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ESSAY

FROM RIGHTEOUSNESS TO BEAUTY: REFLECTIONS ON *POETHICS* AND *JUSTICE AS TRANSLATION*

EMILY FOWLER HARTIGAN*

This essay turns in several directions. One is toward Richard Weisberg, whose most recent book on law and literature, *Poethics: And Other Strategies of Law and Literature*¹ was difficult and confounding yet informative for me. One is toward James Boyd White,² the founding figure in law and literature as an academic field, who has attracted considerable critical hostility in the past few years—to which Weisberg adds with zest. Thus another turn is toward mediation, as the ostensibly shared realm of Weisberg and White is of signal value to the study of law. Yet a further turn is away—not from White, whom I know and respect, nor Weisberg, whom I have never met—but from a combative, hierarchic tone of discourse surrounding the foundational patriarchal space of law and literature. Weisberg and even White make such a grating discourse likely, I venture, by their near-total exclusion of women from their texts. Rather than retreating solely to the “other” version of the field, which Weisberg takes on though ineffectively—the one inhabited by Robin West, Judith Resnik, Marie Ashe, Drucilla Cornell and a score of wonderful feminist writers—I want to speak for a new timbre of conversation, a new openness, even a new dance. I take name for such a movement as one “from righteousness to

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1. RICHARD WEISBERG, *POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992).

2. See JAMES BOYD WHITE, *JUSTICE AS TRANSLATION* (1990).

beauty," because of the inherent draw of the goodness of law, its irresistible poetry, its manifest desirability. Under such a banner, I cannot begin by criticism but neither can I avoid it.

Before I can elaborate that positive call in relation to law, wending my way through all those male texts, I need to say this: I do not believe that any person avoids the terror and emptiness that is inherent in the move toward the good (or the mutual movement between us and the good, the relationship), and I do not believe that law can be true law in this time, without our movements beyond patriarchy. What I know I do *not* want, is to contribute to either a return to prelegal blood feud or to a feminist patricide mirroring the Greek foundational myth of law. (In Aeschylus, so the story goes, Athena rejects having been mothered and acquits Orestes (replacing feud with law) through denial of the son's blood tie to the mother he has killed).³ Neither calculative competition nor retributive denial of the masculine will create a better story. Yet the stakes in law are blood indeed, even now, and thus my hope is neither to attain or award victory but to call forth costly, saving conversation.

Law as conversation is not primarily war through or with words, but the free yet necessary activity of community-weaving among people of profound differences. Given the negligible amount of time White and Weisberg spend conversing with or of women who have claimed their own voices, my call to them may seem initially futile. As the practice of such conversations seems relegated to book dedications and habits of silence about the feminine in the public sphere, my invitation may seem unlikely to be welcomed. Yet if I am right in agreeing with these men that beauty, poetic force, will tell in the end, then I have reason to hope. For I am concerned with them not primarily because of their "place," their status, but because I see the world as in one respect God's wonderful joke: among the always emerging differences among persons, men are as mysterious and irresistible to women as some men have recognized women to be. If men could remember both the irresistible part *and* the mystery (for both men and women), and would open the existing public conversation, they might critique and pointedly ignore each other less violently, and enjoy a new richer company. They might

3. See AESCHYLUS, *Eumenides*, in 2 AESCHYLUS 269 (Hugh Lloyd-Jones ed., Herbert W. Smyth trans., Harvard Univ. Press 1926).

experience the awesome surprises of difference. They might risk even heterosexual,⁴ interfaith, interracial, textual dance—"the lateral dance of difference."⁵ We all in the law might become more and newly—awkwardly and gracefully—human.

* * * *

In January 1992, I attended the Association of American Law Schools (AALS) annual meeting in San Antonio. A friend who teaches law and literature had managed to get Columbia Press to promise her the demonstration copy of Richard Weisberg's *Poethics*. Her glimpses of it at their book stall made it sound exciting. She and I had connected fairly early during the convention, right after I had spoken a question that came to me, with no hint of the rhetorical, to James Boyd White at the Jurisprudence workshop. In a set of related observations and questions, I asked White why he called the restricted range of literary texts he was teaching humanist. (That question has, for me, no final answer, including any preclusive or judgmental one: the issue of what represents the human is, I suspect, a life mystery-struggle.) From one vantage, that question, meant from a profoundly collegial stance, might have seemed pretty ungrateful. White had been unfailingly kind to me as a colleague. But the query, a way of taking him as seriously as I know how, was based on a respect that I find reinforced, perhaps oddly, by the reflections that my friend's copy of *Poethics* began. I disagree with Weisberg's defense of the dated, nearly monochromatic literary canon, and I am perplexed by White's adherence to it, but White's fidelity to what Weisberg seems to identify as the "best" (aside from sheer survival over time, literary Darwinism)—depth, complexity, "radical" challenge of the conventional in true poetic form—is what White's writing often embodies and what Weisberg's, with a very notable exception, does not yet sustain.

My friend's enthusiasm and the most intriguing title itself, led me to order *Poethics* as soon as I arrived at Tulane and found the bookstore. I was familiar only with secondary references to Weisberg, an emerging figure in law and literature—though the book's dust jacket carried Stanley Fish's announcement that

4. This is emphatically not meant as exclusionary, placing heterosexuality above bisexuality or homosexuality; it is the traditional locus of creative gender difference but hardly the sole source of such mysterious attraction.

5. Although the Author attributes this phrase to literary critic J. Hillis Miller, she has been unable to locate it within Miller's work.—eds.

Weisberg was the "energizing force" in law and literature. The subject of literature in relation to philosophy, religion, truth, and law has long been a major intellectual pursuit. Contemporary thinkers, echoing Plato's concerns with genre, continue to struggle with the relationship between medium of expression and its content. In this vein, I had just written a review⁶ of Patricia Williams's *The Alchemy of Race and Rights*,⁷ in which I followed the role of poetry into some of my favorite thinkers' terrain, and emerged with a dancing conviction that legal textuality was a sensuous, inspiring medium of human becoming that hoped, in the words of Elizabeth Sewell's book, "*To Be a True Poem*."⁸

The idea of the aesthetic force of writing as its integral measure has been tackled by European and American writers who have related the poetic, the religious and the philosophical.⁹ Such an interrelationship has been key to the projects of philosophers like Harvard's Stanley Cavell and deconstruction's Jacques Derrida, because who we are and what we say are so fundamentally related. The manifestation of "truth," many of those struggling with these threads suggest, is contextual, non-propositional, lived with the vibration of the Word¹⁰ that illuminates rather than "proves." The lines between philosophy and literature blur, and the stance of "judgment" is more like a reflective aesthetic evaluation than a critique through formal logic. Law is, as Weisberg and White agree, more art than science.

