

Communities, Texts, and Law: Reflections on the Law and Literature Movement*

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How do we form communities? How might we form better ones? What is the role of law in that process? In a recent series of books and articles, James Boyd White, arguably the modern law and literature movement's founder, has put forward distinctively literary answers to these questions.¹ Perhaps because of the fluidity of the humanities, White's account of the nature of community is not nearly as axiomatic to the law and literature movement as is Posner's depiction of the "individual" to legal economists.² Nevertheless, White's conception is increasingly representative of the literary-legalist's world view. Furthermore, with the exception of Richard Weisberg, White has very little competition within the movement itself.³ This article explores and criticizes that vision. Second, it puts forward an alternative account of how we form communities, how we might form better ones, and how law would function within them.

I. COMMUNITY THROUGH TEXTS

Perhaps more consistently and certainly more eloquently than any other literary legalist, James Boyd White has put forward a distinctively literary account of how we form communities, how we might improve them, and how law is implicated in the process. Some aspects of White's vision are held in common with such liberal legal theorists as Ronald Dworkin and Owen Fiss: White shares with both Dworkin and Fiss a passion for communitarian values, and, in very broad outline, a common understand-

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1. See J.B. White, *The Legal Imagination* (1973); *When Words Lose Their Meaning* (1984); White, *Economics and Law: Two Cultures in Tension*, 54 *Tenn. L. Rev.* 161 (1987); White, *Is Cultural Criticism Possible?*, 84 *Mich. L. Rev.* 1373 (1988); White, *Law and Literature: No Manifesto*, 39 *Mercer L. Rev.* 739 (1988).

2. See R. Posner, *The Economics of Justice* (1984).

3. Weisberg's view of community is eloquently drawn and well-defended, but too anarchical and idiosyncratic to be regarded as representative of the movement taken as a whole. See R. Weisberg, *The Failure of the Word* (1984).

ing of the process by which communities and communitarian values come to be formed.⁴ White, however, accords a much greater role to literature, and to “texts” of all sorts, in this process than do the liberal legalists. According to White, communities are formed and improved through the promulgation, transformation, and criticism of cultural texts, including legal texts. Literary and legal texts, White argues, reflect communitarian commitments: if a community has reached consensus on its commitments, its texts will reflect that. If, as is more likely, it has not reached consensus, its texts will reflect its disagreements, ambiguities, and contradictions. But more importantly, it is our texts which also *constitute* a community’s commitments: it is our texts which define, generate, and preserve, as well as reflect, shared community values (rather than, as may be more commonly supposed, it being our community which defines, generates, and preserves our texts). Our shared communitarian texts (rather than our aggregated individual preferences), therefore, are at the core of the formation of our community values:

Every text is written in a language, and the language always entails commitments to views of the world—of oneself, of one’s reader, and of others—with which the writer must somehow come to terms. Similarly, every text is radically social: it always defines a speaker, an audience, and a relation between them, and it may define others as well, as potential readers or as the objects of the discourse. Every text thus creates a community, and it is responsible for the community it creates. This means that every text is at once an ethical and a cultural performance—whether its writer knows it or not—and it can be judged as such.⁵

Immersing ourselves in our community’s texts, White argues, is the primary means by which we come to hold normative beliefs. A community’s texts are the source of its members’ conviction in the *truth*, rather than in mere facticity, of their moral claims. Close attention, or “focused attention,” as White says, to the process of reading texts therefore makes the members more acutely aware of—and hence responsible for—the textual creation of the community’s moral life:

What the habitual reading of literature offers is . . . the experience of directing one’s attention to a plane or dimension of reality . . . , namely the ethical and linguistic plane, where we remake in our texts both our language and ourselves. To the literary mind, language is not simply transparent, a way of talking about objects or concepts in the world, but is itself a part of the world; language is

4. R. Dworkin, *Law’s Empire* (1985); Fiss, *Interpretation and Objectivity*, 34 *Stan. L. Rev.* 739 (1982).

5. White, *No Manifesto*, *supra* note 1, at 745.

not an instrument that "I" use in communicating ideas to "you" but a way in which I am, or make myself, in relation to you.

The literary text offers its reader not information or ideas but an experience of language, a contact with a living mind, of a sort that will erode forever the confidence with which we are otherwise likely to talk about "information" or "ideas" or "communication." The texts that do this are not only those taught in "literature" courses . . . but all texts that lead us to the point of self-consciousness about our language and the relations we create in our use of them.⁶

The centrality of texts to the form and substance of a community's moral and social life suggests that the role of legal texts in our community must be fundamentally reconceived. We ought to think and read legal texts, not as political or positive commands, but as texts which both constitute and constrain the community's moral commitments. This view of language, literature, and law implies an expansive role for literature in the life of the lawyer:

What I think literature has most to teach, then, is a way of reading . . . , a way of focusing our attention on the languages we use, on the relations we establish with them, and on the definition of self and other that is enacted in every expression. It teaches a way of reading that becomes a way of writing too.

Literature lives through language, and so must we: the question is by what art is this possible, and it is at this point that literature speaks most directly to the lawyer, who is herself an artist of this kind.⁷

This close attention in turn demands what might be called "textual virtues." As lawyers, we must learn to be moral, careful readers and listeners as well as writers, interpreters, and advocates. Indeed, White suggests, it is these "textual virtues," and not any particular distribution of material resources, which constitute the "heart of justice":

When our attention is once drawn to this dimension of life, we come to see that the heart of justice is not the distribution of nonlinguistic items in the world, but ethical and relational: it lies in the attitude, and in the capacity of mind, by which authoritative texts are read and interpreted; in the kind of attention given to opposing claims and to the experiences of opposing parties . . . in the sense that the judicial or legal opinion is an ethical and political, as well as an intellectual, text for which the mind composing it is responsible. Thought of this kind . . . keeps us aware of the degree to which results are not dictated but chosen, and can be chosen for well or ill, and of the importance to us, greater than any series of judicial votes, of a legal

6. *Id.* at 750-51.

7. *Id.* at 745-46.

culture that is engaged in the process of educating itself and the public by the sincere and self-critical way it addresses the questions that come before it.⁸

Finally, as White has argued in many different forums, but most recently in his article *Is Cultural Criticism Possible?*,⁹ criticism, as well as the formation of a community's values, must also be based on shared constitutive texts. We criticize and transform our community's values—and hence our community—by criticizing and transforming the texts which produce them. We might call this Whitean view of cultural and communitarian critique “moral textualism.” Moral textualism in turn implies a particular view of the nature of the social and legal critic. According to White, the critic's point of view, like the community being criticized, is necessarily “textual”: the critic as well as the society is a product of her community's texts. The Whitean critic can be socially marginal and critical in profound and radical ways, but he must nevertheless be fully situated in the “textual community” if he is to criticize successfully its dominant values. The critic of the community must be conversant with the community's texts, for it is through criticism of those texts that the critic can transform the community. The critic no less than the community she criticizes, according to White, is constituted, constrained, and defined by text. Thus, it is through a critical transformation of its definitive text that the community itself is transformed.

