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Recommended Citation

Emily Fowler Hartigan, *The Power of Language Beyond Words: Law as Invitation*, 26 *Harv. C.R.-C.L. L. Rev.* 67 (1991).

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THE POWER OF LANGUAGE BEYOND WORDS: LAW AS INVITATION

*Emily Fowler Hartigan**

*There is no speech, there are no words, but their power
goes out across the earth.*

Psalm 19:4–5

*A voice from the dark called out,
‘The poets must give us
imagination of peace, to oust the intense,
familiar
imagination of disaster. Peace, not only
the absence of war.’*

*But peace, like a poem,
is not there ahead of itself,
can’t be imagined before it is made,
can’t be known except
in the words of its making,
grammar of justice,
syntax of mutual aid.*

*A feeling towards it,
dimly sensing a rhythm, is all we have
until we begin to utter its metaphors,
learning them as we speak.¹*

—Denise Levertov

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I thank for their patience, comment and support, readers who made good of this text: Milner Ball, Ruth Colker, Tony Fejfar, Louis Newman, Randy Philips, Carol Ochs, Paul Razor, Carol Rose, Tom Shaffer, John Snowden, Howard Vogel, James Boyd White, and Toto. Also those who listened and responded at the 1989 annual Law and Religion conference at Hamline Law School, especially Drucilla Cornell, Frank Alexander, Douglas Sturm, Steve Scherschlieght, Sandy Levinson, John Flym and Marie Failingner. And the philosopher, the judge and the rabbi.

¹ DENISE LEVERTOV, *Making Peace*, in *BREATHING THE WATER* 40 (1987).

At the basis of this world are values which are simply there, perennially, before we ever speak of them, before we reflect upon them and inquire about them. It owes its internal coherence to something like a pre-speculative assumption that the world functions and is generally possible at all only because there is something beyond its horizon, something beyond or above it that might escape our understanding and our grasp but, for just that reason, firmly grounds this world, bestows upon it its order and measure, and is the hidden source of all the rules, customs, commandments, prohibitions and norms that hold within it.²

—Vaclav Havel

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² Vaclav Havel, *Politics and Conscience*, in VOICES FROM CZECHOSLOVAKIA 6 (1986).

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I. Beginning

This is a story meant to serve as an invitation, a story of blessing—and a confession, an exhortation, even a bit of a sermon—about Law. I am telling you this both to give account of where the words come from, and to let you know where this essay-story is situated, in my life and in the communities in which I find myself. I teach law, and I am writing this for a law review. The footnotes of my self-location include the post-modern, post-Holocaust, post-nihilist writings of political and legal thinkers who have come far enough to assert the Reality of Evil, and whom I would call to join in naming the Good.³

The communities in which I am located extend from the discreteness of law reviews to the domain of thought, feeling and faith that theologian David Tracy suggests is mystical-pragmatic.⁴ In terms of my story, my community also includes particular people who read the first draft of this, and their responses, and you the reader, of whom I am going to make a request. The first people who read this were some of those who lived it. You will find in the following pages the story of the philosopher and the rabbi. The philosopher read this and understood my argument about what the implications for dialogue about law are for a reasoning person called to love God with her whole being and love her neighbor as herself; the rabbi read, loved, commented, and affirmed. It was the law colleagues who read this who changed the beginning.

The blessing text, the scripture of this story-essay is the specific blessing of Deuteronomy: "I have set before you blessing and curse, life and death . . ." As an aspect of that blessing, *Law is*

³ They include Richard Rorty, Mark Tushnet, Stanley Fish, Bruce Ackerman, Michael Walzer, and Thomas Nagel; see THOMAS NAGEL, *THE VIEW FROM NOWHERE* (1986); see *infra* notes 29, 30, 45, 49, 105, 106, 138.

⁴ David Tracy, *The Uneasy Alliance Reconciled: Catholic Theological Method, Modernity, and Postmodernity*, 50 *THEO. STUD.* 548, 564–69 (1989). Tracy's language is conducive to this phrase, but he uses "mystical-prophetic." Another author who takes Tracy to mean something mixing mystical with worldly concerns is Michael Perry, who in his forthcoming book *Love and Power* calls Tracy's idea "mystical-political." M. Perry, *Love and Power* (rev. ed. Sept. 1990) (unpublished manuscript).

an INVITATION to fuller life, more deeply than it is force, violence, coercion, death. Even to Robert Cover, Law is the command of a good God; in this story, it is also the invitation of a loving God, a welcoming cosmos. We can choose freely rather than merely obey carefully, because we have been blessed first.⁵ We can trust reality and our true selves, because they are primarily good. This sense of Law as inviting is in part the neglected feminine face of the world.⁶ It is an affirmation of the outlines (and inlines) of life. We can recognize in the face of life and the countenance of the other, Law's invitation as the tracing, the imprint of the good. I will try to fashion two sorts of bridges into my experience of this blessing text of law, and ask you to supply the third. First, I will try to tell you what I hope to do. Then I will relate a parable, and finally I will ask you to revisit what you have read.

A. Blessing and Bridge

To start (I have cheated a little, giving myself a couple of pages to lead up to this), I ask the reader's blessing. There are two main reasons for this, and one defensive one. The first is that this telling requires openness and some trust, and blessing is the medium of invoking what is needed for trust. The second, in reality, is that it is blessing I am talking about in relationship to the law, and it is that blessing, that goodness, which I need for the courage to write such personal, feminine and out-of-the-mainstream stuff, stuff that is, if Robert Cover is right, written in the face of violence.⁷ I find that frightening. The final reason is that any truth in what I am about to confess, to tell, to advocate, is not my possession. I have lived some of this truth, but never alone and always imperfectly. My conversation partners include all whom I have mentioned, some who come in the course of the essay, and one who appears at the very end of the story. The other

⁵ DIETRICH BONHOFFER, *MEDITATING ON THE WORD* (D. Gracie trans. 1986).

⁶ See *infra* note 72; see also ELISABETH MOLTMANN WENDEL, *A LAND FLOWING WITH MILK AND HONEY* (1986).

⁷ See Robert Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986). Such writing is far from unheard-of, however. See, e.g., Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Marie Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law*, 13 NOVA L. REV. 355 (1989); *Legal Storytelling*, 87 MICH. L. REV. 2073 (narrative symposium 1989); ROBERTO UNGER, *PASSION: AN ESSAY ON PERSONALITY* (1984).

persons in the conversation, the story, have given me courage, and asked for more.

I am asking, as part of blessing, for something rather strange and perhaps presumptuous: I ask that you read this text twice. There are reasons from theory and practice for my request. In practice, I have been told by almost all readers that it took them until the second time to become connected, to understand the invitation, sometimes even to make much sense of the text. Their affirming reports of their second rounds fuel my presumption; so does my reflection on why, even to friendly readers, this text is not easy to read.

There are four reasons I can identify. First, the text is about interweaving mystery with knowledge, and that means it is by its own declaration half-hidden. Second, the text is, I hope, feminine; because we do not yet really know what feminine consciousness is, speaking it is deeply tentative. Third, the nature of texts is that they belong to reader as well as writer, and I have tried to leave that space open (and thus unexplained). Until the reader and the writer meet in the text, the text is incomplete; re-reading continues the process. And fourth, (akin to the second but also distinct) is the fact that our stories, our histories, have nearly no *tradition* of women's voices, so that even if I am true to my own voice, you would have a much more difficult time recognizing either its truth or its coherence, than you would stories of which you have heard prior versions, men's stories.

The role of mystery is explored throughout the Article, but the nature of text and the feminine needs some initial exploration. At its center, the feminine text is related to something legal theorist H.L.A. Hart says about law. When Hart talks about the "internal point of view" (what now might be called the view of the subject), he gives an account of how the solely external, "objective" viewer will miss something integral to law. The external analysis will portray stoplights as "a natural *sign that* people will behave in certain ways, as clouds are a *sign that* rain will come."⁸ This, Hart notes, misses the dimension of social life, the internal experience of the driver that the light is a *signal for* her to stop, a signal to which (or to its prior, habit-forming instances), I would add, she can say yes or no. That internal decision is what I address in my

⁸ HENRY HART, *THE CONCEPT OF LAW* 87 (emphasis in original) (1961).

request for a double reading: I ask that you read the text to get its context, so you can approach it with a mixture of you and the text that is best for you.

The relationship between reader and text is sacred. This is not in the sense of solely theistic thought (indeed, though the language may seem to belie it, this entire text does not require a "belief in God;" as Buber says, "Whoever goes forth in truth to the world, goes forth to God")⁹ but in the sense of the birthing of self and becoming that attentive reading can bring forth. The integration of all that is ostensibly in the text "will not come to fruition other than in the living receiver of the story being told."¹⁰ Philosopher Paul Ricoeur notes that the process of composition does not realize itself in the text but in the reader—this is the risk and what literary critic J. Hillis Miller calls the "ethical moment" of reading.¹¹ This risk is not taken in the void, however: ethics have stories and laws and bases of trust.¹² One of the bases of trust, aside from mutual blessing, will be your first reading.

Ricoeur says that a text is a projection of a new universe;¹³ this is almost exactly what the late Robert Cover said about law.¹⁴ One face of the new universe to which this text aspires began very recently, as English professor Carolyn Heilbrun narrates in *Writing a Woman's Life*.¹⁵ This writing by women about women is particularly difficult because, as Ricoeur's analysis of texts details, all texts come to us mediated by the kinds of stories we have heard.¹⁶ We are constituted by a narrative identity (much as legal philosopher Ronald Dworkin says law is like a serial novel, a continuing story)¹⁷ because "that which we call subjectivity is neither an incoherent succession of occurrences nor an immutable substance incapable of becoming." Rather that identity is "built up into a

⁹ MARTIN BUBER, *I AND THOU* 143 (W. Kaufmann trans. 1970).

¹⁰ Paul Ricoeur, *Life: A Story in Search of a Narrator*, in *FACTS AND VALUES: PHILOSOPHICAL REFLECTIONS FROM WESTERN AND NON-WESTERN PERSPECTIVES* 122 (M.C. Doerer & J.N. Kraay eds. 1986).

¹¹ J. HILLIS MILLER, *THE ETHICS OF READING* (1987) (especially ch. 1, "Reading Doing Reading" and ch. 6, "Re-Reading and Re-Vision: James and Benjamin").

¹² *Id.* (especially ch. 2, "Reading Telling: Kant").

¹³ Ricoeur, *supra* note 10.

¹⁴ Cover, *supra* note 7.

¹⁵ CAROLYN HEILBRUN, *WRITING A WOMAN'S LIFE* (1988).

¹⁶ Ricoeur, *supra* note 10, at 129.

¹⁷ RONALD DWORKIN, *LAW'S EMPIRE* 228-38 (1986).

living continuous overlap of all the lived stories. Thus, the stories told must emerge from this background. In this emergence the story guarantees man."¹⁸ Sadly (yet inviting to the future), that emergence has in the past guaranteed just what Ricoeur names—man. Women have lived, but they have not written their stories or their experiences under the law. Women's stories today rest on almost no history of women's writings. And I am a woman.

So I must risk trying to tell a story from a vantage that does not yet fully exist. French feminist Luce Irigaray suggests that women cannot yet know who they are, nor the nature or perhaps existence of the feminine unconscious (she also suggests the obvious correlate to the fragility of feminine consciousness: ". . . how can anything be known about the 'masculine'" in such a context?).¹⁹ The first flowering of women's writing is happening now. That is why I feel this text as a risk; I invite you to share that risk, and to read twice so that the story may begin to reveal its law more fully, and come to light between us.

As I ask for this re-reading, I want to say two things: first, I do not know the "secret" of how this reading works; second, I am not trying to trap you or me, but to move free of what Wittgenstein calls the (implicitly false) enchantment of language, and yet court a wiser re-enchantment. This is the nature of the Word. As Miller reveals, in discussing re-vision and re-reading, both American writer Henry James and Jewish philosopher Walter Benjamin tap the underlying paradoxes of the word in law and text. James puts it this way:

[Writing] gives itself [to the writer, and that which] finally 'renders,' is a flower that blooms by a beautiful law of its own . . . in the very heart of the gathered sheaf; it is *there* already, at any moment, almost before one can either miss or suspect it—so that in short we shall never guess, I think, the working secret of the revisionist . . .²⁰

¹⁸ Ricoeur, *supra* note 10, at 131.

