

# LIFE-GIVING SPEECH AMID AN EMPIRE OF SILENCE

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LIVING SPEECH: RESISTING THE EMPIRE OF FORCE. By *James Boyd White*. Princeton and Oxford: Princeton University Press. 2006. Pp. xii, 236. \$29.95.

## INTRODUCTION

It will come as no surprise to readers of the *Law Review* that James Boyd White<sup>1</sup> is a daring and wise practitioner of what Clifford Geertz terms “blurred genres.”<sup>2</sup> By appeal to Kenneth Burke, Victor Turner, and Paul Ricoeur, among others, Geertz envisions a broad interpretive venture that breaks out of the rigid regulations of a particular discipline to a larger constructive enterprise that entertains life and its meaning as a “game” of face-to-face engagement, or as a “drama” that presses on to the next scene.<sup>3</sup> White’s work fits that vision precisely.

In *Living Speech: Resisting the Empire of Force*, White is rooted in his own proper study of the law, but he “blurs” his work over in many directions, notably to classical drama, poetry, and philosophy, even with indirect traces and hints of theology. The effect is to summon readers—especially, but by no means exclusively, students of law—beyond the conventional limits and procedures of their discipline or, alternatively, to depths in their discipline that touch human realities that technical reason can never probe. Thus his book is an exercise in the humanities of a wise and urgent kind.

In Part I, I lay out White’s agenda in the book, and identify a key tension in speech upon which White focuses. Developing upon this, in Part II, I describe the sort of speech that White attributes to the empire of force, while in Part III, I describe what White defines as living speech. In Part IV, I apply White’s speech framework to three concepts that have long preoccupied me, namely *intention*, *imagination*, and *interpretation*, and in Part V, I examine what White’s thesis means in own my field, theology. Finally, I conclude the essay with my thoughts about what the book means to each of us, its readers both inside and outside of the field of law.

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1. Hart Wright Professor of Law, Professor of English, and Adjunct Professor of Classical Studies, University of Michigan.

2. Clifford Geertz, *Blurred Genres: The Reconfiguration of Social Thought*, 49 *THE AM. SCHOLAR* 165 (1980).

3. *See id.*

## I

White takes his cue from three lines of Simone Weil in her cunning essay on the *Iliad*: “No one can love and be just who does not understand the empire of force and know how not to respect it.”<sup>4</sup> Weil’s study is an acknowledgement that the *Iliad* is not just an account of war, but also a critical exposé of the way in which the dominant, even violent force that pervades the world might be resisted.

White rightly understands that Weil’s dictum invites us to two tasks. The first task is to recognize and identify the “empire of force.” That marvelous phrase, for White as for Weil, pertains not only to overt control made possible by a monopoly of violence; it pertains, more importantly, to ideological persuasion that justifies and rationalizes what may become overt violence. That is, the empire of force exists and controls through the willful, manipulative use of speech. Thus, the phrase alludes to *the crisis of false speech* that deceives, beguiles, and conjures reality in dishonest ways. That awareness of the lethal potential of speech is a recurring theme among many critics.

Eugen Rosenstock-Huussy explicated the way in which *listening* to well-wrought speech creates a society of freedom:

Speech puts man on a throne. For any man who has something to say, thereby acquires an office in society. And thrones are seats of office. Thought gives man a kingdom. Is this kingdom a constitutional state? Is the freedom to think the anarchy of despotism, or the government of due process of law?

We now shall round out the freedom of the individual to master speech and thought, by considering the constitution, the law of freedom.<sup>5</sup>

Jacques Ellul has observed widespread “contempt for language” among technicians and intellectuals. On the one hand, technicians reduce language to information that thins communication:

Technicians who love diagrams cannot do anything with language except to make it an annex (if it must be included) to explain a given point. Language can never hold the key to meaning or to a demonstration.

For this reason we said above that the devaluation of language through subordination to computer needs is extremely important. The conversation with a computer is not limited to that situation; it becomes the model for all conversation. This was already the model, to a lesser degree, in all relationships that involved technicians. This covers an enormous proportion of language use, since it involves all sorts of technicians: administrators, jurists, economists, physicists, chemists, marketing experts, doctors,

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4. P. 1 (in White’s own translation). The essay is reprinted in SIMONE WEIL, *THE SIMONE WEIL READER* 181 (George A. Panichas ed., 1977).

5. EUGEN ROSENSTOCK-HUESSY, *SPEECH AND REALITY* 175–176 (1970).

engineers, psychologists, publicity experts, film makers, programmers, etc.<sup>6</sup>

On the other hand, intellectuals treat language with scorn by reducing it to scientific formulation:

As professionals, linguists and structuralists take language extremely seriously, yet they treat it as physicists and chemists have treated matter: with utter scorn. They treat it as a mere thing on which scientific discipline is supposed to exercise its rigor. Treating the language as a submissive object is like treating the word of God scientifically. Can anything escape from the triumphant imperialism of the scientific method?<sup>7</sup>

What is lost is communication of address and response that makes genuine social relationships possible.

More popularly, Neil Postman has chronicled the ways in which “entertainment” has displaced communication. Postman is particularly acute on the way in which news has been styled as “entertainment,” so that it is far from clear that the news reporters intend to be telling the truth.<sup>8</sup> We can only wonder, these many years later, what Postman might say about our loss of committed speech!