Thus, such a learned-looking book that talked of the "poetic method for law, or how the law means"¹¹ as its central theme, promised a rich read. I had been rereading G.K. Chesterton's *The Man Who Was Thursday* and was ready to be delightfully disoriented by the apparent conundrums of *another*, as yet unmet, "poet for the law."¹²

I may have been saved from a worse experience because my own bad habit—no longer applied to fiction as it was when acquired in my childhood—of looking first at the end of a book,

6. Emily Fowler Hartigan, *Make the Ring in Your Mind*, 65 ST. JOHN'S L. REV. 1271 (1991) (book review).

7. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

8. ELIZABETH SEWELL, *TO BE A TRUE POEM* (1979).

9. See *infra* note 64.

10. SIMONE WEIL, *WAITING FOR GOD* 124 (Emma Crawford trans., 1951).

11. WEISBERG, *supra* note 1, at 5.

12. G.K. CHESTERTON, *THE MAN WHO WAS THURSDAY* (1935).

prevailed. At the end of *Poethics* is a section on James Boyd White.¹³ I ran through it quickly, to taste, before I sat down to read in right order. The taste was bitter, harsh, confusing. By the time I resampled and then read more systematically through the book, I may have gotten some sense of the source of that brittleness, a sense that taps in me the desire to work toward something key to what White says we do in telling our stories. We make habitable worlds together, with stories. White says we can only tell the stories that are tolerable.¹⁴ That is not a standard that I see White taking lightly—ironically, it is his very fidelity to resisting the intolerable that limits his range in my view, but that limit may be nothing more than the limit that any one human must have (and/or a time of limitation that will perhaps be moved past). The double irony for me is that Weisberg, by testing the boundaries of the intolerable, also contributes something very different to the story of law and literature than what that bitter taste detected. Weisberg would do better to concentrate on what he does well rather than indulging in what—as he himself tells us—Robin West calls his “anarchical and idiosyncratic” commentary.¹⁵

Weisberg’s contribution, which makes him different from White, and valuable in his difference, is to tell a story that is unavoidably his own. He teaches at Benjamin N. Cardozo School of Law, Yeshiva University. He tells us, as he has before in his earlier work, about the legal community in Vichy France in the face of the racial laws against Jews, and his story is profoundly painful. The first response part of me had as a reader was identical to the response Richard Posner gave: “What would Weisberg have [the accused French lawyer] *do*?”¹⁶ But that response is not sufficient. Weisberg’s text tells us with an eloquent relentlessness that he is still in pain over what was done to his people. The tenacity over the terror, the desperation, the famine of the Jews in France, is a fidelity to Weisberg’s experienced story. The reader may hope to hear that story not as an accusation—though there is always that danger in expressed pain that is set in ethical terms—so much as something to call

13. WEISBERG, *supra* note 1, at 224-50.

14. See, e.g., JAMES BOYD WHITE, *HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* 168-74 (1985).

15. Robin West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 *YALE J.L. & HUMAN.* 129 n.3 (1988), noted in WEISBERG, *supra* note 1, at 268-69 n.26.

16. WEISBERG, *supra* note 1, at 169.

forth healing response. Such reader response may be simply a new awareness of something that memory should not let dim: the manifestation in history of human brokenness beyond calculation.

And it is such direct contact with personal human brokenness and with Otherness, which I find missing in White's writing. But, unlike Weisberg and White's other critics,¹⁷ that is not something which leads me to judgment. Taking White at his word, I continue to invite him to conversation. The main reason I do so is that I read his texts as moving toward a deeper response to that invitation of a fragmented-and-whole life which he has described with increasing eloquence but also with increasing tension. Critics like Sanford Levinson see him moving too slowly¹⁸; Weisberg sees him pretending to move but in reality unmoving.¹⁹ I see him as moving in his own way, in his own time. It would be tragic if those who really see in his portraits of conversation and translation something *inspiring*,²⁰ drove him further away from contemporary conversation in the Law and Literature community by premature rejection, or simply by mistake.

The mistake I suggest is highly intuitive, but it begins with my own sensations discerned in reflection on White's texts. When I read Levinson's review I see the perception of (Levinson's word) "betrayal"²¹ that a son might have before he realizes that his father is "moving too slowly," mainly because the son has come into his own more than he himself realizes.²² That is some part of why I experience White's writing as both beautiful—and paternal.²³ For me, the end of patriarchy is not the

17. Even the most tenderhearted, like Sanford Levinson, who expresses anguish, not accusation, in my reading, appear to pass judgment on White. See Sanford Levinson, *Conversing About Justice*, 100 YALE L.J. 1855, 1878 (1991).

18. *Id.*

19. WEISBERG, *supra* note 1, at 255.

20. See, e.g., *id.* at 225; Levinson, *supra* note 17.

21. Levinson, *supra* note 17, at 1878.

22. See Sanford Levinson & J.M. Balkin, *Law, Music, and Other Performing Arts*, 139 U. PA. L. REV. 1597 (1991) (essay/book review).

23. After writing the initial draft of this review, I read two things that make this intuition poignant for me. One, written by Susan Mann, finds White "paternal"—and domineering, coercive, locked, and imperial. Susan Mann, *Note: The Universe and the Library: A Critique of James Boyd White as Writer and Reader*, 41 STAN. L. REV. 959, 990 (1989). That is not my sense of the paternal in White (nor is the Oedipal sense that Harold Bloom conveys in *HAROLD BLOOM, THE ANXIETY OF INFLUENCE* (1973), the second postdraft piece I read). Mann might profit from J. Hillis Miller, *Parable and Performative in the Gospels and in Modern Literature*, in *HUMANIZING AMERICA'S ICONIC BOOK: SOCI-*

waste of patricide, however, and Weisberg treads too much of that territory. Nor is the end of patriarchy the end of the growth of the former parent. It is a time when daughters and sons move away, gain their own voices, and then return to talk not only with one another but also with their parents, in new relations.

Robin West some years back wrote, in her characteristically powerful way, of the Freudian primal hoard and the institution of law after the murder of the father, motivated by the guilt of the sons.²⁴ My enterprise about law intends to intensify its turn from an instrument and occasion of guilt toward its quality as the desirable lining-through of life among persons in community. Weisberg's carelessness—and apparent competitiveness—endangers community, creating a needless violence that is not likely to invite into conversation a man whose texts resolutely call law by its always aspiring names of meaning and justice. Weisberg cannot extract blessing by invective. Yet he places White in a position that can be avoided only by paternal blessing or paternal violence, or by absence. Weisberg's scathing account of White leaves little if any space for a response that would seem likely to "make a world" in which he and White could talk constructively. It also has the tone of competition for dominance that reinforces, not replaces, patriarchy.

How does Weisberg concoct his tale of the sad end of the once "promising" White? Weisberg says that White began with the ostensible aim of the personal enrichment of the reader.²⁵

Yet eventually, as the opportunities (one might cynically say the "market") grew for Law and Literature, White gradually adjusted his position (his "translation"?). He knows how to play the academic game and seems by his method of reading others to value his own place in the hierarchy.²⁶

To maintain that place, Weisberg suggests, White's current vision is misanthropic. No one else but White is worth conver-

ETY OF BIBLICAL LITERATURE CENTENNIAL ADDRESSES 1980, at 57 (Gene M. Tucker & Douglas A. Knight eds., 1982), for why a parable writer like Jorge Luis Borges and a writer of "double movement" like White, are not necessarily prisoners of their books. Also, there may be *good* patriarchs, although the writing and practice of one of my very favorite patriarchs (his term) Tom Shaffer suggests that the best are working themselves out of the job gracefully. Conversation with Tom Shaffer.

24. Robin West, *Law, Rights, and Other Totemic Illusions: Legal Liberalism and Freud's Theory of the Rule of Law*, 134 U. PA. L. REV. 817 (1986).

25. WEISBERG, *supra* note 1, at 245.

26. *Id.* (footnote omitted).

sation, Weisberg charges.²⁷ Weisberg attributes such lack of engagement to White's disdain. Having tapped White's notion of ethics as "respect for the other" Weisberg concludes "If one thing emerges clearly from [*Justice As Translation*,]²⁸ it is that White has precious little respect for others."²⁹ Weisberg then footnotes White regarding Justice Douglas, making clear that in Weisberg's lexicon White is not in the same category with Douglas. Weisberg notes that there is "mean-spiritedness about the writings of others abroad" in White's text.³⁰

Earlier, Weisberg has called White dishonest, dictatorial, colonial.³¹ He finds that White's ways of attempting the "talking two ways" that might be recognized as akin to paradoxical or dialogical movement, to conversation, "also never ring true as aspiring toward honesty."³² He finds that White sets up a "duplicitous scenario," only to soften it by a "disingenuous ending."³³ Weisberg concludes that "as a blueprint for an ethos of 'the world' White's book utterly fails."³⁴

These are among the most distasteful of the charges Weisberg makes. Are they true? Is Weisberg's basic critique true? Is White sitting at the academic apex, deviously impervious to anyone currently writing either literature or commentary on law and literature (and, one must ask, Richard Weisberg in particular)? I will be honest: the more I read, the more I became convinced that Weisberg is like the student who argues passionately again and again—despite the teacher's trying to point out that, at the student's best, they are saying the same thing. His arguments against White are transparently against his own enterprise. Further, he engages in the most obvious of the exclusionary tacks attributable to White, ruminating in the same old masculine canon himself. Too much of Weisberg's remarkable energy is not transformed into aesthetically effective talk, but uselessly spun into disjointed, even malformed critique.

