A Rhetoric of Law

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These are times of ferment in legal academia. Standard doctrinal analysis, which all but occupied the field a decade ago, is now retreating before the onslaught of all sorts of fancy new techniques. Strange-sounding jargon imported from other disciplines—the Frankfurt School of sociology, existentialism and phenomenology, neoclassical economics and capital-markets theory—is appearing in the law journals. New ideas are spreading across the empire of doctrinal analysis.

Partly exemplifying this trend, and partly standing in contrast to it, is James Boyd White’s new book, When Words Lose Their Meaning.1 Professor White has written a series of interrelated essays, each one focusing on a different text: the Iliad, the Gorgias, A Tale of a Tub, Emma, Reflections on The Revolution in France, and other works. Professor White’s project is ambitious. His goals extend beyond analyzing a variety of writings differing widely in cultural context and rhetorical form. He hopes, as well, to elaborate a general way of reading and understanding texts. More broadly still, he wishes to demonstrate the workings of language in human societies—“how we define ourselves and others in what we say, how we create community and reconstitute our culture in

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1 JAMES BOYD WHITE, WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY (1984) [hereinafter cited without cross-reference as WHITE].
All this hardly seems related to law as a separate discipline and area of study. But Professor White asserts that, despite appearances, his book “is really about law from beginning to end.” He wants to set forth a notion of law that differs substantially from the conceptions that currently prevail in academic circles. Law, according to Professor White, is “an art essentially literary and rhetorical in nature, a way of establishing meaning and constituting community in language.” The author challenges us, as lawyers, to reconsider our comfortable assumptions about what we do and how we do it, contending that it is an essential part of reading to “ask[] what these texts have to say to us, situated as we are in our world as it actually is.” In turn, such active reading of texts in some sense “remake[s] ourselves and our world.”

These are large claims. They are important in their own right. And they raise interesting questions about method in legal scholarship. If *When Words Lose Their Meaning* falls short of its claims and its promise in some respects, it remains a noteworthy effort. Those who attempt the book will find their efforts rewarded by a prose style of considerable grace and charm, by large and stimulating ideas, and by thoughtful discussions of texts, familiar and unfamiliar, chosen with impeccable taste from the great works of Western culture.

This review first outlines the analytic and dynamic elements of Professor White’s model of language. The second part assesses the claim that literary theory can tell us something important about law and suggests that the book may represent, in part, a return to an earlier style of analysis in which differences between separate disciplines are not clearly marked. The review concludes by sketching one potentially fruitful line of investigation suggested by the book.

I. THE MODEL

Professor White’s discussions of individual texts are embedded in a theory of language and of human interaction through language. Like any theory, this one has its stock of words used in unfamiliar or technical senses. Key concepts in Professor White’s

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2 White at x.
3 Id. at xi.
4 Id.
5 Id. at xii.
6 Id.
picture of language are "language," "text," "community," and "character." There is a dynamic element in the theory as well: that of linguistic change—the phenomenon of words "losing their meaning."

"Language," in this model, is a concept of the greatest breadth. It encompasses not only words, written or spoken, but also "the expectations that govern the way words may be used." Language includes all forms of human behavior with words, including "tone of voice, social character, ironic implication, and manners generally." Indeed, Professor White suggests that the concept includes all varieties of behavior, whether or not words are used, that serve to communicate meaning within a society. Language in this sense, as the author acknowledges, is roughly synonymous with the idea of culture.

A special form of language is the activity of reasoning. Reasoning, in Professor White's usage, is not limited to logical deduction from premises to conclusions and empirical induction from evidence to propositions. Those are merely special cases of the ways people use language to appeal, persuade, convince, cajole, or otherwise cause others to accept their point of view. Styles of reasoning are therefore culturally determined; arguments that might be accepted as unanswerable in one cultural setting could be inadmissible in another.

In Professor White's picture of language as culture, our language provides us with resources and also imposes limits. The resources of a language are the possibilities of meaningful action it allows. A language's limits define the contours of a culture just as the resources of a language supply its raw materials. Usually, the limits of a language are not felt as limitations by its speakers because almost any situation that can arise within a language can be resolved with the resources of that language. But in unusual circumstances language may break down; a person may find no resources ready to hand at deal with the situation. Words "lose their meaning."

The relationship between an individual speaker and his or her language is deeply reciprocal. We are creatures of our culture and

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7 Id. at 20.
8 Id. at 21.
9 See id. at 20.
10 See id. at 12, 22.
11 See id. at 7-8.
12 See id. at 276-78.
our language. Our ways of conceptualizing the natural and social world, and our possibilities of behavior within the world, are in most respects given to us by our language. Who we are is largely determined in childhood by our education in language and by the accompanying process of socialization within the values and norms of a culture. On the other hand, a language has no existence apart from its speakers. Each of us "reconstitutes" our language by using it, and through speaking and writing we change it, usually in subtle and imperceptible increments, but sometimes all at once. Words are constantly "losing their meaning"; what appears to be a fixed and settled usage has no more permanency across linguistic time than does the shape of a river bed through geologic time. And as we change our language we are changed by it. The world of language is a "world of flux, where self and culture are in a process of continuous and reciprocal change."

Given Professor White's expansive idea of language, it is not surprising that his notion of a "text" is correspondingly broad. A text is the product of any kind of "acting with words." It need not be artistic or noteworthy: a text is a text whether it be a great work of philosophy, a morning newspaper, or a breakfast table conversation. What is necessary is that there be a "relationship" between speaker and listener, writer and reader. A text does not exist independently of its use in communication. It is "a reorganization of [the world's] resources of meaning tentatively achieved in a relation, newly constituted, between reader and writer."