The second task proposed by Weil’s aphorism is “not to respect” “the empire of force,” that is, to engage in intentional resistance to the false reality of empire by alternative practice that refuses the artificial, “virtual” world proposed by the empire. It is much easier to expose *false language* than it is to model or characterize *alternative language* that makes genuine social relationships possible. But that is the work to which White has set himself.

The argument of the book takes up the two tasks proposed by Weil. The exposé of “the empire of force” is, in White’s rubric, surprisingly enough to be found in “free speech.” White’s perception of speech protected by the First Amendment is that it can, in principle, be vacuous and reflective of market assumptions that work against serious communication. The alternative—resistant, generative rhetoric—is placed under the rubric of “living speech.” Thus the antithesis of “free speech” and “living speech” lines out Weil’s two tasks that constitute White’s careful, patient, passionate argument. Before he finishes, the book culminates in a summons to join the debate, to be aware of and committed to such an engagement. The urgency of White’s argument is due to his judgment, surely correct, that “free speech” leads to death and that life depends upon “living speech.” The book is a compelling either/or in the contestation for the future of democratic society. That contestation, on the day I began to write this review, was made vivid and poignant by two happenstance events. On that day I saw the film

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6. JACQUES ELLUL, *THE HUMILIATION OF THE WORD* 162 (Joyce Main Hanks trans., 1985).

7. *Id.* at 165.

8. NEIL POSTMAN, *AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN AN AGE OF SHOW BUSINESS* (1986).

*Thank You for Smoking*,<sup>9</sup> a comic and relentless assault on the tobacco industry. The same day I saw on TV (which I rarely watch) an ad for Philip Morris that offered, on its web page, information about how to teach children not to smoke.<sup>10</sup> Talk about “free speech” that serves “the empire of force”! A tobacco ad that postures family values and social well-being is precisely the sort of beguilement that causes us to take White’s analysis so seriously. When such speech is offered by a tobacco company, we recognize how remote from reality it is. And that such speech is passed off without irony indicates the (speech) pathology that characterizes our society.

## II

White works in detail to characterize “the empire of force” as the enemy of living speech and, consequently, the enemy of democratic humanity. That empire offers “a kind of speech that destroys real speech” (p. 28). Good constitutional scholar that he is, White focuses on the constitutional amendment concerning free speech, and particularly on Oliver Wendell Holmes’s metaphor, the “marketplace of ideas,” or more correctly, “the competition of the market” with respect to speech (p. 30). White describes how the image of the market offers a notion of speech and of social relationships that are “unregulated” and eventually vacuous, committed to the gratification of desire without the gravitas (and critical discipline and assessment) that makes real social relationships possible. White shows compellingly that “free speech” in and of itself is no great gift to a democratic society. He does not, of course, champion censorship or speech control, but insists that “real speech” must remain under critical discipline and reflect commitments that are beyond easy manipulation.

The book teems with pejorative adjectives and polemical phrases about unregulated free speech that diminishes human possibility: “Ideology,” “dehumanization,” “deny humanity,” “propaganda,” “reduce other people to objects,” “erase reality and humanity,” “boring,” “thinness,” “platitude,” “easy,” “authoritarian,” “dead,” “jargon,” “chatter,” “formulaic,” “slogans,” “advertising,” “gratification of desire,” “shallow,” “empty,” “the world of possibility dies,” “seductive,” “misleading,” “confidence tricks,” “mechanical,” “suppress,” “trivializing,” “demeaning,” “sentimental.” Such speech is designed to suppress and mislead; it is intentionally trivializing, dehumanizing, and demeaning of human life and human persons.

When White focuses upon propaganda and advertising, the case is fairly easy and obvious, as we may imagine a loud car salesman on TV or a seductive preacher or a beguiling presidential press conference; all of that would be in the purview of a critique concerned with debasement of human inter-

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9. *THANK YOU FOR SMOKING* (Twentieth Century Fox 2005).

10. See generally Philip Morris USA, Parent Resource Center, [http://www.pmus.com/en/prc/index.asp?source=home\\_fca2](http://www.pmus.com/en/prc/index.asp?source=home_fca2) (last visited Nov. 24, 2006).

course.<sup>11</sup> But White's critical analysis is too urbane and thoughtful to focus on such easy targets, so the examples he selects are from the great works of literature and from the law.

On the one hand, out of his immense grasp of the classical literary corpus, White cites two examples of such trivializing speech. First, he refers to Dante's *Divine Comedy*, a text to which he returns consistently throughout the book. He shows how Francesca, in pursuit of "courtly love," in fact only conforms to convention and reflects no real lived experience of love at all (p. 62). Thus, White identifies how Dante exposes a way of being in the world that is artistically wrought but that is detached from the bodily concreteness of human reality. As White shows, such fantasy avoids the unavoidable question of moral coherence and accountability. The fantasy offered critically by Dante is matched by White's reference to Polonius in his famous speech to Hamlet. White's acute sense is that the seemingly noble advice, "[t]o thine own self be true" and "[n]either a borrower or a lender be" are platitudes on the lips of the King's counselor who is "utterly untrustworthy" because he is "utterly incapable of trust" (p. 59). The insidiousness of the speeches of Francesca and Polonius, moreover, is that noble sounding and smoothly rendered speeches can be mistaken for "real speech"; but in each case Dante and Shakespeare intend to expose the fraud, a fraud about a pretend world that the empire of force wants us not to notice for what it is.