This errancy begins in the simplest way: in the footnotes,

27. *Id.* at 305 n.122.

28. WHITE, *supra* note 2.

29. WEISBERG, *supra* note 1, at 245.

30. *Id.* at 305 n.122. Levinson also notes that White does not engage contemporary discourses, such as those of Derrida and the feminists, or his own critics. Levinson, *supra* note 17, at 1873-78.

31. *Id. passim.*

32. *Id.* at 246.

33. *Id.* at 248.

34. *Id.* at 249.

he says that he praises White for being repetitive, because that marks White's consistency.³⁵ Yet in the Preface, he begins his condemnation by calling White repetitive.³⁶ He calls White's prose "slippery"³⁷ at one point, "clear and invariably coherent" at another.³⁸ But the most central self-destructive move is that Weisberg's arguments against White are arguments against poethics—and they are not good writing, not good poetry, not, as White's texts often are, cogent, inspiring or beautiful. The movement to beauty and its relationship with truth is as old as civilization, but it is no better illustrated than in the *Book of Job*,³⁹ as I will discuss below. The tragedy of Weisberg is that he destroys the best of what is his own, as he attacks his patriarchal figure.⁴⁰ "Honor thy father and thy mother" is a counsel of self-respect, and Weisberg should be more careful of himself.

* * *

Poethics begins with promise. Weisberg tells us he will involve us "in the delightful task of associating two major human enterprises: establishing justice and telling stories."⁴¹ He claims he will defend what he concedes is the "establishment male" canon on the basis of its iconoclasm, its rebellion, its move to "undermine virtually every sacred belief of Western culture."⁴² He tells us that the attempt to restate stories or literature would impoverish not only their beauty, but also their very meaning—words mean through transfiguring thought itself, and all judicial opinions depend "on the appropriateness of the fit—the fluid harmony—between the words used and the aspiration toward justice that every legal pronouncement should embody."⁴³ He so fully equates form and substance that he concludes "that poor craftsmanship even on the Supreme Court ultimately brings an opinion down."⁴⁴ This seems no less than a promise that the might of true stories makes right, that positive

35. *Id.* at 301 n.96.

36. *Id.* at xiv.

37. *Id.* at 244-45.

38. *Id.* at 303 n.108.

39. THE BOOK OF JOB (Stephen Mitchell trans., 1987).

40. Even Bloom in *The Anxiety of Influence* suggests that one must be a truly "strong poet" to engage in the Oedipal "misreading" of the progenitor text. See, e.g., BLOOM, *supra* note 23, at 5-14.

41. WEISBERG, *supra* note 1, at ix.

42. *Id.* at xii.

43. *Id.* at 7.

44. *Id.* at 9. The author believes Weisberg's use of the word "craftsmanship" is an error in grammar.

law is as smoke before the force of the right words, of poetic integrity. Law, he says further, "is utterly dependent on language; better, it *is*, utterly, language."⁴⁵

In one sense, Weisberg's version is not so different from that of a studied feminist like Carol Rose. Each tells the story of law and literature from her own perspective. Rose, in her wonderfully earthy and intellectual *Property as Storytelling*,⁴⁶ depicts narrative theory primarily through women like Robin West. She does not refer to White. Weisberg leans heavily on Cardozo. Although Weisberg attributes to one very powerful essay by Cardozo a greater role in law and literature than other commentators have,⁴⁷ the emphasis is a notable addition, as the passages he cites show Cardozo's self-consciousness about the force of words that augments his remarkably crafted judicial opinions.⁴⁸

Only later does a rereading of Weisberg reveal that he once would have told the story differently. Though his Preface has identified White—"whose early efforts helped to establish the field of Law and Literature"⁴⁹—it is to foretell his report that White has sadly not "fulfilled his promise."⁵⁰ In his history and "strategies" of law and literature from page one to the end of the book,⁵¹ he never mentions White until he begins the eulogy. He omits, in the Preface, *why* Law and Literature's identification as a vital area of the intellectual landscape arose "more than fifteen years"⁵² ago, as well as the name of the only book on the subject in the 1970s. The missing marker is the publication of James Boyd White's *The Legal Imagination* in 1973.⁵³ Even Susan Mann, highly critical of White, identifies White as the "founder of the Law and Literature movement," citing Richard Posner, no fan of White's or the field's, for authority.⁵⁴ Rose, in choosing to omit mention of White, turns the male obliviousness to the feminine writers back on the men; how is Weisberg turning,

45. *Id.* at 10.

46. Carol Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory and Feminist Theory*, 2 YALE J.L. & HUMAN. 37 (1990).

47. WEISBERG, *supra* note 1, at 6-7.

48. *Id.*

49. *Id.* at xiv.

50. *Id.*

51. *Id. passim.*

52. *Id.* at xiv.

53. JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1973).

54. Mann, *supra* note 23, at 963 (citing RICHARD A. POSNER, *LAW AND LITERATURE* (1988)).

when *he* does not mention White except to report on his demise at the end of *Poethics*?

I note that I think Rose a tad misguided. West's very title for her *Economic Man and Literary Woman*⁵⁵ reveals that the space White inhabited in 1973 was taboo, feminine, nonanalytic, heretical, at best marginal. Only his extensive learning, his nearly perfect scholarship⁵⁶ combining with what might have otherwise been "unacceptable" passion (and even a poetic cast) in his writing, cleared the way for literature in law. The influx of women into that now familiar topography attests to the very courage and singularity of White's initial work. He ventured where words *had* lost meaning, and that is why my perplexity at his avoidance of feminine work is secondary to my respect and admiration.

After rewriting the story to erase White, when Weisberg reaches the end of the book to pronounce judgment, what is his report? From what I can glean, Weisberg claims that White's rhetoric overcomes White's morality, honesty, and perhaps more.⁵⁷ "Rhetoric" for Weisberg means craft without commitment, without ethical content. Dutifully noting that White himself resists theory and embraces uncertainty, that White portrays his own writing as involving a nonlinear double movement that eludes analysis, Weisberg then tries to analyze White. As he does it, I fail to find any consistent theme except one, which I will suggest both second-guesses White in a dangerous way and threatens the very enterprise Weisberg endorses.

Weisberg may of course judge White's writings—that would follow from Weisberg's notion of poetic correctness (which he contrasts to White's "complex rhetoric")⁵⁸ as the true aspiration of law and its related literature. Weisberg fails to see any literary quality in White's text. The "fluid harmony" Weisberg says is elemental to poethics, he transmutes in his portrait of White into something "slippery."⁵⁹ He finds that White's writing and its ideas give forth "a sensuous blast of coercion (the

55. Robin West, *Economic Man and Literary Woman: One Contrast*, 39 *MERCER L. REV.* 867 (1988).

56. Weisberg does not follow suit. For example, the review entitled *Translation as Argument*, which Weisberg attributes to David Trubeck, was written by Mark Tushnet. WEISBERG, *supra* note 1, at 254 n.10; see Mark V. Tushnet, *Translation as Argument*, 32 *WM. & MARY L. REV.* 105 (1990) (book review).

