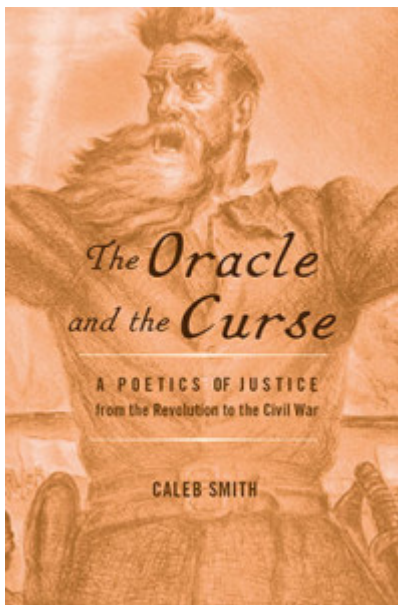
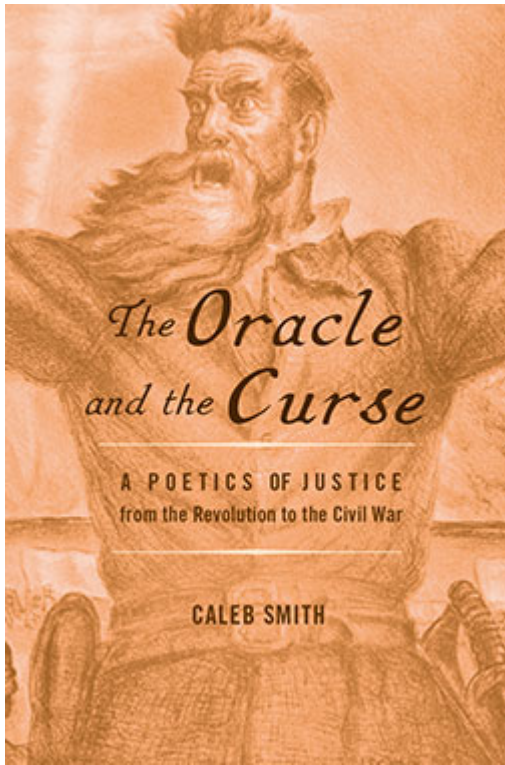


Voicing Justice



In the cultural story that Smith is telling, in other words, justice's ability to move its public—to submission, or to rage—is every bit as native to the public culture of law as the rendering of judgment itself.

As the rather otherworldly title of Caleb Smith's brilliantly inventive and unsettling new book begins to intimate, *The Oracle and The Curse: A Poetics of Justice from the Revolution to the Civil War* is a study that makes itself at

home with the irrational. Though situated as an examination of that seemingly most reasonable of realms, "the law's public sphere," this book tells a complex transatlantic story of the monumental difficulty, and perhaps the ultimate undesirability, of putting any particular analytical stock in arriving at a final distinction between reason and rationalization, argument and harangue (40).

Viewed most broadly, this is a study of the intersecting stories of the early national and antebellum secularization of the law and the period's complementary desecularization of protest. In the cultural narrative that Smith constructs, the oracle-curse dichotomy serves as a barometer to these shifts, according to which the secularization of the judiciary can be described as the "decline of the oracle" and the desecularization of protest can be described as "the rise of the curse" (xiii). At the same time, Smith also uses the oracle-curse dichotomy as an aesthetic index to the unfinished business that would otherwise be concealed by the story so neatly rendered. The oracular, that is, describes a traditional source of authority as well as a persistent style of juridical pronouncement in which the judge seems to assume the voice of the priestly medium. Here, the judge, like the oracle of antiquity, performs the role of designated conduit of the law, rather than merely its fallible professional interpreter. This is the mode that secular justice always claims to want to leave behind. Yet, as Smith demonstrates, it flares up repeatedly in literary representations of the law as well as in the law's own public representations of itself. It arguably persists down to the present day, when judges both insist upon their ethical and political neutrality and signal their ceremonial authority by wearing flowing black robes—essentially the oracular vestments of a judicial priesthood.

The curse operates in this scheme as the oracular's insurgent other, the likewise apparently anachronistic style of extra-juridical denunciation that also claims authorization from beyond. The curse, as Smith shows, can be understood alongside the oracle as a mode that the eighteenth century's own valorization of the reasonable and deliberative public sphere also wants to disavow: exasperated expressions of rage and non-compliance uttered by the oppressed and unjustly condemned are not, after all, "arguments." At the same time, the curse often seems to be the form of extralegal address most regularly called forth by the very attempts exerted toward its suppression. Whether in the early political efforts at corralling the speech of the dispossessed, the legal energies exerted to control supposed public menace of blasphemy, or the broad censorship campaigns waged against radical abolitionist publicity, the curse, Smith shows, was frequently conjured by the very fear of its power.

