theory." Indeed, as White's reading of Burke's *Reflections* suggests, the attempt to reduce experience to the terms of internally coherent theory may actually create a force for disintegration. Let me illustrate this point by drawing on an example from contemporary jurisprudence, from the writings of Professor (now Judge) Posner, who is generally recognized as one of the leading figures in the law-and-economics movement. The thrust of Professor Posner's jurisprudence is to take the experience-based, tradition-looking, and ethically complex language of the common law and transform it into the internally coherent language of economic theory.²⁹ His effort has been to effect a radical transformation of inherited legal language into the terms of the utilitarian cost-benefit calculus. While such a transformation may seem to yield a kind of clean internal coherence that the traditional approach does not offer, it also exerts, I think it can be shown, a very real disintegrative pressure. The impulse we see at work in Posner's writing is in a sense the exact opposite of that reflected in Plato's *Gorgias*. Plato's struggle in the *Gorgias*, it will be recalled, was to take an inherited cultural rhetoric in which terms of excellence were unrelated to terms of ethical virtue and to forge out of those inherited materials an ethically integrated rhetoric. In Posner's writings the effort is just the opposite: it is to take an inherited cultural rhetoric that to a certain extent is already ethically integrated and subject it to the disintegrative pressures of radical market theory. Perhaps what characterizes Posner's organization of language and experience more than anything else is, first, the radical separation of terms of traditional ethical judgment from considerations of what is efficient or expedient and,

29. See note 25 *supra*.

second, the elevation of considerations of expediency to a position of dominating relevance.

The disintegrative consequences of talking and thinking about the world in this way are at least partially revealed in Professor Posner's discussion of the old English case of *Bird v. Holbrook*³⁰ in his famous "spring-gun" article.³¹ A boy is seriously maimed by a spring-gun when he innocently climbs over a garden wall to retrieve a stray peahen. The defendant garden owner apparently had set the spring-gun after valuable tulips had been stolen from his garden which was located at some distance from his house. Note the curiously distorted view Posner expresses of what the case "involved," a view clearly shaped by his radical preoccupation with efficiency and self-interest:

The case involved two legitimate activities, raising tulips and keeping peahens, that happened to conflict. Different rules of liability would affect differently the amount of each activity carried on. A rule that the spring-gun owner was not liable for the injuries inflicted on the plaintiff would promote tulip raising The opposite rule . . . would benefit peahen keeping but burden tulip growing.³²

And so on. What is most striking about the vision of the world expressed here is that it leaves out entirely the central fact of individual human suffering. What the case "involved," Posner insists without apparent embarrassment, is simply the question of which of two economic activities, tulip raising or peahen keeping, would be advantaged by drawing the liability rules one way or another. In his utter preoccupation with the efficiency question — a preoccupation required by the deepest structures of the language he has chosen to employ — he virtually steps over the body of the seriously maimed young man. To the extent that the young man's injury and suffering are relevant at all, they are so, apparently, only to the extent that recognizing them would somehow contribute to a more efficient allocation of resources. In Posner's world, all such considerations become mere functions of the pursuit of efficiency.

The voice we find ourselves listening to in this passage is one that we have heard before: it is Diodotus' voice in the Mytilenean Debate.³³ In a very real and immediate sense, Posner's counsel *is* the counsel of Diodotus. The world he invites us to enter is one in which the rhetoric of expediency and self-interest would become the exclusive rhetoric for explanation and justification of the decisions we make. It is a counsel repeated again and again in the course of Posner's writings.³⁴ To heed that counsel, White's reading of Thucydides would

30. 4 Bing. 628, 130 Eng. Rep. 911 (C.P. 1828).

31. Posner, *Killing or Wounding to Protect a Property Interest*, 14 J. L. & ECON. 201 (1971).

32. *Id.* at 209-10.

33. See text following note 10 *supra*.

34. Posner's utilitarianism has also surfaced in his judicial opinions since assuming the bench. See, e.g., *Bart v. Telford*, 677 F.2d 622 (7th Cir. 1982) (applying cost-benefit analysis to

suggest, is to set off on a tragic course toward Melos.