Alongside these classical references, on the other hand, White returns to his own competence in law. Among the examples he cites, I mention two. First he reviews an argument of John Ashcroft, erstwhile attorney general, in his attempt to justify military tribunals for people suspected of committing crimes of terrorism:

Ashcroft . . . equat[es] the fact that people are charged with crimes with the conclusion that they are guilty of them. This assumption is often made in the general culture: the "suspect" arrested by the police is thought to be guilty, as in fact he often is. But it is a central task of the law and of lawyers to counter these assumptions, not to reinforce them, and to insist upon the fact that we do not know who is guilty until they have been tried in accordance with the fundamental protections of the law. This is the crucial premise of due process itself. The tribunals Ashcroft is talking about exist to determine the very fact he assumes, namely whether the defendants have indeed committed war crimes. His formulation is in its way as conclusory as the phrases used by the twelve-year-old boy to describe his visit to the zoo—"frugal tea," "gay half-hour" and so forth—but with vastly more serious consequences for the world. (p. 66)

The point of the critique is that Ashcroft used his exercise of official speech in Senate testimony to conceal the critical dimensions of his case. The use of speech to conceal in this way may be "free speech," but it is a betrayal of

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11. POSTMAN, *supra* note 8, at 99–113, concludes that even the news on TV has been de-based as entertainment placed between ads, so that the news offered is, in principle, suspect.

public trust and, therefore, cannot be taken in any way as speech that enlivens the human community.

A more important case that White reviews is the opinion of Justice Harry Blackmun in *Virginia State Pharmacy Board v. Citizens Consumer Council*.<sup>12</sup> The question at issue was the legitimacy of advertisements of prices for drugs, which Virginia state law prohibited. The Court, led by Blackmun, decided that the First Amendment protected such advertising. White concludes that Blackmun's opinion is skin deep and unenlightening:

[W]e have a dull replication of an ideology. Blackmun virtually constitutionalizes the "free enterprise system," for example, without any recognition of the fact that our economy is profoundly managed, by regulation, by taxation, and by government spending. The phrase as he uses it is really just a cliché, and much the same can be said of the rest of the formulaic language he employs. This is language that in a profound sense no one could mean. (p. 81)

White's judgment is that while Blackmun protects "free speech," his opinion never joins issue. Consequently, the outcome is a vacuous defense of free commerce in which there is no real voice or argument or engagement with issues concerning the body politic.

I have cited four remarkable examples of "free speech" that lack any vitality. They make clear that the crisis of speech occurs in every dimension of society. Such speech is a reduction of speech to the most innocuous and vacuous enunciation, without engaging any of the issues that concern common humanness and the democratic body politic.

### III

It is White's passionate thesis that public communication does not need to be so. Rather it is "living speech"—speech that emanates from a conviction that is willing to engage other convictions—that invites healing and empowers transformation. The richest and most powerful part of White's book is the analysis of speech that is indeed "living," in that it contributes to the future of the community by opening human possibility. In addition to his forays into Dante, who pressed for "an ordered and coherent poetic universe" that is offered in his poem (p. 18); Plato's *Phaedrus*, which offers dialogue as a way of living with radical uncertainty "without collapsing into incoherence or despair" (p. 132); and Sophocles' *Ajax*, which shows that to live in a chancy world is "a matter of voice and character, of imagination and speech" (p. 187); White offers four choice examples of living speech on which I will comment in greater detail.

1. White takes up a most remarkable, even "cute" poem by William Carlos Williams in which the voice in the poem apologizes for eating plums from the icebox that likely were to be saved for tomorrow's breakfast (pp. 134–40). The poem is offered as a simple apology—case closed. But

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12. 425 U.S. 748 (1976).

because White takes texts seriously and knows that Williams would write nothing “innocent,” White goes further. He notices that it is “plums” (“fruit”) that are eaten and the voice in the poem asks for forgiveness for such a careless act. The juxtaposition of “fruit” and “forgiveness,” not surprisingly, evokes for White the *Genesis* 2–3 narrative of prohibited fruit, “the Fall,” the expulsion, and the final acknowledgement in the poem that the plums were indeed “delicious,” “sweet,” and “so cold.” The capacity to take the words thickly, as the poet intends, makes clear that the poem is no simple, straightforward transaction; it is rather a text that lives amid other texts, evokes other texts, and so insists on being read according to a great textual tradition. The outcome is the recognition that there are no “simple” texts and no “innocent” social transactions, but the great underlying realities are palpably and inescapably available in “living speech.”

2. White comments in a cunning way about a grocery list that he imagines one’s spouse has left on the refrigerator door. It contains an indecipherable item, which might be the word “olives” (pp. 92–94). This small “error” leads to a wondrous probe into the social reality of the relationship that lies behind this “text” and the future that relationship has because of this particular text.