¹⁹ LUCE IRIGARAY, *THIS SEX WHICH IS NOT ONE* (C. Porter trans. 1985) (esp. ch. 7, "Questions"); see also Bly & Thompson, *What Men Really Want: Love, Sex and Intimacy in Changing Times*, in *CHALLENGE OF THE HEART* (J. Welwood ed. 1985).

²⁰ Miller, *supra* note 11, at 118–19 (quoting Henry James).

Miller reflects: "If we shall never guess the secret, that is not because James has not given us as much of the secret as one person is likely to be able to communicate to another." For James, the re-reading calls forth a "due testimony, . . . re-assertion of value, perforating as by some strange and fine, some latent and gathered force, a myriad more adequate channels."²¹ Miller's conclusions get close to the matter: "The text is not the law or even the utterance of the law but an example of the productive force of the law."²² Citing Benjamin's formulation of the paradox of the wordless word, he notes about translation as a form of re-reading: "[b]oth original and translation are inadequate translations of an original which can never be given as such, just as the law as such can never be formulated in so many words, in any language."²³ I have done, will do, my best to give as much of the secret, as much as is given to me, and ask you to meet me in the reading and re-reading. I am not trying to obscure what I know: I know that I do not know, and what *can* be apprehended will best come to be, between us.

The "original" to which Miller alludes is a text that is always liminal, always on the edge of becoming. Thus my text can never capture it. The inherent limitations of text make explicit the interpretive burden that is on the reader—yet that burden "is light," is part of the invitation. This text will be to some extent what you make it. Milner Ball suggests that a humanistic reading "is available for only those who come to a text with the heart and will for such a reading."²⁴ (Key reviews of Richard Posner's law and literature tome suggest that he was unmoved by the greatest in Western letters because he read from the stasis of disengagement, remaining closed as a person and thus writing in bad judgment.)²⁵ The authority of the text lies with the reader, in the end. As I argue below, that is the gift after Babel, the gift to the listeners, the readers, of law and text: much is a matter of your decisions as reader.

²¹ *Id.* at 119 (quoting Henry James).

²² *Id.* at 121.

²³ *Id.* at 123.

²⁴ Milner Ball, *Confessions*, 1 CARDOZO STUDIES IN LAW AND LITERATURE 185, 193 (1990).

²⁵ See Peter Teachout, *Lapse of Judgment* (Book Review), 77 CALIF. L. REV. 1259, 1266–68, 1283–84, 1292–95 (1989); see also James Boyd White, *What Can a Lawyer Learn from Literature?* (Book Review), 102 HARV. L. REV. 2014, 2014–15 (1989) (both reviewing RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988)).

1. *The Theory*

The invitation of law is beyond words, mine very much included. It comes from One whose ways are not ours, and it reaches individual expression only after having been lived into existence among many and perhaps all particular people. It is as simple as Socrates' notion that justice in the soul, justice in the republic and justice in the world are of one form, and that it is love that calls us into being as the motive source for good in philosophy and the cosmos; it is as complex as the attempt to say a truth that resides in the whole of the universe (well beyond a law review article, no matter how detailed the footnotes . . .). Law is like Torah, the inviting, never-ending creation and discovery of the lineaments of a living space given to us in love, spoken to us every moment and at sacred moments (on Mt. Sinai to Moses; here and now to you and me). The laws that we have written and spoken in constitutions and statutes and decisions and folkways are, like this Article, attempts to put the Law into words. This idea is what animates ideas of our Constitution as unwritten; it is the "living spirit" of law that Justice Cooley tapped; it is the "law of the land" of Magna Carta.²⁶ It is Law as "imprinted in the heart" and being of the human person, and always moving towards expression in language.²⁷

I want to point to Law as this creative possibility, this invitation, to make law as we experience it move toward Law that can speak to power. This does not abolish power, does not redeem law fully, but it is a turn, a beginning, a seeing of law anew. It is the change of heart of Christian *metanoia*, the turn and return of Jewish *teshuva*, the vertigo of koan in Zen. It is a new way of seeing the world of law, so that the law may become new. It can both conserve and transform the laws as we now know them. Words will never catch it, and so I will not be hiding the ball in this, but I will drop the ball. I trust you to pick it up when you

²⁶ *People v. Hurlbut*, 24 Mich. 44, 107 (1871) (Cooley, J.); Thomas Grey, *Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought*, 30 STAN. L. REV. 843 (1978); Emily Hartigan, *Law and Mystery: Calling the Letter to Life Through the Spirit of the Law of State Constitutions*, 6 J. L. & RELIG. 225, esp. nn.94-159 (1988).

²⁷ See WALTER LIPPMAN, *THE PUBLIC PHILOSOPHY* 77 (1954); Peter Demetz, *Introduction to WALTER BENJAMIN, REFLECTIONS* at xxii (1986).

can, and run with it²⁸ . . . because it is still in the making (as the playing field itself transforms), and that project needs your participation.

2. *The Parable*

Once there was a young woman who lived in the Midwest. Her parents owned an apple orchard, and grew ten different varieties of apples. Next door to her family's orchard was a smaller orchard owned by a Vietnamese family, who had escaped by boat after the fall of Saigon, and had taken many years to accumulate the down-payment on land. The son of the Vietnamese family had spent his high school and college years working full-time and studying full-time to learn horticulture and orchard management, and he was very proud of his family's achievement. He had developed one of the three varieties of trees in their orchard, and all three were about to reach maturity. He cared only for apples, and never noticed people outside his family.

The young woman was intrigued by these "foreigners" and their close family, hard work, traditional observances and self-contained pride. In addition, the blossoms on their trees seemed at least as beautiful as those on her family's trees; they smelled mysteriously fragrant; they tantalized her.

The young woman wanted to taste the strange apples, but was too shy to speak up. She could think of no way of reaching the apples besides climbing the fence in darkness. She thought about what such a climb would be. She might fall, and not be found until the next day. She might be caught, and be greatly ashamed. She might damage the tree in her nervous picking, and feel deeply guilty. She might be snagged by unseen barbed wire or a booby trap. In her confusion, she mentioned her plan to her father. He said that those apples were not theirs, period. He told her that to go over the fence would be trespassing and theft.

Her mother suggested that, although her father was right about the law, she might take her desire as a sign of life and think about why she wanted the apples so much. At first, this just drove the young woman to distraction, because she began to develop an

²⁸ The editors noticed this obvious use of a sports metaphor; this is an ironic retention of an attempt at translation for the sake of my colleagues at Nebraska.

obsession about the apples, and that was pretty silly. She realized she did not want to have to steal. She asked herself why she was going bananas over apples she had never tasted, was considering invading neighbors' land, and was spending days ruminating over booby traps. She went out to the trees, to get another sense of why she was so drawn to them, and she was met by the sensations of the beautiful color, the intriguing shape and the slight but delicious smell of the small apples over the fence. At the same time, she realized that she was being driven nuts by someone else's forbidden fruit and imagined disasters, without ever having talked to the owners, and she burst out laughing at herself, amid her smiles of enjoyment at the sight and fragrance of the apples. She resolved to talk to the son the next time she saw him. The sound of her laughter came to the son, who looked down from his perch in a nearby tree he had been pruning, to see a wandering, smiling, laughing young woman whom he knew to be the "spoiled" daughter of the well-to-do neighbors. The look in her face was unmistakably one of desire, and delight in his beloved apples, and the next day, the son and daughter met. As the mother suggested to her daughter that the longing she felt was to be lived out as an invitation, so the seemingly punitive prohibitions of the father were really the patterns of a gift coming into being; seen with heart, mind and humor, the law of trespass could illuminate more than it could dominate—and perhaps the nature of the law itself could be changed.

B. *The Devil, Too*

The academy, the law reviews, have already accepted the reality of death, of evil, of curse. For example, Michael Walzer reviewed Stuart Hampshire's book on justice, and agreed with the author that what unites humanity is not a single substantial morality but a recognition of (and implicit agreement upon) the great evils of life.²⁹ Rorty and Ackerman assert that evil exists³⁰ and join Walzer in the defensive stance of avoiding the evil of common life, of law, rather than affirming the good. John Rawls constructs a

²⁹ Michael Walzer, *The Minimalist* (Book Review), *NEW REPUBLIC*, January 22, 1990, at 40 (reviewing STUART HAMPSHIRE, *INNOCENCE AND EXPERIENCE* (1989)).

³⁰ B. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980); Rorty, *infra* note 104.

theory of justice that is, as my students said, a theory of guilt avoidance, not of life embrace.³¹ Arthur Leff's poignant answer to Roberto Unger's cry to God to speak was a negative litany of Wrongs (Pol Pot, Hitler, slavery), though he finally said it, that for the Law, "there is no one like unto the Lord."³² Leff earlier responded to Unger with a letter that said in essence that it was necessary for God to exist, and maybe God did exist, but, feigning the role of the Devil, "[I]f [God] exists, Me too."³³ That gets the essential tie between the two, and the order right: first the Good, then Evil.³⁴ We have what Judith Shklar concedes to be some shared sense of injustice,³⁵ but we have yet to claim the positive that must have preceded that negative: injustice is not-justice. Injustice is a lack of something that we must value, to miss it so. Blessing, good, life, are not only Real, as Real as evil, but they are to be chosen, are being chosen, have been chosen. My tradition tells me that God asks that I do justice, not merely avoid injustice, that I love tenderly, not merely avoid causing suffering to others, that I walk humbly, not merely that I step on no unnecessary toes. So I start with blessing, in writing about law, but I recall the curse. Yes, Professor Leff—the Devil, too.

In order to do good within the Law, we will have to witness to the evil. Robert Cover talks about witness, an "insist[ence] in the face of overwhelming force that if there is to be continuing life, it will not be on the terms of the tyrant's law."³⁶ The law that is coercion and curse is not Cover's Law; his Law is "the projection of an imagined future upon reality."³⁷ It is a commitment to what is not yet, but that can be lived into being. To live so faithfully, Cover tells us, toward the "imagined triumph of the normative universe—of Torah, Nomos—" over death, involves the witnesses' resolution that "any future they possess will be on the

³¹ See *infra* text accompanying notes 86–89.

³² Arthur Leff, *Unspeakable Ethics, Unnatural Law*, 1979 DUKE L.J. 1229, 1232; ROBERTO UNGER, *KNOWLEDGE AND POLITICS* (1984).

³³ Arthur Leff, *Memorandum, TO: Roberto Unger, Professor of Law, etc., FROM: The Devil, etc., RE: Your Knowledge and Politics*, 29 STAN. L. REV. 879, 889 (1977).

³⁴ The primacy of blessing, of the good against which evil is contrasted in order to be known as evil, is present in all major traditions of spirituality. Some consider it a minority theme; those who claim it, consider it true. For an example, with annotations within the tradition of the People of the Book, see MICHAEL FOX, *ORIGINAL BLESSING* 257–58, 277–78, 307–27 (1983).

³⁵ JUDITH SHKLAR, *THE FACES OF INJUSTICE* (1990).

³⁶ Cover, *supra* note 7 at 1604.

³⁷ *Id.*

terms of the law to which they are committed (God's law)."³⁸ Cover's voice knows the context in which such dangerous witness takes place.

C. Context

In his powerful *Violence and the Word*, Robert Cover says the startling but obvious: the words that judges speak, kill. "The judges deal pain and death."³⁹

The law takes children from parents, puts people in jail, devastates plans and lives, gives freedom, and allocates shelter, food and means for existence. In the courts and on the streets, the function of law's language is more than a story to enchant or a rhetoric to persuade. It is also the medium through which we intentionally dispense pain, advantage, freedom and death. As Cover reminds us, the judge is insulated from the results of his words by layers of roles, so that the implementation of judges' words is left to functionaries; without all the structure of social organization, words would not be the same well-padded deeds distanced by a legal system.

To call such a system of language practical wisdom may mask its lethal character, but it reminds us that law language is not philosophy. This is crucial because while we consider, in the context of this essay, language in its more abstract character, we are living in a society that is putting people to death. As we ponder whether it is time to stress divergence or to move to reconstruction, to emphasize sameness or dwell in difference, children are being taken, placed, misplaced. This is not to devise a rhetoric of haste, because some of the deepest wisdom of the moment advises that we have, and should take, time.⁴⁰ Yet we cannot deny that we are living in a "moral emergency;"⁴¹ we are reminded to *locate* our discussion. It takes place amid violence both overt and covered by layers of custom, "comity" and internalized legalism.

We are also called to justify the attempt to do with language what we cannot—to make sense out of the world, to discern its

³⁸ *Id.*

³⁹ *Id.* at 1609.