57. WEISBERG, *supra* note 1, at 240.

58. *Id.* at 225.

59. See, e.g., *id.* at 244-45.

sound-sense 'force' pervades)."⁶⁰ But the problem with this dire diagnosis is that it is accompanied by a theoretic that conflicts with itself. The force comes from "so much inconsistency"⁶¹ in which White "struggle[s] to engage the honest, but . . . always yields to the artful."⁶² Recall that "honesty" is now for Weisberg's venture a poetic term, perhaps even a vehicle of discernment of human authenticity. When White "utterly fails,"⁶³ he is not just writing an inadequate book, under Weisberg's analysis.

Yet White's "yielding to the artful" may be the very heart of poethics, its fulfillment and not its betrayal. If White accepts the draw of the artful, then by poethics standards, he fulfills the hope of art if what he writes is beautiful. Then he has not chosen artfulness in vain, because good art is true. That from one vantage is "all ye know on earth and all ye need to know."⁶⁴ Even White's critics, including Weisberg and Levinson, call his work inspiring.

Weisberg's dilemma of truth and beauty repeats itself in his text. He rails that White fails to give an *independent* answer to ethical questions, within Weisberg's own book that posits the *fusion* of form and substance. The ethical sounds in the resonance of the text, Weisberg has said, not in propositional logic. How can Weisberg stand outside his own text, to call White a failure for standing within his? Weisberg claims that White will not give a definitive rule for those elusive "values" that will keep us from evil, but rather returns within his texts, "double-edged, slippery, pleasing to the ear of the authority whose translation ultimately is the only one that counts."⁶⁵

60. *Id.* at 247.

61. Yet Weisberg has acknowledged the constitutive "inconsistency" of paradoxical, poetic "logic" and has praised White for his consistency. *Id.* at 301, 303.

62. *Id.* at 246.

63. *Id.* at 249.

64. JOHN KEATS, *Ode on a Grecian Urn*, in *THE ODES OF KEATS AND THEIR EARLIEST KNOWN MANUSCRIPTS* (Robert Gittings ed., 1970). This I would suggest also involves the realm of the spirit; for the necessary relationship among truth, beauty, and the good in a religious context, see WEIL, *supra* note 10; see also PETER WINCH, SIMONE WEIL: "THE JUST BALANCE" (1989) (a strong commentary on Weil's *Waiting for God*); Hans-Georg Gadamer, *Religious and Poetical Speaking*, in *MYTH, SYMBOL AND REALITY* 86 (Alan M. Olson ed., 1980). Marie Ashe's expression of resistance to Weil so echoes my own that I need to note it: to read Weil, I have to imagine that she could have done what she did in a solidarity of love that seems beyond my ken much of the time. It is not impossible that she was led to eat only what those she knew to be suffering in the Holocaust had as daily rations, even when it led to her own death, but my concern for the feminine temptation to "rush to crucifixion" makes me very wary.

65. WEISBERG, *supra* note 1, at 247.

Which authority does Weisberg claim is ultimate for White? The judge in one hearing? The next court? The Supreme Court? *Harvard Law Review*? The one who keeps White in "that" place in the academic hierarchy? White and only White? My vote for White's authority "figure" is for the kind of authority his colleague Joseph Vining alludes to in *The Authoritative and the Authoritarian*,⁶⁶ the one that is most likely to do what I take Weisberg to want most of all: lead us not to recommit the Holocaust. Vining's authority is "figurative" in the most important sense.⁶⁷ And where I see White voyaging is closer to the abyss that must be traversed to find the Other than where Weisberg dares. Weisberg's book is full of the cry to make visible the lines of ethical action which will assure that we do not replicate Vichy France—that cry is eloquent but, as he himself says in contrasting himself to Cardozo,⁶⁸ pessimistic.

In part, that is necessary pessimism, because even if we see the lines, nothing can guarantee that we will not cross them. Free will always leaves radical uncertainty. For the very reason of that uncertainty, that riskiness, here I call to White, for it is in Weisberg's cry that I find the note of conversation missing in the mesmerizing final chapters of *Justice As Translation*. I cannot begin to suggest how that cry might resound in White's text, but there is a gritty reality to Weisberg's tenacious desire for norms or assurances, and the answer to that call on us has, I think, come to its time.

My own nascent attempts to deal with such an incalculable historical reality arose from actual encounters with Jews who cared enough to say that they understood in their heads that Christians might genuinely love them as persons, but they did not believe it in their hearts. One such Jew was the rabbi of

66. JOSEPH VINING, *THE AUTHORITATIVE AND THE AUTHORITARIAN* (1986); see also Joseph Vining, *Law and Enchantment: The Place of Belief*, 86 MICH. L. REV. 577 (1987).

67. Vining suggests that law and theology are about the same project. VINING, *supra* note 66. I would like to think that his theological figure is more akin to the suffering servant than God The Father, but Vining, too, is elusive. Both White and Vining, in virtually ignoring actual female writers, are almost reminiscent of the strange misogyny (strange because Derrida also suggests a crypto-feminism in, of all writers, Nietzsche) of those who seem to write for the Eternal Feminine but avoid writing of or to real women. See Jacques Derrida, *Otobiographies*, in *THE EAR OF THE OTHER* (Christie McDonald trans., 1985). In addition see Christopher Norris's lucid interpretation in CHRISTOPHER NORRIS, *DERRIDA* 199-208 (1987).

68. WEISBERG, *supra* note 1, at 237.

whom I have written⁶⁹ who, when he gave me a plain wooden cross from Bethlehem the last time I saw him, made me promise not to analyze it. Illuminating the gift of it, which I cannot possibly analyze, was his sharing with me some of the hate mail that he would receive simply because he was a rabbi. I have no adequate way of conveying (or knowing) fully what that meant to me in terms of trust and love, but I believe I recognize some resonance, some same-melody of it, in genuine interfaith encounters. And the final two chapters of White's book begin to portray for me both the risk of the abyss so insistent in Derrida and the interfaith space that theologians like David Tracy of my tradition,⁷⁰ and David Novak of Weisberg's tradition,⁷¹ convey. No wonder White cannot give Weisberg the theory he demands; in Novak's tradition, we are not even to name The Name, HaShem, as if we could understand much less explain The Name.

* * *

In one strand of Weisberg's tradition, it is the very spaces between the lines and letters that allow the new to become visible within the text. The filling of those spaces⁷² is midrash, the textual commentary that completes the name of God, in which the scriptures and their revisioning together will finally become one uninterrupted word. Thus to dare comment, to word walk into the unknown, is to contribute to the completion of creation and to *tikkun olam*, the healing of the world. Weisberg asks in essence, what will guarantee that such moves into the indefinable will be ethical? Although I take White to affirm something not unlike my own trust of mystery when he says "one is always at the edge of what can be done; . . . beyond it is something unknown and if only for that reason wonderful,"⁷³ Weisberg seems to miss the clues in this mystery story. They are like the purloined letter, in plain sight and visible to those who have eyes to see. They are at once ordinary and hidden. One foundational telltale of their presence, Weisberg mentions but does not seem

69. Emily Fowler Hartigan, *The Power of Language Beyond Words: Law as Invitation*, 26 HARV. C.R.-C.L. L. REV. 67 (1991); Emily Fowler Hartigan, *Parabolic Jokes and the Unknown Law*, 20 CAP. U. L. REV. 73 (1991).

70. See DAVID TRACY, *DIALOGUE WITH THE OTHER: THE INTER-RELIGIOUS DIALOGUE* (1990).

71. See DAVID NOVAK, *JEWISH-CHRISTIAN DIALOGUE: A JEWISH JUSTIFICATION* (1989).

72. Never leaving the text saturated, however—space is always in abundance.

73. WHITE, *supra* note 2, at 253.

yet to trust—beauty. What makes a poem true in the sense that he touches on in his admiration of Cardozo, is its integral beauty.