3. White ponders at some length the opinion of Justice Jackson in the case of *Thomas v. Collins*.<sup>13</sup> The case involved a labor organizer in Texas who solicited membership in a union without registering with the state, as required by a Texas regulation. The case concerned the First Amendment and the labor organizer’s right to free speech. Except, as White notices, Jackson’s opinion in favor of the labor organizer is not a simple exposition of “free speech,” for such an opinion would be comparable with the thin appeal to the First Amendment in Justice Blackmun’s opinion cited above. Rather, Jackson recognizes that the speech here protected—that of the labor organizer—is not protected because it is speech, but protected simply because it is speech that grows out of conflicted human relations. The judgment testifies to the value of the particular speech in a public economic transaction and, therefore, “confers upon it an essential dignity” (p. 87). In his opinion, Jackson uses the remarkable phrase, “watchman for truth”: “every person must be his own watchman for truth.”<sup>14</sup> In this case, the labor organizer speaks a truth about the relationship of labor and production, in which human lives are at stake, and that truth must not be curbed by the regulatory power of the state. The issue for White, as for Justice Jackson, is a reflection of a human mind and human character that must honor in public discourse exactly the kind of human mind and character that the “empire of force” would like to nullify and negate.

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13. Pp. 86–90 (discussing *Thomas v. Collins*, 323 U.S. 516 (1945)).

14. *Thomas*, 323 U.S. at 545.

4. White considers the case of *Cohen v. California*<sup>15</sup> in which Paul Robert Cohen wore a jacket in the hallways of the Los Angeles municipal courthouse bearing the words, “Fuck the Draft” (pp. 175–78). Cohen was arrested for disturbance of the peace by offensive conduct. The issue turns on free speech.

The opinion of Justice Harlan, however, probes deeply into Cohen’s “speech” and recognizes that the speech is not just “offensive speech” that would make for an easy ruling. Rather, the declaration on the jacket is situated acutely amid the Vietnam War and articulates a social reality that must be given voice against the empire of force. This was 1971! One could readily judge that the arrest of Cohen was not intended to stop “ugly speech,” but to silence protest against the war and to stifle dissent. White’s analysis of the opinion shows that Justice Harlan distances himself personally from such speech so that there is no “connect” between the speech of a war protester and the speech of a Supreme Court justice; the justice, nonetheless, appreciates and takes seriously speech from a war protester that he himself would never use. Thus the First Amendment makes possible the honoring of “living speech” by which human society can function in humane and durable ways.

#### IV

The contrast between simple “free speech” (which in and of itself is likely to be empty and thin) and “living speech” is the core issue for White. White’s project is an invitation that we should ponder this life-or-death contrast, that we should *acknowledge* the powerful and seductive ways of “free speech,” wherein the empire of force reduces human life to simplistic transactions, and that we should, after Weil, *resist* the empire of force by the practice of alternative speech. That speech is lively, arises from lively persons who are authentic and socially present, and empowers and energizes others to be lively agents of the common good. As White knows very well, the empire of force has amazing resolve and limitless resources to grind down the human spirit and to curb, if not silence, lively speech in the interest of control and dehumanizing conformity.

The range of practices from *cliché and slogan to advertising and propaganda to ideology to toxic euphemism* that despises human reality is everywhere around us.<sup>16</sup> The book is a vigorous summons to those who are practitioners of speech, and White believes every citizen may be one. The summons is to speak in ways that expose vacuous, narcotized exchanges and that attest to the human drama in its stark, contested dimensions without the overlay of manipulative control. Because White’s own rhetoric is

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15. 403 U.S. 15 (1971).

16. I take the notion of “toxic euphemisms” from ROBERT JAY LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE passim* (Basic Books 2000) (1986). Long before Lifton, see *Isaiah* 5:20.

“lively,” he set me to thinking in fresh ways about the three “I” terms—intention, imagination, and interpretation—that have long preoccupied me.<sup>17</sup>

I. I have learned afresh from White about the *intention* of a text or the intention of speech. In my field of scripture study, more recent scholarship to which I am attuned now looks askance at “authorial intentionality,” recognizing that texts take on a life that will surely reach well beyond the intent of the author. The notion of “original intent” in the hands of someone like Justice Scalia leads to a deep suspicion about the claims of such “intent.”

But White’s discussion of intention is deeper than any of that. When one has a simple text from a known human author, as in the case of a note on the refrigerator door, authorial intent is easy to notice. But such intent in older, more complex textual traditions is not so obvious. Rather, intention in these circumstances, particularly within the law, thus means the following:

[T]he creation of a whole way of thinking about the world and the place we have within it and the character of our relations with each other—a desire for a general language of justice that will govern a wide range of cases in a consistent and fair way, and not just in this particular field but throughout the law. (p. 95)

A particular text has to be harmonized with “the entire cultural and political inheritance” (p. 95). In the field of law, White urges that it will not do to quibble about this case or that statute; rather, the responsible practice of law concerns a larger vision of justice that is articulated through specific rulings. White manages to hold together broad claims and particular speech:

The most important question for judge and lawyer is not whether a particular result is correct, but how we in the law should think and talk about that question: in what language or languages, with what respect for what authorities, with what kind of honesty, adhering to what conceptions of reason and justice—and, as we saw in chapter 2, always subject to the further question whether the person is present and responsible in what he or she says. (p. 95)

The conceptual reasoning of the whole matters; it matters not theoretically or simply as “old text,” but because it calls the present reader of the text to responsibility.

Because biblical texts now figure so widely in public discourse, largely under the aegis of the Christian Right, and because biblical texts are my area of competence, I am interested to connect my sense of scripture to White’s sense of the coherence of law. The whole of scripture—Jewish and Christian—surely is about the *holiness* of the God who wills *justice, mercy, and compassion* in the earth.<sup>18</sup> That is the sum of “the entire cultural and political

17. See Walter Brueggemann, *Biblical Authority: A Personal Reflection*, in STRUGGLING WITH SCRIPTURE 5 (Walter Brueggemann et al. eds., 2002).