Mark Twain's novel *Huckleberry Finn* depicts a community which is formed and criticized—if not transformed—in much the way White describes, and presents a critic—Huck—who personifies White's conception of the social critic. In Huck's world, particular texts characterize, unify, and bind particular sub-communities: great classics, for example, unify the aristocracy; personal oaths unify friendships; prayers are the basis of one's relationship to God; and legal texts, stories, fables, parables, and superstitions bind the larger society. But for Twain as well as for White, texts not only *unify* the various communities on and off the raft; Twain makes clear that texts *define* those communities as White would argue they must. As a consequence, literacy—facility with the community's or sub-community's texts—is the distinguishing criterion of membership in the various “civilized” societies of Huck's world. Huck, for example, becomes civilized and leaves his illiterate father behind as he learns to read. Thus he joins a social world from which his father is excluded. Huck's father complains:

“You're educated too, they say—can read and write. You think you're better'n your father, now, don't you, because he can't? *I'll*

8. *Id.* at 751.

9. White, *Cultural Criticism*, *supra* note 1, at 1373.

take it out of you. Who told you you might meddle with such hifalut'n foolishness, hey?—who told you you could? . . . And looky here—you drop that school, you hear? I'll learn people to bring up a boy to put on airs over his own father and let on to be better'n what *he* is. . . . Your mother couldn't read, and she couldn't write, nuther, before she died. None of the family couldn't before *they* died. *I* can't; and here you're a-swelling yourself up like this. I ain't the man to stand it—you hear? Say, lemme hear you read."¹⁰

Similarly, the ability to interpret properly communal texts distinguishes the "insider" from the "outsider" in what might be called the "textual community." Thus, in the following exchange, Huck complains that Jim's humanistic and moral critique of the Solomon parable "misses the point" of the story:

"I's Sollermun; in dish yer dollar bill's de chile. Bofe un you claims it. What does I do? . . . I take en whack de bill in *two*, en give half un it to you, en de yuther half to de yuther woman. Dat's de way Sollermun was gwyne to do wid de chile. Now I want to ast you: what's de use er dat half a bill? . . . En what use is a half a chile? I wouldn't give a dern for a million un um."

"But hang it, Jim, you've clean missed the point—blame it, you've missed it a thousand mile."

"Blame de pint! I reck'n I knows what I knows. En mine you, de *real* pint is down funder—it's down deeper. It lays in de way Sollermun was raised. . . . A chile er two, mo' er less, warn't no consensens to Sollermun, dad fetch him!"

I never see such a nigger. If he got a notion in his head once, there warn't no getting it out again.¹¹

Interpretive competency, of course, is relative, as is inclusion in white society. Like Jim, Huck also has trouble interpreting the jokes and parables of his aristocratic betters:

[h]e asked me where Moses was when the candle went out. I said I didn't know; I hadn't heard about it before, no way.

"Well, guess," he says.

"How'm I going to guess," says I, "when I never heard tell of it before?"

"But you can guess, can't you? It's just as easy." . . .

"I don't know where he was," says I, "where was he?"

10. Mark Twain, *The Adventures of Huckleberry Finn* 20 (Bantam Press ed. 1988). Huckelberry Finn is becoming an increasingly central text for the Law and Literature movement. White himself provides a sensitive reading and set of questions concerning Huckelberry Finn in *The Legal Imagination* 21-27 (1973). For further readings of Huckelberry Finn by literary legalists, see Phelps, *The Story of the Law in Huckleberry Finn*, 39 *Mercer L. Rev.* 889 (1988); Yudof, *Tea at the Palaz of Hoon: The Human Voice in Legal Rules*, 66 *Tex. L. Rev.* 509 (1987) and Hodges, *Writing in a Different Voice*, 66 *Tex. L. Rev.* 629 (1987).

11. *Id.* at 76-77.

"Why, he was in the *dark!* That's where he was!"

"Well, if you knowed where he was, what did you ask me fore?"

"Why, blame it, it's a riddle, don't you see?"¹²

Membership in the various communities Huck visits up and down the river depends upon a certain level of linguistic and interpretive competency. Regional inclusion is determined by a character's ability to speak English; sexual membership, by one's ability to speak and act in a gender-coded way; and cultural inclusion, by one's ability to properly interpret familiar stories, fables, and parables. Literacy—linguistic and interpretive competency—distinguishes the civilized from the uncivilized, the master from the slave, the native from the foreigner, and the human being from the animal. Huck and Jim sum up the situation in this artful exchange:

"Why, Huck, doan' de French people talk de same way we does?"

"No, Jim; you couldn't understand a word they said—not a single word."

"Well, now, I be ding-busted! How do dat come?"

"I don't know; but it's so." . . .

"Well, it's a blame ridiklous way, en I doan' want to hear no mo' bout it. Dey ain' no sense in it."

"Looky here, Jim; does a cat talk like we do?"

"No, a cat don't."

"Well, does a cow?"

"No, a cow don't, nuther."

"Does a cat talk like a cow, or a cow talk like a cat?"

"No, dey don't."

"It's natural and right for 'em to talk different from each other, ain't it?"

"Course."

"Ain ain't it natural and right for a cat and a cow to talk different from *us*?"

"Why, mos' sholy it is."

"Well, then, why ain't it natural and right for a Frenchman to talk different from us? You answer me that."

"Is a cat a man, Huck?"

"No."

"Well, den, dey ain't no sense in a cat talkin' like a man."

"Is a Frenchman a man?"

"Yes."

"Well, den! Dad blame it, why doan' he *talk* like a man? You answer me *dat!*"

I see it warn't no use wasting words—you can't learn a nigger to argue. So I quit.¹³

12. *Id.* at 95.

13. *Id.* at 77-78.

Just as important, however (as White would predict) the community's shared texts define not only community membership, but also its members' perceptions of cultural, natural, and social reality. Tom explains to his gang that texts define the proper way to go about effecting a highway robbery:

"We are highwaymen. We stop stages and carriages on the road, with masks on, and kill the people and take their watches and money."

"Must we always kill the people?"

"Oh, certainly. It's best. Some authorities think different, but mostly it's considered best to kill them—except some that you bring to the cave here, and keep them till they're ransomed."

"Ransomed? What's that?"

"I don't know. But that's what they do. I've seen it in books; and so of course that's what we've got to do."

"But how can we do it if we don't know what it is?"

"Why, blame it all, we've *got* to do it. Don't I tell you it's in the books? Do you want to go to doing different from what's in the books, and get things all muddled up?"

"Now, Ben Rogers, do you want to do things regular, or don't you?—that's the idea. Don't you reckon that the people that made the books knows what's the correct thing to do? Do you reckon *you* can learn 'em anything? Not by a good deal. No, sir, we'll just go on and ransom them in the regular way."¹⁴

Similarly, Jim employs texts of superstition to explain the natural world:

Some young birds come along, flying a yard or two at a time and lighting. Jim said it was a sign when young chickens flew that way, and so he reckoned it was the same way when young birds done it. I was going to catch some of them, but Jim wouldn't let me. He said it was death. He said his father laid mightly sick once, and some of them caught a bird, and his old granny said his father would die, and he did. And Jim said you mustn't count the things you are going to cook for dinner, because that would bring bad luck. The same if you shook the tablecloth after sundown. And he said if a man owned a beehive and that man died, the bees must be told about it before sun-up next morning, or else the bees would all weaken down and quit work and die. Jim said bees wouldn't sting idiots; but I didn't believe that, because I had tried them lots of times myself, and they wouldn't sting me. I had heard about some of these things before, but not all of them. Jim knowed all kinds of signs. He said he knowed most everything.¹⁵

14. *Id.* at 10-11.

15. *Id.* at 45.

In one of the most quoted exchanges in American literature, slaves are excluded from the natural, cultural, and social species by definitional fiat. Huck and Huck's Aunt Sally use texts to define the human world:

"It warn't the grounding—that didn't keep us back but a little. We blowed out a cylinder head."

