

security. Waldron not only renders Mill's opposition consistent but also suggests parallels to the Patriot Act or other laws imposing disproportionate burdens on the liberties of some groups. Maria Morales's stand-out chapter advances the striking thesis that Mill's liberal feminism is not, properly speaking, "liberal" at all—as defenders and critics alike have assumed—but a more radical theory attentive to "dominance" in the private sphere of the family. The upshot is that problems of spousal abuse and violence toward women cannot be remedied just by securing formal legal equality in the public sphere. Surveying Mill's career as a member of Parliament, Dennis F. Thompson extrapolates rules for weighing moral principles against the compromises necessary for achieving tangible results. This essay reveals the method (and political savvy) behind Mill's apparent madness and explains why some of his political actions appear less principled than his purely philosophical writings might suggest.

Turning from the domestic to the international, Stephen Holmes and Michael Walzer each plumb Mill's thoughts on foreign intervention. Holmes cogently retells Mill's story of the emergence of "self-rule" out of "no-rule" with an eye on the transitional stage of "undemocratic rule" (pp. 322–25). These lessons about the birthing pains of democracy shed some light on regime change in Iraq. Walzer reminds us of the criteria for humanitarian intervention set out in Mill's celebrated essay on "Non-Intervention." In Karuna Mantena's sophisticated post-colonial reading, Mill's thoughts on empire represent both the "apotheosis and denouement of the project of liberal imperialism" (p. 301). Given the unsustainability of Mill's liberal categories, a harder-edged imperialism emerged in the late nineteenth century that shifted responsibility for the failures of civilization onto subject peoples themselves. Georgios Varouxakis explores the role of nationality in Mill's writings, convincingly demonstrating that while the cosmopolitan Mill loathed vulgar nationalism, he was not unaware of the need for patriotic affection among citizens.

Many chapters revolve around the question of Mill's lukewarm commitment to participatory democracy. Exemplary of this tension is Jonathan Riley's nuanced account of how Mill's neo-Athenian representative democracy balances the value of political competence against the goods of popular participation. Bruce Baum teases out the distributional and developmental aspects of Mill's political economy. Nadia Urbinati offers a fascinating genealogy of the concept of "despotism," which tries to reconcile Mill's endorsement of the "good despotism" of empire with his opposition to the "bad despotisms" of the patriarchal family, custom, and bureaucratic "pedantocracy." Frederick Rosen acknowledges that although Mill "never adopted the viewpoint of the democrat," his "method of reform," a dialectical view of social change drawn from his studies of Bentham and Coleridge, contains nothing that would have

prevented him from doing so (pp. 143–44). Alex Zakaras distinguishes Mill's Tocquevillean antipathy to "conformist democracy" from his preferred alternative of "discursive democracy" (pp. 202–7), where individuality anchors democratic politics. Like Wendy Donner's illuminating chapter on education and moral development, Zakaras thinks that everyone, and not just a few eccentric geniuses, can partake of moral development (pp. 220, 255, 258, 262). This requires proper socialization. But are not the schools, families, and workplaces mentioned as potential sites of moral development by Donner also responsible for augmenting the natural advantages and talents of some while leaving others even further behind? Maybe this is why, as Alan Ryan notes, Mill says much less than one would like about the role of civic associations in fostering the "boldness and imagination that would sustain their members against a conformist wider society," effectively shifting responsibility "on the shoulders of individuals" (p. 161).

These are all terrific essays. That said, I am left with a nagging sense that many of these glosses and carefully worked out distinctions end up whitewashing Mill's elitism. In the true Millian spirit, Mill's antidemocratic assumptions are worth taking seriously, not only because of their ubiquity but also, and maybe more importantly, because they serve as object lessons for the direction in which liberalism should *not* go in the centuries ahead. After all, how far have we really progressed from the spirit of Mill's age? Western "civilization" still gets constructed in opposition to fanatical backwardness and barbarism, a process in which Mill himself had a hand. As tyrannical as ever, and arguably no less hostile to diversity or minority views, democratic public opinion proves equally susceptible to elite manipulation and the vagaries of mass culture. The average voter is woefully ignorant of politics, history, and international affairs. Moral authority is either nonexistent or stultifying, depending on which pundit one asks. Given this state of affairs, can we not learn just as much by attending to the illiberal, anti-democratic, and exclusionary legacies of Mill's political thought, rather than celebrating how he strove—in defiance of his age and class prejudices—to approximate the kind of cosmopolitan participatory democrat we might wish him, and ourselves, to be?

Living Speech: Resisting the Empire of Force.

By James Boyd White. Princeton: Princeton University Press, 2006.