The idea of a text is closely connected to two other key terms in Professor White's model: "character" and "community." Character here seems to have its ordinary usage, meaning an individual's moral constitution, a pattern of behavior or personality. What is significant about character, in Professor White's theory, is the way in which it is formed through the interaction of a person with texts. When we read a text, we respond to it by agreeing with some of its claims or values, disagreeing with others, being moved by certain events that occur within the text, remaining indifferent to others, and so on. We define ourselves through our relationship to the author and to the text. This relationship is itself reciprocal, the reflection, in a sense, of the broader relationship between a lan-

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12 See id. at 12.
14 Id. at 282.
16 Id. at 5.
18 Id. at 4.
17 See id. at 14-18.
guage user and his or her language. The reader understands the text in terms of his or her own character. But in the process of reading and interacting with the text, the reader is changed by it and, as a result of the change, comes to understand the text in a different light. As Professor White says of Burke's *Reflections on the Revolution in France*, the text helps the reader "become more fully what he actually is, as an individual and as a member of his culture."18

More important than character, however, is the idea of "community," of relationship between two or more people in a shared undertaking. There are communities within texts—relationships, for example, between characters in a novel who create texts within texts through their conversations. More broadly, there is the relationship between speaker and listener, writer and reader. The author's discussion of how this relationship is established and developed19 is illuminating and original.

The idea of a text as a relationship between writer and reader is a central concept of the book, one that radiates in different directions. It informs Professor White's idea that the "meaning" of a text resides, not solely in the text itself or solely within the reader, but "in the life of reading itself, to which both text and reader contribute."20 It underlies the book's explicit connection between texts and politics. According to Professor White, the relationship between author and reader that is realized in a text has many of the moral and political dimensions of any other human relationship.21 It explains Professor White's somewhat odd tendency to personify texts, by saying, for example, that they "teach" us how they should be read22 or that they are our "friends."23 Finally, it forms the basis for what may be the most controversial claim of the book: Professor White's assertion that in the relationship between writer and reader we can find some fixed point in the cultural heavens that allows us to judge, free of bias, the moral worth of a particular text and of a particular culture within which a text is composed.24 For Professor White, each of the texts he discusses

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18 Id. at 227.
19 See id. at 16-18.
20 Id. at 19. This theory of meaning is controversial. See Bersani, *Literature as Law*, N.Y. Times, Sept. 16, 1984, § 7 (Book Review), at 32 (criticizing White's theory of meaning and suggesting a more indeterminate approach).
21 See Wrte at 18.
22 Id. at ix.
23 Id. at 221, 282.
24 See id. at 13-14.
points, in a different way, to one central, culturally unconditioned value: that of friendship—"the recognition of others and the establishment of educative and reciprocal relations."\textsuperscript{25}

These ideas of language, text, character, and community form the conceptual backbone of the book. Most of the work, however, is taken up by detailed analyses of particular texts, analyses that, while undoubtedly informed by a theory of language, are capable of standing quite independently. The scope of the book thus ranges from ideas of great abstraction to highly particularized discussions of individual texts. Professor White, aware of these contrasts, suggests that the book be read on three levels:\textsuperscript{26} first, as explicating individual texts; second, as illustrating a "way of reading," of "attending and responding to a text and a situation, of acting and being in relation to language and to other people";\textsuperscript{27} and, third, as exploring "how we define ourselves and others in what we say, how we create community and reconstitute our culture in language."\textsuperscript{28}

Professor White does not say why he is especially interested in cases where words lose their meaning. We may surmise, however, that this phenomenon provides a particularly auspicious view of the dynamic processes of language use that form the subject of the book. Just as in physics certain normal processes are best investigated by subjecting matter to extreme conditions of temperature or stress, so in the study of language the ordinary activity of using words may best be analyzed by examining conditions so extreme that language itself breaks down.\textsuperscript{29}

II. LAW AS LITERATURE

Two things should by now be clear: first, that this book has little immediate relevance for the practicing lawyer; second, that it can benefit anyone, lawyer or not, who wants to deepen his appreciation of literature. What is not so clear is its value for a third class of readers—lawyers or legal academics interested in pondering the nature and sources of law. Does the book tell us something important about law, or about how to structure a just society?

\textsuperscript{25} Id. at 220.
\textsuperscript{26} See id. at x.
\textsuperscript{27} Id. at 19.
\textsuperscript{28} Id. at x.
\textsuperscript{29} See id. at 3. Professor White's paradigm case of words losing their meaning is the chaos of the Peloponnesian War, as recounted in Thucydides' History, when the traditional values of Greek society disintegrated under the stress of sustained warfare.
Professor White claims that it does provide important insights into these matters. But what do readings of texts, most of them nonlegal, have to do with law—even law broadly conceived? Professor White makes two distinct claims about the relevance of his work to legal studies. He asserts that his techniques of literary analysis can contribute to the understanding of legal texts. More broadly, he claims that even his work with nonlegal texts is fundamentally concerned with law. I will examine these claims in turn.

A. Law and Literature

In chapter nine of the book, Professor White applies his theory of literature to three famous texts in American legal culture: the Declaration of Independence, the Constitution, and Chief Justice Marshall's opinion in *McCulloch v. Maryland*. Professor White's analytical style is very different from the doctrinal approach typically used by legal scholars. For each text he asks "what kind of community and culture it seeks to establish and how it does so," and "what it can mean for an individual to participate as an actor in this legal culture." In discussing *McCulloch*, for example, Professor White does not ask traditional questions about the facts of the case, the scope of the legal rule, the distinction between holding and dictum, or the logical pathway from premises to conclusions. Instead, he considers the relationship that the opinion establishes between Chief Justice Marshall and his readers; the way in which Marshall frames the question as calling for judicial resolution; his invocation of the power of shared traditions and experience; his implicit claim to authority by virtue of membership in a learned profession; and his appeal to common usages in the community.

