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"Unspeakable crimes": Charles Brockden Brown's *Memoirs of Stephen Calvert* and the Rights of the Accused

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Abstract. *This article considers, from a contextual and poststructuralist perspective, due process in* The Memoirs of Stephen Calvert *by the early American novelist (and trained lawyer) Charles Brockden Brown. Brown's writing, the article suggests, participates in the thematic and rhetorical interface between law and literature. For although his fiction is fragmentary and nightmarish, moving from gothic cities to treacherous frontiers, the narration of transgressions and the law remain constant tropes. Thus, lawyers, conmen, criminals, and doppelgangers appear and reappear in works such as* Stephen Calvert. *The article focuses on how Brown puts the principles of the rights of the accused on trial in this posthumously published novel, for characters are identified as criminals in clear violation of the Fifth Amendment which requires an articulation of the charges that are brought against the accused. In this,* Stephen Calvert *poses considerable legal questions: How are charges articulated? How are they presented in narrative form? And what happens when crimes are said to be "unspeakable"? The interrogation of these questions is highly significant in a new nation that is said to uphold due process of law.*

"It has been usual to subject [the accused] to some appearance of trial, the objects of persecution; to furnish them with an intelligible statement of their offences; to summon them to an audience of their judges; and to found their sentence on some evidence real or pretended; but these rulers were actuated by no other impulse than vengeance."

--Charles Brockden Brown, "Man at Home" 82

"The profession of law is neither liberal nor respectable."

--Charles Brockden Brown, "A Series of Original Letters" 111

In his influential book *Law and Letters in American Culture* (1984), Robert A. Ferguson correctly asserts that the relationship between law and literature is vital for understanding "America's first major novelist," Charles Brockden Brown. Indeed, Ferguson writes that in 1793 "Brown rejected the law as his profession after six years study in the Philadelphia law office of Alexander Wilcocks" in favor of writing fiction (129). Following this career change, Brown feverishly wrote several gothic novels, including *Wieland* (1798), *Ormond* (1799), *Arthur Mervyn* (1799-1800), *Edgar Huntly* (1799) and *The Memoirs of Stephen Calvert* (1799-1800). This latter work, though, has been overlooked by literary critics, including those interested in the intersections of law and literature.[1] In fact, of the few modern critics to take up *Stephen Calvert*, only one -- Robert A. Ferguson -- touches on the legal discourses of the novel. This is particularly surprising when we consider that most of the male characters in *Stephen Calvert* are lawyers, and the interactions between these characters often pivot upon accusation and acquittal, testimony and judgment. Ferguson does an effective job of dealing with the autobiographical content of the novel, and he correctly points out that the text "illustrates the close parallels to Brown's own vocational problems with the law."[2] Ferguson sees the relationship between Sidney (the lawyer) and Stephen (the literary recluse) as Brown's attempt to dramatize his own divided vocations: his familial obligations to study the law and his own desire to pursue a literary career. Both vocations, though, come up short. The lawyer is represented as ubiquitous and yet erroneous in his

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[1] Maurice J. Bennett has, for instance, written an interesting study of Brown's *Stephen Calvert* as an exploration of the development of the eighteenth-century artist in the United States. Maurice J. Bennett, "A Portrait of the Artist in Eighteenth-Century America: Charles Brockden Brown's *Memoirs of Stephen Calvert*." *William and Mary Quarterly* 39.3 (July 1982), 493. Hans Borchers reads the novel as echoing the contemporary psychological theories of love and emotion put forward by Erasmus Darwin and Benjamin Rush. Hans Borchers, Introduction, *Memoirs of Stephen Calvert* (Frankfurt: Peter Lang, 1978), xx-xxiv; Caleb Crain analyses the relationship between Felix and Stephen as including erotic and political tensions. Caleb Crain, *American Sympathy: Men, Friendship, and Literature in the New Nation*. (New Haven: Yale University Press, 2001), 130-2. And Norman S. Grabo looks at the psychological and symbolic figure of the double, suggesting that *Stephen Calvert* explores the familiar Brownian themes of confused identities and erroneous eyewitnesses. Norman S. Grabo, *The Coincidental Art of Charles Brockden Brown* (Chapel Hill: North Carolina University Press, 1981), 155.

[2] Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge: Harvard University Press, 1984), 134.

judgments of others, while the literary man has a mind that is "distorted [by] crude conceptions, and passions lawless and undisciplined."[3]

Ferguson's autobiographical reading is convincing, but his focus casts our gaze away from the more general proliferation of legal discourse that runs throughout *Stephen Calvert*. After all, the language, rhetoric and form of the text move from the submission of a plea to the articulation of a confession to the casting of judgment. In this sense, the novel often reads like a court proceeding, for the dialogues adopt legal language and Stephen's narrative voice frequently takes on the diction of jurisprudence. Sydney is, for instance, repeatedly condemned by Stephen as an "unwise counselor" who is "guilty of injustice."[4] Stephen, too, is "frequently compelled to answer [the] interrogatories" of Louisa, to which he must "persuade [him]self that concealment is but justice to [his] cousin."[5] And Clelia is said to be examined, cross-examined and asked to provide a testimony of her presumably transgressive motives and acts: "She ought," Sydney proclaims, "to have an opportunity of avowing her integrity... My evidence I cannot produce. The information was given on condition that the authors were concealed... [But] the evidence was such as not to be resisted."[6] Evidence, guilt, testimony and justice pervade the novel's dialogues, indicating that the text is never far from the discursive jurisdiction of the law.

