



Drawn by James Hakewill

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*Monument of the late Tho. Hibbert Esq.
at Aquatta Vale, St. Marks*

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Illustration by James Hakewill, from his *Picturesque Tour of the Island of Jamaica, from Drawings Made in the Years 1820 and 1821* (London, 1825). Courtesy of Houghton Library, Harvard College Library, Cambridge.

BOOK DISCUSSION:

Vincent Brown, *The Reaper's Garden: Death and Power in the World of Atlantic Slavery*; Cambridge, MA: Harvard University Press, 2008; 368 pages; ISBN 978-0-674-02422-9 (hardcover).

Rituals of Belief, Practices of Law

Colin Dayan

The voice belongs to the family group dead and alive.
We walk by their leave, for planted in the soil, we must walk
over them to get where we are going.
—Erna Brodber, *Jane and Louisa Will Soon Come Home*

In *The Reaper's Garden*, Vincent Brown presents a history of slavery in colonial Jamaica that is also an inquiry into ritual practice and punishment in a transatlantic perspective. To effect what he calls “a materialist history of the supernatural imagination” is no mean feat.¹ He is able to make matter out of spirit, to call upon a new definition of the body, by reconceiving the meaning of death—and the making of the dead—in the enchanted wreckage that was Atlantic slavery. Brown takes literally the *haunt* of cruelty, the leavings of terror. The dead do not die. They haunt the living, both free and unfree, African and European. As he cautions at the end of his book, they still speak in the present landscape of terror and ruin.

The dogs of Hurricane Katrina; citizens turned refugees in the United States; disappeared “ghost-detainees” held incommunicado in prolonged detention; sick cows kicked and prodded at slaughter; nooses found in trees, in university offices; civilians killed, maimed, burned alive, and locked up in Gaza—the rationales and rituals of terror proliferate. In *Silencing the Past: Power and the Production of History*, Michel-Rolph Trouillot warns, “The Past—or, more accurately, pastness—is a position. Thus, in no way can we identify the past as *past*.”² The

1 Vincent Brown, *The Reaper's Garden: Death and Power in the World of Atlantic Slavery* (Cambridge, MA: Harvard University Press, 2008), 5; hereafter cited in text.

2 Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon, 1995), 15.

ghosts of Brown's story remind us that the codes and sanctions of slavery always resurface and find new places to inhabit.

In *Institutes of the Christian Religion*, John Calvin reflects on the passage in Luke where Christ identifies himself: "See and touch for a spirit has no flesh and bone." He writes as if in anticipation of what T. S. Eliot in *Four Quartets* will name "a familiar compound ghost." For a long time now, since my first visit to Haiti when I was twenty, I have been haunted by Calvin's rumination on the body of Christ. "He proves himself no specter, for he is visible in his flesh. Take away what he claims as proper to the nature of his body; will not a new definition of the body then have to be coined?"³ In 1980 at a *hounfo* in Croix-de-Missions, Haiti, I watched when a devotee was mounted by a *lwa* in service, and I knew that this was a risky, fabulous, and very fleshly matter: this proximity of the common and the sacred, and the apparent arbitrariness of the relation. The spirits unfold their potential in the lineaments of the human, in the material envelope through which they experience life on earth.

In what I call the "cult of the residue," the body remains. The spiritual promiscuity generated by the struggle between domination and obeisance made finite what we understand as "spirits," as if through a nature injected with temporality. The divide between the *spiritual* and the *secular* is far more permeable than civilized claims and their emphatic reasonableness would have us believe, while trafficking in slaves—and the wealth resulting from what Brown calls "a magnificent factory" made "out of mortal crisis" (13)—redefined physicality. Neither whites nor blacks were spared this reckoning. For Brown, both commemorative obsession and lingering phantoms guarantee a *political history* that is rigorous and visible. The will to repeat, the insistence on the already done that must be redone, accounts for the power and clarity of ritual, an action both sacred and civil. Nowhere is ritual power so evident through these embodiments that give a material history to what might seem spiritual concerns. Ritual is not only historically specific, but, as Wyatt MacGaffey has written, it is "about power and is itself more or less political."⁴