Similarly, in discussing the Declaration of Independence, Professor White traces with great skill how the "voice" or tone of the document changes from sentence to sentence, moving from the impersonal to the personal, from argument to action, from an ideal of equality to a union in a common identity. Thus, for example, the first sentence of the Declaration, in referring to the "[c]ourse of

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30 See id. at xi.
31 Id. at xi-xii.
32 See id.
33 17 U.S. (4 Wheat.) 316 (1819).
34 White at 231.
35 See id. at 250-63.
36 See id. at 231-40.
human events” and the “opinions of mankind,” is phrased in universal terms, located in neither space nor time. By the last sentence, in which the signers “mutually pledge to each other our Lives, our Fortunes and our sacred Honor,” the tone has changed to one of intense personal commitment and heroism.

Professor White’s discussions of these texts are fresh and insightful. Professor White’s enterprise is, in many respects, an attempt to apply literary theory to law. He is not alone in this endeavor; other practitioners of the technique are scattered among the law schools. There was a symposium on law and literature in the Texas Law Review not too long ago, and individual works have appeared elsewhere. There is, if not a movement, at least a stirring in the area.

The attempt to analyze legal problems with the tools of literary theory can usefully be understood in the context of current trends in legal scholarship. During the past decade the field of legal studies has been invaded from without (and attacked from within) by scholars armed with the intellectual weapons of other disciplines. For economists and economically oriented lawyers, the call to arms was Richard Posner’s Economic Analysis of Law. For the sociology of the Frankfurt School (and other European imports such as existentialism and phenomenology), the tocsin was the establishment of the Conference on Critical Legal Studies in 1977.

The Critical Legal Studies and Law and Economics movements

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37 See id. at 232.
38 See id. at 238-39.
39 Law and Literature, 60 Tex. L. Rev. 373 (1982). Professor White’s contribution to this symposium was a partial precursor of this book. See White, Law as Language: Reading Law and Reading Literature, 60 Tex. L. Rev. 415 (1982). For a criticism of Professor White, see Fish, Interpretation and the Pluralist Vision, 60 Tex. L. Rev. 495 (1982). For a discussion of how literary theory can be applied to questions of statutory interpretation, see Levinson, Law as Literature, 60 Tex. L. Rev. 373 (1982).
41 RICHARD POSNER, ECONOMIC ANALYSIS OF LAW (1972).
have steadily expanded in influence in the past few years.\footnote{The infusion of ideas from other fields into the study of law is not a new phenomenon. In the 1930's, for example, one branch of the American Legal Realist Movement attempted (without much success) to study the empirical effect of legal rules using methods akin to those of sociology. \textit{See, e.g.,} Hall, \textit{The Law of Arrest in Relation to Contemporary Social Problems}, 3 U. CHI. L. REV. 345 (1936). In the 1960's, there was some thought that psychoanalysis could provide important insights into legal rules. \textit{See, e.g.,} Schoenfeld, \textit{On the Relationship Between Law and Unconscious Symbolism}, 26 LA. L. REV. 56 (1965). The cross-disciplinary activity in the past 10 years, however, has been so much greater in degree as to constitute almost a difference in kind.}

Although they differ widely in methodology and philosophical orientation, these approaches—law and literature, law and economics, and critical legal studies—share the common attribute of being cross-disciplinary. That fact suggests that some insight into the value of law and literature generally, and Professor White's book in particular, can be gained from comparing and contrasting the approaches. I will look at three dimensions of comparison: (1) the theoretical framework applied; (2) the descriptive power of the approach; and (3) the usefulness of the approach in making normative judgments.

With respect to the underlying theoretical framework, there seems to be a substantial difference between law and literature, on the one hand, and law and economics and critical legal studies on the other. The theory underlying law and economics is widely understood and accepted. Economists of almost all persuasions agree upon its basic elements: upward-sloping supply and downward-sloping demand curves, revealed consumer preferences, risk aversion, self-interested behavior, indifference curves, and the rest. So dominant is the theory that the economic analysis of law can sometimes seem almost mechanical in application. By contrast, it would be an overstatement to say that the underlying theoretical framework of critical legal studies is well understood. Nevertheless, the practitioners of this art are at least united in their basic values and theoretical predispositions: their abhorrence of the capitalist system; their solicitude for workers, minorities, women, the disadvantaged; their tendency to conceptualize issues in terms of class struggle and the development of consciousness.\footnote{\textit{See generally} Unger, \textit{The Critical Legal Studies Movement}, 96 HARV. L. REV. 561 (1983).}

Law and literature lacks this kind of organized theoretical structure. Although areas of broad consensus exist in literary criticism, there is no single well-understood and widely accepted theory of literature. Some critics claim that the relevant meaning of a text
is the one consciously intended by the author; others that the author's unconscious intent is more important; still others that the author's intent, conscious or unconscious, is irrelevant and what matters is the reader's understanding. Critics disagree as to the relevance, if any, of the author's personal history and emotional makeup. Nor is there a unifying set of normative values. There are Marxist critics, feminist critics, Aristotelians, deconstructionists. All this suggests that law and literature is unlikely to become a unified intellectual movement. This prognosis does not itself negate the value of the enterprise; at the very least, a sensitivity to literary analysis may help lawyers and legal scholars better understand the task of legal interpretation. But it does raise serious questions about whether law and literature provides an adequate conceptual foundation to support a coherent body of scholarship.