For instance, in the opening paragraph of *The Memoirs of Stephen Calvert*, Stephen attempts to justify and explain his self-imposed exile. He states,

> Yes, my friend, I admit the justice of your claim. There is but one mode of appeasing your wonder at my present condition, and that is the relation of the events of my life.

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[3] *Id*, at 205.
[4] Charles Brockden Brown, *Memoirs of Stephen Calvert* in Alcuin: A Dialogue *and* Memoirs of Stephen Calvert (Kent: Kent State University Press, 1977), 171.
[5] Id, at 173.
[6] Id, at 229.

> This will amply justify my choice of an abode in these mountainous and unvisited recesses, and explain why I thus anxiously shut out from my retreat the footsteps and society of men.[7]

Here, Stephen suggests that he has sequestered himself from society and imposed sanctions on himself for a crime that he does not divulge. He chooses "solitude and labour" as a way of repenting for the "corruption," "idleness," and "evils of his life. But the language used in this passage is a mixture of testimony, confession and accusation. For Stephen's comments read like an affidavit that addresses the reader as both judge and jury. It is almost as if Stephen is speaking from the witness box: he is offering his evidence by giving an account of the events that have led to the unuttered charges of the unknown accuser, whom he refers to as "friend." At the same time, though, we are left to wonder about the origin of his transgressions, for the text lacks testimony on the crimes that have led to the sentencing of his exile. As a result, the text that announces itself as a "memoir" is really an incomplete witness testimony; it is a narrative that frames itself as a response to a series of incriminations and indictments, accusations and charges that are never articulated fully.[8]

Stephen's guilt echoes Clithero's self condemnation in Brown's earlier novel, *Edgar Huntly*. In both cases the men accuse, convict and incarcerate themselves in the penal colony of the forest. However, their respective testimonies are quite different: Clithero offers a

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[7] Id, at 71.

[8] The issue of silence in positive law has recently been examined by Marianne Constable in *Just Silences*. In fact, my reading of Brown's work corresponds to Constable's assertion that we must "listen to what is not positivist in law, to what is not clearly articulated and articulable at law, and to what is just." After all, positivist claims about justice are not normative or prescriptive, and in refusing to relegate the justice of law to empirically social realities, it reveals a multiplicity of legal silences. These silences have, Constable argues, "possible implications for justice at precisely the limits of positive law, where the language of power and the power of language run out." Marianne Constable, *Just Silences* (Princeton: Princeton University Press, 2005), 13-14.

narrative of his crimes, but Stephen remains silent about his offenses. We know that Clithero attempted to murder his guardian, but we only know that Stephen was subject to the "habits of corruption and idleness" and the "evils of temptation."[9] What are his crimes? Why has he accused himself of these offenses? And does his self-imposed punishment suit his transgressions? These questions remain open; Stephen declines to provide any answers, and refuses to speak of his malfeasance beyond the bounds of generalization and abstraction. From this perspective, Stephen's crimes remain an invoked absence, for his narrative seeks to reconstruct the events that led up to the accusation--attempting to justify his self-imposed exile and account for his suspected misdeeds--without ever identifying the crimes for which he is charged.

What I want to suggest here is that the silence surrounding Stephen's crimes is a synecdoche for the entire text. This is because, throughout the narrative, accusations are followed by silence, for when guilt is pronounced the specificities of the specificities of the crimes are not disclosed. For instance, Stephen's father, Stephen Sr., is judged and executed without ever being informed of his offenses or having an opportunity to defend himself against his accuser. Likewise, Clelia's husband, Belgrave, is charged with unutterable corruption, intolerable wrongdoings and flagrant guilt that remain covert and mysterious, and Louisa's father, Ambrose, cruelly whips and brutally punishes his slaves without divulging the trespasses for which they are being punished. Finally, Louise tells Stephen that he is guilty of abominable crimes that she can neither articulate nor forgive. In this, *Stephen Calvert* turns on legal discourse, revolving around the legal concepts of due process and the rights of the accused, while simultaneously unmasking the limits of representation that lie beneath the letter of the law.

[9] Brown, *supra* note 4 at 71.

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Peter Brooks has demonstrated that silence is crucial to an understanding of how the law intersects with storytelling and the construction of narrative within a legal context. After all, the narratives of prosecution and defense in the courtroom necessarily include both the rhetorical devices needed to tell a convincing story and the concealment – or silences – of conflicting elements. "Narrative," as Brooks has observed, "is indeed omnipresent in the law" and yet the "notion of a well-for-med narrative…is misleading in the court of law, for it leads jurors to believe that real-life stories must obey the same rules of coherence."[10] Thus, gaps and silences arise in the pursuit of logical narrative conclusion and this is, I suggest, significant to my reading of *Stephen Calvert*. For legal storytelling in Brown's text foregrounds omission and erasure, which, in turn, lead to contradiction and confusion rather than order and clarity. The argument of one character is always met by the counter-argument of another; the testimony of one witness is contradicted by the experience of someone else; and the adjudication of an authority is challenged by the appeal of a defendant. In addition, these proceedings lack order and do not end in conclusive results, for the spectre of the double and the theme of mistaken identity haunts the text. Instead of order, we find an uncanny vision of the dark mysteries of the self in which the boundaries separating self and other are not clearly defined. From this perspective, the figure of the double functions like the passing figure, for they both call attention to the instability of the self and the incoherence of individuality. However, in *Stephen Calvert*, it is not just that characters cannot tell who Stephen/Felix really is; it is also that Stephen/Felix cannot find anyone who can tell him who he is. In this, the double is a source of disorder precisely because Stephen is seen to be

[10] Peter Brooks, "The Law as Narrative and Rhetoric" in *Law's Stories: Narrative and Rhetoric in the Law*, edited by Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996), 16, 18.

estranged from himself. Or, to put it another way, "I" is another, and the Other inhabits Stephen/Felix while simultaneously remaining displaced and distant.