⁴⁰ See Rowan Williams, *The Suspicion of Suspicion: Wittgenstein and Bonhoeffer*, in *THE GRAMMAR OF THE HEART* 36 (R. Bell ed. 1988).

⁴¹ David Luban, *Difference Made Legal: The Court and Dr. King*, 87 MICH. L. REV. 2152, 2224 (1989).

meaning. The legal system will continue to operate as best it can, even were it to devolve to the quasi-chaos of revolution or totalitarianism, whether or not it can "mean what it says." The one thing that law means is business: the police officer will arrest people today, here, and put them in jail. The law business goes on, and either it will mean the continuation of the status quo, or, in some modest but real part, it will yield to our actions and our words that attempt to give it meaning beyond mere force. Our justification for the search for the source of the meaning and power of words is thus the confluence of acknowledged violence, and hope.

How does the meaning ever emerge from the chaos? How do so many people of so many divergent histories manage to talk at all? How do words of law embody justice in addition to coercion? How can the judge and the criminal ever communicate?⁴² How can we make sense of a system in which we are all innocent, we are all guilty?

D. Turning

Legal language kills, but the words of law can also give life. Law separates, but it can also join. Law is force, but it is also translation.⁴³

I present here the idea and stories of the *spirit of the law as medium*⁴⁴ of translation, both among our radical pluralities and between our deepest consciousness and what lies so deep that it reaches our ineffable oneness. Because the spirit is real, it allows us to communicate when we talk, and to reach beyond the words of our speech. We bother to talk about the meaning and power of words in law because we hope to strengthen the tendrils of meaning that run through the system of organized violence and non-violence. In some sense, we share the desire to minimize the aspect of violence and maximize the aspect of meaning. Law is force and words are force,⁴⁵ but they are also freedom.

⁴² See Cover, *supra* note 7, at 1609; Williams, *supra* note 7, at 401, 405.

⁴³ Cf. Clark Cunningham, *A Tale of Two Clients: Thinking about Law as Language*, 87 MICH. L. REV. 2459 n.* (1989) (citing James Boyd White's newest book, *JUSTICE AS TRANSLATION* (1990)).

⁴⁴ See MILNER BALL, *LYING DOWN TOGETHER* (1985) (describing law as medium).

⁴⁵ Stanley Fish, *Force*, 45 WASH. & LEE L. REV. 883 (1988).

As Kant knew that any attempt to know what really ties the cosmos together (and how it is so tied) was run through with “transcendental illusion,” so we know that in every act of meaning there is meaninglessness. In every use of language to affirm or create life, there is non-life. Our every affirmation is inherently not quite right.⁴⁶ But we continue to try because we know that the cosmos is forgiving to this extent: somehow we live and love and celebrate, as well as die and hate and mourn. And we continue to choose life, to use words, to *inhabit* language with the commitment of each sentence which we can manage to hold as close to reality as we know how. Even as we read texts that deconstruct what we hold sacred,⁴⁷ we find that we cannot but reach to embrace again. Those who would reduce this to the moment, to instrumental pragmatism (in its inherent contradiction, captured by the queries “Works? Works by what measure and from whose perspective?”), or to infinite non-justification, continue to write as if there were a truth in whose honor debunking takes place. Or as if there might be Someone who could get to their hearts by refuting their arguments, battering down the doors of their minds in order to rescue their starving souls. It is time to say more about what we cannot say, time to use language to talk about what language cannot do, so that we may wonder at and affirm what it manages to do.

Language manages to connect us, although without an acknowledgement of the benignity, the grace of mystery; we cannot begin to explain that connection. We can use language to claim (but not to explain) that mystery. As mystery, it cannot be fully predictable, but it can be almost apprehensible in language. Apprehension and proof are two different things, however, and those requiring proof may not be open to apprehension. They may require that their “God-shaped hole”⁴⁸ be filled by reason (or words) alone, and may thus remain empty. Reason is a powerful tool, even in its many guises,⁴⁹ for clearing space. Love is the only tool

⁴⁶ See MARK TAYLOR, *ER[R]ING* (1989).

⁴⁷ See ELISABETH SCHUSSLER FIORENZA, *IN MEMORY OF HER* (1985) and ELISABETH SCHUSSLER FIORENZA, *BREAD NOT STONE* (1987) (rejecting Scripture as not fundamentally trustworthy because it is androcentric).

⁴⁸ Salman Rushdie, *The Book Burning*, N.Y. Rev. of Books, Mar. 2, 1989, at 26, col. 2 (discussing the initial reaction to his *THE SATANIC VERSES* (1988) and his own beliefs (and emptiness) days prior to the Iranian declaration of his death sentence). The phrase originates in this passage: “we all have . . . a vacuum that only God can fill.” BLAISE PASCAL, *PENSEES* § 7 ¶ 425 (1892).

⁴⁹ See Stanley Fish, *Liberalism Doesn't Exist*, 1987 DUKE L.J. 997.

for creating space. Waiting for the space to be filled is more than most of us inveterate writers and talkers can bear. What I propose is that we can begin to talk about the unspoken, saying what we can, knowing we cannot get it right, if we have taken the emptiers seriously. The emptiers, the deconstructors, tell us that we must know nothing before we can affirm something. They remind us of Christian *kenosis*,⁵⁰ of Jewish *tzimtzum*,⁵¹ of the emptiness of God's withdrawal from creation. God is with us, many of our traditions tell us, as *shekhinah* and spirit, but that abiding presence will not fill the space uninvited. God will not trespass upon us. We cannot know to let the space be filled, unless we open our ears to the invitation. This image of reciprocal need for invitation might be the stuff of tragedy, the infinite standoff of who goes first, if we did not know that we have been loved first. One of the signs, one language of that love, is the spirit of the Law. (There is also gift in the Letter, but it is the spirit about which we have been mute.)

It is Law as the Creator's first gift of love that I want to portray. This Law gives freedom, places it, points it out to us. We have been invited, are invited, and it is in pursuit of this dimly remembered invitation that we have been taking apart meaning as we had known it—because of the intuition that a deeper, fuller meaning was at the bottom of the invitation. The seemingly negative enterprise of analysis, skepticism, deconstruction, even nihilism, rests on the suppressed premise of felt loss, on the intuition that by taking apart we will find that "something more" for which we long. It is *Law*, in search of which we reject commonly understood law, *not as the command of parent but as the invitation of friend or lover*, which always grows to replace what we have rejected.

This invitation to Law is only honest if it admits that it includes death. Even were capital punishment abolished, we do as a legal system what results inevitably in death, and we know it. Yet, despite us, death includes life. What we hope for is that life and death have meaning now (not just in some "after" life) and that hope returns us to language.

⁵⁰ See MAGGIE ROSS, *THE FOUNTAIN AND THE FURNACE: A THEOLOGY OF TEARS AND FIRE* (1985).

⁵¹ See, e.g., Lawrence Fine, *The Contemplative Practice of Yihudim in Lurianic Kabbalah*, in *JEWISH SPIRITUALITY II* 65–66 (A. Green ed. 1987); GERSHOM SCHOLEM, *MAJOR TRENDS IN JEWISH MYSTICISM* 260–68 (1946).

In particular, I will try to show that once we move beyond a rhetoric of rights into a fuller legal language reclaiming duty, we should experience that prospect of integration of right and duty as sufficiently attractive in itself so that it “works” by desire, more than by avoidance or fear. Law in this sense is not at first command, but at first blessing, invitation. In pursuit of this, I will suggest that the feminine penchant long missing from academic discourse best conveys invitation, and that masculine discourse tends to the unnecessarily directory or imperative mode.

E. God Talk

In order to tap the strongest tradition of invitation, I will use religious language that is as non-sectarian as I can manage and will argue for the use of such language in public discourse.⁵² I do not want to suggest that raw particularism in one’s relationship to ultimate reality will be the best medium of communication in the public realm. Rather, while I will contest the explicit and implicit rejection of religious thought and speech in the public sphere, I attempt to give much of the impetus for these arguments its due, and enfold their insights in the sense of language that I suggest.

In my tradition, Thomas Merton has said that the saint does not need to use God-talk,⁵³ and Sebastian Moore observes that the truths we need to hear speak to “that burning human centre” that is not restricted to the overt traditions of theism.⁵⁴ I am not a saint, nor do I suppose my fellow citizens or even my fellow academics are. I will suggest that opening up God-talk IN THE ATTEMPT TO COMMUNICATE TO ANOTHER WHAT THAT LANGUAGE TELLS THE SPEAKER, is a good thing. That is, directly contrary to the real fear of many commentators, I most trust the person who is first genuinely grounded in her own relationship with her God, but I find her even more trustworthy if she can know that in this plural world, much of what makes sense to her will be hard to grasp for others. It is the speaker’s very cognizance of the limits of her understanding of God (in my tra-

⁵² See MICHAEL PERRY, *MORALITY, POLITICS AND LAW: A BICENTENNIAL ESSAY* (1988); see also JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY* 213–16 (1984); KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* (1988).

⁵³ THOMAS MERTON, *NEW SEEDS OF CONTEMPLATION* chs. 1–6, (1961) (esp. p. 24).

⁵⁴ SEBASTIAN MOORE, *LET THIS MIND BE IN YOU* 130 (1985).

dition, humility) that must accompany her confession of authentic faith-and-reason.⁵⁵

F. Without Word or Name

Underlying these two themes is the recognition that there are things about language that we cannot understand. Some of what Emerson calls tacit references⁵⁶ or Kant calls categories of perception can be brought to the cognitive surface; some can only be lived. We must, in theologian Tad Dunne's words, "be careful not to think we can explain Mystery; . . . we must be equally careful not to call Mystery those things which Mystery impels us to understand."⁵⁷ We are ultimately helpless in the face of the Other, as even the arch-rationalist Kant admits, but we are also called to try to understand.⁵⁸ And there is a spiral quality to this understanding, as David Tracy reminds us: "In and through even the best speech for Ultimate Reality, greater obscurity eventually emerges to manifest a religious sense of that Reality as ultimate mystery."⁵⁹ There is reason to reflect on Mystery, both because we are constituted to seek to know, to recollect, and because we can accept and even embrace not knowing. "[Mysteries] have to be named, to school the mind and heart, and to be celebrated."⁶⁰

II. The Philosopher and the Rabbi⁶¹

I want to tell you stories about two of my friends. One is a Christian philosopher, one a Conservative rabbi. I met the first when we appeared together on a panel on advocacy in the law, the second at a research colloquium two years later. One contends that I may not use religious language, and may not even use secular language so long as I am religiously motivated, in the realm of public law. The other expected to do his task, and go home without

⁵⁵ See, e.g., Terence Penelhum, *Skepticism and Fideism* and Myles Burnyeat, *Can the Skeptic Live His Skepticism?*, in *THE SKEPTICAL TRADITION* 287 (M. Burnyeat ed., 1983).

⁵⁶ RALPH WALDO EMERSON, *The Over-Soul*, in *RALPH WALDO EMERSON: ESSAYS & LECTURES* 390 (1983).

⁵⁷ TAD DUNNE, *LONERGAN AND SPIRITUALITY* 152 (1985).

⁵⁸ See, e.g., Steven Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 *MICH. L. REV.* 2225, 2230 (1989).

⁵⁹ DAVID TRACY, *PLURALITY AND AMBIGUITY* 108 (1987).

⁶⁰ SEBASTIAN MOORE, *THE CRUCIFIED JESUS IS NO STRANGER* 63 (1977).

⁶¹ For the priest and the minister: see *id.* and *infra* note 71.

having done any real translation beyond the portion of the Talmud he had agreed to do, but found that two very different languages about God, two different ways of life, could meet.

In my first semester of teaching after over eight years of practice, I agreed to be on a panel on legal advocacy with, among others, philosopher Robert Audi, a practicing Christian then on leave at Notre Dame. For my presentation, I wanted to use the definition of advocacy that William Stringfellow advanced at a talk that I attended in the midst of my practice, a definition that fit the best lawyers I knew.⁶² I had discussed the Stringfellow notion with those men in my firm (it was men, back then), and they agreed with it: the advocate must be willing to become vulnerable on behalf of another, even unto death. (They also understood where it came from, in their lives—they were midwestern, tight-lipped Christians underneath it all.)

I told Audi in my opening sentence that I was violating his norm, that I could not but speak as religiously motivated, and certainly not when I was being most nearly real, most whole, most faithful to myself (not to mention God). We had a series of lunch and dinner conversations, in which I came to know him as a deeply thoughtful and sensitive person, someone authentically concerned about moral issues, and about God. We remain friends, and it is from his reprint of his article that my notes for my attack on his position here come. He is a delightful and good person, and he is wrong.