Shadowing this story throughout is a compelling exploration of the realm of the aesthetic—the subtitled "poetics of justice"—which functions as the cultural repository for law's generally unacknowledged but nonetheless constitutive reliance on nonrational persuasion. It is through the lens of the aesthetic, Smith contends, that we can best apprehend the law's ongoing reliance on explicitly public rituals of judgment that seem continuous with the sensory

appeals of religious worship or the old world's gaudy displays of aristocratic prerogative. It is likewise in aesthetic terms that we can perhaps understand the capacity of the curse—the speech of that seemingly marginalized voice in the wilderness—to constitute its own public. Perhaps the best-known example of this effect, and one central to this book's argument, is the political and aesthetic reverberations of John Brown's statements on the eve of his execution. Brown appealed to his contemporaries—and arguably to us—through what Smith names as his language's "summoning power," despite the general consensus that there was nothing particularly reasonable, strategic, or worth emulating, about the revolutionary attack on Harpers Ferry (xi). As Smith writes,

By nonrational persuasion, I mean modes of address and affirmation which involve not the critical evaluation of propositions but the affective and aesthetic response to justice's performative invocation. I mean the love that binds subjects to power, the beauty that enchants, and (in the case of the curse) the fiery righteousness that animates dissent. Often, a promise of belonging is implicit in these styles of conviction, and I attend, especially, to the feeling of taking a side in a collective conflict, joining a community which knows its identity in opposition to its enemies. (9)

In the cultural story that Smith is telling, in other words, justice's ability to move its public—to submission, or to rage—is every bit as native to the public culture of law as the rendering of judgment itself. The "poetic" in this critical framing is not particularly the preserve of the literary imaginary, though it is often the work of literature to resist, amplify, or object to the aesthetic convolutions of contemporary legal culture.

The Oracle and the Curse traces these questions across three pairs of chapters that follow the cultures of legal secularization and extralegal protest from the late eighteenth century to the brink of the Civil War. The first pair examines the contradictory fortunes of oracular justice in the age of revolution. Chapter one, "Oracles of Law," documents the means by which the early United States judiciary established itself as the privileged mediator of the law by successfully representing itself to the public as if it were the voice of the public. Smith traces this effect through the elite treatise literature that bore debates around the nature of the "common law" across the Atlantic in the late eighteenth century. Smith examines the debates between William Blackstone and Jeremy Bentham in Britain, and then among a larger cast of legal commentators in the early national United States, including Jesse Root, Henry Dwight Sedgwick, and James Wilson. By working carefully through this archive, Smith exposes the paradoxical aesthetic operations by which judicial power was solidified in the early republic, explicitly against the well-articulated antinomian objections of skeptical interpreters such as Robert Rantoul and William Sampson who called specific and outraged attention to the Blackstonian jurist's assumption of the oracular style under the cover of natural law and common sense.

Chapter two, "Oracles of God," shifts focus from the oracle to its public and

from theoretical wrangling about the role of the judiciary to the larger scene of judgment evoked in the print cultural formation of gallows literature. Given this book's interpretive matrix, it is easy to imagine that gallows literature could serve as the seedbed for the curse's rise. However, Smith finds that gallows literature assumed a more delicate mediating role. If the democratic gallows can be understood as a particularly extreme expression of the translation of godly authority to a posited popular judgment nonetheless rendered by the judiciary, gallows literature worked to repurpose the traditional genres of the execution sermon and the criminal confession to urge a modern print readership to see their own will in the grim workings of secular justice. That work of mediation seemed to assign those responses to the scene of judgment that could be deemed literary—feelings of sympathy for the condemned, apprehensions of punishment as tragic—precisely to the realm of literature and therefore distinct from the realm of official judgment. With the help of gallows literature, Smith argues, it becomes possible to feel the pain of the condemned while sending them to hang. Such, Smith argues, is the role of literature generally within the more capacious field of the poetics of justice. The chapter concludes with a reading of Charles Brockden Brown's *Wieland*, the era's famous gothic novel of murder prompted by an untraceable disembodied voice. Working against the grain of a number of critical readings that approach this work as a political allegory of federalism or anti-federalism, Smith reads the text as a more aesthetically ambitious literary analogue of popular gallows literature—a work that repeatedly restages scenes of confession and judgment as a paradoxical means to assert literature's ceding of secular judgment to the realm of the law.

The second pair of chapters examines the curse's public emergence. Chapter three, "Blasphemy 'At the Court of Hell,'" considers the secular trials for the crime of blasphemy in the early decades of the nineteenth century. Here, in another ironic turn on the notion of democratic justice, the popular voice is positioned as both the object of punishment and the source of correction, as legal decisions of the era—most famously in the case of the convicted atheist Abner Kneeland—quite explicitly carved unwritten "laws" of social cohesion and class coercion away from the bone of those other legal abstractions known as free exercise and free speech. In the Jacksonian era, Smith finds, the secular judiciary turned its attention to the censure of blasphemy not out of a renewed or residual religiosity on its own part, but rather out of an avowed belief that blasphemy, when publicized among the laboring classes, and particularly through the rising mass circulation of print, could cause social unrest and thus injure the interests of "the people" whose normative identity was imagined to be more genteel.