"Good gracious! anybody hurt?"

"No'm. Killed a nigger."

"Well, its lucky; because sometimes people do get hurt."¹⁶

Although Huck is both socially and economically marginal, he is nevertheless fully within the "textual community." Not only literate, he is a master manipulator of his community's texts, moving through various dilemmas and various communities by telling stories about himself that make him appear the insider. That he can so successfully deceive others about his identity evidences his inclusion in—not his exclusion from—the larger textual community. The contrast with Jim, who is excluded from the textual community, could not be sharper. While Huck lies, and lies successfully, to avoid capture or entrapment, this option is not available to Jim. Jim hides from his pursuers under the raft, beneath bushes, in the woods, and in the water, not inside socially constructed stories.

Consequently, Huck's critical reflections on his community's moral code take the "internal point of view," just as White would insist they must. Huck typically experiences the conflict between what he wants to do and what he understands is morally required of him as one arising from contradictory strands of the community's major moral texts. Huck characterizes his dilemma over turning Jim in as a conflict between breaking promises and turning in escaped slaves:

Jim said it made him all over trembly and feverish to be so close to freedom. Well, I can tell you it made me all over trembly and feverish, too, to hear him, because I begun to get it through my head that he *was* most free—and who was to blame for it? Why *me*. I couldn't get that out of my conscience, no how nor no way. . . . Conscience says to me, "What had poor Miss Watson done to you that you could see her nigger go off right under your eyes and never say one single word? What did that poor old woman do to you that you could treat her so mean? Why, she tried to learn you your book, she tried to learn you your manners." I was paddling off, all in a sweat to tell on him. . . . When was fifty yards off, Jim says: "Dah you goes, do ole true Huck; do on'y white genlman dat ever kep' his promise to old Jim." Well, I just feel sick.¹⁷

16. *Id.* at 213.

17. *Id.* at 85-87.

Huck often recognizes that the community's moral texts are in conflict, a paradox he tries to resolve:

Mornings before daylight I slipped into corn-fields and borrowed a watermelon, or a mushmelon, or a punkin, or some new corn, or things of that kind. Pap always said it warn't no harm to borrow things if you was meaning to pay them back some time; but the widow said it warn't anything but a name for stealing, and no decent body would do it. Jim said he reckoned the widow was partly right and pap was partly right; so the best way would be for us to pick out two or three things from the list and say we wouldn't borrow them any more—then he reckoned it wouldn't be no harm to borrow the others. So we talked it over all one night, drifting along down the river. . . . But toward daylight we got it all settled satisfactory, and concluded to drop crabapples and p'simmons. We warn't feeling just right before that, but it was all comfortable now. I was glad the way it come out, too, because crabapples ain't ever good, and the p'simmons wouldn't be ripe for two or three months yet.¹⁸

At times, Huck experiences his moral dilemma as a conflict between the community's "text" of moral behavior and its "text" of responsibility to others. Thus when Huck first promises Jim that he won't betray him, he experiences a conflict between his obligation to Jim and to his community's "morality":

"But mind, you said you wouldn't tell—you know you said you wouldn't tell, Huck."

Well, I did. I said I wouldn't, and I'll stick to it. Honest *injun*, I will. People would call me a low-down Abolitionist and despise me for keeping mum—but that don't make no difference. I ain't a-going to tell, and I ain't a-going back there, anyways.¹⁹

Other times Huck perceives the conflict as between its texts of morality and irresponsibility:

I knowed very well I had done wrong, and I see it warn't no use for me to try to learn to do right; a body that don't get *started* right when he's little ain't got no show—when the pinch comes there ain't nothing to back him up and keep him to his work, and so he gets beat. Then I thought a minute and says to myself, hold on; s'pose you'd 'a' done right and give Jim up, would you felt better than what you do now? No, says I, I'd feel bad. . . . Well, then, says I, what's the use you learning to do right when it's troublesome to do right and ain't no trouble to do wrong, and the wages is just the same? I was stuck. I couldn't answer that. So I reckoned I wouldn't

18. *Id.* at 64.

19. *Id.* at 43.

bother no more about it, but after this always do whichever come handiest at the time.²⁰

Huck is the paradigmatic Whitean social critic. Just as Huck hides from the community by immersing himself within it, he criticizes the community's moral texts entirely from within them. Although he rejects his "civilization," he fully embraces its *texts* as they embrace, define, and constrain him. Like all Whitean social critics, Huck achieves his critical distance from community by exploiting the tensions within his community's dominant texts. But his community's moral texts continue to constrain him as they define him. At no time, even when he senses and exposes the contradictions, tensions, and internal puzzles of those texts, does he reject them.

The linguistic, literary, cultural, and social texts in *Huckleberry Finn* "constitute" not only Huck's community, the identities of its members, and the community's morality, but also the identity and morality of its critic. In fact, Huck and his world vindicate one of White's most persistent claims: the ideals advanced by the community's critic, as well as the moral code embraced and followed by the community, derive not from aggregated preferences, but from the shared texts through which the community and the critic both derive their collective identities. Like virtually all of the characters in the book who experience or report on moral dilemmas, when Huck agonizes over doing the right thing, he is agonizing over the moralisms he has acquired from his aunt's civilized teachings, from the Bible, or from other authoritative textual sources. Like the community he criticizes, Huck's critical morality is a product of the community's texts. These texts not only mirror but constitute both the community's and its critics' moral practices.

II. THE COMMUNITY'S CRITIC AND THE COMMUNITY'S OBJECT

There are two problems with White's account of community, cultural criticism, and the social critic. One is directly and explicitly explored in *Huckleberry Finn*, the other by suggestion. First, the "textual critic's" vision, as defended by White and dramatized by Huck, is unduly bound by the very texts he sets out to criticize. The result is social criticism which is constrained and stunted by the texts it criticizes. Huck's story vividly illustrates this dilemma. The problem is simple: Huck may be the most critically astute white character in the book, but, nevertheless, for all his courage and good will, he is morally tone-deaf. Thus, Jim's fully human desire to see his family reunited elicits from Huck not warmth, but a chilling callousness:

20. *Id.* at 89.

Jim talked out loud all the time while I was talking to myself. He was saying how the first thing he would do when he got to a free state he would go to saving up money . . . and when he got enough he would buy his wife, . . . and then they would both work to buy the two children, and if their master wouldn't sell them, they'd get an Ab'litionist to go and steal them. It most froze me to hear such talk. He wouldn't ever dared to talk such talk in his life before. Just see what a difference it made in him the minute he judged he was about free. It was according to the old saying, "Give a nigger an inch and he'll take an ell." Thinks I, this is what comes of my not thinking. Here was this nigger, which I had as good as helped to run away, coming right out flat-footed and saying he would steal his children—children that belonged to a man I didn't even know; a man that hadn't ever done me no harm.²¹

Huck, of course, eventually does the right thing; and he does it against the weight of considerable community pressure and in the face of considerable danger. But at no point does Huck experience the conflict between the community's corrupt and racist moral code and his own sense of what he wants to do as a conflict between the positive code of the community and the demands of a truer, higher morality. At no point does he articulate a compelling case against the dehumanization of his friend, either to himself, to Jim, to the communities with which he interacts, or even to his confidant Tom. Never does he question the authority of the social code that dictates the abuses against which he rebels, nor does he reconceptualize what morality requires from the "strands" of the community's splintered and disingenuous codes. Huck is not even a successful reformer. Huck stands by Jim not because he sees Jim's cause as just, feels for his dilemma, or shares his pain—in fact, he doesn't. Rather, Huck stands by Jim because he feels himself bound by his promise to do so. Huck ultimately does the right thing for the wrong reason: he helps Jim out of fidelity to himself.