A second point of contrast is found in the descriptive power of the approaches. Law and economics, at least in theory, concerns itself with the raw materials of social life, with prices bid and asked, actions efficient and inefficient, rents captured or lost. Critical legal studies also prides itself on its concern for social realities, for exploitation and revolution, oppression and freedom. To be sure, the approaches differ widely on the frameworks of their descriptions: the Wagner Act may be viewed by one as a power grab by organized labor, by another as a disguised tool of capitalist

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51 See, e.g., Critics and Criticism (R.S. Crane ed. 1952).
manipulation.54 But both movements conceive of themselves as empirical in orientation.

This focus on underlying social realities has several implications. Both movements, for example, are "destructive" in their treatment of legal texts. Texts are screens to be looked through in order to illuminate the underlying reality. Both movements are also concerned with the coercive nature of law. In their view, legal commands are important because they affect the way people behave in the world, and they affect behavior because they are backed by the coercive power of the state. Empirical descriptions of law should also have predictive power—that is, they should show that a given change in legal rules will cause changes in behavior within a range of probabilities. The predictive quality of empirical descriptions means that theories of this nature are (at least in theory) falsifiable.

Professor White does, to an extent, concern himself with underlying social realities. He is interested in legal argument, in the claims to authority that people can make and find accepted in their culture. His analysis of legal texts focuses on the rhetorical techniques used by the author of the text to persuade the reader to accept the proposition in question. In this respect, his approach does look through the text to a social reality—the underlying values and beliefs of a culture. Such values and beliefs are powerfully coercive, and to this extent Professor White addresses the coercive element of law. There is even a predictive element: given an analysis of particular texts, one can draw inferences about what kinds of arguments have claims to authority within a legal culture and predict whether a given argument made in the future will be successful or not.

Although there is this empirical element in Professor White's work, his primary focus, and the dominant orientation of law and literature generally, is quite different. Law and literature concerns itself mainly with texts viewed as objects of study in their own right. Texts are not screens to be looked through; they are the basic matter of the theory. Because the text is the object, the distinctive nature of law as the application of state coercion fades into the background. Texts, qua texts, are not coercive; and although they

54 See, e.g., Klare, The Quest for Industrial Democracy and the Struggle Against Racism: Perspectives From Labor Law and Civil Rights Law, 61 Or. L. Rev. 157, 166 (1982) ("[C]ollective bargaining law has in practice evolved a complex of legal and managerial arrangements that in many ways institutionalizes, co-options, and dissipates worker collective action.")
may be used to justify coercive actions, those actions themselves
do not fall easily within the ambit of literary theory. Nor does a
focus on texts lend itself readily to predictions about how changes
in texts will affect behavior. It is, accordingly, somewhat difficult to
see how law and literature, insofar as it focuses on texts, can yield
a theoretically useful set of testable propositions about the nature
of the underlying social reality.

A final point of comparison is the normative elements of the
approaches. Both law and economics and critical legal studies con-
tain evaluative and prescriptive elements as integral parts of the
theories. Again, the values against which legal rules are judged are
quite different. For law and economics, efficiency is the byword; for
critical legal studies, the stated values include equality, self-deter-
nination, and varying forms of state regulation of social arrange-
ments. The theories could hardly be more dramatically opposed in
their specific value prescriptions. What they share is that they lend
themselves readily to making normative judgments of legal rules.

Law and literature does not intrinsically include normative
judgments. One could imagine a purely descriptive theory of legal
texts that proposed no judgments about whether one text is "bet-
ter" than another, or whether the values expressed by one figure in
a text are superior to those exemplified by any other figure. Law
and literature can, however, incorporate many different possible
normative theories.

Professor White proposes a normative theory as an important
part of his approach to law and literature. He states the theory in
strong form. In the relationship between author and reader, he
says, we can find a culturally invariant set of criteria for judging
"our own political communities, their rulers and their policies,
from the family to the nation and beyond."\(^5\) The essential value
Professor White finds in the texts is quasi-Kantian: that we should
"recognize . . . the equal value of other people, and integrate . . .
the various aspects of self and experience into meaningful
wholes."\(^6\)

This claim—that in the textual relationship between reader
and writer we can discover some culturally transcendent, uncondi-
tioned moral compass—seems to me excessive, unfounded, even in-
coherent. It ignores the vast differences in the moral systems of
different cultures and different historical epochs. Why should we
assume that the heroic values of ancient Greece have anything to

\(^5\) White at 18.

\(^6\) Id.
do with eighteenth-century England or with nineteenth-century America? When practices that are perfectly acceptable in one culture are condemned in others—eating pork, sacrificing virgins, and paying interest, just for starters—why is there any reason to suppose that the values of equality and friendship, however great their appeal to the contemporary western mind, have any culturally transcendent reality? Moreover, Professor White is unclear as to whether these values are found in all texts or only in those he investigates. If the former, the argument is plainly absurd. No one would seriously argue, I suppose, that the relationship between the author and reader of Mein Kampf somehow establishes values of friendship and respect for humanity. If the latter—that the values are found in the texts Professor White investigates, but not in all texts—then the claim is open to the obvious objection that he has simply selected texts that fit his preconceived value preferences.

Taken as a whole, these factors suggest that law and literature does not have the broad theoretical promise of either law and economics or critical legal studies. It offers much by way of elucidating texts, analyzing styles of argument, and the like. Valuable works—and Professor White's book is certainly a worthy contribution—can be written in the area. But law and literature is unlikely to evolve into a coherent body of theoretical work that has a major impact on legal studies in general.