Stephen Calvert, then, displaces the question of jurisdiction (Where did the crime take place?) and transgression (What law was broken?) to the question posed by the doubled figure who must confront his fractured identity: Who am I?, Stephen asks. This reformulation of legal discourse gestures toward the limits of the law: if a person cannot clearly answer this question, then how can he identify the crime he has committed? After all, accusations rely on clear-cut identifications of the criminal, for the crime must be allocated to a perpetrator. This procedure is made clear under U.S. law: the designation of guilt *must* begin with the identification of the suspect or criminal, after which the crime *must* be plainly communicated to him in order that the accused might have an opportunity to respond to the charges and call witnesses in his defense.

These procedures, though, are called into question throughout *Stephen Calvert*. For instance, when Stephen Sr. is falsely accused of betraying his father, he is accused, tried, convicted and executed without being informed of his crimes or given an opportunity to defend himself. Instead, Stephen Sr. receives a vague and flawed indictment just prior to his execution:

> Sir,
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> You need not be informed of your offenses: you know that they surpass those of the greatest criminals whose guilt has been recorded. You have rebelled against your God; you have been a traitor to your rightful prince; and, finally, you have done all that in you lay, to bring your father to the scaffold. What punishment do you think

you deserve?--Tremble!--Vengeance, though so long delayed, is now preparing to crush you![11]

This letter is not addressed, dated or signed. Hence, the identity of the author who carries out the judgment and the sentencing remains undisclosed. Determining the authority who claims to have jurisdiction here can only be done by piecing together the context of the letter: we can only assume that the charges are put forward by Sir Stephen (his father) under the false suspicion that his son has foiled his plot to assassinate King George II and aid the return of Prince Charles to the throne. One offense is met by the accusation of another; one who is suspected of a crime accuses another of greater guilt. But the crimes in this case--like the identities of the addressor and addressee--are never specified. A vague description of the offense is outlined, but Stephen Sr. is never fully informed of his trespasses, thus leading the accused to speculate about the charges. In this, Stephen Sr. is denied a forum in which he can testify in his own defense, confront his accuser, or offer a testimony that would refute the charges against him.

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The procedural lapses in the case against Stephen Sr. flies in the face of American constitutional law and the rights of the accused. The fifth amendment of the U. S. Constitution protects these rights. "In all criminal prosecutions," the founding document states, "the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, *and to be informed of the nature and cause of the*

[11] Brown, *supra* note 4 at 91.

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Council for his defense."[12] Evidently, this paragraph is meant to guard against the kind of prosecution and judgment experienced by Stephen Sr. For the amendment makes oblique accusations redundant under the law and maintains the importance of charges being conveyed in an overt fashion, upholding a transparent procedure that adheres to the basic rights of the accused.

The fifth amendment, then, is a crucial part of due process, a legal concept that places limitations on laws and legal proceedings in order to guarantee fundamental fairness, justice and liberty. Due process is designed to protect the rights of the accused and maintains that "no person shall be...derived of life, liberty, or property, without due process of law."[13] Of course the term "due process" existed long before 1791 when it was inserted into the U. S. Constitution and can be traced back to Chapter 29 of the Magna Carta, which states that "No free man shall be taken or imprisoned or disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."[14] By the end of the fourteenth century, "law of the land" and "due process of law" were considered virtually synonymous in England. According to the seventeenth-century English jurist Sir Edward Coke, for instance, the liberty to pursue a livelihood and would not be otherwise be deprived but by *legem terrae*, the law of the land, "that is, by the common law, statute law, or custom of England… (that is, to speak once and for all) by the due course, and process of

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[12] *Declaration of Independence and the Constitution of the United States of America* (Washington, D.C.: Cato Institute, 2000), 44 (my emphasis).

[13] *Id*., at 44.

[14] John V. Orth, *Due Process of Law: A Brief History* (Lawrence: University of Kansas Press, 2003), ix.

law."[15] Both the writings of Coke and the Magna Carta influenced the 1704 ruling by the Queen's Bench (during the reign of Queen Anne) in the case of *Regina v. Paty*, in which it was revealed that the House of Commons had wrongly imprisoned John Paty and other citizens merely for the offence of pursuing a legal action in the courts. In this case, Justice Powys of the Queen's Bench explained the meaning of "due process of law" by invoking "Mag. Chart. C. 29, whereby no man ought to be taken or imprisoned, but by the law of the land" and that "*lex terrae* is not confined to common law, but takes in all other laws" and "the words *lex terrae*…are explained by the words due process of law; and the meaning of the statute is, that all commitments must be by a legal authority."[16]