Brown tests the connection between the set of practices in the Caribbean associated with the sacred and what we might call the rules of law, not exactly the underside of the sacred, but its haunting. Indeed, the law haunts this book, its precepts and proscriptions return as a leitmotif in the grit and press of colonial history. In the process, Brown prompts us to ask how legal practices and rituals of belief redefined matter and spirit, persons and property for both masters and slaves. How did sacred authority and ritual practice prompt the redefinition of politics, and under what historical forms? Reading Brown's meditation on what matters in a society built "on the ruins of human life and dignity" (57), I wondered about differing attitudes toward atonement and retribution, variously if somewhat ambiguously called European

3 John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill (1536; Louisville, KY: Westminster, 1960), 1399; biblical reference is to Luke 24:39; T. S. Eliot, "Little Gidding," *Four Quartets* (Boston: Houghton Mifflin Harcourt, 1971), 53.

4 Wyatt MacGaffey, *Religion and Society in Central Africa: The BaKongo of Lower Zaire* (Chicago: University of Chicago Press, 1986), 18.

and African. These attitudes worked in radically different ways in slave communities, where the nonhuman—a concept of great penetrating power—engendered deeply unspecialized applications and entered the human community in any variety of circumstances.

In the unerring embodiments of spirit possession, as in any ritual of remembrance and reenactment, the legal idiom of possession matters a great deal, especially in the case of human chattels that could be passed around, damaged, or consumed. This marking of perishables, consumed by use, says something unique about the somber intelligence of ritual. In places that established slavery as an institution fundamental to the rights and identities of those who were not slaves, a unique blend of Cartesian doubt and sacred spirituality came into play. Throughout the Americas, under pressure of punishment without limits, the concept of personhood could be eliminated for the enslaved who were condemned to live in and through the body. “He can be reached only through his body,” Thomas R. R. Cobb wrote in *An Inquiry into the Law of Negro Slavery* (1858), “and hence, in cases not capital, whipping is the only punishment that can be inflicted.”⁵ Why, we might ask, can he *not* be reached through his mind? The answer—at least in the southern United States—involved some of the most astute and thoughtful of appellate judges in impossible scenarios of racialist ethnography, a dizzying array of examples that demonstrated the legal destruction of the person. If legally the slave had no mind—no legal personality—then this terrible negation of thinking in law, itself a kind of magic, was a disfiguration perhaps more terrifying to the enslaved than the actual beheadings and mutilations so powerfully described by Brown.

In Brown’s landscape of death—a realm of broken but obstinate communication between the living and the dead—nothing ever dies: not oppression nor the disfiguring of persons placed outside the pale of human empathy. The haunting continues, and it is preserved most cunningly in legal rules and regulations. Old forms of terror maintain themselves as they find new content. In thinking about how spectacles of terror control the racially marginalized, the weak, and the socially oppressed, I recall Pollock and Maitland’s insight into the witchcraft behind the law: “Where there is no torture there can be little witchcraft. . . . Sorcery is a crime created by the measures which are taken for its suppression.”⁶

With this penal logic the rules of law and the exercise of spirit became reciprocal. Legally, how much of a body could be dismembered? In the Jamaican Black Code, as in the French Code Noir, a gradual removal of body parts was allowed: one ear for the first escape, another ear for the second, or sometimes a foot or hand. The judicial code was preliminary to the utterance of guilt and essential to its efficacy. In the French code the soul remained, no matter the tortures, whether castration, flogging, roasting, branding, loss of ears, nose, hands, and

5 Thomas R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America* (1858; New York: Negro University Press, 1968), 266.

6 Sir Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*, 2 vols. (1868; Union, NJ: Lawbook Exchange, 1996), 2:555–56.

feet. The baptized slave could, as some Jesuits claimed, shake off the mutilated flesh and rise again incorruptible.

In Jamaica, however, slaves were construed, in varying acts of assembly, as things without thought, with no attention paid to their souls. But the *duppies*, or unquiet dead, returned in varying guises. The relics and scraps of bodies, the slaves who had been called “ebony wood,” “pieces of the Indies,” or “heads of cattle,” returned as ancestor spirits, caught in the evil that had created them. Their metamorphoses, and the threat of “spectral revenge” (69), Brown demonstrates, troubled both whites and blacks, recording the rudiments of a legal sorcery that converted humans into things or nonhuman animals. Whether we turn to the English or French Caribbean, or even the American South, these spirits returned as *baka* or *lougawou*, *soucriants* or vampires, the varying kinds of shape-shifters known to shed skin and suck blood. Condemned to wander the earth most often in the form of pigs, cows, cats, or dogs, these evil spirits are the surfeit of an institution that turned humans into chattels. They, too, tell a history. These residues return, and along with other spirits of the dead, activate the materiality that is so critical to the spiritual beliefs of the enslaved, as well as to the terrible practices of the plantocracy.