B. A Rhetoric of Law

It would, however, be a mistake to label Professor White solely as another player in the game of "law and . . . ." Much of this book is not about legal texts at all. Yet Professor White asserts that his work is about law throughout, even when it is discussing such nonlegal texts as the Iliad. This is a different and broader claim than the assertion that literary theory has something valuable to say about analysis of legal texts. It is also, at least at first glance, a less plausible claim. How does a discussion of the Iliad have anything to do with law?

It turns out, I think, that this claim is bottomed on a very expansive concept of law. The notion of law, for Professor White, is so broad that it merges into a cosmos of disparate fields: anthropology, literary criticism, linguistics, classics, philosophy. In this

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87 Compare id. at xi (book is "about law from beginning to end") with id. at xii (book is also about literature and classical studies) and id. at xiii (book concerns field of "anthropology as well").
respect, the book is not really a cross-disciplinary work at all. Professor White wishes to deny the ultimate validity, at least for purposes of his approach, of a distinction between law and literature. The two are merely ways of studying different types of texts, texts that differ in subject matter and style but not in essential nature.

In a sense, therefore, Professor White's enterprise is neither a newfangled amalgamation of disciplines nor an application of the methods of one discipline to the subject matter of another. It is a call for a return to an older discipline, to a style of thinking that prevailed before specialized fields grew up to claim parts of the intellectual landscape as their special domains. As Professor White says, his "subject is rhetoric"—an old-fashioned discipline that long ago gave way to more specialized fields. Consistently with this drive to rediscover intellectual roots, Professor White returns to the birthplace of Western culture, ancient Greece, for several of his primary texts. And throughout the book he denies the validity, for his purposes, of distinctions that we now almost universally accept as valid: the difference between "facts" and "values" and the contrast between "reasoning" (in its narrow sense of deductive and inductive thought) and other ways of understanding a situation and making arguments with claims to authority. These distinctions, however much they may inform our view of the world, are relative latecomers on the scene; they are the product of modern science and its method and are unnecessary—indeed, confusing—when applied to an older intellectual tradition.

Given this distinction between Professor White's approach and those of other cross-disciplinary legal scholars, we can expect that his book will hold a somewhat different promise than does the typical application of sociological or economic principles to an area of legal scholarship. The promise of most cross-disciplinary schol-

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58 Professor White himself does not acknowledge that he wishes to engage in any type of intellectual renewal. Indeed, in the only passage bearing on the issue, White confesses that

[a]t one time I thought of calling this an essay toward the definition of a new subject, with a new method, linking the fields of law and literature and perhaps classics and anthropology as well. I might even have given it a name. . . . But perhaps the simple truth is that, as I read these texts, they constitute a world for me, a world I see as one, and in this book I invite the reader to share its life.

Id. at xiii.

59 Id. at xi.

60 See id. at 21-23.

61 Professor White is not alone in rejecting the ultimate validity of these distinctions. The fact-value split, for example, has been questioned in recent works of moral philosophy, anthropology, sociology, and philosophy of science. See generally WAYNE BOOTH, MODERN DOGMA AND THE RHETORIC OF ASSENT 1, 207 app. (1974).
arship is that it will illuminate an area that resists doctrinal analy
sis and provide a basis for normative evaluation of actual and pro-
posed rules. The promise of Professor White’s book is different: by
returning to our roots, by reaffirming the historical and rhetorical
continuity of legal texts and other works, we can obtain insights,
more or less profound, about the ultimate nature of law and its
role in society. Professor White speaks in the language of renewal
and reaffirmation, albeit with a new terminology and a new analy-
tical structure.

How successfully does the book fulfill this promise? The an-
swer probably cannot be given except in subjective terms. The
most profound truths, when written or spoken, often come out
sounding trite, banal, or humorous. To say that law has a deep
continuity with other language uses, or that legal texts are not dif-
ferent, in principle, from other texts, may well be to state impor-
tant truths. But one is left uneasily suspended after such a com-
ment; if said in conversation the most natural response would be
embarrassment. This is not a reflection on Professor White’s book,
but on the almost ineffable nature of the ideas he is trying, in his
most ambitious moments, to convey. Still, it is difficult to resist the
thought that distinctions among fields, among literature, law, an-
thropology, and the rest, do have value even with respect to the
questions Professor White addresses. They frame questions on a
level at which they can be answered, and at which the answers lead
to new questions and new insights. To take a page from the econo-
mists’ book, it seems unlikely that the distinctions between fields
of study, and between facts and values, reason and emotion, would
have survived this long, or inserted themselves so deeply into our
consciousness, if they did not serve some useful purpose.

To the extent that he rejects the ultimate distinctions among
intellectual fields, Professor White avoids what is perhaps the most
serious danger of cross-disciplinary work—that of reductionism, of
explaining that a given problem in law, say, is “really only” a prob-
lem of economics, or of sociology. The danger here is the opposite
one: not of reductionism, but of expansionism; not of excessive ri-
gidity, but of excessive freedom; not of unthinking allegiance to a
particular point of view, but of casting loose from the moorings
that an established conceptual framework gives to thought. In
seeking to rise above disciplines, there is the risk that one’s ideas
will become undisciplined.

It is difficult to escape the nagging feeling that Professor
White is equating things that really are different in kind, or at
least that differ sufficiently as to suggest distinctions between
members of a class. Take the idea of language. Although, as noted above, the author ordinarily uses the term in a well-defined (if extremely broad) sense, he not infrequently uses it more narrowly, without informing the reader of the change. Thus, there is a language of value, a language of character, a language of justice, a language of friendship, a language of fact, motive, and sentiment, a language of belief and action, a language of liberty and property. The word is used in a variety of senses, leaving the reader somewhat at sea as to what exactly is intended.