18. In this connection, attention should be paid to the pondering of Jacques Derrida, *Force de Loi: Le “Fondement Mystique de L’Autorité”* [*Force of Law: The “Mystical Foundation of Authority”*], 11 CARDOZO L. REV. 920 *passim* (1989–1990), on the “undeconstructibility of justice.”

inheritance” of scripture (p. 95). In the empire of force, however, that inheritance of distributive justice is regularly skewed or contradicted by the citation of particular texts taken out of context; particular texts are then read against the grain of the larger text and resituated in the narrative of the empire. The empire of force depends upon focusing on particular texts, extracting them from the larger narrative testimony, and imposing on them meanings that are alien to the tradition. Thus, “intention” is no easy or obvious matter; it requires a mind and a spirit marked by character that can transcend partisan and local interest.

2. *Imagination* is the capacity to entertain an alternative wholeness that is not enthralled to the particular demand of the immediate moment. To imagine is to attend to “what is not there.”<sup>19</sup> Imagination is the great enemy of the empire of force, because it is an unregulated practice of an alternative that cannot be administered or censored by the empire of force. That is why every empire fears its artists. White offers no full discussion of imagination, but the exercise of imagination is everywhere in his pages and everywhere in that “living speech” that he champions.

In a passionate conclusion to his second chapter, White judges the consequence of submission to the empire of force:

[W]e will accept false ways of thinking and imagining and talking that obscure the reality of human suffering and cruelty and greed. We will accept, for example, talk about the “national interest” or “our friends abroad” or the “evil” of those who are different or the “rising tide that lifts all boats” without examining it or the reality it obscures. (p. 90)

And then, in the next sentence, he asserts the power of imagination:

If we cannot imagine the lives of others—the half of the world’s population who live on less than \$2 a day, for example—we cannot be capable of justice towards them, for imagination is the root of justice. And if we cannot see others as they are, and understand our own role in systems of wealth and power, we certainly are incapable of love towards them too. (p. 90)

The juxtaposition of these two statements is of profound importance. The absence of imagination leads to a sheep-like conformity; the practice of imagination, by contrast, moves us into solidarity with those excluded from the empire that await justice in the face of power and love in the face of wealth.

The practice of imagination in law has been frontally appreciated by Martha Nussbaum.<sup>20</sup> She comments on the opinion of Justice Stevens in

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Eventually, that is surely the sum of scripture, though one cannot make that point in a simplistic or reductionist way.

19. P. 14. On the topic as it relates to reading texts, see WALTER BRUEGGEMANN, *HOPEFUL IMAGINATION: PROPHETIC VOICES IN EXILE* (1986); WALTER BRUEGGEMANN, *THE PROPHETIC IMAGINATION* (2001).

20. See MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* (1995).

*Hudson v. Palmer*.<sup>21</sup> The point of Stevens's opinion, for Nussbaum, is his capacity to imagine the condition of the prisoner:

Stevens's concluding general reflection grows out of, and is buttressed by, his way of imagining the prisoner's dignity and humanity. He reflects that in general the Constitution stands between human beings and unfettered expediency, that the liberty interests protected in the Fourth Amendment are valued so highly that they are protected against expediency arguments as a matter of constitutional principle. This is no truism. It is an understanding of constitutional reasoning fundamentally at odds, for example, with Posner's economic approach, according to which these liberty interests would in fact become a matter of expediency.<sup>22</sup>

And in her discussion entitled *Mary J. Carr v. Allison Gas Turbine Division, General Motors Corporation*,<sup>23</sup> Nussbaum expounds the opinion of Judge Posner, who is able to imagine, in quite concrete ways, the plight of the plaintiff, Mary Carr:

She was the first woman to work in the tinsmith shop, and her male co-workers were unhappy about working with a woman. They made derogatory comments of a sexual character to her on a daily basis (such as, "I won't work with any cunt"), continually referred to her in her presence by such terms as "whore," "cunt," and "split tail," painted "cunt" on her toolbox, and played various sex- or gender-related pranks on her, such as painting her tool box pink and (without her knowledge) cutting out the seat of her overalls. They festooned her tool box and work area with signs, pictures, and graffiti of an offensive sexual character, hid and stole her tools, hid her toolbox, hung nude pin-ups around the shop, and would strip to their underwear in front of her when changing into and out of their work clothes. One of them placed an obscene Valentine Day's card, addressed to "Cunt," on her toolbox. The card shows a man carrying a naked woman upside down, and the text explains that the man has finally discovered why a woman has two holes—so that she can be carried like a six-pack. A worker named Beckham twice exhibited his penis.<sup>24</sup>

And on that basis, Posner ruled in her favor:

No reasonable person could imagine that General Motors was genuinely helpless, that it did all it reasonably could have done. The evidence is plain that it (or at least its gas turbine division) was unprepared to deal with problems of sexual harassment even when those problems were rubbed in its face, and also incapable of improvising a solution. Its efforts at investigation were lackluster, its disciplinary efforts nonexistent, its remedial efforts perfunctory. The U.S. Navy has been able to integrate women into the crews of warships; General Motors should have been able to integrate one woman into a tinsmith shop.