The cost of such beauty is life given freely in trust. That incalculable equation of beauty and trust is seen in *The Book of Job*,⁷⁴ as Stephen Mitchell translates and introduces it, and in the affirmation of life that Jewish women are making now more than ever, finally in letters and about law.⁷⁵ The reality that life is conversation is nowhere more evident than in the Christian attendance on the Jewish announcement of new life, an announcement I hear in both Jewish feminism and the renewal of Jewish mysticism.⁷⁶ (This fidelity has been there all along, quietly in what Jewish law expert David Bleich, Weisberg's colleague at Cardozo, calls the "nuts and bolts" of *halacha*,⁷⁷ in those strands of Judaism that have not ever taken the death of God so literally as have some of us.) There is no shortcut through the night that a true journeying-with requires, but the millennial truth of Job speaks of a profundity of the human condition that makes the physical, emotional, and spiritual terror of the Holocaust all too available to every person alive. Once, I would not have presumed to call to any Jew to affirm that the Holocaust be risked, but it is the very fidelity of Jews who have taught me, which allows this call to arise in community. Thus, because of the dispensation in which Jews *have* given permission for the Easter Alleluia⁷⁸ we can all celebrate what Stephen Mitchell draws from Job's story.

For Mitchell, Job's narrative becomes a poem, and a radically beautiful one. He tells a story, which his first sentence identifies as containing "[o]ne of the milder paradoxes that shape this greatest Jewish work of art . . . [in] that its hero is a Gen-

74. See Stephen Mitchell, *Introduction to THE BOOK OF JOB*, *supra* note 39.

75. See generally VANESSA L. OCHS, WORDS ON FIRE: ONE WOMAN'S JOURNEY INTO THE SACRED (1990); JUDITH PLASKOW, STANDING AGAIN AT SINAI: JUDAISM FROM A FEMINIST PERSPECTIVE (1990).

76. See *supra* note 75; see also HAROLD BLOOM, KABBALAH AND CRITICISM (1983); LAWRENCE KUSHNER, GOD WAS IN THIS PLACE AND I, I DID NOT KNOW (1991); GERSHON G. SCHOLEM, MAJOR TRENDS IN JEWISH MYSTICISM (1946); YOUR WORD IS FIRE (Arthur Green & Barry W. Holtz eds. & trans., 1977).

77. Conversation with David Bleich, Herbert & Forence Tenzer Professor of Jewish Law & Ethics, Benjamin N. Cardozo School of Law, Yeshiva University.

78. See NICHOLAS LASH, EASTER IN ORDINARY: REFLECTIONS ON HUMAN EXPERIENCE AND THE KNOWLEDGE OF GOD 211 (1988); Hartigan, *The Power of Language Beyond Words: Law as Invitation*, *supra* note 69, at 105-12; see also CAROL OCHS, THE NOAH PARADOX: TIME AS BURDEN, TIME AS BLESSING (1991).

tile."⁷⁹ It is Job's innocence that makes the story of urgent spiritual significance in this post-Holocaust age, Mitchell begins. Yet the Job he portrays is not the patient Job of the Greek scripture but a ferocious, mouthy, raging Job, who will not give up his demand for an answer to why he must suffer without reason.

My flesh blackens and peels;
all my bones are on fire.
And my harp is tuned to mourning,
my flute to the sound of tears.⁸⁰

Job calls God to account:

But what good has virtue done me?
How has God rewarded me?
Isn't disgrace for sinners
and misery for the wicked?
Can't he tell right from wrong
or keep his accounts in order?⁸¹

The answer comes from the Unnamable, and it is an answer of images "so intense that, as Job later acknowledges, he doesn't hear but *sees* the Voice."⁸² Mitchell tells us that Job's final words of outrage come to not submission but surrender, because the answer is an encounter with God's Voice imaging the world in a way that transforms Job.⁸³ The movement through Job is one from talk of justification to a new experience that remains awe-filling, mysterious, ironic—and brings names to Job's daughters. The movement, Mitchell says, is "*from righteousness to beauty*."⁸⁴

What sort of cry of outrage would bring such a meeting with the Unnamable? It is the cry of innocence suffering. At some point, that cry must be both our own and on behalf of the Other. What comes to mind for me is Howard Lesnick's dialogue between (standard) Legal Education and a Critic (a version of Lesnick's own voice) in facing the chemical disaster at the Union Carbide plant in Bhopal, India in 1984. The Critic finds the detached, rational, utility-calculating face of justice that Legal Education paints, "an unbearingly repellent carica-

79. Mitchell, *supra* note 74, at vii.

80. THE BOOK OF JOB, *supra* note 39, at 73.

81. *Id.*

82. Mitchell, *supra* note 74, at xx.

83. *Id.* at xxvii; see THE BOOK OF JOB, *supra* note 39, at 91.

84. Mitchell, *supra* note 74, at xxx (emphasis added).

ture.”⁸⁵ He states *his* reactions to the horror:

My first reaction is to *cry*. . . . I imagine myself carrying my two-year-old daughter, stumbling to find someone safe and expert enough to treat her, or hurrying to deliver her body to an improvised communal pyre before she becomes a source, not of pleasure and pride, but of cholera. She is beautiful, precious, and innocent⁸⁶

His second reaction is to *pray*. The wonderfully unpredictable prayer of this Jew with strong Quaker tendencies is this:

Holy Mary, Mother of God
Pray for us now
And at the hour of our death.
Amen.⁸⁷

Third, he wants to *scream*; fourth, he wants to *do something* — and, fifth, he wants to *despair*.⁸⁸ This is an irresistible testament of compassion, touching all the strands of Job’s story (except perhaps Lesnick’s direct address to God of his own innocence).

In the wake of a tangibly personal and passionate response (that two-year-old is a real person in Lesnick’s life), Lesnick chides Legal Education for wanting “an answer” to the question of the place of human responses in legal thought. “The finding is in the search, in a continually deepening unfolding of understanding.”⁸⁹ The alternative to this search is the counsel of cosmic despair, which Lesnick refuses. Key to his refusal is a level of reflection that he has elsewhere called “radical”—yet his use of the term is not what the reader might expect.⁹⁰ Lesnick chooses, to sound out his commitment as political actor, the realm not of “secular manifestations of a radical perspective”⁹¹ but rather the realm of the spiritual—because he finds religious thought “more often . . . committed to combining an uncompromising sense of injustice with a refusal to let compassion be submerged by anger.”⁹² The resilience of compassion is the

85. Howard Lesnick, *Legal Education’s Concern with Justice: A Conversation with a Critic*, 35 J. LEGAL EDUC. 414, 415 (1985).

86. *Id.* at 416.

87. *Id.*

88. *Id.* at 416-17.

89. *Id.* at 419.

90. Howard Lesnick, *The Wellsprings of Legal Responses to Inequality: A Perspective on Perspectives*, 1991 DUKE L.J. 413, 431-39. A number of my Jurisprudence students found themselves muttering “but I *can’t* be a radical; they throw bombs and stuff” after identifying with his rendition of political stances.

91. *Id.* at 450.

92. *Id.*

hallmark of the spirit, and that movement *beyond* rage is the way in which the Voice can become palpable reality for Job.

Within White's writing, there are often times which touch the kind of pain that enrages—even Weisberg cites the sensitivity of White's impassioned analysis of *Dred Scott*, which Weisberg aspires to parallel in his Vichy commentary. But after reading Lesnick's imagined response to Bhopal, or Patricia Williams's narrative of her sojourns as a black woman in the world of law, or Marie Ashe's profoundly textured reproductive stories,⁹³ some of the direct narrative offerings from White ring faintly at best. Although there is no "objective" vantage from which to evaluate the stakes of White's attempts to create mutual translation with his son's Latin American "host" family, the account lacks the tragic moments on which true life translation must hinge. Even the reported times of "failure and frustration" are "cheerfully tolerated."⁹⁴ The exemplar belies the message of the surrounding text, which names a venture both promising and truly dangerous.⁹⁵ The terrain that law maps is lethal, literally and figuratively, as well as life-giving.