The second friend attended a research colloquium in an inter-faith context, but privately resolved to leave Jewish-Christian dialogue to others. I felt it was the proper thing to pursue that dialogue, but also wanted to avoid the phenomenon that a theologian friend who had attended the same colloquium four years before described: everyone at the colloquium fell in love with everyone else. That sort of encounter can be lived very faithfully, lawfully, but it tends to be exhausting. Reversing my usual priorities, I pursued task primarily; reversing his, he pursued relationship (and task). On the last evening, when we were called to inscribe messages to each of the other thirty participants, I wrote to him: "What can I possibly say?". He replied with his translation of Psalm 19

⁶² See William Stringfellow, *A Lawyer's Work*, 3 CHRISTIAN LEGAL SOC. Q. 17, 19 (1982).

that begins this Article: "There is no speech, there are no words, but their power goes out across the earth." From my almost antinomian Catholicism, to his Conservative Judaism, there has been a bridge that allowed us to translate the untranslatable differences, knowing that we would often be wrong but mostly we were right.

A. *From Nothingness*

What underlies the best of speech about ultimate reality, that speech that, Tracy reminds us,⁶³ turns again to unknowing, is the drawing of an infinitely deep, infinitely inviting Mystery. There is a vast difference between this sense of Mystery and the emptiness that Stanley Cavell says that unrepentant skepticism sustains.⁶⁴ Wallowing in nihilism and abiding in darkness are two very different spiritual stances; one refuses to trust and the other is possible only because of trust. Nihilism as the dark night of the soul is unspokenly pregnant with new life; nihilism as endpoint or the locus of endless rumination is increasingly willful non-life. Darkness is emblematic of tomb and womb, each with the possibility of resurrection and birth, each to be welcomed. To face darkness with at best resignation rather than expectation, is to indulge in stasis that tempts the law of momentum, leaving those caught in the vortex of negation to continue in the dark. To know darkness, as the necessary and so attractive concomitant of light is to welcome Mystery and know it as the focus of our unarticulated longing for Cavell's "something more." Given the striking richness and acknowledgement of the dark in Cavell's work, "something more" would have to be something transcendent.

It is this transcendence *after* immanence that can return to the ordinary, to language after the "disease" of philosophy (Wittgenstein's key image of language and self-conscious reality), and find it and the language-user transformed. After the journey into philosophical self-alienation and self-consciousness, the journeyer is changed. Even if the words of her language remain within the vocabulary that she first left, the power with which she can live those words has returned with her, from the realm of power beyond

⁶³ Tracy, *supra* note 4.

⁶⁴ STANLEY CAVELL, *IN QUEST OF THE ORDINARY* 148 (1989).

words. Even if the words seem simple, it is a simplicity after complexity that aspires to wisdom. Torah can never be contained in books, nor the truth in words. In that sense, the attack on correspondence theories of language is apt—truth is much too strong to be fettered by our human language. Yet the Truth deigned to inhabit that language, so that Truth could be manifest even in such a limited medium; this inhabitation of words is what draws words toward what cannot be said. As Maimonides said, the Law is all that (and more than) every student and teacher may think to ask or answer about it, through time. And those who speak the truth in law are like Moses—slow and unable really to speak, yet enabled to do so by the Mystery of Presence. Because that Presence is not confined to words, but speaks in all creation (Psalm 19), our speech will never be adequate to correspond to reality. Yet the infinite of reality is Spoken, and so we live in a cosmos Spoken beyond words, gifted to us in life, which invites us in a never-ending dance of light and dark in which our power to speak grows.

The tracings that guide us in this growth, are the Law. It is the image, the imprint of divine Law cited by Cover,⁶⁵ that pulls us toward our roles in co-creation of the cosmos. The way of this law is first connection then distinction, first truth then deception, first blessing then consequence, first freedom then obligation. We were together before we were separated, as Plato's myth reminds us,⁶⁶ and we are to be together again, enriched by the times apart. Therefore, law is first continuous, reflecting in all realms its initial imprint—only a moment later is it also discontinuous, the public law with its violence as the distortion of the law of faithful communities of memory affirmed by political theologians Neuhaus and Hauerwas.⁶⁷ It is the connection that allows Cover to put Torah into the public realm and allows us the thin margin through which we can hope to redeem legitimized coercion and to claim even for secular law a continuity with Law as invitation.

⁶⁵ Robert Cover, *Panel Discussion: Theological Perspectives*, 5 J. L. & RELIG. 95, 102–03 (1987).

⁶⁶ PLATO, *THE REPUBLIC* at Book VII in PLATO: *THE COLLECTED DIALOGUES* (H. Cairns & E. Hamilton eds. 1961).

⁶⁷ RICHARD NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* (1984); STANLEY HAUERWAS, *A COMMUNITY OF CHARACTER: TOWARD A CONSTRUCTIVE CHRISTIAN SOCIAL ETHIC* (1983).

B. The Feminine Invitation

The language of invitation would be more likely to appear in feminist writings than in white male discourse. Power commands; "powerlessness" looks to persuade. Although the question of what constitutes real power contains a number of internal distinctions, the power of male dominance in the history and the present hierarchy of law is unavoidable. Eight men on the Supreme Court embody the reality replayed through all the political and legal institutions of the United States. By and large, white "Christian"⁶⁸ men are the rulers, the law-makers, the law-apppliers.⁶⁹ And so their image of law, either from God or from humankind, tends towards command. Even Robert Cover, advocating that we combine an ethic of rights with an ethic of obligation, of mitzvah, and that we make a new Torah together, calls it a matter of command.⁷⁰ Cover makes the difficult move from the image of divine law to that of human law through the invocation of Torah and runs the stunning risks of disclosure and of exclusion from his own tradition, but he does not quite bring along the sense of the gift of law as invitation. He stays with command, as do theologians Michael and Kenneth Himes in their explication of trinitarian political theology and contemporary community.⁷¹ Although the Himeses portray a world of grace that lifts us beyond the dilemmas of self-interest and invoke a trust in Reality that is necessary to generate any generous notion of political community, they revert to the vocabulary of command. Their political theology is self-consciously relational, and supports the feminist vision of an ethic of care, but slips back into directive rather than the initiative of God's first love.

⁶⁸ The quotation marks are the suggestion of my research assistant, Art Morrow, who takes an anti-positivist view of Christianity.

⁶⁹ Mary Becker discusses the figures and implications in Becker, *Politics, Differences and Economic Rights*, 1989 U. CHI. LEGAL F. 169, 179-81.

⁷⁰ Robert Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J. L. & RELIG. 65 (1987).

⁷¹ Michael Himes & Kenneth Himes, *The Myth of Self-Interest*, COMMONWEAL, Sept. 23, 1988, at 493; Michael Himes & Kenneth Himes, *Rights, Economics & the Trinity*, COMMONWEAL, March 14, 1986, at 137. Their political theology of the trinity rests on the imagery of "'God' as the name of a relationship and the poles of the relationship" (lover, beloved, the love between them); God as "the very fullness of relatedness." Individualistic politics based on negative freedom "rather than the freedom for self-gift in relationship, freedom for participation in community" will tend to exclude, to minimize interdependence, and to ignore that the "ending of oppression is for the sake of the oppressor as well as the oppressed."

Feminist spirituality and spiritual politics, in contrast, stress the wonder and inherent goodness of creation, such that its binding forces are experienced as blessings to be pursued ever more deeply. Theirs is a theology of grace, law as guide, life as trustworthy, power as the power of the desirability of the good.⁷² As Socrates said that the only real power is the power to persuade another to do the right thing for the right reasons,⁷³ feminist writings know that persuasion is a gentle draw, more than a compelling force, an invitation more than a command.

This turn to law as desirable (much as Socrates described the good as the object of desire and our love for the good and beautiful as the motivation for our pursuit of the good), is the turn that the apostle Paul attempted and the rabbinic tradition has pursued for the last 2000 years.⁷⁴ It is constantly in danger of takeover by punitive legalism or reactive antinomianism,⁷⁵ but it is the face of "ought" that beckons more deeply than it threatens. It is creative more than competitive, so that the call to law as gift does not require the negation of something, but rather the acceptance of affirmation. As feminist jurisprudes note, women tend to create

⁷² See, e.g., GEORGIA HARKNESS, *WOMEN IN CHURCH AND SOCIETY: A HISTORICAL AND THEOLOGICAL INQUIRY* (1972); HELEN LUKE, *WOMAN: EARTH & SPIRIT* (1984); SALLIE McFAGUE, *MODELS OF GOD* (1987); VIRGINIA MOLLENKOTT, *GODDING* (1987); MOLLENKOTT, *WOMEN, MEN, AND THE BIBLE* (1977); CAROL OCHS, *WOMEN AND SPIRITUALITY* (1983); JUDITH PLASKOW & CAROL CHRIST, *WEAVING THE VISIONS: NEW PATTERNS IN FEMINIST SPIRITUALITY* (1989); ROSEMARY RUETHER, *SEXISM AND GOD-TALK: TOWARD A FEMINIST THEOLOGY* (1983); CHRISTIN WEBER, *WOMANCHRIST* (1987); WEBER, *BLESSINGS, A WOMANCHRIST REFLECTION ON THE BEATITUDES* (1989).

⁷³ PLATO, *THE MENO* in *PLATO: THE COLLECTED DIALOGUES* (H. Cairns & E. Hamilton eds., 1961).

⁷⁴ E.P. Saunders, in *PAUL AND PALESTINIAN JUDAISM: A COMPARISON OF PATTERNS OF RELIGION* (1977) confronts the misapprehension of "the view of Rabbinic religion as one of legalistic works of self-righteousness," *id.* at 33ff, giving ample citation to Jewish commentary on God's gift of Torah as an act of love and blessing, e.g., *id.* at 104ff, while discussing a more adequate interpretation of Paul than the supercessionism (new covenant, new testament replacing the old) that fostered anti-Semitism. See also Paul M. van Buren's trilogy, *A THEOLOGY OF JEWISH-CHRISTIAN REALITY 1: DISCERNING THE WAY* (1980), *A THEOLOGY OF JEWISH-CHRISTIAN REALITY 2: A CHRISTIAN THEOLOGY OF THE PEOPLE ISRAEL* (1983), *A THEOLOGY OF JEWISH-CHRISTIAN REALITY 3: CHRIST IN CONTEXT* (1988); AND FRANS JOSEF VAN BEECK'S CONVERSATION WITH EMMANUEL LEVINAS'S WORK IN *LOVING THE TORAH MORE THAN GOD?: TOWARD A CATHOLIC APPRECIATION OF JUDAISM* (1989). Jewish texts attesting love of Torah are superabundant (GEORGE HOROWITZ, *THE SPIRIT OF JEWISH LAW* (1953); ELLIOT DORFF & ARTHUR ROSETT, *A LIVING TREE: THE ROOTS AND GROWTH OF JEWISH LAW* (1988); JACOB NEUSNER, *FOUNDATIONS OF SHATTERING THE MYTH OF RABBINIC LEGALISM* (1990); Arnold Eisen, *Re-reading Heschel on the Commandments*, *JUDAISM* 1 (Spring 1989)).

⁷⁵ Antinomianism (against law (nomos)) is a reaction to legalism, holding that moral law is of no use (and perhaps of negative value); instead actors rely entirely on faith, intuition or spirit.

by naming, and their use of words is relational.⁷⁶ This naming is also transformation, but not by coercive power. The constructs of the liberated feminine are the best of Paul Ricoeur's "second naïveté"⁷⁷ because they represent a move from contained yet hierarchical sameness, challenged into a new wholeness of difference-and-sameness. They do not forget the context, however; they know we are located in a violent as well as aspirant world.

It is because the invitation is to transformation that it both requires trust and does not claim to overcome the inherent Mystery of growth or to effect a total triumph over violence. Law itself is both violent and transformational; we do not have to smash all contexts⁷⁸ to find that transformation, but the freedom to move from commanded patriarchy to a generative,⁷⁹ integrative humanity does require acknowledgement and at least partial transcendence of the structures of domination. However, as the perennial debate over whether or not ordinary language philosophy is inherently conservative reveals, language itself has the seeds of its own change. The images and connotations that arose with the use of "good" or "just" or even "law" in the past included the very wellsprings of the urge to transcendence that is never completed. The "ought" of words of value is always nascent in them; they are pregnant with transformation. It is the very stretching, reaching, longing for something more, which words evoke beyond words, which is the invitation of the power of language about the good always to grow beyond itself.

