

Review of *Troubling Confessions: Speaking Guilt in Law and Literature*

Author: Peter Brooks
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Peter Brooks has produced a remarkably insightful analysis of the status of confession in law, literature, religion, and psychoanalysis and, at the same time, provided a landmark demonstration of the value of interdisciplinary legal scholarship. In part, the quality of this book as an example of how materials and perspectives from the humanities enrich and enliven legal analysis comes from its very unselfconsciousness about its vindication of interdisciplinary work. It is direct and focused on what Brooks calls "speaking guilt," a subject that, as any student of law knows, long has been a vexing one.

As well written and engaging as this book is, like any first rate piece of scholarship that draws rigorously and thoughtfully on texts from a variety of traditions, it is demanding on its readers. It is demanding in the range of its references: from Rousseau and Dostoevsky, to Freud and Lacan, from *Miranda v. Arizona* to sociological materials on police interrogation. Each of these sources is treated with great subtlety and careful attention. Brooks is the kind of scholar whose range of understanding and breadth of reading allows him to move easily from one genre to another.

The payoff of this facility is an engaging argument about the way law comes to terms with the Fifth Amendment's guarantee against "compulsory" self-incrimination. Confessions, Brooks argues, are at one and the same time an indispensable aid to law enforcement and an object of suspicion. We both need them, and yet worry lest those who confess not be subject to unconstitutional compulsion. We desire confession on the assumption that the guilt spoken from the mouth of the guilty wrong doer is unusually reliable, trustworthy, and truthful. We assuage our concern by insisting that those who speak their own guilt do so "voluntarily."

Much of *Troubling Confessions* is an inquiry into these two issues: truth and voluntariness, an effort to use insights from literature, religion, and psychoanalysis to examine the adequacy and accuracy of law's treatment of the truth value of confessions and law's assessment of the conditions conducive to, or indicative of, the voluntariness of confessions. What he finds both illuminates and complicates the stories revealed and told in cases like *Miranda*.

In Brooks's view, those stories are often reductive and unreal, necessary perhaps to the vindication of a normative system grounded in assumptions about will and responsibility, but nonetheless out of touch with the complexities that are always associated with confessions, especially at the current time. At times Brooks is sympathetic toward law's necessary simplifications; at other times less patient and understanding. "Human law," he writes, "may not so much mimic as parody divine or psychic law when it deals with the individual's self-expression in confessional discourse. For the law takes literally what the other two domains express symbolically." (p. 142).

But it is not only the distinction between the literal and the symbolic that marks the boundaries of these domains. Attending to accounts of confession in

literature, religion, and psychoanalysis suggests that whatever "truth" it reveals is "intersubjective," "transactional," and "transferential." There is no simple truth that confession can and does reveal. Confessions are almost always produced in a relationship to, or dialogue with, a confessor. That relationship with its affect and allure conditions the knowledge/revelations that confessions produce. And, in a fascinating analysis of the performative character of confession, Brooks argues that confession allows for a complex staging of scenes of exposure, guilt, and retribution such that confession is as likely to produce as reveal guilt. The more one confesses, the more guilt is produced, the more one needs to confess.

Throughout the book Brooks reminds his readers of the dangers of the search for "transparency," for an unmediated access to the truths of persons. Transparency, he says, can be allied both to virtue and terror. While the law prizes confessions for the truths they reveal, what is performed may have more to do with a truth of the self, in all of its opaqueness, than with "the truth of fact." (p. 141)

If law prizes confession because of the truth that it assumes confession reveals, law insists that no confession can be accepted, or admitted into a legal proceeding, unless it is "voluntary." *Troubling Confessions* is at its best in its readings of cases where courts have tried to grapple with and define the requirements of the Fifth Amendment. Especially noteworthy is the analysis of Justice Frankfurter's opinion in *Culombe v. Connecticut*. At the heart of Frankfurter's opinion was the suggestion that Culombe's confession was the product of an "overborne will." (p. 68). In this part of the book Brooks shows how the law's conception of the individual before the law depends on a particular concept of the will. That concept sees the confessing subject as choosing whether or not to speak or remain silent. It imagines that the choice is, or can be, a voluntary one, that it proceeds from and reflects the autonomy and dignity of the choosing agent. Whether employing a totality of circumstances test or the bright line rule of *Miranda*, the effort is to identify and protect a moment in which confessions can be understood to be freely given.

Brooks rightly notes that the abstractions of the Supreme Court's opinions in this area sit side-by-side with the quotidian efforts of police to exact confessions through manipulation, trickery, and deceit. In this sense the law speaks in two voices and seeks to have it both ways. Yet Brooks's argument does not depend wholly on this suggestion about the gap between law on the books and law in action. Instead, as in his analysis of the truths that confessions speak, he again turns to literature, religion, and psychoanalysis. Bringing these resources to bear suggests that confession always proceeds from dependency and abjection rather than autonomy and dignity.

People confess because they are compelled to do so, not physically, perhaps not even by the acts of others. What, *Troubling Confessions* asks, are the sources of the compulsion to speak? Suggestive answers abound in this book. Here let me mention just two. First, is the force of broad cultural pressures associated with the pervasiveness of confession as a mode of discourse in American culture. In Clinton's impeachment, the popularity of the "tell all" book and of the Oprah-style talk show, Brooks finds evidence of the "banalization" of confession in the culture. (p. 6) Yet, one might ask, can the culture exert an irresistible pressure to confess even as it renders confession banal? What is the mechanism through which any individual participates in this process?

The second factor operating to limit the possibilities of voluntariness is found in the bonds between confessant and confessor. Brooks argues that confession

requires a relationship: between writer and readers, penitent and priest, patient and analyst, suspect and interrogator. Each of these relationships are characterized by dependency, subjection, fear, and desires to appease and please. So strong are these factors that people may confess to things that they did not do. In this case Brooks is surely right, but I am left wondering whether the factors in relationships between confessant and confessor that he so skillfully unpacks are felt equally in all types of those relationships. In places Brooks seems to write as if they are; still it would seem worthwhile to ask when, where, and why those relationships operate to compel confessions.

Confession, Brooks concludes, must, in order to satisfy the Constitution, be called voluntary while everything conduces to assure it is not. This is a powerful and well documented assertion, powerful in exposing the fictions through which law often operates, well documented in Brooks's skillful marshaling of disparate sources from both inside and outside law. Yet even as he reaches this conclusion, about the inadequacy of law's account of the process of speaking guilt, Brooks remains respectful of law's enterprise. Indeed some readers will find him too respectful, too patient with a situation in which law's fictions produce unjust results. Others will be disappointed that having provided an analysis that undermines law's assumptions about truth and voluntariness in confession that Brooks recommends neither reform nor radical alterations in legal practices.

Nonetheless, there is much to learn about the distance between law and the psychological and social lives that its subjects lead from Brooks's consideration of confession. We may not be able to make law more responsive to those lives, and perhaps we should not, in all cases, imagine that we can close the gap. But what Brooks has done is to explore and expose the way law effaces the realities in which it is embedded, denies the doubleness and ambivalence that surround many of the transactions in which it is involved everyday, and still manages to get on with its business. *Troubling Confessions* provides a striking reminder of how difficult it is to choose silence in the face of demands that we speak as well as a sterling example of the virtues of scholarship that crosses boundaries and draws law into a colloquy with disciplines beyond its boundaries. For those involved in this enterprise, it is a welcome and, at times, inspiring, model.

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