What is wrong with Posner's vision, it is important to see, is not that it relies upon economic theory. For if White is right, and efficiency and self-interest have a legitimate place in our lives, then economic theory itself is not the problem, but the exaggerated or reductionist use to which it is put by those who claim too much for it. The problem lies, in other words, in establishing the wrong relationship to the language of efficiency analysis. To grasp this point is to allow us to appreciate how useful economic theory can be when thoughtfully and responsibly employed, and at the same time to zero in on the real evil: the disintegrative force set in motion when the rhetoric of expediency and self-interest is made the dominant or exclusive rhetoric of a culture.

When we begin to talk about experience in the way that Posner does in the passage quoted above, how different are we, after all, from the "rational" but mad narrator of Swift's *Tale of a Tub*? How different is the ethical sensibility expressed in the Posner passage from the one expressed in that cruel but famous line from the digression on madness: "Last Week I saw a Woman *flay'd*, and you will hardly believe, how much it altered her Person for the worse" (pp. 129-30). There is the voice of "rationality" here, but it is one operating utterly outside the context of those cultural traditions that, in Oppenheimer's phrase, "make us human." It is the voice of cold scientific rationality, utterly stripped of any capacity for sympathetic response.

That is what is meant in part when it is said that radical economic theory of the sort we encounter in Posner's writings ultimately leads to a deeply disintegrative view of human experience. A culture grounded in such a view of experience, if White is right, would be an inherently unstable one. If the cultural rhetoric we employ reflects and shapes the character of our culture, then the disintegrative rhetoric we find in the writings of Posner and other radical market ideologues can never provide the foundation for the constitution of a truly integrated and stable culture.

C. *The Search for an Integrated View of Experience and the Language of Radical Communitarian Theory: A Comparison of Integrative Performance and Community in the Writings of White and Unger*

The literature of radical communitarian theory presents a more interesting problem, because here is a literature whose central theme is

deny claim that first amendment freedom of speech rights were violated, finding that the challenged leave of absence policy in that case outweighed the very slight impairment of free speech); *Sutton v. Milwaukee*, 672 F.2d 644 (7th Cir. 1982) (using a cost-benefit analysis to deny due process challenge to a municipal tow-first-ask-questions-later ordinance).

an attack on the disintegrative consequences for self and culture of the rise of market ideology.³⁵ Moreover, the explicit political thrust of this literature is the recovery or reconstitution of a world in which the disparate aspects of self and community would be reintegrated into some sort of harmonious whole. The vision that it embraces is of a world in which we would all live together without strife or competition in a community of shared values — a world, indeed, in which the bond of shared values would be so great that the need for law itself would simply fall away.³⁶ Not only is radical communitarian literature centrally concerned with the themes with which White deals here, it shares what might seem to be an identical aspiration: the establishment of a truly integrated ethic for self and culture. Yet strangely enough, unlike White's achievement here, radical communitarian literature by and large fails miserably as an ethical literature. The great puzzle is why.³⁷

The effort to carve out a truly integrative ethic for self and culture is a central and self-conscious aspect of the jurisprudence of Roberto Unger, who is generally regarded as the most influential theoretician of the communitarian movement. Unger seems to recognize that a culture based on a mirror-image of "liberalism" (at least as he has crudely defined it) would not necessarily lead to an integrated view of the world.³⁸ Thus he feels impelled to try to work out, at the level of theory, some synthesis that will break the grip of the "dualisms" in our inherited thought that preclude us from achieving such a view — persistent dualisms such as those that lead us to divide the universe into the general and the particular, the universal and the individual, the theoretical and the concrete, thought and emotion, fact and value, and so on.³⁹ Unger wants to find a way of thinking and talking about experience that will unite the separated referents of these traditional dualisms in a single, integrated view of the world.

Thus in terms of ultimate aspiration what Unger seeks in his juris-

35. For a discussion of the ideological thrust of radical communitarian literature, see Teachout, *supra* note 15, at 241, 241-47, 272-78.

36. *See id.* at 275 n.118.

37. It is important to recognize that communitarian literature is not monolithic, that it embraces a wide variety of disparate viewpoints involving differences that are not at all unimportant to those theorists engaged in the communitarian movement. *See generally* Nash, In re *Radical Interpretations of American Law: The Relation of Law and History*, 82 MICH. L. REV. 274 (1983). It would be impossible even to begin to do justice to those differences here. What we can do, however, is identify and discuss representative tendencies as they are reflected in the writings of one of the leading jurisprudential writers in the radical communitarian movement: Professor Roberto Unger.