Weisberg's section on Vichy shows a face of death that Weisberg can claim to mirror in his person.⁹⁶ The visage of human brokenness is an unavoidable face of the law, of translation, of justice.⁹⁷ We cannot see that countenance directly in White's text; in contrast, Patricia Williams has created and recognized her "round brown face" in the glass of Bennetton's unyielding door, letting us see in that reflection the deathmask of racism. I made an assumption after I first met James Boyd White that I think his writing may justify: that his life has contained pain comparable (if pain were subject to comparison) to that of Patricia Williams.⁹⁸ The difference is that she makes hers

93. Marie Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on "Reproduction" and the Law*, 13 NOVA L. REV. 355 (1989); WILLIAMS, *supra* note 7.

94. WHITE, *supra* note 2, at 232-33.

95. See Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986).

96. This is the thesis of communal salvation in MICHAEL WYSCHOGROD, *THE BODY OF FAITH: JUDAISM AS CORPOREAL ELECTION* (1983); the possible implications are perhaps open and infinite.

97. Jacques Derrida, *The Laws of Reflection: Nelson Mandela, In Admiration, in FOR NELSON MANDELA* 11 (Jacques Derrida & Mustapha Tlili eds., Mary A. Cans & Isabelle Lorenz trans., 1987).

98. This may be in some ways a truism about any sensitive human being. Any further disclosure of its verity is up to White, to whom I have sent the drafts of this essay; he has assured me that I have not invaded his sense of privacy.

clearly manifest in her writing.⁹⁹ Similarly, Marie Ashe, Ruth Colker, and Andrew McThenia¹⁰⁰ write texts in which their own fear, pain, need—the vulnerable side of their texts' personal groundings—are to varying degrees visible along with their aspirations and joys. That fuller disclosure springs from a remarkable courage, and like Job's self-revelation¹⁰¹ may be necessary to the full *import* of any attempt, in dialogue about law, at a resolution of death-against-life.

White in one sense moves constantly towards unsettling any final resolution, but eludes fuller opening to a story or dialogue that might make his gestures towards the unknown more trustworthy for the legal reader. However, the lack does not make his pointing to mystery coercive—as Weisberg¹⁰² and Mark Tushnet¹⁰³ seem to charge—except to the extent that there is something “compelling” about the Good. This sense of the force of the word, of a poem, unlike the coercion with which Weisberg labels White, is suggested by the literary scholar Harold Bloom. In his book *Kabbalah And Criticism*,¹⁰⁴ Bloom portrays the effect of “strong poetry” on the reader: the response evoked “insist[s] upon itself . . . it and the text are one.”¹⁰⁵ This intensely personal response comes from the true power of the written words.

The yielding to the Word is the movement of surrender Mitchell has attributed to Job, a surrender that opens to the Unnamable's overwhelming presence. “It is not enough for him to hope or believe or know that there is absolute justice in the universe: he must taste and see it.”¹⁰⁶ Mitchell's revivifying turn on the standard translations of the final response to the

99. Kathryn Abrams calls such disclosure “first person agony narratives.” Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 1021 (1991).

100. See Ashe, *supra* note 93; Ruth Colker, *The Female Body and the Law: On Truth and Lies*, 99 YALE L.J. 1159 (1990); Ruth Colker, *Marriage*, 3 YALE J.L. & FEMINISM 321 (1991); Andrew W. McThenia Jr., *Telling a Story About Storytelling*, 40 J. LEGAL EDUC. 67 (1990).

101. Which opens most fundamentally, contrary to his friends' counsel, to his *innocence*—a turn that makes his story a parable of the Promise. THE BOOK OF JOB, *supra* note 39, at 8.

102. WEISBERG, *supra* note 1, at 247.

103. Tushnet, *supra* note 56.

104. See BLOOM, *supra* note 77.

105. This construction of Bloom comes from KUSHNER, *supra* note 77. After reading Bloom myself, I decided to retain Kushner's misreading of Bloom, because it seems poetic justice.

106. Mitchell, *supra* note 74, at xxvii.

Unnamable by Job, is that Job was "comforted" to be dust.¹⁰⁷ That dust is the warm, soft stuff of human habitation in the world, a world the Unnamable has just made indelibly present as gift. It is also the ordinariness of the world after the suffering of all loss—in its new incarnation, the human is both humbled and exalted. Risking such new life is an affirmation that requires risking "once again." The resistance to that, the "never again," is beyond our ken. In *Cinders*, Jacques Derrida writes of the all-burning, the Holocaust, and the resistance to turning anew: "There is rebellion against the Phoenix and also the affirmation of the fire without place or mourning."¹⁰⁸ Finally, now and yet as it always has been and will be, he confesses that "the innumerable lurks beneath the cinder. Incubation of the fire lurking beneath the dust."¹⁰⁹

As Denise Levertov suggests, *Hunting the Phoenix* goes beyond texts in the simple sense:

Leaf through discolored manuscripts,
make sure no words
lie thirsting, bleeding,
waiting for rescue. No:
old loves half-
articulated, moments forced
out of the stream of perception
to play 'statue',
and never released—
they had no blood to shed.
You must seek
the ashy nest itself
if you hope to find
charred feathers, smouldering flightbones,
and a twist of singing flame
rekindling.¹¹⁰

If White wants Weisberg and his people to risk new life with him in a community based on shared talk, then he will perhaps have to consider disclosing more of his experience of the rending of life's wholeness as it has touched him directly, or his encounter with Weisberg's "difference." If Weisberg wants White to be more forthcoming, somehow more "honest," he will have to consider perhaps writing with more fidelity to his prede-

107. *Id.* at xxviii.

108. JACQUES DERRIDA, *CINDERS* 59 (Ned Lukacher ed. & trans., 1991).

109. *Id.*

110. DENISE LEVERTOV, *BREATHING THE WATER* 4 (1984).

cessors and to the chance of beauty. To read White's texts is to be called toward life—even Tushnet names one of the final two chapters of *Justice as Translation* as “extremely striking”¹¹¹—because they are so often simply beautiful. But Weisberg reminds us of the exacting standard that history makes unavoidable—the beauty is terrible indeed. White has written: “To tell a story that ends in total failure is simply not endurable.”¹¹² Weisberg does not want, it seems, to risk that the Holocaust is replicable or beyond redemption by a learned ethic. If White is to write with sufficient tensile strength to draw even Weisberg into his story, he may have to risk telling the reader what an unendurable story might sound like to him, or has sounded like in his life.

In my tradition, that story is what the disciples of Jesus experienced: to have recognized God's love in the world, and to see it, from their perspectives, finally defeated.¹¹³ The resurrection came as a truly unbelievable story—the women conveyed it in confusion and the men refused it repeatedly. Yet the story is in a sense one any person may relate once she accepts that only by dying can we live anew. It is in Hebrew scripture the story of the suffering servant. The translator of the Yawehist strand of Hebrew scripture for Harold Bloom's *The Book of J*, David Rosenberg, makes a stunning translation of the Isaiah passages of the suffering servant.¹¹⁴ In *A Poet's Bible*, he breaks voice only once that I can detect: as he translates contemporary images of the suffering Jews in the Holocaust directly into Isaiah, then shifts to first person, turning the story to the tradition of the “guilty,” to Christianity:

my own people were blind
but his eyes were true
suffering the world for them.¹¹⁵

The victim of the Holocaust and the story of the figure who supposedly “dominated” the culture of the perpetrators for two millennia, move into one another. This is the image in Marc Chagall's “White Crucifixion,” of Jeshu on the cross wrapped in a prayer shawl, surrounded by images of modern persecution of

111. Tushnet, *supra* note 56, at 105.

112. WHITE, *supra* note 14, at 171.

113. See SEBASTIAN MOORE, LET THIS MIND BE IN YOU: THE QUEST FOR IDENTITY THROUGH OEDIPUS TO CHRIST (1985) (on the experience of the disciples).