Huck's story is a story of courage. But his lack of moral vision (to say nothing of the community's) ultimately reveals the limits of cultural criticism grounded in the texts of the community being criticized. No less than his virtues, Huck's moral blindness is entirely a product of his immersion in his community's texts. Throughout the novel, Huck does the right thing by playing those texts off against each other: the text of a promise versus the text of a law; the text of the Biblical injunction to love one's enemies against the text of an aristocratic code of enmity; the text of conventional morality against the text of familial morality and loyalty. At no point, however, does he genuinely and sympathetically identify with the strangers, blacks, animals, or foreigners which his community's texts systemati-

21. *Id.* at 86.

cally and quite horrifically alienate or dehumanize. At no point does he achieve either moral autonomy from the community which constrains him, or genuine connection to the humanity of those his community unjustly objectifies.

The moral texts of Huck's community—even as he criticizes them—preclude all of these genuinely moral responses. Huck's story does indeed illustrate the possibilities of critique and transformation imminent in a community's moral texts. As such it illustrates the "moral textualism" White has so passionately defended. But what it illustrates is that the critique that emerges from this process will be muted, and the transformation of the community will be minor.

There is a second and more serious problem with White's view of culture and cultural criticism: a community's constitutive and defining texts will dehumanize outsiders, *as will the criticism that is grounded in those texts*. This is almost (but not entirely) inevitable. According to White, a community improves as well as defines itself through reading, absorbing, and criticizing its great constitutive literary and legal texts. For those participating, this process may have great meaning. But those who are excluded from participation simply do not exist for the Whitean "moral textualist." Because they do not participate as subjects in the processes of critique and self-transformation, they become literally objectified. In fact, those who are not included in the "textual community" as either readers, writers, or critics occupy an unbreakable circle of objectivity: because they are outside the community, they do not speak; because they do not speak, they are objects; because they are objects, they do not speak, and as non-speakers they are outside the community. They are, or have been in our history, "slaves," "niggers," "women," "wives," even endangered species like foxes and whales. If White's belief that the community is constituted and defined by its texts is correct, these excluded "others" will not elicit the empathy of the textual community. If we ground our criticism in our texts, then we will not grant moral entitlement to those "others" our texts objectify. We will not recognize them at all.

Huck's story vividly, if indirectly, illustrates this dehumanizing objectification of the textual outsider. The stories and moral codes of the communities that Huck and Jim visit, and Huck's partial transformations are all—necessarily—told from Huck's point of view. We do not hear the story from Jim's point of view because Jim is definitionally outside the textual community. Jim has almost no voice. Twain's story and Huck's story almost entirely exclude the voice of the slave. Not only Huck, but also the reader, cannot escape the narrowness of Huck's vision or the constraints of his community's texts, even as we condemn them. The reader cannot hear this community's story from a slave objectified by the community and its texts.

As readers we express outrage at Jim's objectification. We are surely

outraged when Huck and Aunt Sally define slaves as outside the bounds of humanity. But we are expressing our anger at the barbarism of the thought and the callousness of its expression. We are not expressing horror at Jim's subjective pain because we are not allowed to feel it. Our focus remains on the texts that constrain the definitions and the characters who do the defining. Throughout the novel, we see those texts stretched and pitted against each other, mocked, satirized, and occasionally transcended. But our critical attention remains on the text. The tragedy of *Huckleberry Finn*—and it is a tragedy—is that we see this community's story only through its own defining texts. We neither see nor feel it from the point of view of the defined.

Toni Morrison's *Beloved*, written almost one hundred years later, reveals what Twain's *Huckleberry Finn* leaves unspoken. First, Morrison's *Beloved* also tells the story of an escaped slave's journey north on a river to freedom. Morrison's run-away slave Sethe—like Jim—is helped along the way by a white, dirt-poor, de-civilized, kind, and sympathetic teenager. The plots of these two novels have striking parallels. In every other way imaginable, however, these two stories contrast. First, the genders are reversed: in contrast to Twain's relatively atomized, individualistic, and masculine Jim, Morrison's Sethe is a young woman (about Jim's age), the mother of three children and pregnant at term when she makes her escape. But Sethe is not just incidentally a mother. She is fundamentally, profoundly a mother: she is tied to her children; Sethe *is* her children. Second, in contrast to the centrality of Huck in Twain's story, the white teenager Amy in *Beloved* is a relatively minor character, even though she saves Sethe's life and helps deliver Sethe's child.

The greatest contrast between these two books, however, is in point of view. The story of Twain's Jim, the escaped slave, is told from the point of view of the white, free, marginal, critical, but textually included boy. Morrison's *Beloved* is told from the point of view of the excluded and objectified black slave woman. Twain's story gives voice to the critical reflections of the "textually marginalized": Huck may be marginal to his society, but he is an integral part of it. Morrison's story, in contrast, gives voice to the textually *excluded*. *Beloved* is told from the point of view of the community's object. In Twain's story, the slave is the excluded but sympathetic object: we cannot identify with him but we do sympathize with him. The "object" of Huck's story becomes the "subject" of Sethe's story in Morrison's novel. In Twain's *Huckleberry Finn*, Jim is a victim; in Morrison's *Beloved*, Sethe is a heroine.

Beloved takes as its explicit subject matter the very problem with "moral textualism" which *Huckleberry Finn* only illustrates: "moral textualism" objectifies by excluding those who do not participate in the production, interpretation, or criticism of a society's texts. *Huckleberry Finn* illustrates the problem with authorial irony, but *Beloved* explores and

corrects it. In *Beloved*, the silenced and objectified communicate and become subjects. In *Beloved*, those on the outside of the textual community—the dead, the illiterate, the young, the foreign, the gagged—speak without speech to those on the inside.

The illiterate and the linguistically incompetent impose their presence:

Sixo went among trees at night. For dancing, he said, to keep his bloodlines open, he said. Privately, alone, he did it. None of the rest of them had seen him at it, but they could imagine it, and the picture they pictured made them eager to laugh at him—in daylight, that is, when it was safe. But that was before he stopped speaking English because there was no future in it.²²

The gagged, the excluded, and the objectified all become subjects:

He wants to tell me, she thought. He wants me to ask him about what it was like for him—about how offended the tongue is, held down by iron, how the need to spit is so deep you cry for it. She already knew about it, had seen it time after time in the place before Sweet Home. Men, boys, little girls, women. The wildness that shot up into the eye the moment the lips were yanked back. Days after it was taken out, goose fat was rubbed on the corners of the mouth but nothing to soothe the tongue or take the wildness out of the eye. Sethe looked up into Paul D's eyes to see if there was any trace left in them. "People I saw as a child," she said, "who'd had the bit always looked wild after that. Whatever they used it on them for, it couldn't have worked, because it put a wildness where before there wasn't any. When I look at you, I don't see it. There ain't no wildness in you eye nowhere." . . . In that unlit daylight his face, bronzed and reduced to its bones, smoothed her heart down.²³

Beloved explores communications to, from, and among the textually excluded. When the textually excluded communicate in *Beloved*, they communicate without texts. They communicate, instead, through imagery:

They were not holding hands, but their shadows were. Sethe looked to her left and all three of them were gliding over the dust holding hands. Maybe he was right. A life. . . . All the time, no matter what they were doing—whether Denver wiped perspiration from her forehead or stooped to retie her shoes; whether Paul D kicked a stone or reached over to meddle a child's face leaning on its mother's shoulder—all the time the three shadows that shot out of their feet to the left held hands. Nobody noticed but Sethe and she

22. T. Morrison, *Beloved* 25 (1987).

23. *Id.* at 69-70.

stopped looking after she decided that it was a good sign. A life. Could be.²⁴

They communicate with color:

Suspended between the nastiness of life and the meanness of the dead, [Baby Suggs] couldn't get interested in leaving life or living it. . . . Her past had been like her present—intolerable—and since she knew death was anything but forgetfulness, she used the little energy left her for pondering color. Bring a little lavender in, if you got any. Pink, if you don't. And Sethe would oblige her with anything from fabric to her own tongue.²⁵

and body language, song, dance, and play:

Of that place where she was born . . . she remembered only song and dance. Not even her own mother. . . . Oh but when they sang. And oh but when they danced and sometimes they danced the antelope. The men as well as the ma'ams, one of whom was certainly her own. They shifted shapes and became something other. Some unchained, demanding other whose feet knew her pulse better than she did. Just like this one in her stomach.²⁶

In *Beloved*, when the textually excluded communicate, often they do not respond to the textual content of what is said. They respond instead to the bodies and the subjectivities of the speaker. And they respond with their own bodies, their sadness, their pain, their joy or pleasure.

In *Beloved*, when the textually excluded—those robbed of subjectivity and speech—speak, they speak of the subjective experience of objecthood. They speak of how it feels to be defined as one who is not allowed to feel. They speak of the subjective experience of being the object of a bill of sale. They speak of the subjective experience of selflessness:

[t]he sadness was at her center, the desolated center where the self that was no self made its home. Sad as it was that she did not know where her children were buried or what they looked like if alive, fact was she knew more about them than she knew about herself, having never had the map to discover what she was like. Could she sing? . . . Was she pretty? Was she a good friend? Could she have been a loving mother? A faithful wife? Have I got a sister and does she favor me? If my mother knew me would she like me?²⁷

And then of the revelation of self-possession:

24. *Id.* at 47.

25. *Id.* at 3-4.

26. *Id.* at 30.

27. *Id.* at 140.

[w]hen Halle looked like it meant more to him that she go free than anything in the world, she let herself be taken 'cross the river. Of the two hard things—standing on her feet till she dropped or leaving her last and probably only living child—she chose the hard thing that made him happy, and never put to him the question she put to herself: What for? What does a sixty-odd-year-old slavewoman who walks like a three-legged dog need freedom for? And when she stepped foot on free ground she could not believe that Halle knew what she didn't; that Halle, who had never drawn one free breath, knew that there was nothing like it in this world. It scared her. Something's the matter. What's the matter? What's the matter? she asked herself. She didn't know what she looked like and was not curious. But suddenly she saw her hands and thought with a clarity as simple as it was dazzling, "These hands belong to me. These *my* hands." Next she felt a knocking in her chest and discovered something else new: her own heartbeat. Had it been there all along? This pounding thing? She felt like a fool and began to laugh out loud.²⁸

In *Beloved*, when the textually excluded communicate, they speak, among other things, of the pain of their exclusion from community. They speak of a communion with the past in danger of being lost because its memory is too painful. When they construct for each other their pasts, they do so in the face of a pain often harder to bear than the ghostliness of not-knowing:

[I]f she could just manage the news Paul D brought and the news he kept to himself. Just manage it. Not break, fall or cry each time a hateful picture drifted in front of her face. Not develop some permanent craziness like Baby Suggs' friend, a young woman in a bonnet whose food was full of tears. Like Aunt Phyllis, who slept with her eyes wide open. Like Jackson Till, who slept under the bed. All she wanted was to go on. As she had.²⁹

When the textually excluded speak, they speak of the difficulty of forming communities of love in the face of an unreliable future:

Listening to the doves in Alfred, Georgia, and having neither the right nor the permission to enjoy it because in that place mist, doves, sunlight, copper dirt, moon—everything belonged to the men who had the guns. Little men, some of them, big men too, each one of whom he could snap like a twig if he wanted to. Men who knew their manhood lay in their guns and were not even embarrassed by the knowledge that without gunshot fox would laugh at them. . . . So you protected yourself and loved small. Picked the tiniest stars out of the sky to own; lay down with head twisted in order to see the

28. *Id.* at 141.

29. *Id.* at 97.

loved one over the rim of the trench before you slept. Stole shy glances at her between the trees at chain-up. Grass blades, salamanders, spiders, woodpeckers, beetles, a kingdom of ants. Anything bigger wouldn't do. A woman, a child, a brother—a big love like that would split you wide open in Alfred, Georgia. He knew exactly what she meant: to get to a place where you could love anything you chose—not to need permission for desire—well now, *that* was freedom.³⁰

Finally, and most notably, in *Beloved*, when the textually excluded speak, they rarely speak, even critically, of the larger community's "texts" which belabor the principles that justify their exclusion. Sethe, for example, does not know the *Dred Scott* decision. She never read it, criticized it, or participated in any other way in its production or transformation. Her life, however, was profoundly affected by its meaning. Sethe knows a meaning of *Dred Scott* which those of us who shared or will share in the production, transformation or criticism of that decision will never know. Thus, Sethe explains the meaning of the slavecatcher's sudden appearance in her newly-free life:

Sethe knew . . . that she could never close in, pin it down for anybody who had to ask. If they didn't get it right off—she . . . could never explain. Because the truth was simple, not a long drawn-out record of flowered shifts, tree cages, selfishness, ankle ropes and wells. Simple: she was squatting in the garden and when she saw them coming and recognized schoolteacher's hat, she heard wings. Little hummingbirds stuck their needle beaks right through her headcloth into her hair and beat their wings. And if she thought anything, it was No. No. Nono. Nonono. Simple. She just flew. Collected every bit of life she had made, all the parts of her that were precious and fine and beautiful, and carried, pushed, dragged them through the veil, out, away, over there where no one could hurt them. Over there. Outside this place, where they would be safe. And the hummingbird wings beat on.³¹

The second problem with White's moral textualism, then, is simply that even if the textual critic condemns the texts that negate Sethe's being, so long as the critic looks only to texts, she nevertheless excludes Sethe's voice, experience, and understanding. By defining "community" by reference to our "texts" we blind and deafen ourselves to expressions of pain inflicted on those whom the community's texts exclude, violate, or objectify. When we do so, we not only fail to include Sethe in our world, but we also fail to understand the "texts" that exclude and objectify her. If we only read, teach, transmit, or criticize our "texts" of constitutional law, for

30. *Id.* at 162.

31. *Id.* at 163.

example—*Dred Scott*, *Plessy*—we will never hear Sethe's voice, and if we do not hear Sethe's voice, then we will never understand either the nature or immorality of even the "law" of slavery, racism, or race relations. Reading the "dissents" of our critics is not enough. If we don't understand Sethe's experience of the holding in the *Dred Scott* decision—if we can't hear and feel the hummingbirds—then we simply don't understand the case.