38. R. UNGER, *supra* note 25, at 106, 140-41.

39. Unger's central preoccupation in *Knowledge and Politics* is with resolving what he describes as the "antinomies" in liberal thought between "theory and fact," "rules and values," the "abstract and the concrete self," and "reason and desire." *See, e.g., id.* at 137 (These "antinomies have never been resolved, nor will they ever until we find a way out of the prison-house of liberal thought.").

prudential writing is in some respects not far removed from what White sets out to do. Both aspire to discover and give expression to an integrative mode of addressing experience that, in essential thrust if not in peculiar terminology, is expressed in Coleridge's famous description of the powers of poetic imagination:

The power [of the imagination in the poet] . . . reveals itself in the balance or reconciliation of opposite or discordant qualities; of sameness, with difference; of the general with the concrete; the idea with the image; the individual with the representative; the sense of novelty and freshness with old and familiar objects; a more than usual state of emotion with more than usual order; judgment ever awake and steady self-possession with enthusiasm and feeling profound or vehement⁴⁰

There is a moment, indeed, when Unger seems at the verge of recognizing that the literature of the Romantic writers may represent a way out of the "dualism" dilemma with which he is grappling.⁴¹ And White incorporates Coleridge's view in his own vision of the world explicitly in his earlier work, *The Legal Imagination*,⁴² and implicitly here.

But at this point we come to a crucial parting of the ways. White imaginatively pursues the suggestion, implicit in the Coleridge passage, that we must turn to poetic and literary modes of organizing language and experience if we wish to escape the dualisms that contribute to a disintegrative way of viewing the world.⁴³ But Unger, although he seems to recognize that the poetic mode represents an important window of opportunity, apparently does not know what to make of this observation, and thus retreats back into the world of abstract discourse.

Once he has done so, of course, everything else is pretty much determined, because there is no way to achieve in the abstract language of theory the kind of integrated view of experience that he wants to achieve. Although Unger wants a world in which the particular is fully integrated with the universal, the concrete with the abstract, and the individual with the collective self, the fact is that in the world we actually encounter in Unger's writing the particular, the concrete, and the individual, however important they are supposed to be, are not given complete or equal expression. They are not fully integrated with their abstract pairings. They are consigned to a subservient and recessive role.

40. S. COLERIDGE, 2 *BIOGRAPHIA LITERARIA* 12 (1817).

41. R. UNGER, *supra* note 25, at 124 ("The Enlightenment and Romantic thinkers who developed the modern idea of imagination were well aware of the relationship of the analytic approach to the contrast of reason and desire. For they saw imagination as a faculty that unites thought and feeling at the same time that it makes men attentive to the organic wholeness of complex beings.").

42. J. WHITE, *supra* note 22, at 762.

43. See, e.g., p. 23.

The reality, of course, is that as long as Unger remains stranded in the world of abstract theory, he can never effect a full reconciliation of the abstract with the concrete, the general with the particular, and the collective with the individual self. He is working with a medium that has a built-in bias in favor of the abstract elements in these traditional pairings. That is why, in reading Unger's jurisprudence, we get the sense on the one hand of an intellectual effort of almost heroic proportions and on the other of a deep and pervasive frustration. Unger is trying to make the language of theory express what it cannot possibly express, to make the medium of theory do what it cannot possibly do. That is why Unger's jurisprudential writings form by and large such a thought-tormented literature. Unable to effect in a full and meaningful way the kind of reconciliations he wants to achieve, he is driven to develop more and more elaborate intellectual structures, sphere upon sphere, ellipse upon ellipse, until we find ourselves in the end confronting a conceptual apparatus as complex and unwieldy as those models constructed in the middle ages to explain the movement of the stars and planets under a pre-Copernican view of the universe.

