

**Living Speech:
Resisting the Empire of Force**

By James Boyd White

Princeton University Press, Princeton, NJ, 2006.
236 pages, \$29.95.

REVIEWED BY THOMAS HOLBROOK

This is a book about disrespect—and about the benefits of practicing it. Disrespect is particularly vital to practitioners of law, James Boyd White tells us, as well as to others who wish to be truly human and to overcome the fatuities of power and the coils of the powerful. So important stuff here, if we choose to heed it.

Where does this power reside, and how are we to resist it? White's answer is surely applicable to the political circumstances in our time, because, as he explains, the force that coerces improper actions isn't physical, but almost always mental: "it really lives, in the mind [not the barrel of a gun]; without that life it would have no force at all." The danger comes not from the physical coercion of George Orwell's *Nineteen Eighty-Four*, but from the self-imposed linguistic bondage of Joseph Heller's *Catch-22*.

As a professor of law and of English at the University of Michigan, White is ideally suited to examine the bondage that language can exact from those it overmasters. The remedy is to master the language, as he has argued in prior books, *The Legal Imagination* and *The Edge of Meaning* among them.

White's proof text for the argument of *Living Speech* is from Simone Weil, and is translated as "No one can love and be just who does not understand the empire of force and know how not to respect it," although "know how to disrespect it" might be a less awkward Englishing.

What does this mean? What does mere language have to do with the starwarian "empire of force"? How does "living speech" matter to us, on our quotidian plane of prosaic reality? Why should we care?

It is because "prosaic" is the prime deceptor, White argues, "and much is

at stake." For we can live on one plane, that of "the reiteration of clichés, formulas, slogans—dead language really," where we can try "to sound like a lawyer, not to be one," become mentally and morally dead, in White's conception. Or we can attain utterance of a second kind:

speech that comes from the center of the person, and is addressed to the center of its audience . . . speech upon which both individual and shared life can be built. . . . For it is only this . . . living speech, that . . . makes possible the real—if always imperfect—communication of mind with mind. . . . Indeed it is what enables any of us to be a person in the first place.

Thus, "living speech" is the method we are to use to resist, then to overcome, Weil's "empire of force" that White adopts as his metaphor for the spiritual and ethical death that abidingly prevails in so much of contemporary life—the death conveyed by "clichés and received ideas and formulas and slogans presented as though they could carry the work of thought and writing":

[T]he strong forces of advertising and propaganda [that] constantly work to trivialize our language and experience, to infantilize us as political actors and thinkers, and to reduce us to consumers and voters with defective minds. How to resist these forces, ultimately forces of death . . . is . . . both the central question of individual life and the largest cultural and political issue of our era.

The "empire of force" uses this murky and formulaic "second kind" of language (cliché, formula, slogan, received opinion) to deceive and enslave us, as George Orwell pointed out long ago in his essay "Politics and the English Language." Orwell focused primarily on the political uses of deceitful language, whereas White explains that, by succumbing to such language we not only are manipulated politically but

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also actually lose our human value. We cease to "be" in any clear, active, and humane sense and become more like echoes than persons. "Living speech," in short, can be uttered only by people who are "present as a mind, a person" in their speech and writing.

White anatomizes this "being present" by analyzing several legal opinions and literary works (and one that, at heart, is both). He opens with Homer and Dante, then proceeds through Frost, Shakespeare, William Carlos Williams, and Plato's *Phaedrus*, alternating with legal opinions that are various and extensive, "alive" and "dead," with several from the U.S. Supreme Court. And there is a brief letter by Lincoln.

A high point of the book is White's equation of the U.S. Supreme Court with Athenian tragic drama. The Court, he explains, "exists primarily in cultural and imaginative and political space." Just so classical Athenian drama. Further, "it is a public arena . . . one function of which is to bring certain stories and the problems they present into public attention . . . for education or enlightenment." In a footnote to this remark, White explains how immensely important the juridical *opinion* is to this process and how clear, explicating prose is absolutely necessary for living law—law that is "present as a mind, a person": "Imagine . . . that the Court had been forbidden to write opinions and that its judgments had to stand on their

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own, undefined and uninterpreted. This would destroy the possibility of law as we know it.” One can scarcely imagine that, in a free and open society.