In the exemplary “Icons, Shamans, and Martyrs” (chapter 4), Brown provides the context for a new understanding of the “supernatural.” A new religious idiom acquires strangely animate life, while “rites of legal practice” become inseparable from “rites of terror” (138). Speaking broadly, I would argue that only in legal documents and under legal forms are the social, economic, and even spiritual arrangements of remote times made visible. The black codes, penal sanctions, and judicial enforcement form the skeleton of the body politic. Throughout the Americas, the creation of persons in law, earmarked for domination, was a weighty matter, and the rituals adapted to this novel status were impressive. Not only did terror and legality go hand in hand, but the supernatural served as the unacknowledged mechanism of justice. Law traded on the lure of the spirit. “The legal system was in place,” Brown notes, “but a belief system was not” (139). A startling and crucial point, which deserves to be analyzed further. Both planters and slaves proved again and again that the sacred was inextricable from the law, just as the law shaped and sustained belief.

Legal thought in colonial Jamaica, as in Saint-Domingue, relied on a set of fictions in order to sustain the absolutist and physical concept of property: a fictive, and, I would add, supernatural domain grounded in the materials, habits, and usages of society. What might first seem phantasmagoric is locked into a nature lived as a spectacle of servitude and possession. The dispossession accomplished by legal slavery, as I once argued, became the model for possession in Vodou: turning a person not into a thing but into a spirit. The raw materials of colonial legal authority became the stuff of spiritual life. In Creole, for example, the term for either law or god is *lwa*. Those dispossessed by the *loi d'état* enacted an alternative history when they were possessed by their *lwa*.⁷

7 See Joan [Colin] Dayan, *Haiti, History, and the Gods* (Berkeley: University of California Press, 1995), 65–74.

The law was not beyond the ken of slaves, but something that obsessed them. They understood its power and knew that on this soil of the dead, the elements of law had a great deal to do with the making of gods and spirits—and political authority. *The Reaper's Garden* sensitively lays out this habitat for law's creatures and offers the ground for a gothic America: a hybrid place into which are seeded legal fictions, spiritual beliefs, and historical fragments. The very notions of mastery and servitude, as well as persons and things, are there transfigured.

To say that law uses and represents history is also to know how it becomes a site of commemoration. How does law materialize memory? As a locus of embodied history, law becomes key to understanding what it meant when slaves, formerly property, were freed into another kind of status that recognized the exchange of one kind of bondage for another. It is no accident that two other recent books about Jamaica focus on law's sorcery. R. W. Kostal's *A Jurisprudence of Power* and Diana Paton's *No Bond But the Law* both link unspeakable practices to legal strictures.⁸ What is remarkable is law's ability to invent persons who yet remain in a negative relation to law, whether through state-controlled punishment or in the legal-minded acquiescence in torture.

The law, ever turning to the past in order to accumulate its vestigial bits, remains deathly. Yet this residue is the lifeblood for the constancy, the deathlessness of legal inquiry. What gives law the power to preserve and manipulate the categories of spirit and body? The double and complex movement between the extremes of external and internal, what can be removed and what remains, turned the rules of law into tools for unmaking persons throughout the colonial Americas, whether we turn to the British colonies in the West Indies or in North America.