This built-in frustration has important substantive implications for Unger's jurisprudence, moreover. Locked into a theoretical mode of discourse that tends by its deepest structures to favor the abstract over the concrete,⁴⁴ Unger begins in a very subtle but deeply significant way to lean toward a conception of the universe which relegates the particular, the individual, and the concrete to a subservient role. Notice, for example, the associations and relationships established in the following sentences: "As a being whose life is always finite and determinate and who is never in fact more than a *small part* of what he might be, the person is a *concrete self*. . . . Because man is *partial*, he has a *concrete self*, and because he is universal, he has an abstract one."⁴⁴ "Set against the background of the wealth of talents of which the species disposes and which it is forever increasing in history, every *individual* is *fated to indigence*, no matter how great his exertions or favored his circumstances."⁴⁵

I do not want to labor here whether these statements are in some sense valid or invalid; indeed, I am prepared to concede that if one views the world in a certain slant of light they have a kind of validity. What I am interested in, rather, is the "slant of light" itself, because if it becomes the whole way — and not simply one way — of viewing the individual and his possibilities, it reveals a very diminished sense of both. When, for example, White looks at the classic works we have been considering, he sees ethical performances which open up for us a rich set of possibilities for the realization of self and community; when

44. R. UNGER, *supra* note 25, at 222 (emphasis added).

45. *Id.* at 222-23 (emphasis added).

Unger looks at the same achievements, what he sees are individual "exertions" that are "fated to indigence."

There are deep-seated differences, moreover, in what is meant by "completeness" in the work of the two writers. Unger's jurisprudence is based upon the notion that "completeness" somehow exists out there in the abstract.⁴⁶ That is why in his writing the concrete and the individual are always associated with words like "small part" or "partial." And that is why the constant emphasis in his writing is on the diminished significance of individual performances in this world — on how far short they fall from expressing that abstract completeness. In White's work, by contrast, an essential aspect of "completeness" is the full integration of the particular aspects of experience with the general or abstract. What renders the classic performances he discusses "complete" is the fact that the writer finds a way to reach down into the world of concrete experience and incorporate fully that experience in the world to which he gives expression.

This difference is vividly reflected in the radically different character of the worlds we encounter in the writings of these two. The world of Unger's jurisprudence is composed largely of the material of abstract thought: of types and models and concepts and disembodied essences. By contrast, the world of White's work is centrally composed of concrete moments of experience, of individual voices, and of tangible ethical performances in the real world. The abstract ideological types we encounter in Unger's writing are replaced in White's by distinct individual voices, both internal (such as Cleon's and Diodotus' in the Mytilenean Debate or those of the characters in Emma's world) and the external or narrative ones (such as Homer's, Plato's, Johnson's and Burke's). In White's work, a major part of our experience consists of particular moments of human encounter. One thinks back, for example, to the tension and ambivalence in that moment in the *Iliad* when Achilles rejects the delegation from Agamemnon, or to the tentativeness and poignancy of that final moment of embrace between Achilles and Priam. This is particular experience in all its richness and ambiguity and subtlety.

These differences between White and Unger are brought home with even greater force if we regard their writings as compositional or integrative performances. Unger seeks to perform the integrative ethic by combining in his jurisprudence the perspectives of sociological theory, political theory, linguistic theory, and so on.⁴⁷ But, for all his endeavor, he still ends up spinning around and around in the world of

46. See *id.* at 232 (failure to actualize ideal associated with "incompleteness of self"); 233 ("ideal can never be *fully* achieved in history," expressing sense of incompleteness of concrete achievement in this world) (emphasis added); 235 (this world associated with "part," ideal with "whole").

47. This view is reflected in the structure of R. UNGER, *supra* note 25.

theory itself, unable to break out of the prison of the abstract. White, on the other hand, takes works of imaginative and practical literature that are strikingly diverse in character — that represent the full range of possibilities for comprehending experience — and pulls them together into a highly integrated composition. Consider for a moment what White has done here: he has taken from ancient Greek literature, an epic poem, a history, and an example of dialectic; from eighteenth century English literature, a satiric tale, a group of moral essays, a novel of character, and a defense of English constitutionalism; and, from the early American constitutional experience, three very distinct public documents; and he has forged out of these incredibly diverse texts a truly integrated vision of experience. Moreover, the diversity itself becomes an actual source of strength and richness. In sum, the very structure of White's work allows him to achieve the expression of a deeply integrated view of experience — one in which there is genuine reconciliation of the abstract with the concrete, of the general with the particular, of the cultural with the individual self, "of sameness, with difference" — in a way that Unger, locked into a channel of abstract theoretical discourse, can never do.