The same point can be made about the concept of words “losing their meaning.” Professor White tells us that words lose meaning for Achilles when his wrath against Agamemnon proves so great as to break down the principles of honor by which the heroic world is governed. They lose meaning when traditions of value and morality disintegrate in the chaos of the Peloponnesian War. They lose meaning in the Gorgias when Socrates demonstrates the merit of propositions that contradict prevailing cultural values. They lose meaning for Emma when she discovers that her accustomed ways of speaking and thinking about the world are utterly false.

Even if Professor White demonstrates successfully that something is happening with language in each of these cases, it is surely not the case that words are losing their meaning in anything like the same senses. In the case of Achilles, we see a character in a work of art being “at a loss for words,” unable to justify the acts he finds himself performing. In Thucydides, words in a spoken language lose their meaning in the crucible of social stress. In Plato, words lose their meaning through the corrosive influence of the dialectical method. Words lose their meaning for Emma in a still different sense; her problem is not so much that the connotations of her words change as that she misconceives the objects to which the words properly refer.

One wishes to see distinctions drawn here. Words can lose (or

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62 See White at 154.
63 See id. at 72.
64 See id. at 77.
65 See id. at 168.
66 See id. at 194.
67 See id.
68 See id. at 220.
69 See id. at 51.
70 See id. at 81.
71 See id. at 107-08.
72 See id. at 187-89.
change) their meanings for the language as a whole, or for individual speakers of a language. The two are not the same, either in the mechanisms by which they are accomplished, or in the implications of their occurrence. At the social level, the meaning of words can change gradually, in the normal course of things (we find Shakespeare more difficult to understand than Jane Austen, and Chaucer more difficult still), or suddenly, in response to social shocks (imagine, for example, the changes that took place in the English language after the Norman Conquest). At the individual level, the meanings of words can change because of gradual processes like growing up, or sudden events like calamity or windfall, religious conversion, and so on. This type of personal-meaning change can, and usually does, occur quite independently of any change in the language; for words can be used in a variety of different senses within a given language.\(^7\) Words also lose their meaning for individuals when they are taken out of the usual context of use within the language and allowed to assume strange and unfamiliar roles. Here we encounter various phenomena: the eerie feeling of the meaning draining out of a word as it is repeated out loud (and the related impression of meaning seeping into a chanted nonsense syllable); the uncanny sense of seeing or hearing something perfectly familiar and not recognizing it at all; the philosophical temptation to employ words outside the contexts in which they ordinarily have meaning.\(^7\) At both the individual and social levels, words can lose or change their meaning through shifts in either connotation (the qualities of praise or blame associated with a word), or denotation (the objects to which the word refers), or both.

These are not academic quibbles, or distinctions without a difference. The phenomena of change and loss of meaning are obviously significant. To understand them would be, possibly, to grasp something important about language. Understanding, however, requires investigating causes and effects. If there are many different kinds of meaning change, it would be important to distinguish among them, to investigate how they differ, and to analyze particular categories of meaning change to determine their causes and effects.


\(^7\) See id. at 175-76 (discussing how the meaning of a word "disintegrates" as it is used in different senses).
III. AN APPROACH TO MEANING CHANGE

Professor White's theory thus suggests the value of more specific and focused investigations of particular words and particular cultural settings. In the final section of this review, I suggest in rough and impressionistic form the kind of study that seems worth pursuing. The type of meaning change I have in mind is that which occurs to words gradually as a result of cultural change.

The following discussion is not specifically legal in character. It does, however, have implications for legal scholarship. As Professor White observes, the study of law is largely the study of words used in special contexts. Some of these words have a specifically "legal" meaning: "process," "jurisdiction," "trespass," and the like. It is possible to examine how the meaning of these words has changed over time. Such an analysis might well tell us something useful about how basic cultural ideas of justice and fairness have been affected by the demands of a changing society. Such an examination could also have implications for legal problems involving the interpretation of old texts, such as the Constitution or early statutes. The study of how the sense of a word changes over time might also yield inferences about how the legal system affects underlying cultural values through its function of giving meaning to specifically legal terms. It might be possible to get some insight into the reciprocal relationship between the legal system and broader values of a culture. Moreover, lawyers do not always use words in a technical legal sense. Much of the craft of being a lawyer is being able to associate one's client's position with powerful positive cultural values and cast the opponent's case in negative terms. Practicing lawyers spend much of their time taking brute facts and expressing them in a highly charged value context. In this respect, the study of how even nonlegal words change their meaning can aid in understanding the rhetorical force of legal arguments in different historical periods.

I will deal with two different groups of words, one as affected by changes in social class structure, the other by shifts in religious values and beliefs. Both sets of words are caught at a point of transition in the works of Jane Austen, and particularly in her Pride and Prejudice.75

The first set of words is "gentleman" and "condescend." "Gentleman" originally had a precise technical meaning. It referred to someone with a definite rank in society, the highest class

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beneath that of the hereditary titled nobility. This technical usage was still common in Jane Austen's day, but it was giving way to other usages. First, sufficient wealth and leisure could elevate a young man of good education to the status of gentleman even if a suitable pedigree were lacking. Mr. Bingley, in Pride and Prejudice, is clearly a gentleman, even though his family obtained its wealth through trade. Second, one could claim the status of a gentleman even without the advantages of wealth so long as one could present the proper appearances. Mr. Wickham, who turns out to be a scoundrel, is at first universally considered a gentleman because of his "most gentleman-like appearance." Finally, and most importantly, the word "gentleman," by this time, had come to mean certain qualities of character. Mr. Darcy, although a gentleman in rank, in wealth, and in appearance, at first is not fully a gentleman in character. Only after his first proposal of marriage is refused by Elizabeth Bennet on the ground that he was not "gentleman-like" does he reflect and reform—and eventually win Elizabeth's hand.