Similarly, we will never understand our property law without considering, as Patricia Williams has eloquently prodded us into doing,³² the experiences of those who are or have been the object of property, the object of a bill of sale, or the object of someone's commercial and constitutional rights of entitlement. The "story" of the law of slavery and racism is not just the story of the evolution of the texts of the *Dred Scott* decision, the Fourteenth Amendment, the Civil Rights Act, or the Equal Employment law. Slavery was the lives and stories of *Dred Scott*, of the "sixty million and more" who died on the slave ships and to whom Morrison dedicates her novel, of Morrison's Sethe, of Twain's Jim, of Patricia Williams' great-great grandmother, and of their families and ancestors and descendants. Moral textualism blocks this understanding. So long as we define our communities by reference to our "texts," no matter how critical, sympathetic or apologetic we may be or become for the damage those texts have wrought, we shield ourselves from the voices of those whom the texts exclude.

III. THE INTERACTIVE COMMUNITY

A different answer to the questions "how do we form community," and "how might we form better ones," which is more inclusive than the textualism advocated by White (although to some degree implied by it) might be this: we make communities by interacting with others. More specifically, we make communities by violating, suppressing, oppressing, terrorizing, loving, nurturing, caring for, or respecting the feeling, subjectivity, autonomy, and needs of the others in our lives. We might call the communities that we form in these ways our "interactive communities." The moral worth of these communities depends entirely on the quality of this affective interaction. We make hierarchical and/or oppressive communities when we violate or oppress others, and we make intimate or respectful communities when we behave compassionately or respectfully.

Textual productivity, criticism and transformation is certainly sometimes implicated in the process of forming interactive communities. But sometimes it is not. For example, although the dominant party in a hierarchical relationship does sometimes violate the other with texts, more

32. Williams, *On Being the Object of Property*, 14 Signs 5 (1988).

typically, he does so through violence. It is violence, not texts, that binds oppressive communities. Similarly, although we often create communities of respect, intimacy or compassion through texts, we do not always do so. Many of our communities of intimacy are profoundly non-textual; it is often love or affection that bind communities of both private intimacy and public respect.

Our interactive communities are broader than our textual communities in at least two ways. First, "interactive communities" include those we violate as well as those with whom we textually communicate. Second, interactive communities include those with whom we are lovingly intimate in non-textual and non-verbal ways. Therefore, the way to improve these larger interactive communities is not necessarily, as the textualist insists, through improving or interpreting our cultural texts. It may be that this is the right way to improve our textual community. But the way to improve our non-textual interactive community is to "transform" not our texts, but our selves. We need to transform our communities of violence, terrorism, and oppression into communities of compassion and respect. The way to do so is by improving the quality of our affective interaction with others.

Beloved depicts both the formation and the transformation of non-textual interactive communities. Thus communities of violence are formed when the characters violate or oppress the other, and communities of intimacy and respect are formed when they care for the other. None of these communities depends upon the production or criticism of texts. White masters and black slaves, for example, without the benefit of shared texts, coexist in an interactive community of violence, neither formed, evidenced, nor "constituted" through texts. Rather, they are formed through violations into and upon the physical body of the violated. It is not "texts," but rather whips, bits, gags, rapes, scars, and hangings that effectuate these communities of violence:

[L]ikely as not the fugitive would make a dash for it. Although sometimes, you could never tell, you'd find them folded up tight somewhere: beneath floorboards, in a pantry—once in a chimney. . . . Caught red-handed, so to speak, they would seem to recognize the futility of outsmarting a whiteman and the hopelessness of outrunning a rifle. Smile even, like a child caught dead with his hand in the jelly jar, and when you reached for the rope to tie him, well, even then you couldn't tell. The very nigger with his head hanging and a little jelly-jar smile on his face could all of a sudden roar, like a bull or some such, and commence to do unbelievable things. Grab the rifle at its mouth; throw himself at the one holding it—anything. So you had to keep back a pace, leave the tying to another. Otherwise you ended up killing what you were paid to bring back alive. Unlike a snake or a bear, a dead nigger could not

be skinned for profit and was not worth his own dead weight in coin.³³

Similarly, it is marks on the body, not marks on a page, that communicate the nature and quality of the various communities of violence in which Sethe has lived:

Amy unfastened the back of her dress and said "Come here, Jesus," when she saw. Sethe guessed it must be bad because after that call to Jesus Amy didn't speak for a while. . . . "It's a tree, Lu. A chokecherry tree. See, here's the trunk—it's red and split wide open, full of sap, and this here's the parting for the branches. You got a mighty lot of branches. Leaves, too, look like, and dern if these ain't blossoms. Tiny little cherry blossoms, just as white. Your back got a whole tree on it. In bloom. What God have in mind, I wonder. I had me some whippings, but I don't remember nothing like this."³⁴

In the book's most searing scene, Sethe's milk—intended for her newborn—is brutally stolen from her body. As Sethe's breasts are raped for their milk, an utterly non-textual community of violence comes into being: it is a community that relies on no shared principles, no shared texts, no participatory culture, and no common tradition. As rape is a violation of the body that transforms sexual intimacy into sexual violence, so the violent theft of Sethe's milk, without textual mediation, transforms the nurturant intimacy of the mother-infant community into a grotesque and atextual community of physical domination. Sethe tells a sympathetic but uncomprehending Paul the story:

"All I knew was I had to get my milk to my baby girl. Nobody was going to nurse her like me. Nobody was going to get it to her fast enough, or take it away when she had enough and didn't know it. . . . Nobody knew that but me and nobody had her milk but me. I told that to the women in the wagon. Told them to put sugar water in cloth to suck from so when I got there in a few days she wouldn't have forgot me. The milk would be there and I would be there with it.

"After I left you, those boys came in there and took my milk. That's what they came in there for. Held me down and took it. I told Mrs. Garner on em. She had that lump and couldn't speak but here eyes rolled out tears. Them boys found out I told on em. Schoolteacher made me open up my back, and when it closed it made a tree. It grows there still."

"They used cowhide on you?"

"And they took my milk."

"They beat you and you was pregnant?"

33. T. Morrison, *Beloved* 79 (1987).

34. *Id.*

"They took my milk!"³⁵

Communities of violence can also, of course, be formed by words. In fact, words are used over and over in *Beloved* to form communities of violence and of violation. *Words themselves*—not the texts they form—actively deprive or speciously grant the slaves their humanity—whether or not they express their deprivation textually. Thus the relatively benign owner of "Sweethome" bestows a specious and self-serving manhood with words:

[T]hey were Sweet Home men—the ones Mr. Garner bragged about while other farmers shook their heads in warning at the phrase. Y'all got boys, he told them. Young boys, old boys, picky boys, strappin boys. Now at Sweet Home, my niggers is men every one of em. Bought em thataway, raised em thataway. Men every one.

"Beg to differ, Garner. Ain't no nigger men."

"Not if you scared, they ain't." Garner's smile was wide. "But if you a man yourself, you'll want your niggers to be men too."

"I wouldn't have no nigger men round my wife."

It was the reaction Garner loved and waited for.

"Neither would I," he said. Neither would I, and there was always a pause before the neighbor, or stranger, or peddler, or brother-in-law or whoever it was got the meaning. Then a fierce argument, sometimes a fight, and Garner came home bruised and pleased, having demonstrated one more time what a real Kentuckian was: one tough enough and smart enough to make and call his own niggers men.³⁶

In contrast, the book's most horrific character, Schoolteacher, uses the definitional power of words backed up by force to deprive the slaves of both sustenance and humanity. In the following exchange, the slave's exclusion from the textual community is underscored as his ironic attempt to participate in the texts that exclude him elicits Schoolteacher's violence:

"You stole that shoat, didn't you?"

"No, sir. . . ."

"You telling me you didn't steal it, and I'm looking right at you?"

"No sir. I didn't steal it."