While the central thrust of both Unger's and White's work is toward the expression of an integrated vision of community, there is a radical difference in the "communities" we actually encounter in the work of these two writers — a radical difference in the "communities" *actually performed*. The difference once again lies in the fact that Unger is left to try to carve his vision of "community" out of the abstract material of theory, while White has available the extraordinary resources of the literary worlds out of which his own work is composed.

An elusive abstract quality characterizes culture and community in Unger's work wherever we find it. What strikes us most about Unger's portrait of "liberal" culture, for example, is how little it corresponds to liberal culture as we know it in the real world. What we encounter in Unger's writing, rather, is a kind of scarecrow construct — a caricature composed, as it were, by assembling in exaggerated form the worst features of the most extreme variants of liberal "thought."⁴⁸ Thus we get no sense at all in Unger's writing of what living in a liberal culture such as our own would really be like.

There is a sense in which Unger *has to* deal with liberal culture in the abstract. He is not concerned, it becomes clear, with describing

48. Unger acknowledges that the "liberal" culture he portrays in *Knowledge and Politics* is an artificial composite reflecting a view of liberal culture that "nobody has ever held." R. UNGER, *supra* note 25, at 8. It is a "reconstruction of a system of thought that [the writings of selected 17th and 18th century political theorists] partially exemplify." *Id.* at 9. Unger admits that his composite of liberal culture may have little in common with the views of "modern liberalism." *Id.* And he recognizes that there are many "factors which distinguish the set of ideas that are the subject of this essay from what we now ordinarily call liberalism." *Id.* at 11. In short, whatever his disclaimers to the contrary, he proceeds by first creating a "strawman" and then taking it apart.

the real world of liberal culture, or even with imagining what such a culture might be. Rather his effort is to transform radically the very meaning of the term "liberal" into its negative opposite. The classic understanding of "the spirit of liberality" is reflected in Pericles' description of fifth century Athens as the embodiment of a generous, open, and discriminating spirit.⁴⁹ That is what the term "liberal" means. In Unger's jurisprudence, by contrast, "liberal" culture is made to seem the embodiment of exploitative and manipulative relationships⁵⁰ — it is transformed into the embodiment of mean-spiritedness. Language is turned on its head. We find ourselves in Unger's jurisprudence in a world very much like that which Thucydides describes in his *History*: "Words had to change their ordinary meaning and take that which was now given them."⁵¹ To Unger it is perfectly legitimate to alter the meaning of words in this way since in his world language is regarded as an instrument of power⁵² to be used and then ultimately discarded.⁵³ But, as Thucydides' *History* brings forcefully home, this sort of manipulation of language can ultimately lead to the tragic disintegration of community and culture. It leaves us with a distorted language and view of the world out of which a truly stable community can never be formed.

As we proceed farther into Unger's world, what becomes increasingly clear is that, for all the talk about the importance of community, community itself still remains an elusive abstraction. What is most striking about Unger's "tribal" community, for example, is that, to the extent it is inhabited at all, it is inhabited by faceless anonymous beings playing out stock parts in some grand ideological scheme. It all exists, as in a sense it has to, somewhere out there in the realm of the abstract.

That is why the famous ending of Unger's *Knowledge and Politics* must take the form that it does. The central movement in that work is away from the world of human friendship and community in all its problematic complexity toward the embrace of an abstract and isolated "love." In the final moment of the work, surrounded by a kind

49. See Pericles' description of the "character" of Athens in his famous funeral oration in THUCYDIDES, *supra* note 4, at 104-06. Pericles draws a sharp contrast between a culture based on "calculations of expediency" and one based, as he claimed Athens was, on "the confidence of liberality." *Id.* at 106.

50. See, e.g., R. UNGER, *LAW IN MODERN SOCIETY* 127 (1976) (social relationships "manipulated"); *id.* at 144 (liberal culture based on "exploitation of power advantages" and "law of the jungle").

51. See text at note 4 *supra*.

52. Unger's view is fairly reflected in the following statement: "He who has the power to decide what a thing will be called has the power to decide what it is." R. UNGER, *supra* note 25, at 80.