C. Translation and Trust

There is danger, however, in the return to language, when it is either the "old" ordinary language redolent with domination or

⁷⁶ Ann Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373, 1383 (1986).

⁷⁷ PAUL RICOEUR, *Conclusion: The Symbol Gives Rise to Thought* in *THE SYMBOLISM OF EVIL* (1967).

⁷⁸ ROBERTO UNGER, *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* (1987); R. UNGER, *PLASTICITY INTO POWER: COMPARATIVE-HISTORICAL STUDIES ON THE INSTITUTIONAL CONDITIONS OF ECONOMIC AND MILITARY SUCCESS* (1987); R. UNGER, *SOCIAL THEORY: ITS SITUATION AND ITS TASK* (1987).

⁷⁹ Robert Cover, *The Supreme Court 1982 Term—Forward: NOMOS and Narrative*, 97 HARV. L. REV. 4, 11 (1983).

the dominant language in our always plural linguistic world. When English is that into which Spanish is to be translated, or Hebrew is to be translated, the speakers with less power risk that their particularity, their identity, will be lost in translation. When the feminine attempts to speak in her own voice, she may be silenced, translated away, erased from “rational” discourse.⁸⁰ When the ordinary person comes to court, her story may be lost in the translation into legalese, that arcane jargon that marks the court Insiders. Thus, the first voices to translate should be those of the vulnerable, rather than the powerful. And any hope for a new language in this second naïveté, depends upon the knowing, willing participation of those who have been wounded by power. That is why, as I will note later, the movement to the spirit for translation requires a special participation by those who most easily know themselves to be Outsiders. By giving such power of initiation to blacks, Jews, Hispanics, women, we may be reminded that, as Robert Burt suggests, the good news is that we are all Outsiders.⁸¹ It also safeguards those who are different, in their difference. Particularly in the writings of post-structuralists and post-modernists, the Other is suggested as primarily the feminine;⁸² the feminine is not identical with the female, but in a society of deeply gendered roles, the feminine voice is always fragile, and risks being lost in translation.⁸³ The Other has been, in Western letters and theology, the Wholly Other, God. If the newest aspect of the face of the Other is the feminine, women walk and speak on dangerous if sacred ground. There is not only benign spirit in the world of translation; there is also evil, and thus grave risk. The solely commanding law of the father, law professor Jerome Frank’s spectre that emerges in current phenomenological thought and French feminism, may reassert itself—with a vengeance.⁸⁴ If that

⁸⁰ See, e.g., ZILLIAN EISENSTEIN, *THE FEMALE BODY OF THE LAW* (1988), 33–36, 54 (“The language of law silences woman,” discussing Luce Irigaray’s thought).

⁸¹ Robert Burt, *Constitutional Law and the Teaching of the Parables*, 93 *YALE L.J.* 455 (1984).

⁸² See Stanley Cavell, *Psychoanalysis and Cinema: The Melodrama of the Unknown Woman*, in *IMAGES IN OUR SOULS*, 33–40 (J. Smith, W. Kerrigan eds. 1987); EMMANUEL LEVINAS, *TOTALITY AND INFINITY*, 155 (1971); ALPHONSO LINGIS, *PHENOMENOLOGICAL EXPLANATIONS* (1986); In MARTIN BUBER, *I AND THOU* (W. Kaufmann trans. 1970), the “You” is crucially feminine.

⁸³ This fear is one female academics cannot avoid; I speak to that in Hartigan, *supra* note 26, and the story in that essay of how I changed my voice is the one that my women students find most difficult.

⁸⁴ This reassertion may come in the guise of the punishing father or the omnipotent

were to be so, all Others would suffer, masculine and feminine alike.⁸⁵

Cover makes an allusion to his own use of command that suggests that it cannot, however, be dispensed with in a world that contains evil. He recommends the notion of *mitzvah*, of obligation on the part of the citizen, but also suggests we keep the language of rights in order to protect participation by those not already effectively enfranchised. For those who *have* political power, the obligation side is more central.

Yet as I scan my own—our own—privileged position in the world social order and the national social order, as I attend the spiritual and material blessings of my life and the rather obvious connection that some of these have with the suffering of others—it seems to me that the rhetoric of obligation speaks more sharply to me than that of rights.⁸⁶

Command does speak sharply, and it seems prudent for those less advantaged to retain the commanded, binding protections of social contract, of rights. (The optimistic or communitarian construction of this is that the fulfillment of the obligations of granting rights to others is indeed what will fulfill the rights-granter. The entire quest might remain primarily positive, not a zero-sum binding of the relatively advantaged.)

The notion of binding as constriction rather than as bonding, of obligation not as *ob ligare*, tying together, but as obliging, forcing, is central to Rawls' social contract. This is not surprising, given how phobic Rawls is about religion⁸⁷ (which is *re ligare*, bonding together again). Rawls specifically excludes all religious motivations from the realm of the good.⁸⁸ He fears the religious

mother—in the Wizard of Oz, the most terrifying moment is when Auntie Em's face in the crystal is overlaid/overcome by the mocking echo of the wicked witch of the West (see note 110 *infra*).

⁸⁵ Cavell, *supra* note 64; Buber, *supra* note 82; JEROME FRANK, *LAW AND THE MODERN MIND* (1930) esp. 18–20; ALPHONSO LINGIS, *DEATHBOUND SUBJECTIVITY* (1989); Levinas, *supra* note 82 (esp. § II D “The Dwelling”); Irigaray, *supra* note 19.

⁸⁶ Cover, *supra* note 65, at 73.

⁸⁷ See Steven Carter, *Evolutionism, Creationism, and Treating Religion as a Hobby*, 1987 DUKE L.J. 977.

⁸⁸ *E.g.*, JOHN RAWLS, *A THEORY OF JUSTICE* 554 (1971) (to choose God as our one “end” is irrational or “mad”); *id.* at 365 (civil disobedience may not be justified on religious grounds).

wars. He denigrates religiously-based civil disobedience, placing it at distinct disadvantage in relation to conscience-based objections to government action. And he refuses an overall notion of the good—as in the goodness of God’s creation. More tellingly, he informs us that his intention in setting up the veil of ignorance and the original position is to bind the entrant into a position from which he cannot extricate himself.⁸⁹ Once the initial choices have been made, the chooser, Rawls hopes, will be *forced* to accept the reasonable consequences of his actions. It is like tricking someone into virtue, or, worse, like programming them. This is “structurally coercive” discourse.⁹⁰ Rawls leaves no room for freedom, for creativity, for play. His obligation is commanding indeed.

The response to a morality of command is one of invitation. This corresponds to the use of language that James Boyd White recommends, a use which persuades, which creates an inviting text.⁹¹ (This is intended to be such a text.) The difference is one of freedom, of the affirmative movement of assent. To choose to comply with command, even the all-wise command of God, is to obey rather than to embrace.⁹² To respond to an invitation is both to know that one can say no, and to experience the positive draw of the choice being made. Even if these choices, embedded in a life shot through with tragedy, are also painful, the response to invitation is an affirmation, a reaching toward the whole. This is the image of law that the gift of Torah at Sinai narrates and that the epistles of the apostle Paul, read carefully, affirm. It is not merely the avoidance of the curse of Deuteronomy; it is the active choice of blessing. This choice is both knowing and unknowing; we stand in our relationship with God at each moment, choosing life and law that is, like God, becoming for us. We do not fully know, yet we decide. This is the integral movement of trust.

⁸⁹ *Id.* The conditions of the veil of ignorance are ones we “do in fact accept,” *id.* at 21, though they were chosen by the author to set bounds, *id.* at 18, which eventually both “hold unconditionally,” *id.* at 115, and may establish a “bond” to the status quo, *id.* at 116. His qualifying words lose their apparent power to free the reader when, in later commentary, he admits the book is an apologetic work. See, e.g., Rawls, *The Idea of an Overlapping Consensus*, OXFORD J. LEGAL STUD. 1 (1987).

⁹⁰ Cf. White, *supra* note 25, at 2017.

⁹¹ JAMES BOYD WHITE, HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW xi (1985). *But see*, Richard Sherwin, *A Matter of Voice and Plot: Belief and Suspicion in Legal Storytelling*, 87 MICH. L. REV. 543, 547–49, 581 (1988).

⁹² Command is “law as the voice of the father” rather than the acceptance of the mother. See, e.g., Elisabeth Moltmann Wendel, *Self-Love and Self-Acceptance*, in LOVE: THE FOUNDATION OF HOPE (1988). See also *supra* note 72 and *infra* note 124.

Trust is key to language and to law. Without some sense of trust in the law, all compliance is coerced. Without some sense of trust of the other with whom we speak, we cannot expect, or hope, to communicate across the gap between other minds.⁹³ Without trust, there is no covenant, no contract, no conversation, no law.⁹⁴ Where does this basic trust come from, in a radically plural world? We manifest it every day, as we speak to strangers and stranger-friends, as if they could understand.⁹⁵ We also manifest distrust and difference. And that is one surprise about the invitation: I am talking to you not about trusting your old icons of law, but about listening to mine, and those of people of color and of other despised difference. (I will admit for this moment that every person participates in despised difference, is an Outsider, but I am asking you to read for now experiencing yourself as *responsible insider*, as well as invited Outsider.) I am inviting you to listen to the victims of law, in order to find the law that was gifted.

D. Listening

The first invitation is to listen to those who were victims of one historical use of law that most perverted law, of the orderly and lawlike extermination of six million Jews and millions of other "undesirables."⁹⁶ In order to recreate a public order, those victims will have to be open to invitation, to affirm the "ongoingness of time."⁹⁷ Some of the scions of the Holocaust have begun to do so, but it is no happenstance that Derrida, Ackerman, Nagel and Fish, rather than overtly affirming values, deconstruct justifications. As all theology after the Holocaust must know itself changed, so must all political theory and law.⁹⁸ Harold Berman, in support of an

⁹³ Nicholas Lash reads this necessity for trust as *the* underlying insight of Martin Buber, especially in BUBER, *ECLIPSE OF GOD*, (1952). LASH, *EASTER IN ORDINARY* chs. 12, 13 (1988).

⁹⁴ For a suggestion that the contract between men and women is up for grabs, see Remarks at the Alternative Feminist Theories of Contract Panel, AALS Annual Meeting, (January 1989) (on tape available from AALS); see also CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988).

⁹⁵ See MICHAEL IGNATIEFF, *THE NEEDS OF STRANGERS* (1985).

⁹⁶ See Jack Boozer, *Law Without Justice* (rev. ed. June 1989, forthcoming).

⁹⁷ For the invitation to embrace time from now on, see CAROLE OCHS, *AN ASCENT TO JOY* 64 (1986) and *The Noah Paradox* (forthcoming in 1991).

⁹⁸ Johannes Baptiste Metz, *Christians and Jews After Auschwitz* in *THE EMERGENT CHURCH* 17 (1981); Jurgen Moltmann, *Love, Death, Eternal Life: Theology of Hope, the Personal Side*, in *LOVE: THE FOUNDATION OF HOPE* 19, at 20 (1988); DOROTHEE SOELLE, *SUFFERING* 145ff (1975).

integrative jurisprudence that must take account of history, cites examples of legal argument (one by German social philosopher Jürgen Habermas) that ground in the historical fact of attempted genocide by the Nazis. Such examples are unavoidable. Some historical events overwhelm abstract reasoning; even when such reasons might be advanced, they are patently inappropriate in the face of such reality.⁹⁹

Some of those who actually experienced the Holocaust and the American wounds of racism have spoken with hope;¹⁰⁰ some are just finding a voice to do so; some are struggling with voicelessness that comes, I speculate, from the realization of the enormity of the move such words would be. From the moment that he answered his fellow inmates' calls of "Where is God?" in the face of the hanging of a Jewish child in the death camps with "Here He is,"¹⁰¹ Elie Weisel spoke with hope, even if it was the hope of demanding response from God. Many years later, Jewish theologian Carol Ochs embodies the second prophetic turn, the turn after repentance and atonement, to rejoicing,¹⁰² by embracing the ongoingness of time. That is not an ahistorical embrace; Ochs has not failed to heed the call to remember, but has made the awesome movement that only those who have lived with the *via negativa* can make authentically, the beginning of the *via positiva*. It is because of the depth to which the apophatic, the God-is-not-that, the negative image of God, has been taken, that such a positive (cataphatic) turn can be taken. Derrida's reliance on such negative theology as that of Isaac Luria and the Lurianic kabbalah is postulated by Thomas J.J. Altizer.¹⁰³ The thoroughgoing negation of any sense of space or free belief has been argued by commentators like Stanley Fish.¹⁰⁴ The way has been cleared

⁹⁹ Harold Berman, *Toward an Integrative Jurisprudence: Politics, Morality, History*, 76 CALIF. L. REV. 779, 791 (1988).