In the early United States, the expressions "due process" and "law of the land" were often used interchangeably. The 1776 Constitution of Maryland, for instance, included a clause taken from the Magna Carta, including the expression "law of the land."[17] Likewise, the New York statutory bill of rights enacted in 1787 included four different due process clauses, which Alexander Hamilton justified by stating that the words "due process" had a "precise technical import" that must be invoked in a variety of contexts.[18] Following this, the state of New York proposed the addition of "due process" language to the U.S. Constitution, and in response James Madison drafted the due process clause for Congress, which was adopted after Madison explained the clause in relation to the Magna Carta. During the first sixty years after the ratification of the U. S. Constitution, the due process clause was confined

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[15] Edward Coke, *The Second Part of the Institutes of the laws of England*. 1608 (Buffalo, N.Y.: William S. Hein, 1986), 46.
[16] *Reports of Cases Argued and Adjudged in the Courts of King's Bench and Common Pleas*, volume 2 (London: L and R Brooke, 1792), 105.
[17] *A Collection of the Constitutions of the Thirteen United States of North America* (Philadelphia: John Bryce, 1793), 36.
[18] Alexander Hamilton, "Remarks on an Act for Regulating Elections," *The Papers of Alexander Hamilton*. Ed. Harold C. Syrett, et. al. (New York: Columbia University Press, 1979), 174.

to a procedural meaning – a situation that did not change until the fourteenth amendment was adopted in 1856.

Due process, then, ensures the individual's right to be adequately notified of charges or proceedings involving him, and the opportunity to be heard at these proceedings. Criminal prosecutions and civil cases are thus governed by explicit guarantees of rights under the Bill of Rights, which protects the rights of the accused at the state level. While the Constitution does not lay out specific procedures that must be followed in government proceedings, due process provides a minimum floor of protection to the individual that statutes, regulations, and enforced actions must meet to ensure that no one is deprived of basic rights arbitrarily or without opportunity to affect the judgment and result. This minimum protection extends to all government proceedings that can result in an individual's deprivation, whether it be in a civil or a criminal prosecution. This was to some extent an outgrowth of the common law's philosophical reliance on natural law and the idea that some laws could be "unlawful." The intent of writing due process into the U.S. Constitution was to impose limits not only on how laws were passed and enforced, but also on what kinds of laws that were imposed by majorities upon minorities as well as individuals. Just what these rights are, though, is not always clear. For throughout U.S. legal history, due process has protected rights such as marriage and the raising children, and it has upheld the extension of the Bill of Rights over the States. However, the lack of clarity surrounding the exact content of these rights has lead to many of legal debates.[19]

[19] One of the most famous legal debates on this issue was *Dred Scott v. Sandford*, in which Dred Scott, a slave, argued that passing through territory wherein slavery was prohibited destroyed his owner's property rights over him. In this case, the Supreme Court held that due process protections of property restricted certain types of laws that would take away property, not merely the procedure by which it was taken. See Leon A. Higginbotham, *In the Matter of Color: Race and the American Legal Process*, vol. 1 (Oxford: Oxford University Press, 1980), 91-97.

The question of due process protecting minorities in the United States was first raised in the Quock Walker case.[20] In 1781, Quock Walker, a slave, escaped from Nataniel Jennison and took refuge on a Massachusetts farm belonging to Seth and John Caldwell. Walker and his parents had been purchased by the Caldwells' older brother in 1754. When the elder Caldwell died, Walker had become the property of his widow, who later married Jennison. After the marriage, it was not clear who owned Walker. Was he owned by the widow? Was he the property of Mr. Jennison? Or was he a free man? Whatever the answer may be, Walker's liberty on the Caldwell farm was short-lived: he was soon recaptured by Jennison, severely beaten, and forced back into bondage. But Quock Walker fought back by filing suit against Jennison for assault and battery. In this case, the jury ruled in favour of Walker, for they found him to be "a Freeman and not the proper Negro slave" of Jennison, awarding Walker fifty pounds in damages. This ruling led to another trial, *Commonwealth v. Jennison*, in which the defendant was once again indicted and charged with assault and battery against Walker.[21] The Attorney General argued that Jennison was aware that Walker's original master had promised to set him free when he reached the age of twenty-five and, as a consequence, Jennison had attacked a free man. Jennison's lawyer argued that his client had a right to hold Walker in bondage based on the law of Coveture, which transferred the possession of a woman to her husband at the time of marriage. He also argued that the 1780 Massachusetts constitution did not specifically prohibit slavery and that Walker was Jennison's legal proverty. But Chief Justice William Cushing and the jury held that,

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[20] This series of judicial cases, based on the 1790 state constitution, successfully challenged the legality of slavery in Massachusetts. Although chattel slavery continued to exist in Massachusetts, the Quock Walker decision indicated that it would no longer be supported by the state courts. The case was widely publicized and it was a significant ruling for two reasons: first, it legally maintained the freedom of blacks in the state; and, second, it was one of the first instances in which a written constitution was applied directly as law. See D. E. Fehrenbacher, *The Dred Scott Case* (Oxford: Oxford University Press, 1978), 39.