This particular formation of post-secular juridical authority, Smith finds, did however produce the very form of popular protest it most feared: "the self-exonerating convict narratives, trial reports, and polemics that were beginning to circulate in the mass press of the 1830s" (118). These were the public appeals produced by those who felt themselves wronged by official justice, who, like many aggrieved bloggers of today, "go public" in hopes of finding readers

inclined toward more favorable judgments. This chapter includes an extended literary reading of Nathaniel Hawthorne's *House of Seven Gables* in conversation with Hawthorne's early story "Alice Doane's Appeal," framing them as two texts engaged with the formal implications of the "self-exonerating" search for counter-publics that could offer extra-judicial vindication to the officially guilty.

Chapter four, "Evil Speaking, 'A Bridle for the Unbridled Tongue'," examines the evangelical community's self-regulating project of prosecuting "evil speaking," or unauthorized preaching, especially among women in the 1830s and 1840s. As was the case with the blasphemy trials, the intramural regulation of "evil speaking" and "enthusiasm" produced a popular literature of opposition, those works of spiritual testimony written by women such as Sally Thompson, Eleanor Knight, and Zilpha Elaw. But, more to Smith's point, the evangelicals' efforts at self-regulation provided the material and aesthetic preconditions for the emergence of sentimental novels, Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852) chief among them. If the "problem" of female speech was its inspired, embodied publicity, Smith suggests, novels like *Uncle Tom's Cabin* managed to solve it by accomplishing female publicity in a form that strategically described itself as being spoken in private.

The third pair of chapters examines literary abolitionism's characteristic means of mobilizing what the blasphemy trials revealed as the odd duality of the curse as a threat to be contained and a power to be unleashed. Chapter five, "The Curse of Slavery," takes up what Smith identifies as a curious paradox within the radical abolitionist publicity associated with William Lloyd Garrison. On the one hand, Garrisonian radicalism was deeply invested in the power of stirring speech to move a public toward extra-legal action. After all, Garrison promised in the 1831 inaugural issue of *The Liberator* that his rhetoric would be "as harsh as truth, and as uncompromising as justice." However, in Garrison's mind, there appears to have been a difference between imagining harsh speech *diminuendo*—as inspiring quietly peaceful action—and *crescendo*—as inciting destabilizing physical violence. In Smith's account, the threat of *crescendo* becomes, perhaps ironically, the self-imposed job of these most radical and self-sacrificial of abolitionists to manage and moderate. As a matter of philosophy, Smith argues, this duality can be discerned in Garrison's ambivalent treatment of the legacy of the condemned prophetic enslaved revolutionary Nat Turner. As a matter of aesthetics, Smith finds these questions brought to the surface most powerfully in Elizabeth Barrett Browning's abolitionist poem, "The Runaway Slave at Pilgrim's Point." Published in the United States abolitionist annual *The Liberty Bell* in 1848, "The Runaway," Smith persuasively argues, works to represent the enslaved rebel's summoning curse as, Job-like, withheld rather than uttered to ignite a revolution.

Chapter six, "Words of Fire," returns us at last to John Brown's moment and, with it, to the possibility that "mere" words can be finally reimagined as so inextricable from deeds as to become frankly inflammatory. Completing the

book's rigorous dialectical practice of tracking the cultural poetics of law as a contest between empowered and incompletely silenced voices vying to be heard, this chapter tracks the emergence of the very incendiary publicity that abolitionism—particularly white-led movement abolitionism in Smith's account—worked so hard to regulate. Attending to John Brown's raid on Harpers Ferry and its subsequent publicity in the legal public sphere, Smith interprets Harriet Jacobs's autobiography *Incidents in the Life of a Slave Girl* (published in 1861) and Martin Delany's novel *Blake: Or, the Huts of America* (serialized from 1859 to 1861) as two major African American-authored literary works that can be understood as responding to the militant "summons" of the Harpers Ferry Raid and the additional attention drawn by Brown's legendary jailhouse eloquence. Whereas white movement abolitionists might have wished to imagine Brown's raid as an act of sacrificial extremism that would yield more moderate and controlled results, Jacobs and Delany heard a different call from Harpers Ferry: a call to imagine the powers of amplification possible if deeds were to be translated into words and then back into deeds again ad infinitum. Harpers Ferry provided a means to imagine slavery's end not as the work of reform, but rather as a general rising of the oppressed in response to the martyred revolutionary's call.

The Oracle and the Curse, as I began by saying, is an unsettling work, and deliberately so. As a matter of method it is devoted to upending those comfortable myths about the practice of democracy in the decades between the revolution and the Civil War upon which popular historiography has long rested. This book furthermore offers an unsettling implicit commentary on our own particular era, a period in which the connections between privilege and the enjoyment of supposedly universal liberties seems once again to be laid bare. *The Oracle and the Curse* offers a persuasive redescription of the public culture of the law in early America, even as it prompts us to reflect anew on the legal and institutional worlds that we now live in.

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