¹⁰⁰ See, e.g., GUNNER MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1975); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); JOHN NEIHARDT, *THE TWILIGHT OF THE SIOUX* (1925).

¹⁰¹ ELIE WEISEL, *NIGHT* 62 (1960).

¹⁰² FRANCIS DORFF, *THE ART OF PASSING OVER: AN INVITATION TO LIVING CREATIVELY* (1988).

¹⁰³ Thomas J.J. Altizer, *History as Apocalypse in DECONSTRUCTION AND THEOLOGY*, (1982); but see Derrida, *infra* note 110.

¹⁰⁴ See Fish, *supra* note 45 at 1007; Fish, *infra* note 106. In the latter, Fish says that for such space, to be the god-like person discussed below, one would need to be created by a living God (at 1007). As one of my students, Jean Brestel, noted, "Why is he so angry that the only answer is God?"

for the Way(s). There is a continuing place for those who say no, so long as it is a no allowing some opening to the possibility of truth. (Richard Rorty denies that he is interested in goodness and truth any more, but he keeps hanging around those who are; his writings betray his real interest, even if they also state a regrettable closed-spiritedness and thus closed-mindedness on God and goodness.)¹⁰⁵ Fish himself names the positive face of the move beyond perspectives, citing Keats' praise of Shakespeare as the rare person to achieve the stance of Negative Capability.¹⁰⁶ Fish identifies such a stance as that of rising above perspectivism as a God, but then argues as if there were never such persons or such *moments*, but only undifferentiated, relative, fully constrained beliefs.¹⁰⁷ Perhaps it is easier for the believer to acknowledge such invaluable transcendent moments, because the believer EXPERIENCES that *belief is punctuated moment to moment with doubt, that the moment of connection and the moment of loss are at some level phenomenologically simultaneous*. The minds of believers will always come up with disbelief, and external dialogue will help deal with the permanent fear of loss that any belief in God engenders (we believe in God; we know that at each moment we are not fully Present with God, and we must yearn for more; in our lack, we wonder if there really is a God).

Such radically negative projects as those of Fish and Derrida are the first movement in the recognition of a new step toward Meister Eckhart's and the Zohar's and the Hassidim's God-beyond-God.¹⁰⁸ We come to know God, with shards of idolatry inevitably embedded in our relationship; we lose God as if abandoned; we destroy all vestiges, like a child who did not want that parent anyway, defiantly, independently. And then if we will listen,¹⁰⁹ we will hear and be heard anew.

¹⁰⁵ RICHARD RORTY, *CONTINGENCY, IRONY AND SOLIDARITY* (1989); RORTY, *CONSEQUENCES OF PRAGMATISM* 24, 34 (1982).

¹⁰⁶ Stanley Fish, *Unger and Milton*, 1988 *DUKE L.J.* 975, 1005.

¹⁰⁷ *Id.* at 1006 ("If you are a finite being . . . you are wholly situated . . . your every capability is . . . a reflection and extension of the system of belief that bespeaks you and your possibilities, and there is nothing negative (detached, independent, free) to nurture.").

¹⁰⁸ *YOUR WORD IS FIRE* (A. Green ed. 1977); *ZOHAR: THE BOOK OF ENLIGHTENMENT* (D.C. Matt trans. 1983); *TREATISES AND SERMONS OF MEISTER ECKHART* (J.M. Clark & J.V. Skinner trans. 1958); see, e.g., ALPHONSO LINGIS, *PHENOMENOLOGICAL EXPLANATIONS* 42 (1986); see *infra* note 110.

¹⁰⁹ Ruth Colker, *Feminism, Theology and Abortion: Toward Love, Consciousness and Wisdom*, 77 *CALIF. L. REV.* 1014 (1989).

E. Rejoicing in the Ordinary

Altizer names Derrida's move as a "profound and purely negative assault upon faith and revelation" which comes from the only post-modern thinker really to take account of the Holocaust, and thus as "a uniquely twentieth-century Jewish witness to bring the whole tradition of modern Christianity to an end, and thereby make possible a new Christian beginning."¹¹⁰

But Derrida does not stand alone for the Jewish or Hebraic witness, because previously silent voices, including those of Jewish women, stand for something newer, something positive—for rejoicing. Amy Eilberg, the first contemporary Conservative woman rabbi in the United States, experienced, with the birth of her daughter, rebirth and joy not contained by the intellectual doctrines of feminist theologies, and came to know a God who not only commands, but also nurtures.¹¹¹ She was, in her words, reborn, experiencing "[the] shift [of] the ground beneath [her] relationship with Jewish law."¹¹² Law does not merely command. It invites to fullness, from the emptiness through which we had to pass and in which all fullness still takes place.

The importance of the voice of Jewish women is what liberation theologians call the authority of those who suffer.¹¹³ This authority is both ontological and epistemological; philosopher Claudia Card suggests that the very nature of women's perspectives on moral issues is changed by the fact of their moral wound-

¹¹⁰ Altizer, *supra* note 103, at 150–51; Drucilla Cornell commented that this reading of Derrida does not take account of his more recent work, which she finds grounded in an affirmation of love, especially *THE POST CARD* (A. Bass trans. 1987). My first forays into Derrida's latest work on Heidegger suggested the dust jacket's interrogatory ("To whom or what does one say yes?") might point to this turn. In April, 1990 this note and all other references to Derrida changed because of my dinnertable meeting and participation with him in a roundtable, but I leave this text as it was because that is another story. The change is significant, and I am moved to note it because Derrida has expressed pain at the unwillingness/inability of commentators to read (*ne peut/ne veut*, which he elides to *ne peut*) his texts in good faith. See Jacques Derrida, *Biodegradables: Seven Diary Fragments*, 15 *CRIT. INQ.* 812 (P. Kamuf, trans. 1989).

¹¹¹ Amy Eilberg, *Encountering a Feminine God*, 14 *MOMENT* 34, 36 (Apr. 1989).

¹¹² *Id.* at 35.

¹¹³ JOHANNES BAPTISTE METZ, *Christians and Jews after Auschwitz* in *THE EMERGENT CHURCH* 18 (1987); REBECCA CHOPP, *THE PRAXIS OF SUFFERING: AN INTERPRETATION OF LIBERATION AND POLITICAL THEOLOGIES* (1987). No one text can take account of all the particular wounds of being outside; the list is never ending—gay, lesbian, Asian, Arab, Jew, disabled.

edness.¹¹⁴ Once those who have been oppressed recognize that fact, their return to ordinary knowledge is enriched by a way of knowing that is unavailable to rational cognition alone.¹¹⁵ Along with the distinctiveness of women's, blacks', Jews', Hispanics', native Americans' voices, there is a corresponding way of listening that each requires.¹¹⁶ How can such diverse listening take place in the face of the uniformity of the law?

There are several levels of answer to this fundamental plurality-and-unity question. One that requires some religious language, but that can be translated into depth psychology or Emersonian essay, is that of Pentecost. It is not coincidence that the Jewish Pentecost, *Shavuot*, is the commemoration of the Sinai gift of law, while the Christian celebration is of the Jewish disciples of Jesus speaking to an assembled crowd from all nations. The Torah of Sinai is for all nations; the beginning of the transparency of that Torah to all was the gift of spirit called "interpretation of tongues"; in this case, the tongue was a version of Hebrew, Aramaic. We can hear others speak, despite their and our radical particularity, because of the medium of the spirit, because God is with us.

The gift usually brought to mind by reference to the Christian Pentecost is the gift of speech to the apostles, who were suddenly, after hiding in a house for fifty days, able to proclaim the good news. The gift of tongues (*glossolalia*) to those especially called, is not what I mean here; I point to the gift given to all humankind, of having "ears to hear." The gift of Sinai, Torah, is celebrated at *Shavuot* by all-night study, the purposeful activity that allows comprehension of the Law. The point of both Jewish and Christian Pentecosts is the point of furthest comprehension of the Word—the gift is to the listeners, the studiers (the readers)—and the listeners and studiers are gifted. They heard each in his or her own tongue, because it was given to them as ordinary people to understand. They were connected, Israelites and those not from Israel, by the descent of the Holy Spirit. This was an event in

¹¹⁴ Claudia Card, *Women's Voices and Ethical Ideals: Must We Mean What We Say?*, ETHICS, Oct. 1988 at 125. The moral woundedness of the advantaged, the alienated white male of high status can be found through the logic of relationship as in notes 17, 67. But it is for the advantaged to name their own woundedness, in solidarity with all others.

¹¹⁵ Dorothee Soelle, *Suffering and Learning* in SUFFERING (1975). To be an adult, Dorothee Soelle suggests, is what is learned.

¹¹⁶ Sara Ruddick, *Remarks on the Sexual Politics of Reason* in WOMEN AND MORAL THEORY 245 (1987) (cited in Card, *supra* note 114).

human history that connected all human “tacit understandings” so that the return from Babel was announced again.¹¹⁷

F. Out of Silence

That return can be guided by the authority of the oppressed, but more constructively by the eloquence of the oppressed. Patricia Williams’ *Alchemical Notes* is both statement and exemplar.¹¹⁸ Beginning with a meta-story that attributes to the deconstructors the “knowledge of Undoing Words” she places them in a realm “Beyond the Power of Words.”¹¹⁹ What she tells in her story is how law as it has been understood (law as rights, which even Cover notes must be retained as we deepen towards Law)¹²⁰ has power for blacks and for women and for black women, like her. That history of power cannot be abandoned into anarchy and formlessness, but must be re-enveloped in a new story, which she begins in her final section “Conclusion (In Which I Attempt to Rescue From Silence Feelings for Which There Are No Words).”¹²¹ She has been talking about gift, as the erotic attraction of life as a fount of relationship. She equates rights with the conscious commitments in the psyche; the corresponding role of gift seems to be that which invites beyond the conscious into the realm of becoming. She calls for a move from the visible world of owning gold, to a world transformed by our being owned by “a luminous golden spirit.”¹²² Williams has told a hard story of a black woman’s oppression, of even now her being turned away from neighborhoods by realtors because of her race; she has authority to claim both the empowerment of rights and the aspiration of spirit.

In order to rescue becoming from silence, Williams uses feelings. Why does she think feelings need to become worded?¹²³ The content of her last section gives the answer: feelings are the traces

¹¹⁷ This reading of the spirit as gift to all, of the interpretation of foreign tongues as the antidote to Babel, is not uncommon. See THE NEW OXFORD ANNOTATED BIBLE WITH THE APOCRYPHA 1320–21 (1973).

¹¹⁸ Williams, *supra* note 7, at 401.

¹¹⁹ *Id.* at 401–02.

¹²⁰ Cover, *supra* note 65, at 73.

¹²¹ Williams, *supra* note 7, at 427.

¹²² *Id.* at 433.

¹²³ See Susan Miller Okin, *Reason and Feeling in Thinking About Justice*, 99 ETHICS 229 (1989).

that lead us to the unknown place of waiting from which creation springs. She creates because she cares, as her earlier story of walking the halls of the courthouse as a black woman lawyer tells us. Here is desire, eros,¹²⁴ the spring of invitation that draws—and that, if unacknowledged consciously, drives. It is Cavell's difference between bonding and binding: "In the realm of the figurative, our words are not felt as confining but as releasing, or not as binding but as bonding. (This realm is neither outside nor inside language games)."¹²⁵ Feeling, desire, wanting, longing—all these aspects of human life are not within the control of reason in the end. The threat that they pose is that they will not respond to command. They are out of control.

G. Out of Control

During my federal clerkship, one of the state's more prominent politician lawyers grabbed me around the waist in the judge's conference room, and made a comment he thought I would find complimentary. I found it so intrusive that it took me twenty minutes and a conference with my (male) co-clerk to settle into a clear response. I told him I had never been subjected to such an inappropriate comment in my professional life, and I was insulted. After an initial reaction of fear that I would somehow go public and sully his reputation, he backed off for a couple of hours. After lunch, he approached me on a procedural question over which the law clerks had jurisdiction; I gave a thoroughly business-like reply. He then began a reasonably thoughtful apology. What he had been doing with the first question was testing to see if I were rational; I knew that from my own learned ambivalence. Having stepped outside accepted decorum in an easy-going Southern federal court, I was untrustworthy until tested for sanity. My judge from then on referred to me as out of control; I have on my office wall a letter from him signed over his name and the subscript "Male Chauvinist."