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— Eloise A. Buker, *Saint Louis University*

James Boyd White's recent work is as impressive as his earlier work in terms of the clarity of argument, the originality of thought, and the commitment to social analysis that incorporates language analysis, legal theory, and ethics. While drawing from current theories of language, White

does not quite belong in the postmodern tradition because he searches for authentic representations of thoughts and emotions. This brings him closer to phenomenology. His title phrase, “living speech,” taken from Simone Weil, sets forth his primary argument. He makes a distinction between living speech, which represents genuine, creative thought, and “dead speech,” which reiterates slogans, clichés, and speech patterns from a culture’s ideologies, including advertising and propaganda. Dead speech endeavors to get the listener to act in a prescribed way, while living speech tries to persuade the listener to see the virtues of an argument. White’s goal is to encourage living speech in order to move societies closer to love and justice. Like the postmoderns, he believes that speech is the foundational human activity because it conveys the imagination, but unlike postmoderns, he wants to talk about the ways in which speech articulates aspects of a human mind by making meaning.

The key argument centers on his quotation from Simon Weil, “No one can love and be just who does not understand the empire of force and know how not to respect it” (p. 1). Weil wrote these words during World War II, arguing that the force comes through clichés, sentimental speech, false languages, and ideologies. White draws on her visions of war and his own readings of the *Iliad* to show how war and other forms of force involve dehumanizing others in order to kill them. His book asks a key question: “How, as individual minds and persons, might we come to understand the ways that the empire of force is always present in our thought and speech, and learn how to resist its power by refusing to respect it?” (p. 10). He explores this question in terms of general speech practices at the same time that he explores the issues in terms of the First Amendment, the “freedom of speech,” and judicial opinions. To illustrate his argument, he draws from the *Iliad* as well as from a variety of writings—the Bible, Dante’s *Divine Comedy*, Thomas Aquinas, Supreme Court opinions, legal briefs, poets including Robert Frost, Abraham Lincoln and the work of young boys just learning to write. He argues that by learning to draw on living speech in writing and speaking, citizens can avoid being captured by the empire of force, dead speech, including advertising and political propaganda. That frees speech to be directed toward building relationships that reflect justice and love. Such speech engages the imagination. Defining living speech and the ways in which it differs from other speech is the focus of the book. It is not an easy task, but the strength of his arguments makes it a worthy task.

White’s first chapter focuses on the value of silence, with examples from Trappist monks and Quakers. He is also mindful of issues of what is not said, the silences within speech. For negative examples, he turns to advertising and political propaganda because these types of speech diminish persons and their desires, as well as treat persons as no more than “a cluster of wants and desires”

(p. 27). He shows how the metaphor “the marketplace of ideas” leads to problems because it reduces exchanges to manipulation. Emphasizing his commitment to democracy, he embraces communitarian views of the good polity.

In Chapter 2 White argues that good, living writing is writing in which the speaker is present; it embodies personal experiences. He draws on Shakespeare’s Polonius to show how clichés can sound like good advice but really mask evil, which is what dead speech can do. He uses John Ashcroft’s justification of military tribunals as a second negative example because of the presumption of guilt within this argument (p. 66). The outcome is force, not legal process.

Chapter 3 pursues meaning by arguing that living speech creates surprises and life expectations through an unfolding intelligibility. Living speech enables the exchange of words, which facilitates “imagining the world” (p. 101). The fourth chapter contains the argument in the title, “Writing That Calls the Reader into Life—or Death.” White argues that in some cases, the law calls forth life and sometimes not. Living speech in the law is exemplified by Justice Louis Brandeis in his argument related to the First Amendment on free speech, *Whitney v California* (pp. 165–67). Chapter 5 argues for the importance of human dignity in speech and calls on classical Greek drama and judicial opinions as public forums for creating full, rich views of humanity that come about through oppositions and dramatic tensions.

The final chapter sets forth its conclusion in the title “Silence, Belief, and the Right to Speak.” White explains that democracy depends on living speech because it requires a level of serious exchange that goes beyond the articulation of preferences or interests. A discussion of belief does not draw from notions of a belief in God or a cosmology but focuses instead on belief in the individual person and his or her worth—the Quaker principle, the “God in every person” (p. 213). He closes his book by saying, “The cry of injustice is the first, last, and deepest insistence by the human being upon his or her own value, and the value of humanity itself” (p. 203). While this last chapter clearly lays out his own ethical commitments to the human person, it does not illuminate the political implications of this commitment. The conclusion is the shortest chapter and seems rushed. Because the distinctions he has made are so important, so clearly presented, and because the interpretations are so politically rich, readers may expect more in this final chapter.