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21. 468 U.S. 517 (1984).

22. NUSSBAUM, *supra* note 20, at 104 (footnote omitted).

23. 32 F.3d 1007 (7th Cir. 1994).

24. NUSSBAUM, *supra* note 20, at 106 (quoting *Carr*, 32 F.3d at 1009).

The judgment is reversed with instructions to enter judgment on liability for the plaintiff. . . .<sup>25</sup>

It is clear in these cases and in others that Nussbaum cites that the administration of justice is not simply about “the facts” or about “original intent,” but about the capacity of judges to imagine the situation of the poor and defenseless, precisely those driven off the screen of the empire of force. It is clear in the current practice of the empire of force that shameless euphemisms are utilized in order to eliminate any sensibility toward human pain or human dignity. In an oil-driven military state, there is no lingering over such particular social reality. White and Nussbaum hold out for a judiciary that can imagine otherwise—and so rule—in resistance to the empire of force.

The focus upon imagination, in moving from White’s field to mine, calls attention to the work of William Cavanaugh, *Torture and Eucharist*.<sup>26</sup> Cavanaugh chronicles the pervasive state torture (empire of force) in Chile under Pinochet. He reports on the slow, but finally effective way in which the Roman Catholic bishops countered Pinochet. It was the purpose of torture under Pinochet, so judges Cavanaugh, to destroy society, kill imagination, and leave only the state. In the end, the bishops, with reference to the Eucharist, out-imagined the regime. Cavanaugh reports that in Lawrence Thornton’s novel, *Imagining Argentina*, the lead character finally resists the force of empire:

Confronted with evidence of the miraculous, Carlos’s friends nevertheless remain skeptical, convinced that Carlos cannot confront tanks with stories, helicopters with mere imagination. They can only see the conflict in terms of fantasy versus reality. Carlos, on the other hand, rightly grasps that the contest is not between imagination and the real, but between two types of imagination, that of the generals and that of their opponents.<sup>27</sup>

Cavanaugh then comments on the novelistic affirmation:

To refer to torture as the “imagination of the state” as I have done is obviously not to deny the reality of torture, but to call attention to the fact that torture is part of a drama of inscribing bodies to perform certain roles in the imaginative project which is the nation-state. Likewise, in *Imagining Argentina*, Carlos’s imagination is manifested in real effects; escaping the imagination of the state means that bodies go free. The imagination is defined as nothing less than “the magnificent cause of being.”<sup>28</sup>

It is endlessly the project of the empire of force either to suffocate imagination or to preempt it for purposes of ideology. Either way, resistance to that empire of force requires a sustained act of imagination that refuses the

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25. *Id.* at 110 (quoting *Carr*, 32 F.3d at 1012–13).

26. WILLIAM T. CAVANAUGH, *TORTURE AND EUCHARIST: THEOLOGY, POLITICS, AND THE BODY OF CHRIST* (1998).

27. *Id.* at 278.

28. *Id.* at 279 (footnote omitted).

curbs, limits, and authority of the empire. White and Nussbaum show what a difference it makes to have judges who imagine alternatively.

3. *Interpretation* is the act of liberated imagination that knows that the practice of human society is not a one-size-fits-all move from ideological premise to particular act.<sup>29</sup> Between premise and act is a performance of interpretation that entertains alternatives, recognizes ambiguities, acknowledges doubts and uncertainties, and then, in a venturesome way, acts concretely according to a large human vision. In making that venturesome act, however, agents of interpretation recognize that the act itself is penultimate and not absolute. But, of course, interpretation can be contained within “the box” by the empire of force so that there is no thinking outside the box.<sup>30</sup> The empire of force intends that texts can have only a single meaning and that human choices are limited by the force of ideology.

Reflection, and having the time for reflection, allows for and creates the possibility of alternative meaning and human choice. In an article in 2004, Mark Slouka celebrates the virtue of idleness and critiques “the Church of Work” with its endless busyness and bustle. He avers:

Idleness is not just a psychological necessity, requisite to the construction of a complete human being; it constitutes as well a kind of political space, a space as necessary to the workings of an actual democracy as, say, a free press. How does it do this? By allowing us time to figure out who we are, and what we believe; by allowing us time to consider what is unjust, and what we might do about it. By giving the inner life (in whose precincts we are most ourselves) its due. Which is precisely what makes idleness dangerous. All manner of things can grow out of that fallow soil.<sup>31</sup>

That is, idleness creates space, time, and energy for the intuitive work of interpretation upon which democracy depends. And then, in a reflection that some may think too partisan, Slouka suggests that President Bush, ever-busy cutting brush and biking, is a model of busyness that precludes reflective interpretation. And where playful exploratory interpretation that entertains alternatives is precluded, we move toward fascism, a single-optioned practice that may tolerate free speech but in a spirit that prevents living speech:

From his notorious mangling of the English language to his well-documented impatience with detail and analysis to his chuckling disregard for human life (which enabled him to crack jokes about Aileen Wuorno’s execution as well as mug for the cameras minutes before announcing that the

29. The master of interpretation in the present scene is Paul Ricoeur. For an introduction to his dense and generative work, see DAN R. STIVER, *THEOLOGY AFTER RICOEUR: NEW DIRECTIONS IN HERMENEUTICAL THEOLOGY* (2001).