White’s excerpting of Court opinions to illustrate “dead” and “living” expression is too extensive to quote illustratively here, but a brief negative example from a Court opinion may suffice:

The statute proscribes the visual depiction of an idea—that of teenagers engaging in sexual activity—that is a fact of modern society and has been a theme of art and literature throughout the ages. ... It is, of course, undeniable that some youths engage in sexual activity before the legal age, either on their own inclination or because they are the victims of sexual abuse.

Ashcroft v. Free Speech Coalition, 535 U.S. 234, 246, 247 (2002).

This is a meaningless bladder of blah blah blah, as White points out: “[I]n this part of its opinion and indeed throughout [the Court] engages in analysis at the level of ... formula or cliché. It is the stuff of law school outlines, not a distinguished judicial opinion. What I miss ... is the presence of a mind actually engaged with a difficult problem of understanding and judgment.”

In all this we may think that White disrespects too avidly, that he makes impossible demands on legal and other writers, given the pace and pressure of modern life. If so, we need only to look at the letter by Lincoln that he includes as the “living” expression we must aspire to, written under as much pressure as any writer has ever had to bear. Lincoln writes to Gen. Joseph Hooker in January 1863:

I have placed you at the head of the Army of the Potomac. Of course I have done this upon what appear to me to be sufficient reasons. And yet I think it best for you to know that there are some things in regard to which, I am not quite satisfied with you. I believe you to be a brave and skillful soldier, which, of course,

I like. I also believe you do not mix politics with your profession, in which you are right. You have a confidence in yourself, which is a valuable, if not an indispensable quality. You are ambitious, which, within reasonable bounds, does good rather than harm. But I think that during Gen. Burnside’s command of the Army, you have taken counsel of your ambition, and thwarted him as much as you could, in which you did a great wrong to the country, and to a most meritorious and honorable brother officer. I have heard, in such a way as to believe it, of your recently saying that both the Army and the Government needed a Dictator. Of course it was not *for* this, but in spite of it, that I have given you the command. Only those generals who gain successes, can set up dictators. What I now ask of you is military success, and I will risk the dictatorship. The government will support you to the utmost of its ability, which is neither more nor less than it has done and will do for all commanders. I much fear that the spirit which you have aided to infuse into the Army, of criticizing their Commander, and withholding confidence from him, will now turn upon you. I shall assist you as far as I can, to put it down. Neither you, nor Napoleon, if he were alive again, could get any good out of an army while such a spirit prevails in it.

And now, beware of rashness. Beware of rashness, but with energy, and sleepless vigilance, go forward, and give us victories.

Yours very truly
A. Lincoln

This is writing that disrespects the empire of force as strongly as can be imagined. Lincoln’s prose is clear, plain, direct, empathetic but forceful, legalistic but nonlegal. We are so unaccustomed to such writing that it shocks us with its directness (which is, after all, just truth), but when we try to change it,

or excerpt it, we find that it cannot be modified or abbreviated without serious loss. It is written by the whole person, the whole mind, and it fully engages the mind of the recipient (one cannot imagine Hooker’s ever forgetting this letter). We could scarcely conceive of a fitter example of what White calls for in this book:

It is possible for writing in the law, as in other fields, to call the reader into life, life with language and life with other people, and hence into a world in which love and justice are possibilities. It can resist the forces of death and empire—of advertising and propaganda, of cliché and commodification—by insisting upon a kind of speech that speaks from person to person, mind to mind, and recognizes that in all our language uses we are claiming meaning for the experience of ourselves, and others, meaning for which we are responsible.