Schoolteacher smiled. "Did you kill it?"

"Yes sir. I killed it. . . ."

"Did you eat it?"

"Yes sir. I sure did."

"And you telling me that's not stealing? . . . What is it then?"

"Improving your property, sir. . . Sixo plant rye to give the high

35. *Id.* at 16-17.

36. *Id.* at 10-11.

piece a better chance. Sixo take and feed the soil, give you more crop. Sixo take and feed Sixo give you more work.”

Clever, but schoolteacher beat him anyway to show him that definitions belonged to the definers—not the defined.³⁷

Texts, education, and even ink can be weapons of violence and violation:

Nothing to tell except Schoolteacher. . . . Talked soft and spit in handkerchiefs. Gentle in a lot of ways. You know, the kind who know Jesus by His first name. . . . Not strong as Mr. Garner but smart enough. He liked the ink I made. It was her recipe, but he preferred how I mixed it and it was important to him because at night he sat down to write in his book. It was a book about us but we didn't know that right away. We just thought it was his manner to ask us questions. He commenced to carry round a notebook and write down what we said. I still think it was them questions that tore Sixo up. Tore him up for all time.³⁸

The textually excluded in *Beloved* also form communities of intimacy and respect. The communities, like the communities of violence and violation, are also typically formed without benefit of texts. Often, they are formed without words entirely. Thus communities of trust are formed through tears:

Not even trying, he had become the kind of man who could walk into a house and make the women cry. Because with him, in his presence, they could. There was something blessed in his manner. Women saw him and wanted to weep—to tell him that their chest hurt and their knees did too. Strong women and wise saw him and told him things they only told each other. . . . Therefore, although he did not understand why this was so, he was not surprised when Denver dripped tears into the stovefire. Nor, fifteen minutes later, after telling him about her stolen milk, her mother wept as well.³⁹

Communities of intimacy are formed through non-textual tender caress:

Behind her, bending down, his body an arc of kindness, he held her breasts in the palms of his hands. . . . And when the top of her dress was around her hips and he saw the sculpture her back had become, . . . he could think but not say, “Aw lord, girl.” And he would tolerate no peace until he had touched every ridge and leaf of it with his mouth, none of which Sethe could feel because her back skin had been dead for years. What she knew was that the responsi-

37. *Id.* at 190.

38. *Id.* at 36-37.

39. *Id.* at 17.

bility for her breasts, at last, was in somebody else's hands. Would there be a little space, she wondered, a little time, to . . . just stand there a minute or two, naked from shoulder blade to waist, relieved of the weight of her breasts, smelling the stolen milk again and the pleasure of baking bread? Maybe this one time she could stop dead still in the middle of a cooking meal—not even leave the stove—and feel the hurt her back ought to. Trust things and remember things because the last of the Sweet Home men was there to catch her if she sank?⁴⁰

Communities of nurturance between the generations are formed through non-textual kissing, horseplay, and breastfeeding:

Buglar and Howard played with her ugly feet, after daring each other to be the first to touch them. She kept kissing them. She kissed the backs of their necks, the tops of their heads and the centers of their palms, and it was the boys who decided enough was enough when she lifted their shirts to kiss their tight round bellies. . . . It was some time before she let Baby Suggs shoo the boys away so Sethe could put on the gray cotton dress her mother-in-law had started stitching together the night before. Finally she lay back and cradled the crawling-already girl in her arms. She enclosed her left nipple with two fingers of her right hand and the child opened her mouth. They hit home together.⁴¹

Communities of friendship are formed through dance and play:

Beloved took Denver's hand and placed another on Denver's shoulder. They danced then, round and round the tiny room and it may have been dizziness, or feeling light and icy at once, that made Denver laugh so hard. A catching laugh that Beloved caught. The two of them, merry as kittens, swung to and fro, to and fro, until exhausted they sat on the floor.⁴²

And finally, moral communities of intimacy and respect, like communities of violence, are sometimes formed through words, speech, and storytelling. Story-telling is as central in *Beloved* as in *Huckleberry Finn*, but the stories serve profoundly different ends in the two novels. Each act of story-telling in *Beloved* carries promise and extreme risk: the stories are of so much anguish and suffering that their telling evokes in turn waves of pain in both the listeners and the tellers. But the bridge of shared empathic experience makes it worth the pain:

Sethe learned the profound satisfaction Beloved got from storytelling.

40. *Id.* at 18.

41. *Id.* at 94.

42. *Id.* at 74.

It amazed Sethe . . . because every mention of her past life hurt. Everything in it was painful or lost. She and Baby Suggs had agreed without saying so that it was unspeakable; to Denver's inquiries Sethe gave short replies or rambling incomplete reveries. Even with Paul D, who had shared some of it and to whom she could talk with at least a measure of calm, the hurt was always there—like a tender place in the corner of her mouth that the bit left. But, as she began telling . . . she found herself wanting to, liking it. Perhaps it was *Beloved's* distance from the events itself, or her thirst for hearing it—in any case it was an unexpected pleasure.⁴³

In *Beloved*, the act of storytelling is valued not because the stories produce or constitute "texts," but more simply, because *in the telling* bridges of shared understanding, trust, and experience are created. Thus, Denver watches her mother moved to conversation:

Denver stood on the bottom step and was suddenly hot and shy. It had been a long time since anybody (good-willed whitewoman, preacher, speaker or newspaperman) sat at their table, their sympathetic voices called liar by the revulsion in their eyes. For twelve years, long before Grandma Baby died, there had been no visitors of any sort and certainly no friends. No colored people. Certainly no hazelnut man with too long hair and no notebook, no charcoal, no oranges, no questions. Someone her mother wanted to talk to and would even consider talking to while barefoot. Looking, in fact, acting, like a girl instead of the quiet, queenly woman Denver had known all her life.⁴⁴

Words are also used to soothe. When Amy, the white girl, saves Sethe's life and later helps Sethe deliver, Amy's flow of words keeps Sethe in the realm of the living. The actual "text" of Amy's words, however, is utterly irrelevant. It is the care she expresses through the simple human act of talking that saves Sethe's life:

Sethe didn't know if it was the voice, or Boston or velvet, but while the whitegirl talked, the baby slept. Not one butt or kick, so she guessed her luck had turned. . . . So she crawled and Amy walked alongside her, and when Sethe needed to rest, Amy stopped too and talked some more. . . . The sound of that voice, like a sixteen-year-old boy's, going on and on and on, kept the little antelope quiet and grazing. During the whole hateful crawl to the leanto, it never bucked once.⁴⁵

And finally, at the end of *Beloved*, words provide for Denver, Sethe's

43. *Id.* at 58.

44. *Id.* at 12.

45. *Id.* at 33-34.

daughter, the basis of a restored self-respect, and hence the prerequisite for sharing in the public life of the larger community:

"I want work, Miss Lady."

"Work?"

"Yes Ma'am. Anything."

". . . Oh, baby," said Mrs. Jones. "Oh, baby."

