

from Burke, Kenneth. *The Philosophy of Literary Form: Studies in Symbolic Action*. 3d ed.
Berkeley: University of California Press, 1974.

In equating "dramatic" with "dialectic," we automatically have also our perspective for the analysis of history, which is a "dramatic" process, involving dialectical oppositions. And if we keep this always in mind, we are reminded that every document bequeathed us by history must be treated as a *strategy for encompassing a situation*. Thus, when considering some document like the American Constitution, we shall be automatically warned not to consider it in isolation, but as the *answer or rejoinder* to assertions current in the situation in which it arose. We must take this into account when confronting now the problem of abiding by its "principles" in a situation that puts forth totally different questions than those prevailing at the time when the document was formed. We should thus claim as our allies, in embodying the "dramatic perspective," those modern critics who point out that our Constitution is to be considered as a rejoinder to the theories and practices of mercantilist paternalism current at the time of its establishment.²⁶

²⁶ In this connection, we might note a distinction between positive and dialectical terms—the former being terms that do not require an opposite to define them, the latter being terms that do require an opposite. "Apple," for instance, is a positive term, in that we do not require, to understand it, the concept of a "counter-apple." But a term like "freedom" is dialectical, in that we cannot locate its meaning without reference to some concept of enslavement, confinement, or restriction. And "capitalism" is not a positive term, but a dialectical one, to be defined by reference to the concepts of either "feudalism" or "socialism."

Our courts consider the Constitution in accordance with theories of positive law—yet actually the Constitution is a dialectical instrument; and one cannot properly interpret the course of judicial decisions unless he treats our "guaranties of Constitutional rights" not as positive terms but as dialectical ones.

Where does the drama get its materials? From the "unending conversation" that is going on at the point in history when we are born. Imagine that you enter a parlor. You come late. When you arrive, others have long preceded you, and they are engaged in a heated discussion, a discussion too heated for them to pause and tell you exactly what it is about. In fact, the discussion had already begun long before any of them got there, so that no one present is qualified to retrace for you all the steps that had gone before. You listen for a while, until you decide that you have caught the tenor of the argument; then you put in your oar. Someone answers; you answer him; another comes to your defense; another aligns himself against you, to either the embarrass-

Our Bill of Rights, for instance, is composed of clauses that descended from two substantially different situations. First, as emerging in Magna Carta, they were enunciated by the feudal barons in their "reactionary" struggles against the "progressive" rise of central authority. Later, in the British Petition of Right and Bill of Rights, they were enunciated by the merchant class in their "progressive" struggles against the "reactionary" resistance of the Crown. It is in this second form that they came into our Constitution.

BUT:

Note this important distinction: in the British Bill of Rights, they were defined, or located, as a resistance of the *people* to the *Crown*. Thus they had, at this stage, a strongly collectivistic quality, as the people were united in a common cause against the Crown, and the rights were thus dialectically defined with relation to this opposition. The position of the Crown, in other words, was a necessary term in giving meaning to the people's counter-assertions.

In the United States document, however, the Crown had been abolished. Hence, the dialectical function of the Crown in giving meaning to the terms would have to be taken over by some other concept of sovereignty. And the only sovereign within the realm covered by the Constitution was the *government elected by the people*. Hence, since the opposite "coöperates" in the definition of a dialectical term, and since the sovereignty or authority against which the rights were proclaimed had changed from that of an antipopular Crown to that of a popularly representative government, it would follow that the quality of the "rights" themselves would have to change. And such change of quality did take place, in that the rights became interpreted as rights of the people as *individuals* or *minorities* against a government representing the will of the people as a *collectivity* or *majority*.

Eventually, this interpretation assisted the rise of the great super-corporations, linked by financial ties and interlocking directorates. And these super-corporations gradually come to be considered as a new seat of authority, placed outside the

ment or gratification of your opponent, depending upon the quality of your ally's assistance. However, the discussion is interminable. The hour grows late, you must depart. And you do depart, with the discussion still vigorously in progress.

It is from this "unending conversation" (the vision at the basis of Mead's work) that the materials of your drama arise.²⁷ Nor is this verbal action all there is to it. For all these words are grounded in what Malinowski would call "contexts of situation." And very important among these "contexts of situation" are the kind of factors considered by Bentham, Marx, and Veblen, the material interests (of private or class structure) that you symbolically defend or

direct control of parliamentary election. And as this kind of business sovereignty becomes recognized as *bona fide* sovereignty, you begin to see a new change taking place in the "dialectical" concept of Constitutional rights. For theorists begin now to think of these rights as assertions against the encroachments of the super-corporations (the New Crown). That is: the tendency is to think once more of the rights as claimed by the people as a *majority* against the rule of the super-corporations as a sovereign minority.

However, the statement that a term is "dialectical," in that it derives its meaning from an opposite term, and that the opposite term may be different at different historical periods, does not at all imply that such terms are "meaningless." All we need to do is to decide what they are *against* at a given period (in brief, to recognize that the Constitution cannot be interpreted as a positive document, but must continually be treated as an *act in a scene outside it*, hence to recognize that we must always consider "the Constitution *beneath* the Constitution," or "the Constitution *above* the Constitution," or "The Constitution around the Constitution," which may as you prefer be higher law, divine law, the laws of biology, or of big business, or of little business, etc.). Much of the cruder linguistic analysis done by the debunko-semanticist school (worst offender: Stuart Chase) involves the simple fallacy of failing to note the distinction between positive and dialectical terms, whereby, in applying to *dialectical* terms the instruments of analysis proper to *positive* terms, they can persuade themselves that the terms are meaningless.

²⁷ Also, it is in this "unending conversation" that the assertions of any given philosopher are grounded. *Strategically*, he may present his work as departing from some "rock-bottom fact" (he starts, for instance: "I look at this table. I perceive it to have. . . ." etc.). Actually, the very selection of his "rock-bottom fact" derives its true grounding from the current state of the conversation, and assumes quite a different place in the "hierarchy of facts" when the locus of discussion has shifted.