This is a compelling book—an appropriate tract for our times that deserves widespread and careful reading in an era deeply infected by the linguistic plagues White disinfects through disrespect. However, because most of the material is reworked from earlier talks and essays, perhaps the best way to read this book is one chapter at a time, with lapses and considerable cogitation between. **TFL**

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Investigating Identity Theft: A Guide for Businesses, Law Enforcement, and Victims

By Judith M. Collins

John Wiley & Sons, Inc., Hoboken, NJ, 2006.
252 pages, \$39.95.

REVIEWED BY ARTHUR L. RIZER III

Are you concerned about identity theft? A better question, according to Judith M Collins, the author of *Investigating Identity Theft: A Guide for Businesses, Law Enforcement, and Victims*, is: What are you going to do if you are a victim of or investigating a case of identity theft?

Collins, a highly regarded expert on crimes involving identity theft and a former professor at the School of Criminal Justice at Michigan State University, notes that, despite the widespread attention that these crimes command, they continue to increase in severity and frequency. Even more disturbing is that victims and law enforcement officers appear to be ill-equipped and insufficiently educated to prevent and combat these crimes. Whereas in the pre-Internet era, you could prevent most theft merely by locking your doors, today you must take steps that include shredding your garbage, installing firewalls on computers, and reducing your electronic profile. As for the police, whereas in the past they might have achieved results merely by chasing down leads, today they are faced with tracing international e-mails and digging through IP addresses and URLs across the World Wide Web.

Collins follows a five-step format in investigating these types of crimes:

1. Know the crime and understand the criminal.
2. Equip computer security for identity theft investigations.
3. Configure the computer for online investigations.
4. Understand the victim, then prepare to launch the investigation.
5. Authenticate the facts of the case (in particular what the victim reported) and investigate the crime itself.

The chapters in the book follow this basic format, with the first half of the book providing background on the problem of identity theft crimes by giving examples of real cases—both solved and unsolved—and the second half of the book moving from explaining crimes of identity theft from a technical or victims' perspective to investigating the crimes.

This book is unique in the extent of

detail it provides for actually conducting an investigation. The real gem in the book, however, is the practical exercises it provides to enable the reader to actually try to do what is being taught. One learns not merely the concepts involved in investigating identity theft; one learns how to investigate it.

Investigating Identity Theft contains a bounty of useful information. You will learn how to put your name on the Do Not Call list, how to write a letter to a business explaining that you were a victim of identity theft (yes, sample letters are provided), and how to find the code in an e-mail so that you can decipher where it really came from. Almost more useful is the 165-page appendix that contains a list of hundreds of useful Web sites that allow the user to find anything from zip codes to registered truck drivers in Alabama. This is all presented in an easy-to-read format with concise statements of themes complemented by dozens of graphs for some of the more complex discussions and scenarios.

Although *Investigating Identity Theft* would be helpful to an official investigator, the book would be especially useful to a victim of identity theft who seeks to get his or her life back together and track down the perpetrator—although Collins states explicitly that victim investigators should not try to confront suspects; rather, they should gather information on the computer and turn it over to law enforcement officials. This is also a good idea because, as Collins observes, police spend most of their time investigating conventional violent crimes such as rape and murder. Therefore, Collins notes that, by being your own investigator, you not only can help the police with their legwork but also may cure yourself of the feeling of being a victim. In the past, Collins writes, “the most a victim could do was prevent further abuse and accept the fact that the perpetrators may never be caught and convicted.” This is no longer the case—thanks, in part, to this book.

Investigating Identity Theft does have a few shortcomings. In particular, because it is filled with useful information, a heartier index would make future research more convenient. My only other criticism—which is not re-

ally a criticism, because the problem is inherent in the subject matter—is that the book runs the risk of being outdated very soon. This is particularly true of the technical data contained in the graphs and practical exercises. Indeed, while conducting some of the practice exercises, I noticed that some of the Web sites had already changed, making those exercises obsolete. Nevertheless, *Investigating Identity Theft* will be useful to victims of identity theft, law enforcement officers, and anyone who wants to prevent identify theft. **TFL**

Arthur Rizer is an attorney with the U.S. Department of Justice. The views expressed in this review do not necessarily represent the views of the Department of Justice.