[21] Arthur Zilvermit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967), 114.

based on due process, the constitution granted rights that were incompatible with slavery. In the verdict, Jennison was found guilty of assault and battery, setting a precedent whereby the due process protection of life, liberty and property was applied to Walker. By extension, the ruling implied that due process held the laws of slavery to be unlawful under the state constitution, and the due process clause was embraced by judge and jury to protect the rights that were implicit in the "ordered liberty" of Walker.[22]

Brown would have been familiar with this high-profile case and the controversial ruling of the court. Thus, it is not surprising that *Stephen Calvert* explores this case in the depiction of Ambrose Calvert, a tyrannical slaveholder who takes great pleasure in brutally beating his slaves. He is said to enjoy inflicting the "deep traces of the lash," as well as raping his female slaves. According to the narrator,

> His [Ambrose's] fields were cultivated by Africans.... His disposition was remote from avarice, but it was savage and capricious. He inflicted upon them the most excruciating punishments for the most trifling offences. He made little or no discrimination in the choice of objects of his wrath. No tenderness of age or sex, no degree of fidelity or diligence, exempted from suffering the unfortunate beings who were placed under his yoke. His imagination created crimes when they were wanting; and that was an inexpiable offence at one time, which, at another, was laudable or indifferent. When in a sullen mood, merely to smile in his presence was guilt, and incurred inhuman chastisement.[23]

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[22] *Id*., at 115.
[23] Brown, *supra* note 4 at 99.

A despotic slave driver, Ambrose determines the law of the plantation, and places himself in the position of judge, jury and punisher. Under his jurisdiction, there is of course a marked absence of due process, and this lack arises here precisely because there are no limits on how the laws are passed or enforced: the law in this region is fluid, malleable and constantly under construction and re-construction. On Ambrose's plantation--as on all plantations--there can be no protection of rights, freedoms or liberties, for these concepts are seen to be foreign to the institution of slavery, and exiled to the territories beyond the legal limits of Calverton.

Part of Ambrose's despotism arises from the fact that he refuses to inform the punished slave of the nature of his or her transgression. In fact, due process has no place here; for Ambrose, the voice of the law, conjures the transgressions of his slaves, and conceals the guilty conduct of the accused in order to perpetuate an aura of mystery surrounding the proceedings of accusation, judgment and sentencing. In this, the law of Calverton is always transformative and, as such, it questions the conventional notions of the law which are, determined by an imagined set of formalized regulations and an interpretive schema that produces interpretations in accordance with a procedural protocol. In this respect, the law serves institutional ends and interrogates, among other things, the motive, action and plotting of a transgression. Assumptions and limitations in this practice are outlined in the procedural due process, but any ruptures in this system expose the ease with which the transformation of institutional ends can occur. To put this another way, the law fluidly moves from the transparency of clear-cut regulation and procedure to an uncanny transformative figure that is illusive and ungraspable. The subversion of the law's assumed clarity, then, produces a sense of that which is strangely familiar, a sense of losing one's bearings and becoming disoriented by a certain undecidability that infects the law.

From this perspective, the only deducible and procedural principles in the law are discerned against a background of a deafening silence, and the law's citationality is not

innocuous but detrimental, perpetuating ideologies and agendas that are dressed up in the language of justice and higher law. Here, the law dictates fictitious conditions, so that one cannot pretend that innate, ubiquitous, knowable laws govern human activity. On the Calverton plantation, for instance, the meaning of the law is derived from the social machine of language and political agendas. Hence, meaning manifests itself in systems, and these systems are both provisional and project an illusory efficacy. They are provisional in that they refer to the temporal grounding of meaning that derives from and governs the fluctuating context that enacts and respects meaning. The illusory efficacy of meaning attempts to subjugate all others and announces itself in the name of what is "natural" or seemingly immanent. In short, the law of Calverton functions in a *mis en abime* fashion, stressing the slipperiness of language and the assessment of legal meaning. The law is, in other words, grounded in a prelocating tumult of temporality and context.

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The marked absence of due process on Calverton is mirrored in the covert charges lodged against Clelia. Here, the text links chattel slavery with the bondage of women in marriage, highlighting the unjust laws that perpetuate the exploitation of women in patriarchy. In passages that remind us of Brown's 1798 dialogue *Alcuin*, Clelia, Belgrave's wife, is said to be "charged directly" with "misconducts" that violate the institution of marriage.[24] But Sydney, the lawyer and voice for the prosecution, never articulates the specific crimes for which she is charged. Is she accused of adultery? Is she charged with betraying her husband? Sydney hints that this *might* be the case, but he does not confirm this. Instead, he speaks in generalizations, saying only that he is "convinced...of her guilt" and that

[24] Id., at 230.

he has "indubitable evidence" of transgressions that must remain concealed.[25] Stephen is confounded by these covert charges: "What was her crime?," he asks; to which no reply is given.[26] In place of an explanation, Sydney cryptically states that detectives have monitored Clelia's daily activities, and that witness testimony has declared her to be guilty. Guilty of what? Sydney never says, but he condemns her as "a vile criminal" and tells Stephen that he is "convinced of her depravity."[27]

Clelia responds with a summons. She demands that Stephen visit her at home so that she can enter a plea of innocence and defend herself against the mysterious charges. "I beseech you," she writes to Stephen, "afford me the opportunity of justifying my conduct. You know me merely as a fugitive from my husband and my country, and you impute to me all that is criminal and odious; but the true reasons for my actions will shew [sic] you that I am not without excuse."[28] Stephen complies with the summons. But Clelia's plea only compounds mystery, for her defense perpetuates covert charges by accusing others of dark crimes and unspeakable acts. In fact, Clelia defends herself by charging her husband, Belgrave, with a "nameless something," an affront to the "animadversions of the law."[29] In so doing, she condemns him for transgressing the law, but she conceals his crimes. "Cohabitating with him," she says, "I [have] became acquainted with transactions and scenes, which, at a distance, could not possibly have been suspected. Under the veil of darkness, propensities were indulged by my husband, that I have not a name which I can utter. They cannot be thought of without horror. They cannot be related."[30] This mix of defense, accusation and deferral simultaneously reveals and conceals Belgrave's actions. But