30. In my own field of scripture study, containment of interpretation “within the box” was accomplished by historical criticism, an approach that kept the text under the alien restraints of Enlightenment rationality. It is important nonetheless to remember that approaches of historical criticism were evoked by the hardnosed dogmatic interpretations of the church that largely misrepresented the text.

31. Mark Slouka, *Quitting the Paint Factory: On the virtues of idleness*, HARPER’S, NOV. 2004, at 57–58.

nation was going to war), Dubya was Marinetti's "New Man": impatient, almost pathologically unreflective, unburdened by the past. A man untroubled by the imagination, or by an awareness of human frailty. A leader wonderfully attuned (though one doubted he could ever articulate it) to "today's swift pace"; to the necessity of forging a new patriotism; to the idea of war as "the necessary and bloody test of a people's force"; to the all-conquering beauty of Business.<sup>32</sup>

I have no wish to focus upon the President, except as he may represent and model the empire of force that precludes alternative.

The struggle among us for *intention*, *imagination*, and *interpretation* is not only at the heart of White's wise book; it is at the heart of the social crisis now broadly facing us. White's aphorism for that struggle is the alarming judgment that "reading [is] not for meaning but for use" (p. 115). When speech is only "useful," its living power is dissipated and life is reduced to "routine and dead forms of thought and expression, stereotyped and authoritarian social relations, mechanistic and reduced ways of imagining the world" (p. 115).

## V

In further exploring White's vision of "living speech," I take the liberty of enacting a riff from my own field, theology. Karl Barth, the most generative Protestant theologian of the twentieth century, made his mark by his deep resistance to the empire of force under the Nazis. In doing so, he refused what he called "natural theology." By that term he meant the "blood and soil" ideology of National Socialism and the broader sense that God was imminent in "natural processes." But Barth did not quit when he had taken his stand against National Socialism. He continued, for many more decades, to move his argument always in fresh ways in response to new contexts, and in engagement always with new conversation partners. As a consequence, he never completed his seminal *Church Dogmatics*,<sup>33</sup> finally stopping his work long enough to die. In a sense, he kept writing the same thing over and over, but always new, always different, always as a summons. In his pages, one always knows that it is a summons for the gospel and the truth. But one also knows that it is the voice of Karl Barth who had something else yet to say, because he put his life on the line to say what had been given to him of the truth.<sup>34</sup>

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32. *Id.* at 65.

33. See the wide expanse of KARL BARTH, *CHURCH DOGMATICS* (Geoffrey W. Bromiley et al. eds., 2004) in fourteen volumes.

34. It is important to recognize the narrative character of Barth's work; it is style and mode that distinguish his work as much as the length of the writing. Thus he may be contrasted with the contained and closed system of Paul Tillich or the syllogistic reasoning of Aquinas. By contrast with such modes, Barth offers speech that is contagious and demanding in a narrative openness that always evokes more texts, including more from his own hand.

I refer to Barth because in the general field of theology he, more than any other, was a practitioner of White's "living speech."<sup>35</sup> Karl Barth is a master theologian, having written the most and the most important theology of any Protestant theologian in the twentieth century. He is also a master of rhetoric, for he has the heart, mind, and tongue of a preacher who intends to move and persuade and compel the reader, not by authoritarian leverage, but by fresh imagination and evocative image. He yields only rarely to scholastic abstraction, the mode of most theology, but is specific and concrete in ways that concern the life-or-death status of faith. While not always combative, Barth's speech is living because it is always a part of a contestation against alternatives in the relentless articulation that requires decision for truthfulness. I understand White to mean by "living speech" utterance in which something deep and urgent is at stake for human persons in human community. What is regularly at stake in theology is not an idea, a rule, or a proposition, but a decision that opens the future to humanness or that closes that future in an ideological manner. Barth knows full well what is at stake in the crisis of faith that concerns not just church tradition, but all of human community and its practice of neighborliness in an economy that has given itself over to the market. It is for good reason that long after Barth's crisis in German National Socialism, our best theological thinkers in the Christian tradition, Catholic as well as Protestant, return to Barth's generative speech and find it, in every new context, living and generative of lively possibility.

I also refer to him because after him have come many "Barthians," some better than others. The deep temptation of every Barthian (including this one) is to reiterate, to reduce his fresh speech to slogan, to tear speech out of context and reduce it to a formula. Thus I recently heard a dismissal of Barth "because he rejected natural theology." Not! The play from Barth in *living speech* to many Barthians in *echoing speech* is a model for White's contention. No doubt in every field of serious study, the point is the same.

I do not imagine that theological discourse is a privileged category. Rather, theology is yet one more arena of communication, like the others that White considers, in which decisions are made for living speech or for free speech. The difference in theological discourse is only that it claims to speak of deepest things; but then that is the same claim made in parallel fashion in legal, philosophic, and artistic discourse as well. Theological discourse has too often been "privileged" academic rhetoric locked into abstraction quite removed from lived reality and bound, like Job's friends, to

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35. Barth kept at the task because he understood precisely the judgment of White about real speech:

In this speech there is also a sense of the temporary, an inherent nonfinality. For everyone present in the room knows that whatever is said is said for this day, this moment only; as soon as it is over the present becomes the past and the silence out of which meaningful speech can emerge exists again, calling for something new. The kind of speech that takes place here is never conclusive; it always assumes and calls for further speech, and speech that emerges from silence. All this provides a context where simplicity can work with power—not as a cliché, but as truth.

systemic explanations that proceed in disregard of human facts on the ground.