53. Notice, for example, how in the final moment of Unger's *Knowledge and Politics* language is separated from "essence" (love becomes "thought disembodied from language") and is cast aside to permit the abstract reconciliation of essence with essence. *Id.* at 295.

of self-imposed darkness, illuminated only by the halo of his own conceit, Unger approaches the Godhead. Invoking the imperative form of address, Unger commands: "Speak, God."⁵⁴ Significantly, there is no answer. Only the void.

Some readers have attempted to dismiss this closing passage as a mere rhetorical flourish,⁵⁵ but that is a mistake. In fact this passage holds the key to what "community" ultimately means in Unger's work; it takes the form, not of human community in the real world, but of a kind of mute communion between essence and essence in a world without words. It is not accidental that the dominant impulses in this closing moment are those of separation and divorce: the movement away from concrete reality toward the embrace of the abstract, and the divorce of language itself from meaning. For the vision of community toward which Unger's jurisprudence moves is the kind of community that can be realized ultimately only in the abstract — only "out there," cut off and isolated from the "indigent" realm of concrete human experience.

At the heart of White's vision of community, by contrast, is the idea of friendship — not "friendship" in the abstract but friendship as we know it. It is friendship as it is embodied, at least in part, in the relationship that develops between Emma and Mr. Knightley in Austen's *Emma* as they move from the false or "sentimental" friendship we encounter in the early chapters to a "critical" friendship based on a more complex way of organizing language and experience. It is shaped as well by the coming together of Emma and Mr. Knightley in the closing moments of the novel, forming as it were a sort of marriage of imagination and judgment. What this final coming together represents is not an indiscriminate blurring of the differences between imagination and judgment. Both terms, as do both characters, retain their independence and autonomy. But at the same time, in the forming of this union, each takes on an added richness and depth and stability. Reflected here, it is important to see, is the same kind of relationship that is established in White's world between other paired terms, such as "justice" and "efficiency" in his reading of Thucydides' *History*,⁵⁶ or "liberty" and "order" in his reading of Burke's *Reflections*.⁵⁷ It is the relationship expressed in Coleridge's description of the poetic imagination as it reveals itself in "the balance or reconciliation of opposite or discordant qualities; of sameness, with difference."⁵⁸ White's world, in other words, is like Burke's in the sense that relationships at every level of experience — at the level of language, of interpersonal

54. *Id.*

55. See, e.g., Nash, *supra* note 37, at 327.

56. See text following note 12 *supra*.

57. See text at Part I.B.4. *supra*.

58. See note 40 *supra* and accompanying text.

relationship, of organization of political community, of culture, and indeed, of the natural universe⁵⁹ — all reflect, to borrow Burke's phrase, "the same course and order." At the heart of this world is a complex relationship of "critical friendship" that creates a bond of reciprocity and interdependence but at the same time enriches the character and enhances the autonomy of the self.

Significantly, it is a relationship embodied as well in the principal literary form through which, in Austen's novel, the action develops and relationships and character are formed: the conversation between friends. If abstract theory represents the paradigmatic mode for establishment of community in Unger's jurisprudence, it is the conversation between friends that replaces it in White's work. The choice of the conversational form, like the choice of dialectic, implies a commitment to a substantive vision of human relationships in which the partners to conversation are not simply theorists, as are the participants in Unger's universe of discourse, but whole persons like ourselves, struggling as we must do to make sense out of the world. The conversational form also has many of the same attributes and virtues of dialectic: it requires a relationship of mutual trust and respect, and it depends upon the independence and autonomy of the conversational partners. It establishes, that is to say, that crucial relationship of mutual reciprocity.

The most impressive aspect of our experience in White's work is the way in which this elemental relationship of friendship comes to form a critical bond which links the individual literary performances we have been considering into a single community of shared endeavor. The very structure of the composition serves to establish and reinforce the deep sense that we are in the presence of a real and vital community formed by the pervasive interdependencies of these classic works. Underlying the basic structure of White's work is a central conception: that these literary and ethical performances themselves represent acts of "friendship" in the educations they offer about how to get along in a complex world and in the possibilities they open up for the realization of self and community. Individually viewed, each work, each act of