[25] Id., at 228-9.
[26] Id., at 199.
[27] Id., at 230.
[28] Id., at 199-200.
[29] Id., at 202, 205.
[30] Id., at 203-4.

revelation soon gives way to suppression when Stephen presses Clelia to disclose the specific transgressions that she has witnessed: "I cannot utter it--I was frozen with horror. I doubted whether hideous phantoms, produced by my own imagination, had not deceived me; till my memory, putting past incidents together, convinced me that they were real... The world would never believe the wrongs which I had endured, and which, indeed, would never know the most odious of these wrongs."[31]

What are these odious wrongs? What crime has Belgrave committed? And how, more generally, can anyone be charged with an unspeakable offense? By finding him guilty in the extreme, Clelia seeks to acquit herself of equally mysterious wrongdoings. As a result, the rhetoric of these passages generates feelings concerned with the liminal and other sorts of uncertainty, with darkness, and with a sense of a transgression that is so secret that it is best to leave it untouched. Clelia, then, implies that Belgrave's crimes are so horrific that they ought to remain hidden. They should be suppressed and repressed, hidden from the light of reality, in the form of a secret story that can never be told. Her account, in short, presents us with an effacement. For she effaces the nature and cause of the accusation, leaving the charges unknowable, enigmatic and inexplicable. Belgrave's crimes are thus bound up in an intellectual and legal uncertainty that haunts us with an ominous darkness, a sense that he has transgressed boundaries that go beyond the borders of speech or the letter of the law.

Stephen, then, is asked to judge Belgrave's unspeakable transgressions. In this, he is forced to rely on his imagination to fill in the gaps and elisions in Clelia's testimony: the imaginary must come to stand in for the reality of the alleged crime. Stephen is, in essence,

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[31] Id., at 205. See also Stephen Spapiro's reading of the erotics of *Edgar Huntly* correctly points to this passage in *Stephen Calvert* as "the first U.S. literary indication of the 'open secret' about what cannot be declared, for Neville's horror is not merely at the primal scene of Belgrave's homoerotics, but his brazen refusal to be ashamed." In Stephen Shapiro, "'Man to Man I Needed Not to Dread His Encounter': *Edgar Huntly*'s End of Erotic Pessimism," *Revising Charles Brockden Brown: Culture, Politics, and Sexuality in the Early Republic*, edited by Philip Barnard, Mark L. Kamrath, and Stephen Shapiro (Knoxville: University of Tennessee Press, 2004), 216-51.

faced with an effacement of the boundaries separating the imagination from reality that produces an uncanny effect, and his situation calls attention to the fact that "reality" and "imagination" are not mutually exclusive, but fundamentally linked in terms of displacements, disturbances and refigurations of the imaginary and the real. Clelia's concealment articulates the experience of reading Belgrave's transgression as a cryptic, private and unverifiable mode of interrogation and interpretation. The secret generates a special obtuseness of its own that disturbs her position as a reliable witness or as an allegedly detached and objective observer. But her concealment also accentuates the very effacement with which the law cannot be associated: her silence undoes any certainty about what is real and what is not, about where the imagination ends and the real begins.

We are, like Stephen, drawn into a strange silence, a solitude comprised of the unspeakable, into a world where, we perhaps discover, we can imagine a darkness that cannot be spoken. Clelia does not identify Belgrave's transgression or even the means by which she has come to discover it. She leaves us in the dark. What are we to make of this? Does she remain silent because she believes that she will be corrupted by uttering the crimes of another? Or does she omit the information because she knows that the imagination will conjure transgressions much more shocking than those which are put into language? It is possible that Clelia is concerned for us not to know more details about Belgrave's guilt. Like Carwin in Brown's *Wieland*, it might be said, Clelia is at once revealing through confession and concealing through silence. But, unlike Carwin, she does this by suppressing the specificities of another's crime, and tries to gain immunity for herself by exposing her husband's guilt in an imaginative fashion.

* * *

Caleb Crain convincingly argues that Belgrave's unutterable crimes are a direct reference to sodomy. "*Stephen Calvert* is," he writes, "the one piece of his fiction where Brown broaches the topic of sodomy."[32] Textual evidence certainly supports this reading, for Belgrave's unspeakable crimes are said to be committed with other men in the confines of his private closet. Moreover, His very name--Belgrave--is the death-like imagery that homophobically associates sodomy with the grave. In his article "Is the Rectum a Grave?," for instance, Leo Bersani writes that the "asshole" has been aligned with effeminate gay male sexuality, and it is "the heterosexual association of anal sex with a self-annihilation originally and primarily identified with the phantasmic mystery of an insatiable, unstoppable female sexuality."[33] In Brown's day, "preterition was the conventional way to represent sodomy," and the words unutterable and unspeakable became a form of coded discourse to characterize the crime (Crain 131).[34] As a consequence, this coded discourse, this preterition, was "written into" the law itself. In a unique statute of 1793, for instance, the State of Maryland adopted a penalty for sodomy applicable only to males, defining the act as "that most horrid and detestable crime (among Christians not to be named,) called *Sodomy*" (emphasis in original). This crime, which could not to be named and yet could be called something, followed on the definition of sodomy in English common law, which also labeled the transgression as something unspeakable. In both cases, the letter of the law could not name the crime, thus framing it as something mysterious, unidentifiable and beyond representation. However, in the United States, under the due process laws of the fifth amendment, a crime needed to be named and clearly identified when a charge was being made. But how could this be done in