But faithful theological discourse, as Barth exemplifies, has not been interested in system-building abstractions or in denial of the facts on the ground. For that reason, it has been clear for decades, since the work of Karl Barth and Richard Niebuhr, that narrative is a privileged mode of discourse in theology, for narrative focuses on the particular, traces plot from problem to resolution, and makes maneuvers that are impossible in more systemic thought. Narrative, moreover, can allow as dramatic persona a Holy Force excluded from explanatory rationalism, a Holy Force that lives in, with, and under controlled human reality. For that reason, theology as narrative discourse allows silent space for the unutterable to be uttered, an unutteredness that, as Barth and White know well, must be heard if we are to speak life anew.

The speech that White envisions and Barth offers arises from brooding, “visited” silence. White did not make a sustained point of such silence, but all through his pages he insists that freighted silence—the kind practiced by Trappists and Quakers—is the ground of living speech. That kind of silence is not suppression or censorship—rather waiting, brooding, and generating. The empire of force does not wait or brood or generate. It acts quickly and simply, because everything, according to formula, is obvious. The empire does not act in order to understand or communicate, but only to control. White knows, as his models Plato and Dante and Shakespeare knew before him, that the wonder and mystery of the human venture is not obvious. That venture requires artistry and then action; but such human action is penultimate and kept under the aegis of yet more artistry.

## VI

In the end it is clear that White’s book is not a study in rhetoric; rather, the book has a “deeply political purpose” (p. 205). That purpose concerns the cruciality of *human character, meaningful social life*, and ultimately *the performance of justice* on which a viable society can be sustained.

Of *human character*, White judges: “[A]t the center of every human being is the desire for justice and love, to which the empire of force is always opposed” (p. 77).

Of *meaningful social life*, White concludes: “Democracy is built upon the hope that our lives and experience can have meaning, meaning of a kind that the language of the market cannot express or imagine” (p. 37).

Of the cruciality of *the performance of justice*, White avers:

But as human beings we have a need that other animals do not seem to have, namely to tell the stories of our life in a way that makes sense of them, that yields a tolerable meaning. For us an essential question at work in every such story is justice—the justice of what some person or government did or failed to do, the justice of the gods, or of God, perhaps the justice of the universe. We want to be able to affirm the justice of what has happened to us, and what we see around us; in default of that we need—

our integrity demands it—to be able to express our sense of injustice. This need is essential to the dignity and value of human life. Indeed, to make a claim of justice—or injustice—is a large part of what language is for: language seen not as a system of signals, or an instrument for the exchange of information, but language as a way in which we claim this kind of meaning for our experience. (p. 197)

White's analysis indicates that we, in belated Western society, have much to fear. It is clear that the empire of force, with its hard will matched to powerful ideology and sophisticated technology, has now largely occupied our defining institutions, and with such occupation, can distort the arena of genuine human society.

It is, however, equally clear that we have grounds from which to hope. The ground of hope is the awareness that the empire of force, for all its force, cannot finally silence human speech. Alongside the *coercive silence of conformity* encouraged by the empire of force, there is the *alternative silence* that breeds living speech. Out of that breeding ground to which the empire of force has no access, there may yet arise new speakers unafraid:

For us to show that we understand the empire of force, with all its seductive allure and power, and know how not to respect it—and to insist upon respecting instead the center of the human mind and soul, where meaning is claimed and made—is the only way in which our world can be transformed for the better. It is the only ground of hope. (p. 205)

When new speakers speak unafraid, the irreducible human utterance is a cry, a cry of protest against pain and injustice, a cry of possibility insisting that human persons are, by their very existence, entitled to more well-being than is currently granted by the empire of injustice. The irreducible human speech of a cry that constitutes self-announcement of elemental entitlement is evident in biblical artistry in the cry of the slaves in a voiced act that begins the narrative of deliverance in the exodus:

After a long time the king of Egypt died. The Israelites groaned under their slavery, and cried out. Out of the slavery their cry for help rose up to God. God heard their groaning, and God remembered his covenant with Abraham, Isaac, and Jacob. God looked upon the Israelites, and God took notice of them.<sup>36</sup>

That cry, moreover, pervades the Book of Psalms so much that James Kugel is able to conclude that answering the cry is God's most elemental obligation in scripture.<sup>37</sup> It is this cry that lies at the heart of all living speech:

The cry of injustice is the first, last, and deepest insistence by the human being upon his or her own value, and the value of humanity itself. It is the center of our capacity to claim meaning for experience, and the center of our resistance to the empire of force. (p. 203)

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36. *Exodus* 2:23–25.

37. See JAMES L. KUGEL, *THE GOD OF OLD: INSIDE THE LOST WORLD OF THE BIBLE* 109–36 (2003).

I imagine that White's book is a summons to the legal profession to fresh energy for its urgent assignment. I will take it, *mutatis mutandis*, as a summons to "the talkers" in the sphere of theology and ministry. In fact the summons is to no particular profession: it is addressed rather to that which is intractably human in all of us, so intractably human that the empire of force may not finally prevail. Professor White is to be thanked for his broad learning, even more for his daring, courageous advocacy. His hope is upstream; but, then, such hope is always upstream amid the empire of force. We can, from his writing, turn yet again to reading and speaking!