Liberty Under Attack: Reclaiming Our Freedoms in an Age of Terror

Edited by Richard C. Leone and Greg Anrig Jr.

Public Affairs, New York, NY, 2007. 275 pages, \$15.95.

REVIEWED BY KEVIN J. BARRY

It has been said that what happens to a person is often less important than how that person responds to what happens. That principle underlies the essays in this remarkable and timely book. The attacks of Sept. 11, 2001, brought forth a new era in America—an era defined not so much by the attacks themselves as by the choices our government made as to how to respond to those attacks. Now, more than five years later, the implications of those choices are becoming more and more clear. *Liberty Under Attack* is a compilation of essays that presents the views of 12 respected experts, each assessing an aspect of our government's response to Sept. 11. The compelling message of the book is that anyone who cherishes the freedoms that have been part of America's ideals since the founding of our nation should now be apprehensive—if not distinctly alarmed.

The editors open with an introduc-

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tion that summarizes the situation after five years of fighting the “global war on terror” and introduces the essays that follow. Next are five essays under the heading “Discarding Democracy.” Alan Brinkley leads off by pointing out that, historically, during times of crisis, security always takes precedence over civil liberties, but that it is a myth that civil liberties always snap back after the crisis has ended. In any case, because the current crisis has no clear end, we should be especially vigilant when it comes to preserving our civil liberties. David Cole follows with an analysis of the extreme viewpoints of executive power promulgated by John Yoo and illustrates how these views were exactly what President George W. Bush wanted to hear. Gary Hart indicts Congress for its abject failure during the first five years of the Bush presidency to fulfill its constitutional duty to act as a check on executive power, and he complains that both the Republicans, when they held a majority in Congress, and too often many Democrats, behave as if their oath had been to support and defend not the Constitution, but the President. John Podesta writes about the administration’s push to reclassify historical documents in order to take them out of the public view and the White House’s penchant to classify material and keep secrets not for national security reasons but to avoid embarrassment. Podesta argues that the result has been far less security, because fewer secrets and a better informed public are the route to enhanced national security. Peter Onos then outlines the tension that has existed between the media and various administrations, and the Bush administration’s particularly effective efforts to limit not only adverse publicity but also even the reporting of facts needed for the Congress and the public to be able to evaluate the administration’s pronouncements—pronouncements that are too often at odds with the truth.

Three essays appear in the second section of the book, “Americans Under Watch.” Stephen J. Schulhofer leads with a discussion of the PATRIOT Act, which he sees as emblematic of the “surveillance society.” He argues that the PATRIOT Act, whose provisions

have “alarming implications,” was reauthorized in March 2006, despite the administration’s having provided “almost none of the concrete details necessary to assess the provisions or to understand their impact.” Schulhofer reviews many of the act’s most troublesome provisions and discusses the administration’s defiance of the law in its use of warrantless electronic surveillance. Next, Patrick Radden Keefe, in “The Espionage Industrial Complex,” argues that the current situation—with technically deficient government intelligence services relying on private-sector expertise—manifests the “grave implications” that President Eisenhower saw in the “conjunction of an immense military establishment and a large arms industry.” Keefe fears the real possibility that “by incrementally diminishing our expectations of privacy and liberty in exchange for a promise of elevated security that ultimately proves illusory, we will end up both unsafe and unfree.” Finally, Aziz Huq, in “The New Counterterrorism: Investigating Terror, Investigating Muslims,” addresses the targeting of Muslims via new investigative techniques and the use of “preventive” prosecutions. He demonstrates that such efforts have been ineffective in finding terrorists but have had a huge cost in the loss of trust within Muslim communities and the consequent loss of tips from individuals in these communities.