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[32] Caleb Crain, *American Sympathy: Men, Friendship, and Literature in the New Nation* (New Haven: Yale University Press, 2001), 131.
[33] Leo Bersani, "Is the Rectum a Grave?" *AIDS: Cultural Analysis/Cultural Activism*. Ed. Douglas Crimp (Cambridge: MIT Press, 1988), 223.
[34] Crain, *supr*a note 32 at 131.

the sodomy cases of the 1790s? For in such cases, according to the letter of the law, this crime was unspeakable.

This situation calls attention to the legal fictions of due process and the rights of the accused. Due process necessitates the articulation of a crime, but the unspeakable nature of sodomy suggests that it is also unwritable, unreadable and enigmatic. Sodomy, then, exists outside the frontiers of legal discourse and it is exiled from the body of texts that comprises the law. Under such circumstances, it should be excluded from the hegemonic rationalism and imagined coherence that constitutes a law. For when the 1793 Maryland statute refers to sodomy as that which is "unnameable," the law frames it as a text of the *laspse linguae par excellence,* a text that slips over the signified and calls for an analysis that can never be conclusive. To put this another way, the unnameable thing called sodomy begs for analysis, and, in so doing, it gestures toward an illusive and analytic discourse that challenges the single-axis framework of the law. By speaking of sodomy as unnameable, the statute puts into practice a reading of the signifier *other* than in terms of the signified--that is, other than in the terms of the word that is being communicated. This implies that sodomy is beyond the limits of signification and, as a result, it is at once infinitely analysable and represents a limit for analysis. This is because the thing called sodomy in legal language simultaneously produces and pulverizes meaning: the word pushes beyond the limits of the thinkable, the representable and the discursive as such, while the law also makes claims to having a pre-discursive domain.

But if the naming of the crime was thought to be impossible, prosecution for sodomy was conceived as achievable. Under the law of Maryland, for instance, this inscrutable crime carried with it an explicit and harsh punishment. Those men charged with this offense could be brought before a justice of the peace who could hand down the sentence of

> labour for any time, in their discretion, not exceeding seven years for the same crime...and the said justices may procure a proper place or places for the confinement of such criminals...and to keep them, (and if necessary, secure them with irons), to constant hard labour...and any one of the said justices shall have full power to order any of the said criminals to be close confined, and whipped, not exceeding thirty-nine lashes.[35]

This brutal sentence could be issued without any definition of the very word being used to charge or convict the defendant. In fact, this particular statute was accompanied by a separate provision that mandated a *penalty of death* for any slave who committed sodomy. In Brown's home state of Pennsylvania, a similar penalty was also on the books as early as 1718: any man, regardless of colour, could face capital punishment if convicted of sodomy.[36] This maximum sentence was used in 1785 when Joseph Ross of Westmoreland County was sentenced to die on December 20, 1785 for an "unspecified act of indecency."[37]

It is crucial that the court documents in the Ross case refer to his act as "unspecified" and indecency. For the verdict gestures toward the consequences and effects of that which is inexpressible and unameable and helps us to witness the unsymbolizable competing with the symbolizable to suggest that every sign of difference is equivalent to its own deferral. But the law, by not naming and yet calling the transgression a crime, simultaneously recognizes the limits of the signifiable and tries to bring the unsignifiable under the auspices of the symbolic order. This is necessary because the regulation of desire and the act that is defined as a transgression must, in some way, be written down in the letter of the law. In this sense,

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[35] Louis Crompton, "Homosexuality and the Death Penalty in Colonial America," *Journal of Homosexuality* 1.3 (1976), 279.

[36] In Maryland, the death penalty for a slave convicted of sodomy could be commuted by a justice of the peace to a sentence of hard labour for up to fourteen years, a sentence twice that for free persons. John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (Harper and Row, 1988).

[37] According to legal historians, this is the only known execution in Pennsylvania for sodomy.

the law always privileges the logic of the signifier, even when it broaches that which is said to be unsymbolizable.

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In *Stephen Calvert*, though, the importance of naming the charge for which one is accused also arises in relation to transgressions other than sodomy. Louisa, for instance, condemns Stephen of crimes that she does not name. "I dismiss my hopes of you," she says to Stephen, "this instance of depravity and falsehood exceeds what my worst fears had painted."[38] Stephen then asks to be heard, so that he might defend himself against the charges:

> "Good heaven! What is the ground of your belief? You will not surely condemn me unheard?"
>
> "I have no doubts."
>
> "No doubt of my depravity?"
>
> "Alas! none."
>
> "Let me then take away from your sight, a wretch who is not even worthy to be heard in his own defense."
>
> She wept and sobbed...
>
> "And is it come to this? Shall I not, at least, know my crime?"
>
> "Your crime cannot but be known to you. Would you have me blast my own ears by repeating it?"....

[38] Brown, *supra* note 4 at 234.