114. THE BOOK OF J (Harold Bloom ed., David Rosenberg trans., 1988).

115. DAVID ROSENBERG, A POET'S BIBLE 286 (1991).

Jews. This is the turn to the terrible beauty of the truly human children of God, the beauty sufficient to move God the Father (and the Mother) to let the children go free, free to hurt and be hurt, free to love and trust. It would be truly intolerable if we could not risk the freedom to learn to trust one another and thus to foster the "interactive life" and the "creation of something new" that White so values.¹¹⁶ Never to risk would be final defeat, and unspeakably ugly.

Yet the resistances to this risk must be fully lived. Weisberg wants ethical norms, or some other ground of trust, from White. And Levinson and I hope for something more conversational, more mutual, from White. Levinson calls White's work monologue.¹¹⁷ That charge touches my sense of the paternal in White's text. Even Lesnick falls into the distancing mode that White shares—the pain they report is that of a father. Part of the suffering servant is his willingness to suffer on behalf of others, but an integral part is the *experience* of suffering, of tasting personal pain, abandonment and even despair. White touches this when he talks of the translator as living on the margins,¹¹⁸ and suggests the tensions so created, but he shows neither the pain nor the recognition that perhaps we are all translators at the margin and are all incalculably different. He also reveals in the stance of his translator the risk to the very "multivocity" he advocates: the translator is one "who wishes to connect two worlds, two ways of being and seeing, in his own mind, in his own perceptions and feelings."¹¹⁹ The translator "does all the voices" in his voice.¹²⁰

White's later recognition in *Justice as Translation* both that the other is always "imperfectly knowable," and that texts will be inadequate in "the representation of another,"¹²¹ is not sufficient for me as a woman, to relieve my sense of being potentially (unconsciously?) subsumed into *his* sense of the human, so long as those of my voice are absent from his texts. How am I to trust that he recognizes there are "different" human voices that

116. WHITE, *supra* note 2, at 257-62.

117. Levinson, *supra* note 17, at 1875-76.

118. WHITE, *supra* note 2, at 231.

119. *Id.*

120. Yet he names an aspect implicit in this move: "It is in fact the radical intellectual vice of our day to insist that everything be translated into one's own terms." *Id.* at 259.

121. *Id.* at 258.

he will never fully understand (as I will never fully understand his) and that is not a tragedy but an invitation?

In the absence, in White's text, of women as conversation partners, contemporary text writers, or concrete subjects, my resistance to his translating me or to his addressing me as reader in the attempt at open texture that Chapter Eleven illustrates wonderfully, might be softened if I saw a greater openness in his writing. His text is guarded, and I as reader cannot open as fully to it as I would had he told me his story as Marie Ashe or Andrew McThenia have, or turned his brilliant reading toward texts of "difference" that he can engage but never fully comprehend. Katherine Anne Porter's *Noon Wine*,¹²² a rare, perhaps lone contemporary feminine story in his lexicon, is seen only through the male characters. White's talk of the miracle of the creativity of the word between people is always one level of abstraction too removed: I see only a doubly-reflected, occasional feminine or "different" figure. How can I as a woman reader know that he even suspects that he cannot speak for me? Those of other "differences" might ask their own versions of my question.¹²³

My concern with White's confirmation of a mode of discourse challenged by postmoderns—one in which he does not acknowledge that his own voice is one among many, yet by the momentum of intellectual history continues to be seen as "pretending" to the throne of "humanism"—has two aspects. One is the impaired value of his text because of its paradoxically self-circumscribed, unselfconscious limitation to the male dance;¹²⁴ the other relates to the wasteful side of attacks on the patriarchy. To follow White's increasingly angry critics in either discounting his writing or accusing him of being unethical, would be a version of the flaw of theories of social determinism that all social commentary risks. It would reduce White to his role in the academic hierarchy, and deny his personhood by refusing to listen for his own story. Such reduction threatens all who exercise power. In public power terms, the refutation of such reduction-

122. KATHERINE ANNE PORTER, *NOON WINE* (1937).

123. This commentary applies to Weisberg. He says nice things about how gentle and influential Robin West is in footnotes, see WEISBERG, *supra* note 1, at 268 n.26, but he gives her even less serious textual space than White did at the AALS Jurisprudence workshop, where White cited her activity as parallel to his own. Weisberg has, however, made room for TONI MORRISON, *THE BLUEST EYE* (1990) in his course. See, e.g., WEISBERG, *supra* note 1, at 34.

124. Always with the delightful anomaly of Jane Austen.

ism lies in the conundrum of Marxism: if each person's consciousness is in part determined by social relations (economic for Marx, linguistic for White) then, to that extent, not only are the oppressed innocent, but so are the powerful.

At this point I venture a step into the abyss. There is an eerie emerging symmetry to this risk of power. In the public realm, men have patriarchal power. In the private, women have what has been called "the power behind the throne." Male colleagues have repeatedly answered tough questions about their carelessness of women in the academy with this defense: women really run things anyway. Perhaps men need to articulate their equivalents of women's fears of domination and abuse that Robin West and her cohorts voice. Women have no public selves in West's summary of the argument.¹²⁵ The correlative stories would tell of men's fears and narratives of domination and abuse in the realm in which *they* fear invisibility: the "private" and the moral. The value of such stories would be, for me, the aspiration to bring to consciousness the things that women do that men experience much (but not the same) as women have experienced violation and domination. These stories might help us not to do to men an inverse version of what they have done to us (with our participation) *and* a new, more complex public-private polarity might allow women to "go public" and men to "go private," more creatively.

One alternative to such a redemption of human powers is the hatred of law at the core of Chesterton's story of anarchism and paradox in *The Man Who Was Thursday*.¹²⁶ In the beginning, Syme a police officer who calls himself a poet of the law, meets the mysterious, charismatic anarchist Gregory (and his lovely sister Rosamund). Through an unpredictably postmodern set of inversion-after-inversions, the secret organization of anarchists turns out to be populated by seven day-persons who have lives in the law by day, and infiltrate—and are genuinely caught up in—the anarchist conspiracy by night. As the story moves to denouement, each of the weekdays (Syme is Thursday) reveals aspects of human character, and all focus on the leader, Sunday. Chesterton's allegory is in the end religious, as Sunday is God's peace, the Christian Sabbath ordained and sustained by law. He is, however, as tantalizingly inexplicable as

125. See, e.g., Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

126. CHESTERTON, *supra* note 12.

a God in a world where innocence suffers must be—there is no resolution of theodicy here. Yet the story does two things key to my discussion of conversation. First, it suggests why suffering is important to a true story, and, second, it illustrates why the suffering here as explicitly primary, may be masculine theology.

The need to give some, though never fully satisfactory, account of suffering and violence in law, comes to crisis in the one remaining unconverted anarchist—Gregory, who has no day. Gregory is a chaotic figure, whose fate the book does not reveal. His resistance to Sunday is finally met—after he accuses Sunday of being in power, and vows resistance to all law because *those in power cause pain but have not suffered*.¹²⁷ I hear echoes of this accusation in Weisberg's and Mann's accounts of White; they experience White as impervious, oblivious, domineering. Those who know they have been dominated find it hard to call to mind that everyone has a story, and every story has pain. Robert Cover says that the power-wielder in the law is not in the same universe of discourse as the one against whom the force of law is used.¹²⁸ He is right, but that is not all the story. It is also true that we are all subject to the law.