In the final section of the book, “Is This Justice?” Stacy Sullivan leads off by addressing the egregious situation in Guantánamo from a variety of perspectives, including the departure from American principles, such as the presumption of innocence, the right to counsel, and the right not to be incarcerated indefinitely without charge or trial. Joseph Lelyveld expands on the issue of the detainees, analyzing the effect of our abandonment of the Geneva Conventions and the impact of domestic law such as the Detainee Treatment Act and comparing British measures used in dealing with terrorist suspects during the same period. Ann Beeson assesses the Bush administration’s use of secrecy in investigations (for example, national security letters

and secret warrantless wiretaps) and litigation (state secrets privilege) as well as governmental abuses in both. Finally, Eugene R. Fidell closes this extraordinary collection with “Disorder in Military Courts,” in which he analyzes problems related to courts-martial of American forces for a variety of crimes as well as the huge legal problems and perception issues raised by the use of military commissions to try non-citizen enemy combatants.

It was Benjamin Franklin who cautioned that those who would “give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.” In this marvelous compilation, the authors present compelling evidence and arguments that, in its response to the attacks of Sept. 11, the executive branch of our government has ignored domestic and international law; created new legal systems; defined new categories of persons neither civilian nor military; used abusive interrogation tactics amounting to torture against such persons; spied on its own citizens; and used fear, secrecy, and intimidation as weapons in support of its preference for security over liberty—all to the detriment of traditional American principles and values. Moreover, the authors show that the legislative branch has been complicit in these wrongs by its utter failure to fulfill its constitutional duty to oversee the executive branch and to serve as a check on its abuse of power. *Liberty Under Attack* should be mandatory reading for every member of Congress, every federal judge, and every employee of the executive branch. It should be read, in fact, by everyone who cherishes American freedoms or fears unchecked governmental power. **TFL**

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Reflections on Freedom of Speech and the First Amendment

By George Anastaplo

University Press of Kentucky, Lexington, KY, 2007. 336 pages, \$70.00 (cloth), \$26.95 (paper).

REVIEWED BY JOSEPH GOODMAN

Reflections on Freedom of Speech and the First Amendment is a companion to George Anastaplo's prior book, *Reflections on Constitutional Law* (which I reviewed in the May 2007 issue of *The Federal Lawyer*). The new book builds toward a greater understanding of both the historical basis and boundaries of freedom of speech and the importance of freedom of speech for responsible and effective republican government. The first part of the book examines the background and principles of free speech and includes brief chapters on Plato, St. Paul, Thomas More, John Milton, and Patrick Henry, as well as on some of this nation's founding documents. The second part of the book examines leading Supreme Court free speech cases and includes essays on Justice Hugo Black and Winston Churchill.

Anastaplo's passion for the subject of freedom of speech can be traced back to 1954, when he was denied admission to the Illinois bar for refusing, on First Amendment grounds, to answer questions about his political beliefs. Anastaplo argued his case all the way to the U.S. Supreme Court, which, in *In re Anastaplo*, 366 U.S. 82 (1961), ruled against him by a 5 to 4 majority, even though there was no evidence that he was a Communist or any other kind of threat to the republic. The Court concluded that Anastaplo "holds the key to admission in his own hands," while dissenting Justice Hugo Black defended without qualification Anastaplo's First Amendment right to silence, writing, "We must not be afraid to be free."

It is not surprising, then, that Anastaplo argues throughout the book that "responsible and effective self-government" depends on a "wide-ranging, if not even absolute," protection of political discourse. He begins with Plato's *Apology of Socrates*, "one of the sacred texts upon which Western Civilization rests." He argues that "the inspiration offered by the *Apology* can usefully be considered vital to the most serious purposes of the First Amendment. The claims of what we call 'conscience' are elevated. And citizens can be encouraged thereby to speak out about the

issues of concern to the community." Anastaplo also finds the career of St. Paul a source for modern freedom of speech. In affirming one's faith, frankness of speech is necessary, "even to the extent of openly calling into question the deeds and the doctrines of those in authority."