> My thoughts insensibly acquired firmness and consistency. *Of those atrocious charges I was innocent. I knew not what the charges were*. I cared not to know. If I were not worthy to be heard, to be informed of my offences, I would trample, in my turn, on such injustice; I would leave my vindication to time, to chance.[39]

What we have here are a series of silences and silencings that surround the charges and judgments put forward by Louisa. After all, Louisa chooses to remain silent concerning why she has condemned Stephen, thus concealing the charge under a veil of secrecy. Her silencing, then, engenders other silences, for Stephen is left with no choice but to remain mute in the face of the accusation; he cannot challenge the charge--or indeed the silence itself--until the crime has been articulated and revealed to him.

These silences perpetuate confusion. By having no means to refute the allegations, Stephen cannot uncover the mistaken identity that is generating false impressions. For it is Stephen's double, his lost twin, Felix, who should be held accountable for the unuttered transgressions. Yet the silence surrounding the accusation means that the figure of the double baffles investigation, and creates false witnesses that muddle the coherence of legal authority. In this, the doubled figure suggests that nothing is more fleeting than the search whose movement constitutes the labyrinth that investigates it. But this investigation is necessarily filled with a sense of strangeness due to the dissemination of secrecy and unfamiliarity. To put this another way, the double compromises the law because it comprises the uncanny experience of being after oneself. How can the law investigate that which the suspect has done and yet simultaneously not done? Such an investigation will lead to the labyrinth of duplicity, or, as Nicholas Royle puts it, "the regulation of a strange economy, an art of

[39] Id., at 235 (my italics)

negotiation which presupposes a kind of double talk" that will bewilder an effective interrogation.[40]

In *Stephen Calvert*, then, the figure of the double calls forth a "lawful versus transgressive" distinction. In so doing, the moments of greatest heuristic power in the text occur through the confused acts of witnessing and interpreting that militate against this distinction. Unsettling the ground of both poles (lawful and transgressive), the text entails the experience of a suspended relation, for the double does not necessarily presuppose the identity and meaning of that which is witnessed. Rather, doubles resist the fixity of a binarized ontological status and gesture toward a certain indecidability that affects and infects the witness so that they can mean something other than they are.

Fixity is challenged precisely because the double is construed as a foreign body within oneself, or even the experience of oneself as a foreign body, the very estrangement of inner silence and solitude. This has to do with a sense of the self as double, split, at odds with itself, as well as the detection of a foreignness in oneself. Such a recognition, a glimpse at ontological uncertainty, is pointed to in the fact that Stephen Calvert is a fiction, a self-remarking fiction, dressed up as a memoir. It is a text about a double with a title that is thus double, narrated moreover by one who describes his name as a fictitious title: "My original appellation was Stephen," he tells us, "but henceforth I was called Felix."[41] The name is thus his double's title and his own, and suggests that the name itself is double, the double is already in the name. After all, Derrida reminds us that "a proper name does not name anything which is human, which belongs to a human body, a human spirit, an essence of man. And yet this relation to the inhuman only befalls man, for him, to him, in the name of man.

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[40] Nicholas Royle, *The Uncanny* (Manchester: Manchester University Press, 2003), 17.

[41] Brown, *supra* note 4 at 88.

He alone gives himself this inhuman name."[42] Here, the name itself is a doubling process, for the act of naming is synonymous with the act of othering--merging I and another--and identifying the human with the inhuman.

And yet the fixity of the law relies upon the fixity of the subject: the naming of the crime and the naming of the one who is charged with committing the crime. The charges, then, are not inseparable from Stephen's name--which identifies the transgressor--but his name is not his own, just as his alleged crimes are not his own and his actions are at once his and not his. Thus, Stephen's narration testifies to this structure of doubling or "being-two-to-speak"--and of being-two-to-act and of being-two-to-witness--for the writing of the "I" is the writing of doubleness precisely because the first person singular does not appear as such. Rather, the writing "I" is always inscribed in advance by its double. In this sense, Stephen's memoir--his fiction of self--speaks doubly to the experience of having a secret sharer, one who reveals his transgressions. But as a memior, there is a doubling of voices that calls attention to the duplicity of the narrative: Stephen's voice is duplicated by Felix and signed by Brown. The movement of the text, in essence, functions along the same lines as Carwin's ventriloquism in Brown's *Wieland,* for it constructs a model of a duplicity that confounds an original.

Stephen Calvert calls attention to the fact that the law as text is double. For when reading the law, we find ourselves constantly brought back again and again to the text by paradoxes of the double and of repetition. Such doubleness of the law in language, as Derrida points out, blurs "the boundary lines between 'imagination' and 'reality,' between the 'symbol' and the 'thing it symbolizes'..., the considerations on the double meanings of

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[42] Jacques Derrida, "Aphorism Countertime," *Acts of Literature*, ed. Derek Attridge. (New York: Routledge, 1992), 427.

words."[43] But it is important to note that the figure of the double not only mimics the doubleness of the law, but the double also confounds the law's "foundational" principles. The double has the power to efface identity--to conflate self and other--and, as such, the double can efface the legal procedures of due process and the rights of the accused. For if "I" is another, then the accused is also potentially the Other. The double, then, has the authority to, through duplicity, rob the self of legal statutes designed to protect the individual. To put this another way, it is necessary for the law to operate under the sign of unity: it can work only if there is a single source of identity that relates to the accused. When that source of identity is double, the role of the law is effaced and legal procedures cannot handle the multiple or the proliferative. In the end, due process is denied.

[43] Jacques Derrida, *Dissemination*, trans. Barbara Johnson (Chicago: Chicago University Press, 1981), 220.