This book would fit well into philosophy of law classes because it combines legal issues with philosophical discourse and so creates a bridge between the law and philosophy, especially areas of classical political philosophy, rhetoric, and ethics. For political scientists who are teaching general law courses, this text would offer a way to explore connections between the law and ethics that draws upon classical Western literature for illustrations. For those

in literature, his work offers an opportunity to examine how law and public discourse establish a literary imagination of the world. The text is rich with examples that clarify this primary distinction and so it is excellent for students. The writing is clear, free of technical language, and easily understood.

White is an interdisciplinary scholar who speaks to those interested in law, politics, literature, and ethics. His argument offers a way of understanding the present poverty of

public discourse, and he invites individual citizens to speak more frankly, more openly, and with more candor in order to articulate their experience in ways that more fully present their own thinking rather than repeating political clichés. This can undo totalitarianisms of various kinds. *Living Speech* is an important book for thinking about how we speak with each other about justice, and so it is valuable to academics but also to political leaders. In this work, White is both a scholar and a public intellectual.

AMERICAN POLITICS

The Failure of the Founding Fathers: Jefferson, Marshall, and the Rise of Presidential Democracy.

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— Russell L. Hanson, *Indiana University–Bloomington*

As the title of this book indicates, Bruce Ackerman does not believe that the Founding Fathers produced a finished, or flawless, frame of government in 1787. In particular, their method for selecting the president of the United States was ill-conceived and left critical questions of procedure unanswered and open to contestation. These failures aggravated the controversy surrounding the presidential election of 1800, when neither John Adams nor Thomas Jefferson won a majority in the Electoral College and Federalists in the outgoing House of Representatives nearly threw the election to Aaron Burr. As the House deliberated, the governors of Massachusetts and Virginia readied their militias to prevent each other's favorite son from stealing the election. Ackerman suggests that a civil war was avoided only by the statesmanship of Adams and Jefferson and the unraveling of a plot to install John Marshall as acting president.

Ackerman's purpose in telling this story is not to impugn the Founders so much as it is to praise others for rescuing the Constitution from political crises never imagined by the framers. He understands the Constitution as "an ongoing dialogue between the inspiring speculations of one generation and the worldly experience of the next" (p. 266), with worldly experience supplying important correctives to inspiring speculations. The "miracle in Philadelphia" was only the first chapter in this supremely political dialogue; the "revolution of 1800" was another, and it resulted in significant changes to the Founders' vision of the presidency and its place in the system of checks and balances. Whereas the Founders expected the president to restrain majority factions, Jefferson acted as a champion of the majority and its right to rule without impediments. With himself and his congressional party on the side of the people, the only remaining check on

the reign of public opinion was the Supreme Court, which after 1800 had to decide whether to bow to the will of the people or put Jefferson in his place out of deference to the will of the Founders.

Chief Justice Marshall was in the majority of delegates who ratified the Constitution in Virginia, and he was an exponent of the doctrine now known as originalism, which refers constitutional questions to the intent of the Founders. But Marshall also recognized that a Supreme Court comprised of Federalists was no match for a president whose Republican Party controlled both chambers of Congress and was intent on taming the federal judiciary. He opted not to enforce the Constitution but to adapt it. The example of the arch Federalist Marshall departing from the intent of the framers in the face of political reality is this volume's contribution to Ackerman's attack on originalism in *We the People* (1991), and his corresponding injunction that we, too, must review the Constitution in light of our worldly experiences.

The "switch in time" for Marshall was the decision in *Marbury v. Madison* (1803), wherein Marshall asserted the Supreme Court's power to review congressional legislation and executive action, but declined to use that power to make Jefferson honor Adams's "midnight appointment" of William Marbury. Marshall's opinion is routinely described today as a political masterstroke insofar as it avoided a showdown without surrendering the Court's independence. Ackerman argues that Marshall conceded much more than the *Marbury* decision alone suggests, however. He points to a companion case, *Stuart v. Laird* (1803), in which the Court let stand judicial reforms enacted by Congress in 1802. Under the reasoning of *Marbury*, these reforms should have been invalidated, yet the Supreme Court—with no dissent from Marshall—acquiesced in Republican efforts to undermine judicial independence.

Marshall's strategic retreat was not temporary. As Ackerman sees it, *Stuart v. Laird* was the beginning of a long line of cases in which Marshall accommodated a plebiscitary presidency within a constitutional framework built around a very different conception of the relation between the presidency and the federal judiciary. Regrettably, the specific doctrinal expression of Marshall's "synthesis of