"A 1521 petition to King Henry VIII, by Sir Thomas More as Speaker of the House of Commons," Anastaplo writes, "is said to be the earliest document in which parliamentary freedom of speech is recognized." More than a century later, in 1644, John Milton produced the celebrated *Areopagitica*, which is a pamphlet that argues against "any system which subjects writings to official scrutiny before publication." Anastaplo describes *Areopagitica* as "serving as the 'cornerstone' upon which freedom of speech can rest." He then discusses the career of Patrick Henry, whose resolutions "became the basis for violent agitation [against the British] from Boston to Charleston." Emphasizing that freedom of speech in the United States was established before the Bill of Rights, Anastaplo points out that Patrick Henry's famous exclamation, "[G]ive me liberty, or give me death!" ... is one of the most memorable exercises of freedom of speech in American history, an exercise that did not depend for its legitimacy or effectiveness on the First Amendment."

With respect to the First Amendment, Anastaplo views the freedom of speech clause as primarily intended to protect political speech. He discusses the Sedition Act of 1798, which was a "consequence of the fear in this Country, especially among the Federalists, of French meddling in American affairs" and "was considered oppressive by people accustomed (from even before Independence) to American-style liberty." The Sedition Act turned out to be "the beginning of the permanent decline of the Federalist Party in this Country."

Following a chapter on John Stuart Mill's *On Liberty* (1859), which "is so celebrated that it can be identified in our own time ... as virtually an appendix to the Declaration of Independence and the Constitution of the United States," Anastaplo examines freedom of speech and the approach of the Civil

War. After discussing the South Carolina Declaration of the Causes of Secession, he draws attention to the relation between free speech and responsible self-government: "The intimate relation between freedom of speech and the necessary political processes of the Country was again and again evident even during that soul-wrenching period of genuine 'clear and present danger' for the United States."

The second part of *Reflections on Freedom of Speech and the First Amendment* begins with an essay on "The Naive Folly of Realists: A Defense of Justice Black (1937-1971)," in which Anastaplo responds to another scholar's assessment of Justice Black "as a constitutional fundamentalist." Oddly, Anastaplo does not reveal the name of the scholar or identify the work to which he is responding, even though his primary purpose in this essay is to rebut the scholar's "question[ing] whether there is any 'original understanding of the Constitution' by which judges, or anyone else in authority, can and should take their bearings." Anastaplo argues that Justice Black's career was "very much grounded in the constitutional principles and expectations of the American regime."

Anastaplo then criticizes a few Supreme Court decisions that restricted political speech, starting with *Schenck v. United States* (1919), which includes two of Justice Holmes' most famous phrases: speech may be punished only when it creates a "clear and present danger," but freedom of speech "would not protect a man in falsely shouting fire in a theater and causing a panic." In *Schenck*, the Court affirmed the convictions of defendants who had circulated to military draftees leaflets "calculated to cause insubordination and obstruction." Anastaplo argues that *Schenck* "set an unfortunate precedent in First Amendment law," and that, in fact, "the language used by Justice Holmes can be understood to have done far more to weaken the security of the United States than anything that the Schenck defendants and their successors in the docket ever tried to do."

Anastaplo also discusses *Debs v. United States* (1919), which was de-

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cided one week after *Schenck* and affirmed the conviction of Eugene V. Debs pursuant to the Espionage Act of 1917 for speaking out against the recruitment of soldiers during World War I. Anastaplo believes that *Debs* “may be the most disgraceful prosecution for unpopular political speech in the history of the Country,” and that “the Supreme Court, in the principal sedition cases in the twentieth century, tended to reassure ... those among us who have been determined to suppress any sedition that they have come to believe a threat to the Country.”

Discussing Justice William O. Douglas’ concurring opinion in *Brandenburg v. Ohio* (1969), Anastaplo points out that Justice Douglas recognized the Cold War “as having helped weaken the Speech and Press guarantees recognized by the First Amendment.” Anastaplo also makes the interesting assertion that “the Cold War may have contributed to the determination of the Government of the United States, including its Courts, to favor racial desegregation in the interest of an effective American foreign policy.” As he does often in this book, however, he makes this isolated comment without further discussion or citation, leaving the reader to do research on his own. (That is easy enough in this case; see, for example, Michael L. Krenn, ed., *Race and U.S. Foreign Policy During the Cold War*, published in 1998.)