It seems that "gentleman," in Jane Austen's day, was a word evolving away from usages based on rank and status and toward one based on character. Today, as always, to be a gentleman is no doubt an advantage. Yet the word is not as freighted with social meaning as in past years. That aspect has lost much of its force now that the class origins of the word have faded.

"Condescend," unlike "gentleman," has changed radically in connotation over the years. In Shakespeare's time, condescension was praiseworthy; to condescend was to grant a favor to someone of inferior status, to do something compassionate and beyond the call of duty.

In Pride and Prejudice we see the word changing meaning. It is repeatedly used by the servile Mr. Collins to boast of the favors he has received from his patroness, Lady Catherine de Bourgh. By placing the word in the mouth of Mr. Collins—a man "alto-
gether a mixture of pride and obsequiousness, self-importance and humility.”—Jane Austen implicitly comments on a usage that apparently had currency in England at the time. That Jane Austen does not endorse the qualities connoted is evident when we see the true nature of Lady Catherine’s “condescension”: snobbery, pride, hauteur, rudeness, and dictatorial intrusion into the affairs of others. 82

The negative usage of the word is the one that prevails today. “Condescend” connotes an obnoxious snobbery or an insulting presumption of superiority. The connotation has thus reversed over time. In Jane Austen’s work the term is used in its old sense as a term of praise, but is placed in the mouth of one of the more unctuous figures of British fiction, thus strongly implying that condescending behavior is anything but praiseworthy. 83 There we capture the word at a transitional point, when it is “losing its meaning.”

It is not difficult to guess the causes of these changes. The class structure of inherited status and rank, so rigid in English society during the preceding century, was undergoing serious strains. 84 The changes in these words reflect those tensions. When rigid class differences no longer seem “natural,” it is harder to commend someone for acting in a way that would be required by common humanity in any event merely because the object of the action happens to be of lower social status. When new groups are rising in society, claiming importance and status, the idea of a gentleman has to expand, or undergo a transmutation, if it is to retain

81 Id. at 114.
82 See id. at 197. Lady Catherine as viewed for the first time through the eyes of Elizabeth: “Her air was not conciliating, nor was her manner of receiving them, such as to make her visitors forget their inferior rank. She was not rendered formidable by silence; but whatever she said, was spoken in so authoritative a tone, as marked her self-importance.” Id. Jane Austen by no means disapproves of the British class system, of course; her objection is rather to the view that social status has some intrinsic connection to merit as a human being.
83 The word is also used in Pride and Prejudice to mean unworthy behavior. Thus, Mr. Darcy, in explaining to Elizabeth his attempt to separate Jane Bennet and Mr. Bingley, says that “[t]here is but one part of my conduct in the whole affair, on which I do not reflect with satisfaction; it is that I condescended to adopt the measures of art so far as to conceal from him your sister’s being in town.” Id. at 229. Here the word refers to qualities of character rather than to social status. The movement from social status to character can be seen as well in the changes in meaning of the word “gentleman.” See supra notes 76-78 and accompanying text.
84 See JULIA BROWN, JANE AUSTR N’S NOVELS: SOCIAL CHANGE AND LITERARY FORM 5 (1979) (Austen’s novels provide “a foreground of social and moral change, conceived with an irony that accurately reflects its tensions”).
its usefulness.

We may also speculate about the impact of the meaning of a word on its users. Jane Austen, a superb artist, uses words with exquisite attention to all their shades of meaning. In ordinary language, however, words are employed as tools for communication. The user does not reflect on the picture of a society that the words imply. Yet that picture seems inevitably to shape the implicit values accepted by language users almost by virtue of the fact that they use the language at all. Imagine a world in which to "condescend," to deign to pay attention to someone of lower rank, is an act universally admired; in which a person is a "gentleman," and therefore worthy and admirable, merely because of an accident of birth. The words convey a powerful endorsement of the class system, an ideology all the more powerful because it is ordinarily completely unconscious.

At the same time, changes in words like "condescend" and "gentleman" may well have contributed to the undermining of rigid class distinctions. If condescension is thought a bad thing, then someone of lower social status is less likely to accept the inevitability of his or her subordinate condition. If being a "gentleman" denotes traits of character rather than status, then anyone can aspire to that desirable condition. When words laden with social values change their meaning, the event may both reflect revolutionary changes and also contribute to those changes. The relationship, as Professor White insightfully observes, is deeply reciprocal.

I will discuss the second set of words—those affected by changes in religious values and beliefs—in less detail because the principles at work are similar to those just discussed. The words are "pride," "vanity," and "humility." If we go back to Shakespeare's day or before, we find the words infused with religious potency. Pride was not just a shameful character trait; it was a terrible evil, the worst of the seven deadly sins. Vanity, although not itself a sin, was an outward manifestation of sin. The root idea of vanity was futility, nothingness, a usage we retain in saying some-

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85 Chaucer's Parson says that pride, the "general roote of alle harmes," is the worst of all the sins. GEOFFREY CHAUCER, THE CANTERBURY TALES (The Parson's Tale), in THE COMPLETE WORKS OF GEOFFREY CHAUCER 285 (F.N. Robinson ed. 1933). Pride is one of the seven deadly sins in Spenser's The Faerie Queen, EDMUND SPENSER, THE FAERIE QUEEN, book 1, canto 4, st. 12 (Penguin ed. 1978) ("proud Lucifera men did her call"), and is frequently condemned in the Bible, see, e.g., Mark 7:21-22, Proverbs 8:13. See also WILLIAM SHAKESPEARE, CORIOLANUS, act 2, scene 1, lines 39-41 (T. Brooks ed. 1924) ("a brace of unmeriting, proud, violent, testy magistrates, alias fools, as any in Rome").
thing was done "in vain." Humility, on the other hand, was a high virtue.  