My judge was and is a profoundly courageous and luminous, good person, but he is a Southerner in his mid-seventies and had

¹²⁴ See PLATO, SYMPOSIUM, PHAEDRUS in PLATO: THE COLLECTED DIALOGUES (Cairns & Hamilton eds. 1961); Audre Lorde, *Uses of the Erotic: The Erotic as Power* in WEAVING THE VISIONS: NEW PATTERNS IN FEMINIST SPIRITUALITY 208 (Judith Plaskow & Carol Christ eds. 1989).

¹²⁵ STANLEY CAVELL, IN QUEST OF THE ORDINARY 148 (1988).

not moved beyond both delighting in and recoiling from what he called my remarkable combination of thinking and feeling—that is, I felt and said so, but still thought. I am unsure if he ever realized that perhaps my depth of feeling AIDED my thinking, that it fueled my desire to understand, and gave life to the concepts of my mind. He knew that we loved each other and fought a lot, and that there was faithfulness and even respect in my being out of control, but it frightened him.

If you talk to me, you can determine that even in my most lucid, analytical moments, I believe in Mystery. All the philosophy, the years of academic life, and ten years of Quaker agnosticism finally deepened the sophistication with which I hold (and let go of) that belief. But it is when I call ultimate reality “spiritual” or “religious” that people become most frightened—and, would they admit it, most fascinated (like my friend Robert Audi). I remember the dinner-table conversation right after the panel on advocacy, in which he and other rationalists talked with bemusement of sons who had inexplicably joined the church; they listened to my story of the powerful spiritual bonding and communication I had experienced at a theology conference that summer. The experience was credible in part because it was in a week-long retreat with Parker and Sally Palmer and Henri Nouwen (I didn’t tell them that many of us “learned” the most from Sally’s nonverbal exercises and the Quaker silence); Henri and Parker have gotten tenure and written academically respectable books.¹²⁶ They made the milieu trustworthy. The reasoners could risk fascination.

H. The Voice of Spirit

But life in the academy goes on, and Robert published his major piece in *Philosophy and Public Affairs* on church and state¹²⁷—still advocating the moral superiority of never speaking on matters of potential public action from any but a fundamentally secular motivation. With a most curious language, he gives credence to “both head and heart” by asking to restrict the role of

¹²⁶ I have cited their books before, and find them full of words of insight. See PARKER PALMER, *TO KNOW AS WE ARE KNOWN: A SPIRITUALITY OF EDUCATION* (1983); see also HENRI NOUWEN, *CLOWNING IN ROME* (1979).

¹²⁷ Robert Audi, *The Separation of Church and State and the Obligations of Citizenship*, 18 *PHIL. AND PUB. AFF.* 259 (1989).

religious persons in their most conscientious inner regions, exhorting them to avoid the rationalizations that might tempt them to convince themselves that positions that they REALLY hold for religious reasons, they could very well almost hold for secular reasons, so (they falsely think) they *do* hold them for secular reasons and are thus free to speak.¹²⁸ For Audi, even if highly plausible secular reasons exist for something that the believer might advocate that the government do, reasons that the believer respects, unless the conscientious person of faith is quite sure that any advocacy stems from the secular *first*, she must be silent.

For some of us, that would require a choice between lifelong silence about justice, and idolatry of the state. Audi thinks that “one can live one’s faith . . . while constraining one’s efforts in supporting restrictive laws and policies, or indeed other sorts of legislation or social programs, in accord with the principle of secular motivation,” apparently because religion commands loving one’s neighbors.¹²⁹ But he is right only if the faithful one is willing to give voice only to *primarily* secular urgings to speak. He seems to miss the whole point of the “other” commandment: to love God with all one’s heart and mind and soul and strength. To be faithful to that commandment is to speak *primarily* out of love of God. Audi would banish the wisdom and fidelity of the heart, and the primacy of God’s light in the mind. Part of his further misapprehension of the movements of heart and soul turns on his equation of (his version of) “rational” with the capacity to discern correct moral principles, and those two in turn with doing good. In fact, the key gesture he makes to persuade a believer, that “if . . . a moral or political view *is* grounded in God’s will, God’s goodness may plausibly be taken to imply that some secular basis is accessible to rational inquiry,”¹³⁰ demonstrates that his entire argument works only if God has so constructed the world. God is much more interesting than to serve merely as the suppressed premise of Audi’s long, “rational,” dry argument.

Audi’s real fear comes out at the end. He urges that such secular trustworthiness is necessary so “the nonreligious will not feel alienated or be denied adequate respect.”¹³¹ Further, as “we

¹²⁸ *Id.* at 288.

¹²⁹ *Id.* at 294.

¹³⁰ *Id.* at 295.

¹³¹ *Id.* at 295.

are prone to extremes in the service of our holy causes” we cannot adequately participate in “the crucible of free discussion” because God-talkers function like “the meeting of an irresistible force with an immovable object.”¹³² This is what Steven Carter has called the liberal fear and intolerance of religion.¹³³ It is an anxiety that James Boyd White suggests may be not totally fear of religious oppression, but also fear of religious truth.¹³⁴ “Religion” is potentially fearsome, so that Buber claimed it was the primal danger of humankind, but that is because of the destructive power of its perversion, rather than its lack of intrinsic reality or goodness.¹³⁵

The only people from whom Audi asks heart-searching, conscientious respect of others to the point of abandoning their source of final grounding, are believers. Yet he says that those who believe in God “tend to be confident that proponents of different interpretations—are in error.”¹³⁶ In the best deconstructionist perspectivism, there is nothing to suggest that the religious perspective is any more deluded, negatively irrational, genuinely intolerant, or systematically unselfconscious, than any other. Stanley Fish delightfully argues that liberalism doesn’t exist, precisely because the high ground of the “rational” belongs to no one, especially those wielding such basic critiques of all others’ faiths.¹³⁷ Robert Audi, in the public sphere (which he *thinks* he can distinguish from the personal or private), bases his foundational faith on a particular brand of philosophical discourse he would call reasonable. That is his public god.

He argues that those who do not believe will be alienated by God talk. I reply that their alienation is far deeper than that, and comes from a separation from the most central sources of speech. He is concerned with wars of religion as are Rawls and now Mark Tushnet.¹³⁸ I reply that the most atrocious war of history was

¹³² *Id.* at 296.

¹³³ Steven Carter, *Evolution, Creationism, and Treating Religion as a Hobby*, 1987 DUKE L.J. 977.

¹³⁴ James Boyd White, *Response to Roger Crampton’s Article*, 37 J. LEGAL EDUC. 533 (1987).

¹³⁵ Nicholas Lash cites Buber in a BBC interview shortly before his death, remarking on how glad he was that the word “religion” occurs nowhere in the Bible. Lash, *supra* note 93, at 178. Buber of course used the word; see, e.g., MARTIN BUBER, *Religion and God’s Rule* in A BELIEVING HUMANISM (M. Friedman trans. 1967).

¹³⁶ Audi, *supra* note 127, at 296.

¹³⁷ Fish, *supra* note 49.

¹³⁸ Mark Tushnet, *Flourishing and the Problem of Evil*, 63 TUL. L. REV. 1631, 1648–50 (1989).

fought on behalf of a purely secular vision made demonic by containing all the power and passion of the unspoken desires of the human heart within an idea of a single secular yet sacred nation. As humans intensify their humanity, they will intensify both thinking and feeling—and all the other hallmark aspects of the human. If we do not speak to the full array of human qualities, the unspoken will drive us, unknowingly unknowing, to horror like World War II.

Cavell names horror as that which we must face in the human. We are capable of great good; we are capable of commensurate evil . . . free will, even with grace, is no guarantee. Only attending to reality, to the human “as inherently strange, say unstable, its quotidian as forever fantastic,”¹³⁹ will we answer the invitation to life—and only in answering the invitation will we avoid evil. There is no safe staying still, unless it is to listen. We must face the “horrified vision of ordinariness,” “the acknowledgement of otherness, specifically as a spiritual task” in Cavell’s words,¹⁴⁰—but this is not quite the heroic task even Cavell implies. It is a matter of ordinary, everyday invitation.

“[T]he most vital words die when spoken. This is why God begins where words end.”¹⁴¹ What lies just beyond words is what ties together the universe. That same Being is what creates and sustains what Cavell calls our “attunement with one another.”¹⁴² The only real power is always coming into being within our form of life, in Wittgenstein’s phrase, and always begins beyond words. Socrates remembered that the greatest power was not to write on a page, but to speak to the heart, to inscribe on the soul.¹⁴³ We may speak and write of Socrates, all the same, and we should. But as Heschel remarks, philosophy begins in wonder, and religious insights “have to be carried over a long distance to reach expression, and they may easily . . . perish on the way from the heart to the lips.”¹⁴⁴ Language traveling from potential to real makes a fragile transition into words. The “ineffable will only enter a word in the way in which the hour to come will enter the path

¹³⁹ Cavell, *supra* note 125, at 154.

¹⁴⁰ *Id.* at 158.

¹⁴¹ ABRAHAM HESCHEL, *MAN IS NOT ALONE* 98 (1951).

¹⁴² Cavell, *supra* note 125, at 147.

¹⁴³ PLATO, *PHAEDRUS* in *PLATO: THE COLLECTED DIALOGUES* (H. Cairns & E. Hamilton eds. 1961)

¹⁴⁴ Heschel, *supra* note 141, at 98.

of time: when there shall be no other hours in the way. It will speak when of all words only one will be worthwhile."¹⁴⁵

Where does this language, having journeyed from heart and mind into words, show itself in law? It manifests most clearly in the law language spoken to juries and to clients. The more ordinary people must be spoken to in law, the more lawyers must honor the translation of dominant legalese into the ostensible poverty of everyday speech. The role of juries is what will make us Insiders more honest, more grounded, more alive to the eloquence of simplicity. We must trust jurors not because they are infallible, but because they are gifted listeners, recalling us to our "second naïveté," that is, to ourselves.

In addition, this renewed language can point to rules of law that would change how courts find justice. The systematic role of equity, which dwells on the particular, can be strengthened. What counts as evidence can be transformed from the current system of seemingly exacting standards, which in fact fall into the nebulous realm of "hearsay" and "reliability," to a focus on remembering rather than dismembering a witness' story. A shift from a scientific stress on supposed objectivity, to an intersubjective view of verification, would allow the way people operate in their ordinary lives to fashion rules of evidence. If, as Joseph Raz notes, we begin to count divining for water as a way of knowing where water is, then what is publicly acceptable as "knowing" changes.¹⁴⁶ If courts harken to what persons count as verification when their lives are on the line—that is, everyday—then courts will let the "finders of fact" and of law hear more of the whole story.

III. Mystery

Why is the philosopher wrong and the rabbi right? Neither is incomprehensible; neither's speech lacks coherence, or concern. Both are good people. There are two main reasons that come to mind, or two ways of trying to say one reason. What the rabbi had is hope in God and clarity of heart. Thus he could trust mystery openly. That trust in mystery led him to invitation which surprised him. Early on in the colloquium, he invited me to come visit his

¹⁴⁵ *Id.* at 99.