Anastaplo writes:

[F]reedom of speech and of the press, as protected by the First Amendment, is designed primarily for the benefit of the community as a whole, *not* primarily for the benefit of those who may want to say something. It should be obvious that when critical opinions are suppressed, the community is deprived of something that it may very much need to hear. And such opinions are apt to be suppressed if those holding them are routinely subjected to prosecution because of associations intimately linked to those opinions.

In light of this view, Anastaplo does not believe that nonpolitical speech deserves the same protection as political speech. Anastaplo criticizes *Cohen v. California* (1971), in which the Supreme Court overturned the conviction of a young man who, in a municipal courthouse, had worn a jacket that said “Fuck the Draft.” Anastaplo sees *Cohen* as incorrectly placing “the emphasis upon an individual’s desire to exhibit ‘the depth of his feelings’ about whatever might move him. It is *not* to recognize what the community is accustomed and entitled to expect from those who, sometimes at great personal risk, challenge the wrongheaded policies of the day.” As to the Court’s suggestion that “[t]hose in the Los Angeles courthouse could effectively avoid further bombardment of their sensibilities simply by averting their eyes,” Anastaplo comments, “This means, in effect, that an aggressive young man gets in one slap at every unsuspecting bystander he chances to encounter as he walks through a public place. *He*, it seems, should not be obliged to control *himself* at all, but only those he indiscriminately attacks.”

It is not surprising that Anastaplo is also not sympathetic to free speech protection for obscenity, believing that “[a]n unregulated freedom of expression can, in some circumstances, undermine the character and education needed for sustained self-government.” He adds: “Even more insidious may be the spiritual waste we are generating by developing, and thereafter by catering to, all kinds of lascivious tastes. Technological developments have been such that it will soon be, if it is not already, impossible for any sizable community to exercise effective control over the corrupting influences to which its members are apt to be exposed. It can then become largely a matter of chance who does what to whom.”

Anastaplo is also highly critical of the Universal Declaration of Human Rights, which the United Nations adopted in 1948. Although the document promotes “a democratic society” as the only legitimate form of government, Anastaplo conjectures that “[i]t is unlikely that even half of the coun-

tries represented in the United Nations General Assembly which promulgated this Declaration were ‘democratic’ in the sense indicated therein.” He also notes that the declaration insists upon the rule of law, including entitlement to a proper trial when detained, “[b]ut is evident throughout the Declaration that the countries subscribing to it do not have ‘in their bones’ any ‘feel’ for the power of the writ of *habeas corpus* in the hands of a substantially independent judiciary.” He compares the document to the Soviet Constitution: “The limited effectiveness of noble proclamations, when not grounded in a people’s character and experience, was evident in the noble rhetoric of the Soviet Constitution. The wide-ranging rights guaranteed there, imported for the most part from the West, were mocked by the routine political and legal oppressiveness of the Soviet regime. The dependence of the development of truly free, or at least decent, institutions does depend considerably upon the circumstances of a people.”

Entitled “The Future of the First Amendment?,” Anastaplo’s final chapter is philosophical. He returns to his theme of the effect of technological development on society and expresses concern about the impact of the Internet on the community and the character of the people. “[P]olitical tyranny is apt to be undermined, or at least threatened, by the Internet and its successors. But also apt to be undermined are the sense of community and the character of the people. This can amount to another, even more insidious, form of tyranny. ... Rampant individualism is promoted even as one is more and more entangled. The unprecedented anonymity now available in what one says publicly can permit one to be irresponsible. At the same time, one can become, as the target of the irresponsible utterances of others, ever more vulnerable.”

Reflections on Freedom of Speech and the First Amendment reflects more than half a century of contemplation of freedom of speech issues by Anastaplo since his 1954 Illinois bar controversy. It is well worth reading. **TFL**

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Finn: A Novel

By Jon Clinch

Random House, New York, NY, 2007.
287 pages, \$23.95.

