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Constitutions and Reconstitutions of Language,
Character, and Community. by James Boyd White.

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WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY. By James Boyd White.¹ Chicago: University of Chicago Press. 1984. Pp. xvi, 377. \$25.00.

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When Words Lose Their Meaning brings to mind Arthur Leff's tribute to Grant Gilmore, particularly its closing lines: "Ultimately, the law is not something that we know, but something that we do. All right, all right, amen. But at least there is this: on the way to those final defeats, there are, at least for some, some beautiful innings."³

How can a book, the bulk of which is given to readings of Homer, Thucydides, Plato, Swift, Johnson, Austen, and Burke, claim to be a book that is "about law from beginning to end"? White explains this claim by saying that one of the book's objects is "to set forth a rather different conception of law from those that presently prevail in academic circles: as an art essentially literary and rhetorical in nature, a way of establishing meaning and constituting community in language."⁴ That is an ambitious project, if intended to displace presently prevailing conceptions. But a more modest interpretation is suggested by the closing paragraph of the preface.

At 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.⁵

With this gentle invitation to share a view of a world, White avoids the "mendacious tendency (which, I suppose, is the defining falsehood of all scholarship): to see all that is as in theory understandable."⁶ Rather, he offers a view of law that is both illuminating and

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3. Leff, *Law and*, 87 *YALE L. J.* 989, 1011 (1978) (footnote omitted).

4. WHITE, *supra*, at xi.

5. *Id.* at xiii.

6. Leff, *supra* note 3, at 1011.

potentially healing.

White's book is informed by a conception of language as a reflexive activity: "individual people . . . at once form and are formed by their language and the events of their world. When language changes meaning, the world changes meaning, and we are part of the world." The book promotes a "way of reading" that eschews the reductionism common to theories of interpretation (meaning *is* the writer's intent, meaning *is* the reader's response, and so on) in favor of an effort to understand the relationships between writer and language, writer and audience, established by the text.⁷ White chooses his texts to emphasize the reciprocal relationship between language and culture by focusing on situations in which the two have become unstuck. As he explains, "[O]ne will normally see that one's language is contingent, not necessary, only if one experiences a basic cultural dislocation: the sense that words have lost their meaning."⁸

White fleshes out his theory with readings of particular texts. White's readings are elegant, careful, and provocative. An attempt to render them within the scope of a review would be tendentious, probably feckless, certainly impertinent. I shall avoid so unpromising a task, and confine my remaining remarks to efforts to place White's book within the unruly discipline that is the province of this journal.

Contemporary constitutional theory exemplifies the relationship between cultural dislocation and loss of meaning that is White's subject. It is hard to imagine a major constitutional scholar of the 1980's making a career on the kind of work done by Thomas Reed Powell, for example.⁹ Powell's confident discussion of substantive issues has given way to a preoccupation with the feasibility of saying anything meaningful. To the ancient battle between "liberal" and "strict" construction, we have added deconstruction. To the lexicon of constitutional argument, we have added "interpretivism" and "noninterpretivism," "originalism" and "nonoriginalism."

Someday, a Pocockian student of *lange* and *parole*¹⁰ may tell a story about how critics of Gilded Era constitutional practice, working with terms borrowed from that practice but turned to other ends, undermined the legitimacy of the practice itself; how they and

7. WHITE, *supra*, at 4-6.

8. *Id.* at 277.

9. T. POWELL, VAGARIES AND VARIETIES IN CONSTITUTIONAL INTERPRETATION (1956).

10. J. POCOCK, VIRTUE, COMMERCE AND HISTORY 5-12 (1985).

their successors tried to reconstitute the practice without recognizing that they had eaten away the ground upon which it had stood; how this all came tumbling down around their ears as they sought to sustain claims of justice in a language they had drained of meaning. That student will be able to draw on White's reading of Thucydides, in which he explains how a rhetoric of pure self-interest¹¹ forfeits the capacity for practical reason.¹²

More generally, White's alternative conception of law speaks suggestively to the endemic view that, in the absence of transcendental grounding for norms, law must be restricted to an instrumental function, implementing values chosen elsewhere. He says:

The law is best regarded not so much as a set of rules and doctrines or as a bureaucratic system or as an instrument for social control but as a culture, for the most part a culture of argument. It is a way of making a world with a life and a value of its own. The conversation that it creates is at once its method and its point, and its object is to give to the world it creates the kind of intelligibility that results from the simultaneous recognition of contrasting positions. This recognition is necessary to the rational definition and pursuit even of the most selfish ends. Without it, neither reason nor ambition can have form or meaning.¹³

A persistent theme in contemporary political theory is the importance of community as the source of enduring meaning, and thus as the source of significance for human action and human lives, and the responsibility of liberal individualism for the destruction of community. Community is today a term of near-universal approbation (how many appeals to *your* better side have been made in the name of some community: the university community, the community of scholars, the intellectual community, the conservative community, the liberal community, and so on?). It is a term open for appropriation in the battle against whatever one takes to be the central malaise of the times.

One of the virtues of White's book is that, having established the significance of community, he does not require too much of it. Community is necessary to meaning (and because meaning is necessary to the good life, so is community) but not sufficient to human ends. White writes of texts that seek to create their ideal reader—thus creating a community of two between reader and writer—and, in the case of law especially, of the effort to create a community among readers.¹⁴ But he also acknowledges the responsibility of

11. *E.g.*, "[A]ll law means I will kill you if necessary to make you conform to requirements." Justice Holmes in 1 HOLMES-LASKI LETTERS 16 (M. Howe ed. 1953).

12. WHITE, *supra*, at 76.

13. *Id.* at 267. *Cf.* the arguments concerning the theory of self interest in D. PARFIT, REASONS AND PERSONS (1984).

14. WHITE, *supra*, at 271.

readers to decide whether to become part of the community that the writing attempts to fashion.¹⁵

The day may come when we can see that insistence on responsibility as liberalism's contribution to creation of a community that takes seriously the ideal of justice for all. White's book is a step in that direction. It is also an example of "law and" that Arthur Leff certainly would have appreciated. Professor White has given us one of those "beautiful innings."

15. *Id.* at 272-73.