Denver looked up at her. She did not know it then, but it was the word "baby," said softly and with such kindness, that inaugurated her life in the world as a woman. . . .⁴⁶

In this final chapter, Denver and the reader encounter for the first time, a "text" in which Denver actively participates in the manner described by White:

At least once a week, she visited Lady Jones. . . . She gave her a book of Bible verse and listened while she mumbled words or fairly shouted them. By June Denver had read and memorized all fifty-two pages—one for each week of the year.⁴⁷

As White would predict, Denver's literacy inaugurates not only her womanhood, but also her acceptance into the "textual community":

When [Paul] asked her if they treated her all right over there, she said more than all right. Miss Bodwin taught her stuff. "She says I might go to Oberlin. She's experimenting on me." And he didn't say, "Watch out. Watch out. Nothing in the world more dangerous than a white schoolteacher." Instead he nodded. . . .⁴⁸

How, then, do we form communities? As White has so persuasively argued, one way is indeed through the production, criticism, and transformation of our shared cultural texts. When we create, read, criticize, or participate in texts, we are indeed engaging in a form of communal reconstitution. Surely one of the ways to improve the moral quality of our communities, then, is through the careful criticism, interpretation, reading and re-reading of legal and literary texts. The law and literature movement, following White, has focused our attention on how it is that we engage these texts—and hence ourselves—and how we might do so in a more morally creative way.

But there are other ways we form communities, and therefore other ways we might improve them, which White's "moral textualism" neglects. Like the characters in *Beloved*, we form communities not just through the reading and criticism of our texts, but also through interacting with

46. *Id.* at 248.

47. *Id.* at 250.

48. *Id.* at 266.

others. These communities do not necessarily converge: we interact with many "others" who are simply unable to participate, as reading, literate, critical subjects *in any fashion* in our cultural texts. White masters interacted with black slaves at a time when slaves-as-subjects were written out of the legal, cultural and human texts of the dominant community. Our community, defined by the interactive effects we have on others, is considerably larger than the community as defined by our texts. We interact, for better or worse, with those we textually exclude. If we want to improve our community then, we should improve not just the quality of our texts, but also the quality of those interactions.

CONCLUSION

What is the role of law, and of legal texts, in the formation and transformation of communities? First, legal texts, as White has shown, no less than literary texts, do indeed constitute our textual community. Our legal texts—no less than our literary texts—reflect and constitute as well as convey our moral and cultural traditions. But laws are also implicated in the formation of our interactive communities. Laws constitute one of the ways we interact with others. Thus legal decisions, statutes and doctrines are constitutive of the "interactive community" just as legal texts are constitutive of the "textual community." Laws oppress and protect; grant and deny rights; acknowledge or repudiate one's humanity, moral worth or entitlement; create spheres of violence or intimacy; and create feelings of misery, deprivation, safety or respect. Furthermore, a law can affect the subjectivity of the lives of many creatures—human and otherwise—who will never produce, participate in, or criticize its textual meaning. The "interactive community" that a law constitutes, then, might be considerably larger than the "textual community" it brings into being. A "law," while it is certainly one form of cultural text, is always more than *just* a text. It is also, potentially, a communicative and interactive tool of violence, violation, compassion, nurturance or respect.

And indeed, the same law, statute, decision, or doctrine that textually expresses a high cultural ideal or practice for the textual community may operate as an instrument of violence upon those members of the interactive community who are textually excluded. It may operate positively upon the "textual community" and negatively upon the "interactive community." The *Dred Scott* decision, for example, textually expresses an exemplary moral principle of respect for the property rights of others, while at the same time wreaking violence upon the subjectivity of slaves—its textually excluded objects. Similarly, the "marital rape exception" upholds, extends, and "re-interprets" the moral conviction of the modern textual community that we ought to respect the privacy of the

home and the rights of the falsely accused, while it wreaks terrible violence upon the subjectivity of wives.

The reverse of this relation might also obtain: the same decision that seems to violate norms of textual morality, generality or neutrality for the textually included, might operate in such a way as to create a community of greater intimacy, compassion or respect between the excluded and the textually empowered. *Brown v. Board of Education* and the Marshall-Brennan opinion in *Bakke v. University of California* might be such texts. Whether we condemn or praise a particular law or legal decision might depend, then, upon whether we view it from the point of view of the textual or interactive community.

We need then to understand our laws not only as "texts" that embody our traditions and our cultural ideals, but also as interactive instruments of violence, violation, compassion or respect. Laws have a profound impact upon the subjectivity of people, children, slaves, women, and other living things who either might or might not participate in their textual production, interpretation, or critique. Until we learn to feel, to empathize with, and to assume those effects, we will not achieve even a decent understanding of the legal texts themselves. We will not understand the real meaning and the real horror of Huck and Jim's travels up and down the Mississippi, for example, until we hear of them from Jim's point of view, and Mark Twain did not and could not possibly give us Jim's point of view. Similarly, we cannot understand the meaning of the *Dred Scott* case merely by reading the opinion—no matter how critical of it we may be—because we do not hear Scott's voice, and we can't possibly presume to know what that case held without appreciating the profound violence the decision effected on those whom it objectified. We won't achieve that understanding from reading the case, no matter how hard we strive to perfect the sensitivity and critical intelligence of our readings.

Nor will we achieve this understanding, I am afraid, by simply supplementing our sensitive and critical readings of texts with the empirical and objective methods of the social sciences. We do, of course, need to understand the objective consequences of our law. But we need to understand also the subjective impact of our decisions: how those decisions affect both insiders and outsiders as *subjects*, not just as objects. We need to understand how it *feels*—not just what it does, or what the "text" that effectuates it says—to be "an object of property,"⁴⁹ or in Morrison's strikingly similar formulation, to be "an object of a definition." We need to see the history of the civil rights movement as experienced by those whose rights were expanded but whose welfare continues to be ignored. The subjective, phenomenological difference between the feelings of violation—of being

49. P. Williams, *supra* note 34.

violated—and the feelings of respect or compassion—of being respected or cared for—neither can nor ought be empirically measured.

The narrative voice and law-and-literature movement have important roles to play in our understanding of the interactive as well as the textual community. The only way to achieve an understanding of the interactive community—the only way to understand whether and how we are creating communities of violence or communities of intimacy and respect—is by listening to the narratives, the stories, the poems, the reflections, the memories, the hopes, the ambitions, and the philosophies of the textually excluded. We need to pay attention to our literary texts about law, as White says, but we also need to produce, listen to, criticize, and participate in the production of narratives about the impact of legal norms and institutions upon the subjective lives of those whom the legal textual community excludes. The stakes of this enterprise are quite high. The antebellum South could not survive its refusal to expand its human community to include slaves or its discourse to include their voices, and our modern textual community may not survive if we do not learn to include the natural world in our sense of what deserves moral respect. The narrative voice might help us achieve that minimal degree of empathy for the “non-human” world which increasingly appears to be necessary for our own survival.

But more fundamentally, we need to listen to the narratives of those who are excluded from legal discourse in order to create better communities, not just communities which can survive. To create better communities we probably should learn, as White has argued, to become better readers of the classic cultural and legal texts that (partly) constitute our communal life. Improving the quality of our reading will improve the quality of our “textual community.” But we also ought to improve the quality of our “interactive community,” and to do that, we need to become not just better readers, but better people. We need to concern ourselves not just with the worth of the “principles” expressed or unexpressed in a legal text, but also with the subjective quality of the lives which that legal decision—*our* legal decision—will affect. This means that we need to become better able to concern ourselves with the subjective quality of the lives of those affected by the decisions those “legal texts” embody.

We need to listen, then, not just to the great stories and classic texts that constitute our cultural and legal tradition. We also need to listen to the lawyers, legal academics, lay people, poets, novelists, and anyone else who is able to tell the stories of those who have been textually excluded from that cultural past. We need to learn to feel the quality of those lives by opening our hearts as well as our minds to the stories, poems, metaphors, and parables of others. By learning to listen to the outsider, we expand and improve our interactive community. Ultimately, we expand and improve ourselves.