REVIEWED BY HENRY S. COHN

Jon Clinch's *Finn* is certainly evidence of the truth of Ernest Hemingway's bon mot that "[a]ll modern American literature comes from one book by Mark Twain called *Huckleberry Finn*." Clinch, who formerly had a career in advertising, has written his first novel—a fictional biography of pap Finn, Huck's father. Although the premise is innovative, the work moves uncomfortably away from both the facts and the flavor of the Twain classic.

In Twain's *Adventures of Huckleberry Finn*, pap appears suddenly and asserts his right to Huck's assets. Twain brilliantly portrays the resulting proceedings in a 19th-century juvenile court, and his description of pap's claimed rehabilitation from alcoholism still strikes a chord in readers today. Later, Twain movingly pictures pap's delirium tremens and Huck's escape from his father's control. Then, just as Huck and the slave Jim begin their raft adventures, they find a frame house floating down the Mississippi.

This house is a treasure trove for them, and they take away most of its contents. One of the highlights of Twain's novel is his description of the inside of the house. "There was heaps of old greasy cards scattered around over the floor, and old whisky bottles, and a couple of masks made out of black cloth; and all over the walls was the ignorantest kind of words and pictures, made with charcoal." Men's and women's clothing were "hanging against the wall. ... And there was a bottle that had had milk in it; and it had a rag stopper for a baby to suck. We would a took the bottle; but it was broke." Jim also finds a dead man on the premises. You can guess who it is.

Aspects of *Huckleberry Finn*—especially Twain's description of the house—become the raw material for Clinch's story. In Clinch's novel, pap is the younger son of a prominent racist Illinois judge. While pap has become a derelict, the judge's other son has become an attorney and a slavish follower of his father. Clinch also makes use of Twain scholar Shelley Fisher Fishkin's thesis that Huck's mother was black. Pap cohabits with a black woman, Mary, with whom he has a love-hate bond. Needless to say, this interracial relationship completely alienates pap's father from pap. Although Clinch leaves the relationship ambiguous, Mary seems to be Huck's mother. Pap, who has a violent temper, eventually commits an assault in a tavern and receives a prison sentence. On pap's release from prison, he abuses Mary, who escapes with Huck across the Mississippi to St. Petersburg, where the Widow Douglas lives. Clinch finishes his tale by relating pap's last days in the aforementioned frame house.

Clinch's dialogues are well-written, and he builds up tension effectively. Unfortunately, however, he adopts the modernistic technique of not giving his tale a beginning, a middle, or an end. The story jumps back and forth among various events in pap's life, and it is difficult at times to reconcile Clinch's version of events with Twain's version. For example, in *Huckleberry Finn*, Huck escapes from pap, spends a few days with Jim, and then discovers the frame house. *Finn*, however, implies that Huck had escaped much earlier.

Clinch's pap engages in domestic violence, substance abuse, and racism, and he is too one-dimensional—unmitigated evil. Twain's novel, by contrast, is much more nuanced. He populated his novel with frauds and hypocrites, such as the duke and the king, and, in the misdirected wealth of the Shepherdson and Grangerford households, he showed the excesses of capitalism. In Twain's portrayal, characters like pap are incompetent and angry, but they usually do not do serious harm to others. Nevertheless, pap and the unfortunate Boggs were tragically doomed to death by their alcoholism. Twain, unlike Clinch, shows Huck's struggles with his own racist attitudes. Twain's

multidimensional characters are more believable because they are more real.

Twain's tone is also different than Clinch's. Drafts of *Huckleberry Finn*, some of which became available only in the last few years, reveal that Twain's initial description of the frame house was more graphic than the one that appears in the final version. In a 1996 edition of *Huckleberry Finn*, Professor Victor Doyno notes that the house scene originally had a "nightmarish quality" but that Twain revised it to make the depiction less disturbing. Clinch's novel intends to shake up the reader by painting a picture of a reprehensible life. Twain's approach is more effective and is infinitely more enjoyable. **TFL**

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