Jane Austen, writing in the early nineteenth century, uses these terms in substantially different senses. The connotations show continuity with earlier usages: pride and vanity are both blameworthy, with pride the more serious flaw; humility is praise-worthy. But the religious implications have faded; the words now refer, not so much to states of the soul, but to qualities of character. Pride and vanity are similar in meaning, but distinct; "[p]ride relates more to our opinion of ourselves, vanity to what we would have others think of us." Humility, for Jane Austen, is a positive trait, the opposite of both pride and vanity. Humility can be a matter of natural disposition, as with Jane Bennet and Mr. Bingley, or of effort and will, as with Elizabeth Bennet and Mr. Darcy.

While these usages are familiar enough to the modern reader, they appear oddly quaint. The words today have lost much of their moral force. Their connotations have changed, and are still changing. "Pride" is no longer always, or even usually, condemned. "Civic pride," "pride in one's work," and the like all convey a sense of approbation. "Vanity" still retains a generally negative quality, but this too is changing. It is increasingly accepted to avow a wish to be better, prettier, handsomer, smarter than the next person. Qualities that might heretofore have been disapproved are es-

86 See William Shakespeare, Henry VIII, Act 2, scene 3, lines 67-69 (J. Berdan & T. Brooke eds. 1925) (Anne tells Lord Chamberlain that she has nothing to offer the King: "[M]y prayers Are not words duly hallow'd, nor my wishes More worth than empty vanities."). The root of the English word "vanity" is the Latin "vanitas," or emptiness. Webster's Third New International Dictionary of the English Language Unabridged 2532 (1961).

87 Chaucer's Parson prescribes "humylitee" or "mekenesse" as the remedy against pride. G. Chaucer, supra note 85, at 288. See also William Shakespeare, Henry V, act 3, scene 1, lines 3-4 (R. Dorius ed. 1918) ("In peace there's nothing so becomes a man / As modest stillness and humility.").

88 See generally J. Austen, supra note 75. Pride and vanity, on the one hand, and humility, on the other, present a kind of organizing continuum, a philosophical and moral structure in Pride and Prejudice. Jane Austen's novel can be viewed almost as a philosophical tract in which a typology of cases is set forth and different approaches are evaluated. Mr. Bingley and Jane Bennet represent natural grace and modesty, characters not flawed by overweening pride, excessive vanity, or false humility. Elizabeth Bennet and Mr. Darcy represent characters subject to pride (in Mr. Darcy's case) or vanity (in Elizabeth's), but with the capacity to accept humiliation and thereby attain sincerity and respect for others. The minor characters represent flawed approaches: the irresponsibility of Mr. Bennet, the arrogance of Lady Catherine, the false humility and bullying self-importance of Mr. Collins, the self-deluded vanity of Mary Bennet, and the compromising practicality of Charlotte Lucas.

89 Id. at 67. Jane Austen places this true, but commonplace, distinction in the mouth of Mary Bennet, who ironically demonstrates her own pride and vanity by trying to impress others with her threadbare observations.
teemed. One is permitted to admit and even revel in one's vanity. "Humility," in contrast, is no longer highly esteemed. People who might once have been praised as being humble are now reviled as unassertive, compliant, or weak.

Here again, we see words "losing their meaning." When the existence of God was unquestionable, when the presence of God was palpably felt in daily life, then pride—a sense of one's own importance even in the face of the Almighty—quite naturally appeared the worst of all sins. Vanity, the outward appearance of pride, had a sense of futility, for no one can defy God. And humility, the abnegation of self in the face of the Almighty, constituted a high virtue. By Jane Austen's day, the reality and presence of a Supreme Being, while not denied, had less importance in daily life. The metaphysical background of the culture had changed; the concept of God had ceased to exercise such pervasive influence over the language. Words like "pride," "vanity," and "humility" lost much of their religious tenor, and came to be reformulated in terms of a primarily secular ethic based on character. Today, the influence of religion has all but disappeared from everyday speech. When there is no concept of a deity underlying the language, pride and vanity can become praiseworthy and humility disapproved. What has happened, in a sense, is that the connotations of these terms are merging with the positive correlatives that Jane Austen was at such pains to distinguish: pride is merging with natural superiority, vanity with healthy self-esteem, humility with servility. Hence the current confusion of their connotations. The words remain in a state of flux; they continue to "lose their meaning."

As Professor White would remind us, the process is deeply reciprocal. Just as changes in the culture's idea of a Supreme Being affect language usage, so the connotations of words affect and reinforce a culture's religious life. Here, as elsewhere, language plays a double role: as the guardian and teacher of powerful cultural values and beliefs; and as the vehicle and instrument of social and cultural change.

Conclusion

The foregoing discussion sketches one of the many directions that Professor White's notion of words "losing their meaning" might lead. When Words Lose Their Meaning is a fascinating, difficult, and original investigation of words and their uses as they appear in some of the great texts of Western culture. Its high merit more than justifies the effort of reading—in Professor White's
sense of "understanding and living with"—this richly textured, dense, multi-layered text.