Orlando Patterson, following Claude Meillassoux's lead in *The Anthropology of Slavery*, used the term *social death* to describe the utter "depersonalization" that signaled an "alienation" both sacrificial and mercantile.⁹ One of the most startling and persuasive moments in *The Reaper's Garden* is Brown's revisiting of social death—a condition that I have long argued is essential to understanding the status of prisoners who, once recognized as "slaves of the state," undergo "civil death," naturally alive but legally dead.¹⁰ Taking issue with Patterson's use of the metaphor of social death "as the basic condition of slavery," Brown questions Patterson's position that "the enslaved had been culturally stripped by slavery's rigors and terrors" (127). Thus, while concentrating on death, Brown questions the view of the socially dead slave, instead giving examples of familial relationships through time, the "determination to brace a fractured lineage, of whatever kind" (118) through legacies and bequests. In a brilliant riposte to Patterson, Brown distinguishes between figure and actuality. Throughout

8 R. W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (Oxford: Oxford University Press, 2005); Diana Paton, *No Bond But the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780–1870* (Durham, NC: Duke University Press, 2004).

9 Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982), 22; Claude Meillassoux, *The Anthropology of Slavery: The Womb of Iron and Gold*, trans. Alide Dasnois (Chicago: Chicago University Press, 1991), 9–35.

10 See Joan [Colin] Dayan, "Legal Slaves and Civil Bodies," in Russ Castronovo and Dana Nelson, eds., *Materializing Democracy: Toward a Revitalized Cultural Politics* (Durham, NC: Duke University Press, 2002), 53–94, and "Legal Terrors," in "Redress," special issue, *Representations* 92 (Fall 2005): 42–80.

his remarkable discussion of inheritance practices among Jamaican slaves he clarifies how they continually, often successfully, accomplished what they were legally *not free* to do. For slaves to act “freely” would contradict the substance of enslavement, Brown argues. And yet slaves in their last wills and testaments reacted against this legal impossibility. Nowhere is this divide between legal precepts and actual practice as evident as in the history of slave inheritance claims.

The threat of haunting, the fact of loss, and the promise of an afterlife were singularly pronounced in the rituals of inheritance that Brown elaborates in the chapter “Expectations of the Dead.” Reading these riveting pages on the rights to land and claims of lineage, I am reminded that slavery in the United States and the laws that sustained it were indeed exceptional and unprecedented. Even relationships outside the law between masters and slaves never significantly countered the abstract precepts of law. In Jamaica, however, slaves, once reduced to a special kind of property, were yet to be governed as persons with wills of their own, even though fixed in their status as legal property. What Brown portrays as a reciprocal exchange that thrived on separate but equal possibilities—“the relative openness of inheritance practices among slaves” (115)—on the eve of emancipation in the West Indies was quite reversed in the southern United States on the eve of the Civil War.

Southern laws became increasingly draconian after the Nat Turner rebellion of 1830 and the increasing militancy of abolitionists, along with emancipation in the British West Indies. But, above all, the emphasis on slaves as property meant they could have no relation to property. Here is Cobb: “Of the other great absolute right of a freeman, viz., the right of private property, the slave is entirely deprived. His person and his time being entirely the property of his master, whatever he may accumulate by his own labor, or is otherwise acquired by him, becomes immediately the property of his master.”¹¹ While Edmund Burke considered how slaves might become “suitable subjects” in his 1780 “Sketch of a Negro Code” (see 123), even abolitionists in the United States—as Frederick Douglass reminded his audience—never quite accepted former slaves as equals. Instead, they still bore a stigma of the deepest degradation, to paraphrase Justice Roger Brooke Taney in *Dred Scott v. Sanford* (1857).

In Brown’s remarkable book we learn how the rules of law and the transformations of belief worked for both the enslaved and the free to make an alternative history that suspended the alleged disconnect between sacred and profane. In asking how the living might speak with the dead, he also asks what it means to put politics into a frame that can only be called *religious*. The miraculous story he tells stands outside moral injunction or reasonable consensus. In a terrain ravaged by violence, mutilation, and greed he recognizes something like the divine: excessive and beyond rules, laws, or the rational expectations of humanist culture. In what secular culture takes to be useless, dead, or discarded, Brown summons a world of family and friends, spirits and persons that has little to do with morality or something

11 Cobb, *An Inquiry into the Law of Negro Slavery*, 235.

called *progress*. Both slaveholders and slaves struggled with the meaning of belief and the vexations of spirit under the bonds of law. These struggles, as Brown suggests, underlie our contemporary order but remain unacknowledged or unspoken within its reigning theories of liberalism. His archive, then, resurrects the materials of a history too easily forgotten: the resilience, inventiveness, and wit of those who walk in rubbish, gaze from blown-out windows, and live in the shadow of merciless brutality.