¹⁴⁶ Joseph Raz, *Facing Diversity: The Case of Epistemic Abstinence*, 19 *PHIL. & PUB. AFF.* 3, 34–36, 43 (1990).

home and his synagogue, to meet his family and congregation, though he did not fully understand why. Such meetings are not easy. The experience of sameness and difference at the service on Shabbat was so profound an experience of boundary and openness, of worship of "that One" in a faithful community of strangers accessible by love, that I was overcome. Perhaps this is, with its costliness, what one commentator calls the "joyous shock of difference."¹⁴⁷ My friend still wonders where this "pesky Christian" woman came from, and I still do not know whether I understand the doctrine of election (he said I'll get it . . .). But there is a connection coming into being, and the celebration of that bond came forth in our call and ability to be together in prayer, and then to hope to talk of God (sometimes, we only talked of theology).¹⁴⁸ Hope for Pentecost, for moments of connection within what George Steiner in *After Babel* calls "the translucent immediacy of that primal, lost speech shared by God and [a]dam,"¹⁴⁹ turns first on resurrection. Paul Ricoeur locates Freedom in the Light of Hope, along with Kant's Religion Within the Limits of Reason Alone, as flowing from resurrection, which is "aporetic" (skeptical, contrary) and "alogical" not from lack of meaning but from a surplus of meaning. "Resurrection surprises by being in excess in comparison to the reality forsaken by God."¹⁵⁰ This "superabundance" is not only for the Greek scriptures, for the Christian texts beyond the Hebraic: "Wisdom overflows the framework of the Covenant, which is also the framework of the election of Israel and the promise made to Israel. It is not by chance that more than one sage in the biblical tradition was not Jewish."¹⁵¹ Resurrection, abundance rather than scarcity, promise rather than threat—these characterize Torah, Ricoeur says. Invitation, rather than command, comes first. Mystery is not a threatening kind of being out

¹⁴⁷ Michael Eigen, *The Area of Faith in Winnicott, Lacan & Bion*, 62 INT'L J. PSYCHOANALYSIS 413, 416 (1981).

¹⁴⁸ When this paper was presented at the second annual Symposium on Law, Religion and Ethics in October 1989, Douglas Sturm asked whether the way I saw invitation and translation came from my grounding in a universalist tradition; I referred to the prediction that I WOULD come to understand election, and that if that were so, somehow by meeting that particularity in love, both my friend the particularist and I the universalist, would be right, together, in paradox. See DAVID NOVAK, *JEWISH-CHRISTIAN DIALOGUE: A JEWISH JUSTIFICATION* (1989).

¹⁴⁹ GEORGE STEINER, *AFTER BABEL* 474 (1975). Steiner also notes that, according to the kabbalah, the time without translation is the time of redemption.

¹⁵⁰ PAUL RICOEUR, *ESSAYS ON BIBLICAL INTERPRETATION* 165 (1980).

¹⁵¹ *Id.* at 85.

of control, a rigid irrationality, a start to religious war. It is a promising invitation. It is not carelessly made, this invitation; it lives close to death, the fear of which Ernest Becker (a non-believer) convincingly portrays as the hidden source of anxiety in the modern world.¹⁵² Steiner tells us that translation is flawless when it is close to death,¹⁵³ and death and Pentecost are nearly contiguous. What lies between them is resurrection.¹⁵⁴

A. Resurrection

My friend the rabbi knows the role of resurrection, which he addressed in his Yom Kippur sermon this year of 5750. The writer Dennis Praeger had observed that though it is clear that Judaism has a belief in life after death, most Jews will say it doesn't. Despite the belief's appearance in the second paragraph of the *Amidah*, prayed repeatedly during the day, Jews seem embarrassed by the idea of it. As my friend noted, our psychology professor might laugh at us. In response, my friend quotes Arthur A. Cohen, editor of *Contemporary Jewish Religious Thought*,¹⁵⁵ in his essay on resurrection,¹⁵⁶ and then paraphrases him: "As hard as it is to say that you should believe this, I cannot discard it; I can only keep it in trust, to hand over to a generation when it will be easier to believe."

And it is in resurrection that we are reminded of what Torah is first—a gift of God's love. Law is invitation because before it was a threat, Law was a promise. The symbol of Torah, of the Law, is and was Israel's emblem of Promise. The symbol of Resurrection is for Christians the announcement of the Promise once again. But Christians believe in the Law to be fulfilled, and Jews believe in resurrection.

¹⁵² ERNEST BECKER, *THE DENIAL OF DEATH* (1973).

¹⁵³ Steiner, *supra* note 149, at 37.

¹⁵⁴ In the Christian calendar, Good Friday precedes Easter, which precedes Pentecost (the descent of the Holy Spirit) by 50 days. In the Jewish year, Passover [Pesach] precedes Shavuot/Pentecost, by 50 days.

¹⁵⁵ Arthur Cohen, *Resurrection of the Dead*, in *CONTEMPORARY JEWISH RELIGIOUS THOUGHT: ORIGINAL ESSAYS ON CRITICAL CONCEPTS, MOVEMENTS, AND BELIEFS* 807–13 (1988).

¹⁵⁶ Hayim Goren Perelmuter claims that resurrection is one of the three key themes of Rabbinic Judaism dating to the early Common Era. See HAYIM GOREN PERELMUTER, *SIBLINGS: RABBINIC JUDAISM AND EARLY CHRISTIANITY* (1989).

For ancient Israel, the Law is the way that leads from promise to fulfillment. Covenant, Law, Freedom, as power to obey or disobey, are derivative aspects of the promise. The Law imposes (*gebietet*) what the promise proposes (*bietet*). The commandment is thus the ethical face of the promise. Of course, with Saint Paul, this obedience is no longer transcribed in terms of law; obedience to the Law is no longer the sign of the efficacy of the promise; rather, the Resurrection is the sign.¹⁵⁷

Ricoeur cites Buber as making clear the promise of Law, so that I venture that *both* Law and Resurrection are signs of the invitation, of the promise, of the God who is coming rather than the God of present, completed triumph.

B. Dispensation

The God who is coming is also present with us, as spirit and hope. We are already resurrected—not finally, but from the many deaths of life fully lived. There is a history to the announcement of this resurrection, however. We can only claim it because we have returned as prodigal children, and it must be first spoken by the Outsider. In 1988 I found myself saying to Carol Ochs, after her presentation of the first stories of the *via positiva*, that her movement was gift because I realized that in some sense I had been waiting for dispensation from her in her Jewish particularity and her womanhood, to claim resurrection. In 1989 Nicholas Lash said he is “almost tempted to say that, in the shadow cast by the Holocaust, a shadow eclipsing God in the eclipse of relationship, the Christian *requires permission* from the Jew to sing the Easter ‘Alleluia.’”¹⁵⁸ This requires, he says, forgiveness; dispensation¹⁵⁹ is both a letting go of sin and a system of promises and rules divinely ordained and administered—it is a face of Torah. It is also the luminous golden spirit of Patricia Williams (and Alice Walker

¹⁵⁷ Ricoeur, *supra* note 150, at 162.

¹⁵⁸ Lash, *supra* note 93, at 211.

¹⁵⁹ WEBSTER'S THIRD INTERNATIONAL DICTIONARY (UNABRIDGED) (1971).

and Zora Neale Hurston), and the threat of resurrection of Julia Esquivel:

It isn't the noise in the streets
that keeps us from resting, my friend,

. . .

There is something here within us
which doesn't let us sleep,
which doesn't let us rest,
which doesn't stop pounding
deep inside,
it is the silent, warm weeping
of Indian women without their husbands,
it is the sad gaze of the children
fixed there beyond memory,
in the very pupil of our eyes
which during sleep,
though closed, keep watch
with each contraction
of the heart,
in every awakening.

Now six of them have left us,
and nine in Rabinál,
and two, plus two, plus two,
and ten, a hundred, a thousand,
a whole army
witness to our pain,
our fear,
our courage,
our hope!

. . .

Accompany us then on this vigil
and you will know what it is to dream!
You will then know
how marvelous it is
to live threatened with Resurrection!

To dream awake,
to keep watch asleep,

to live while dying
and to already know oneself
resurrected!¹⁶⁰

One reason, I think, that my friend could preach of resurrection this year is that we both risked translation. The other part of his last-day message to me was, "Thank you for coming across the bridge to meet me." I had asked about Torah, and halacha, and aggada and kavanah (more than once!), and listened. But he also risked translation, by coming across the unfamiliar bridge of relationship. I was very careful of his tradition, have learned the Hebrew alphabet, read and listened. He was very careful of my feelings, learned about how I experience both my tradition and myself in relationship. There were losses in translation between us; there were overwhelming, surprising gains. In an intensely spiritual relationship, there was idolatry, and iconoclasm, suffering and even death—but there is, more deeply, hoped-for resurrection. That resurrection's cost, to be entered into by both Jew and Christian, may be more than we can fully comprehend; Jewish philosopher Emil Fackenheim says that "[o]nly if we share in the anguish of the victims dare we affirm their resurrection."¹⁶¹ There is no guarantee we are up to what is required, but we hope.

C. *Absence and Presence*

The hope and the resurrection are prelude for the advent of Pentecost, for the gift of the Spirit. Pentecost is gift, but deeper life brings with it deeper suffering, cost. Our God is both Absent and Present, both with us and hidden; we are both loved and abandoned by the withdrawal that gives us the space to be free. The cost is the absence, *tzimtzum*:¹⁶² Christ says that He must leave, because unless He leaves, the Spirit will not come.¹⁶³ The cost is also the space, the freedom to sin, to do evil. We are free—but we are not alone, and so the freedom to do evil can be named: we have, along with freedom for greater good than has been

¹⁶⁰ JULIA ESQUIVEL, *They Have Threatened Us With Resurrection*, in THREATENED WITH RESURRECTION: PRAYERS AND POEMS FROM AN EXILED GUATEMALAN 59 (1982).

¹⁶¹ EMIL FACKENHEIM, *WHAT IS JUDAISM?* 274 (1987).

¹⁶² Scholem, *supra* note 51.

¹⁶³ *John* 16:7.

known, freedom to repeat the Holocaust, and worse.¹⁶⁴ Yet Pentecost is the announcement, with rush of wind and tongues and bush of fire, that we are connected again. The gift is among us, as Jeremiah's prophecy of new covenant. It is the one heart, and with the reality of that one heart, brother shall no longer tell sister to know the Holy One, because each shall know, the least to the greatest, because they are forgiven.¹⁶⁵

My friend the philosopher is thus safe from proselytizing. But he also needs to know that he has created a *reductio ad absurdum* that requires in response a statement of faith as a statement of identity. It is because the law bears the imprint of the divine law, as Cover says, that we should be about the business of appropriating a new Torah together. This requires disclosure and trust. Trust and disclosure are central to how we can know to whom we are talking, and how we can expect to be received.¹⁶⁶ A new Torah even (though not primarily) participating in the fully public realm is possible because the Law can to some extent serve as medium.¹⁶⁷ That medium is sustained by spirit and invites trust. Law need not be primarily a defense against being wrong; it can ground in hope of being right. Law need not serve solely as a threat to "translate" the other out of existence, but more centrally as a movement toward trustworthy translation.

Disclosure and translation are not easy. The best milieu for those movements, and the best place of gestation for what remains beyond the reach of words but enters the spoken from time to time, is a clarity not of reason alone but of the whole person. Perhaps it even requires prayer:

Praying means to take hold of a word, the end, so to
speak, of a line that leads to God. The greater the power,

¹⁶⁴ Some believe that the risk of Holocaust is greater under modern secularism than it was under even medieval Christian anti-Judaism, as Nazism—in its typically secular denial of transcendence—is a "distinctly modern phenomenon." Novak, *supra* note 148, at 5–14.

¹⁶⁵ *Jeremiah* 31:31–34.

¹⁶⁶ See Thomas Shaffer, *Judges as Prophets* (Book Review), 67 *TEX. L. REV.* 1327, 1338–40 (1989). Shaffer calls on Robert Burt, a provocative user of religious language, to come forth about how much he really believes in such language, rather than just putting it on the page. This is the kind of disclosure that both Cover and Richard John Neuhaus cite in their discussion in Robert Cover, Richard Neuhaus, Robert Cahill, *Theological Perspectives* (Symposium on the Religious Foundations of Civil Rights Law), 5 *J. LAW & RELIG.* 95 (1987).

¹⁶⁷ See MILNER BALL, *LYING DOWN TOGETHER: LAW, METAPHOR AND THEOLOGY* (1985).

the higher the ascent in the word. But praying also means that the echo of the word falls like a plummet into the depths of the soul. The purer the readiness, so much the deeper penetrates the word.¹⁶⁸

My friend the rabbi is right, if such a thing exists, more than my friend the philosopher, because he spoke in relation, lived in hope, and listened with clarity of heart. His tradition, his vocation, his milieu, his generation and even his politics, were considerably more alien to mine than are those of my friend the philosopher. Yet this bemused rabbi and this Catholic heretic have met and were translated to one another. That involves, I believe, the presence of Reality with an internal movement that images dialogue. This is the emerging vision of a lawful process in which, first God speaks (whether only the first letter of the Hebrew alphabet, silent aleph, or all of revelation), then we respond, and, finally, between and among and within us, endlessly translating in living love, God hears.

¹⁶⁸ ABRAHAM HESCHEL, *MAN'S QUEST FOR GOD: STUDIES IN PRAYER AND SYMBOLISM* 30 (1954).