Sunday's answer to Gregory is the unimaginable power of suffering when it is done in love. In an image tapping the Christian mystery of the suffering of the Father in the Son, Sunday looms into awe-inspiring vastness and depth, departing with "have you ever suffered?"¹²⁹

Yet Chesterton's final question carries a tone of rhetorical accusation—when the true wonder is that the suffering servant *does it for love*. This is the second contribution of Chesterton's story to mine: he illustrates the masculine primacy of suffering. Perhaps that is what the spiritual must be at this time in history for the masculine—it must focus on letting go, on giving up power. As many women theologians have suggested, women need a different spirituality—one of claiming and naming, of active manifestation of self. The feminine must become publicly visible.

Chesterton does the predictable with his just visible feminine figure: The book ends with Syme catching sight of Greg-

127. CHESTERTON, *supra* note 12, at 189-91.

128. See Cover, *supra* note 95.

129. CHESTERTON, *supra* note 12, at 191. We are not told if this answer overcomes Gregory's resistance—the reality of human freedom leaves it open to his acceptance or rejection.

ory's sister. The eternal feminine is spotted. Note that the entire story, between the first few pages and the very last, takes place without her acknowledged presence. The men go on their quest, dancing with men before a masculine God, and return finally able to see that the woman exists, but no more.

I would suggest that it is here that the conversation starts. Men have a story of sonship. Women need both to tell a story of daughtership, which I find in Mary of Bethany, but that is another story, and somehow to allow men the space in the "private," the personal, which the power of feminine emotion has circumscribed. That is, I propose that the world Jean Bethke Elshtain calls *Public Man, Private Woman*¹³⁰ was one in which men too, have suffered domination, but have not told us how. Just as patriarchs may be innocent for their unconscious deeds, but may move to take responsibility and turn toward mutuality, so women may be innocent of maternal moralistic domination, and can perhaps only move toward mutuality if we are told the effects of what we have unintentionally done. Women must hear men's experiences of pain to understand their own power—so we may be more careful of it, open it to the Other, share in it in conscious love.

The need for men's personal narratives is part of why Weisberg's story of pain is valuable in its relentlessness, although it would be more fruitful if it did not come with accusations of moral inauthenticity. In part, it is because of this need, and because I do not believe White could write such eloquent texts that strain at the boundaries were he not living the costly life of aspiring to careful consciousness and to justice, that I call him to conversation. The final account of law in Chesterton is of the power of the suffering of life in love, in which even the creator participates. It is the power of powerlessness, and it allows true conversation among equals.

What Chesterton suggests through his voiceless feminine figure, I propose explicitly: The relationship to the goodness and the beauty of law and justice requires pain but means love.¹³¹ And the Other is necessary to love.

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130. JEAN B. ELSHTAIN, *PUBLIC MAN, PRIVATE WOMAN* (1981).

131. This learns from Julian of Norwich's "showing" that Jesus's meaning was love. 2 *A BOOK OF SHOWINGS TO THE ANCHORESS JULIAN OF NORWICH* 733 (Edmund Colledge & James Walsh eds., 1978). Julian was actually the masculine pseudonym for Juliana.

The use of the dated canon restricts both Weisberg and White, but given White's valuation of newness and his greater profundity, it is most poignant in his case. No longer limited to addressing the Ideal Reader, the learned, Western, Christian white male author now has actual Others, capable of their own voices, with whom to do not even the striking theoretical dance White envisions, but more—the real dance. This dance-between is an invitation to truly radical re-vision, and not even James Boyd White can (or need) do it alone. Such choreographies do not require abandonment of the canon, but rather invite us to untold abundance in new perspectives on both old and new. One splendid version of the presence of the Other in a male text is the series of portraits of legal actors that Milner Ball illuminates in *The Word and the Law*.¹³² He spends time and conversation with a series of people who work with the law. The "objects" of his narration are women, Jews, people of color, whom he conveys to the reader through a rich tension between his appreciation of their true differences, and his love and respect for each of these Others. Those of obvious marginality¹³³ appear in Ball's texts as beloved subjects from time to time because he so often uses their own words.

In almost painful contrast, we do not hear of such meeting in White's text¹³⁴; there seems instead an excruciating tension between desired conversation and actual monologue.

Imagine for the moment that I am speaking to you not in writing but face-to-face, and that, in an effort to make a new start, I say: "I want to talk to you next about justice and translation."

So I want to begin. But what kind of sentence is that? It makes "justice" and "translation" nouns, or nomens, as if there were entities in the world that could be named—pointed out and referred to—by these words, which of course there are not. . . . "There is the world of talk, and the world beyond talk," I seem to say; the relation between them is that the first is "about" the other. But translation is a form of talk. . . .

And I say "I" and "you" with great assurance, as though

132. MILNER BALL, *THE WORD AND THE LAW* (forthcoming 1993).

133. As opposed to the hidden vulnerabilities of a white male as suffering subject at (White) or near (Ball, on the ascent) the top of the academic hierarchy.

134. In Weisberg's we hear of academic jousting. See, e.g., WEISBERG, *supra* note 1, at 188-250. I find it hard to read Posner, Weisberg's most frequent interlocutor, as Levinson does, that is, as involved in the genuine risks of human conversation. See Sanford Levinson, *Strolling down the Path of the Law (and Toward Critical Legal Studies?): The Jurisprudence of Richard Posner*, 91 COLUM. L. REV. 1221 (1991).

there were one "me," who "wants to talk," and one "you," who is expected to—to do what? "listen?" "receive?" "understand?" Or simply do nothing, not to be there in the discourse at all? (Does my talking imply no correlative activity on your part?)

. . . "Justice" and "translation" are not labels but words, and they must receive much of their meaning from the text I make in talking to you, and in your response to it. They are references to the past and a promise for the future.¹³⁵

The quality of White's text is, as Levinson suggests, clearly passionate, sensitive, profound, subtle, wonderfully reflective. But the very goodness of its particularity *and* partiality, necessary in some measure because the author is not the Author but only one person, is muffled in the offering of White's inner processes that leaves key dimensions and figures in his internal conversation veiled. Nor has the larger "text" expanded beyond the reader's one response—White never answers Levinson.

The relation of the hidden and the open is inherent in the mystery of these things, however, and the beauty of White's process is still unmistakable. I am reminded of Allan Hutchinson's critique of Martha Minow's allegedly "relational" approach, when she never moves out of the univocal authority of the commentator.¹³⁶ Hutchinson vouches for her personal presence as attractive, though we never apprehend it directly in her text.¹³⁷ I found my first response to *Justice as Translation*, read after that first meeting with White, was sadness that the reader did not get to encounter the genuine, remarkable person whom I had met. If that is the source of Weisberg's "frustration," then Weisberg is in a way right: there is more to James Boyd White than the reader is shown. But this is *not* dishonesty. It is a face of human limitation as constitutive of human wholeness in the world. Resistance to deeper choice for disclosure, for fuller encounter with the reader, for conversation with others or space in the text for the Other's voice, is, with Weisberg's further resistance to trusting beauty rather than righteousness, to be honored. The risks of conversation, disclosure, encounter, dif-

135. WHITE, *supra* note 2, at 229-30.

136. Allan C. Hutchinson, *Inessentially Speaking (Is There Politics After Postmodernism?)*, 89 MICH. L. REV. 1549, 1556 (1991).

137. *Id.* Perhaps the reader may glimpse her presence in Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665 (1990).

ference, and *being* translated (a movement I apprehend as finally one of the Spirit among us, with the human authors) are invitations; response is up to the author, each to accept, if appropriate, in the time of his and her own way—even should it come unexpectedly.¹³⁸

138. See JOHN SHEA, *THE HOUR OF THE UNEXPECTED* (1977).