59. Consider in this respect the centrality of the metaphors of "reciprocity" and "tension" and "complexity" in White's description of the composition of language, self, and culture. His reading of the *Iliad*, for example, is shaped by the notion that its central movement is not the kind of linear movement we might find in a theoretical tract, but rather a movement back and forth from one perspective to another, leading to a cumulative complication of perspective. In his reading of Thucydides' *History*, the central idea is that of the relationship of reciprocity that must exist between contrary terms, between claim and limit, and of a parallel reciprocity that must exist between self and world. And in his reading of Plato's *Gorgias*, White views dialectic as the procedural embodiment of the reciprocal relationship between opposed views expressed in the context of a shared endeavor. The central imagery — of "complexity" and "reciprocity" and the suspension of opposed impulses or forces in a kind of perpetual "tension" — is that which we would expect to find in the description of a complex ecological system. In each case, the stability of the system — the language, the self, the culture, the natural world — is a direct function of its internal complexity.

friendship, creates a community of two between individual writer and reader; cumulatively they form a durable cultural community linking us backward and forward through time to generations that have come before and to those yet unborn. By reading these classic works together, as White does here, each in the light of the others, those linkages which in fact exist at some deep subconscious cultural level are to a certain degree rendered visible and explicit. The dominant impression we bring away as a consequence is that of a chain of interlocking "friendships." We are all part of the same community; the struggles of those who have come before are ours, and ours theirs; and their achievements represent both an education and an example by which we conduct our own lives.

The communal bond that is created by such a perspective is a powerful one, based as it is in a sense of common struggle. When we sit down to write a brief, or prepare our summation to the jury, or do any of the other things that we as lawyers do, our struggle is in a very real sense the same as Homer's as he endeavored to forge out of the materials he was given to work with a more complex vision of human possibilities; the same as Thucydides' as he struggled to make sense out of a world in which words had lost their meaning; as Plato's as he sought to reconstitute language in a way that would make ethically integrated discourse possible; and so it is with all the others.

In preserving a relation as he has done here with those who have come before, with those whose creative literary efforts have in earlier times led to the reconstitution of inherited culture, White has given us a new sense of both our responsibilities and our possibilities as lawyers. He makes us see here that such "genuine reconstitution" of our culture and its discourse is a central and inescapable responsibility of the lawyer. For better or worse, we are central participants in the shared endeavor of reconstituting the world we have inherited. Whether it is transformed into a better world — more decent and more just — is ultimately up to us.

James Boyd White's *When Words Lose Their Meaning* is a work of great originality and integrity. It is rare that one comes across a work where everything comes together as it does here, where there is an almost perfect correspondence between the critical method that is employed and the vision toward which the work proceeds, between the ethical sensibility that is expressed at the level of individual paragraph and the large imaginative pattern which gives the work its structure and meaning, where finally performance and vision merge so completely that it becomes impossible, to borrow an image from Yeats, "to know the dancer from the dance."⁶⁰ That is not to say White turns in a perfect performance here. One encounters in this work the same

60. W. YEATS, *Among School Children*, in THE VARIORUM EDITION OF THE POEMS OF W.B. YEATS 443, 446 (P. Allt & R. Alspach eds. 1957).

sorts of problems one encounters in almost any work: the false starts, the misplaced claims, the occasional tendency to get carried away by one's own internal vocabulary, the establishment at times of the wrong tone. These are but minor and forgivable lapses, however, in a work that in its broad conception, in its deeply imaginative implementation, and in the vast part of its great rich detail, is fundamentally sound.

Yet having come this far, there is still the lingering question of what all this has to do with the great problems of injustice and oppression and human suffering which exist in the world. I do not have a complete answer to this question, but I can try to suggest the form such an answer might take. It is not, it seems to me, a question of whether or not we want to confront such problems. Problems of injustice and human suffering *are* our problems, they are our inescapable responsibility. We are all, White makes us see, trustees of the human spirit. The only question, really, is the ethical perspective we bring to bear on such problems as we seek to understand them and deal with them to the extent our resources will allow. It is here that White's book offers us something that, in my estimate at least, no other recent jurisprudential work has even come close to offering: it offers a language, to borrow the words of another writer, "with grandeur to match the proportions of [the] endeavor upon which we are embarked."⁶¹

61. N. MAILER, *OF A FIRE ON THE MOON* 274 (1970).