Still Comfortable After All These Years: A Response

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Abstract

In Writing in Public: Literature and the Liberty of the Press (Johns Hopkins University Press, 2018), I describe how the public function of literature changed as a result of developing press freedoms during the period from 1760 to 1810. I examine contests over the laws of copyright, defamation, privacy, and seditious libel to show what happened to literary writing once certain forms of discourse came to be perceived as public and entitled to freedom from state or private control. This issue of Critical Analysis of Law offers reviews of my book by Brian Cowan, Leslie Kendrick, Karen Petroski, and Elliott Visconsi. In this brief article, I address some of the reservations these reviewers express about my argument in the book, and in particular about its approach and tone. I note my own similar concerns, and I elaborate on what I see as some of the repercussions for my argument of having to limit its scope. I also restate my findings more forcefully to make clear that the position I take on the history I relate is not quite any of the several divergent positions that the reviewers attribute to me. My aim in the book, I emphasize, is to describe the consequences of a kind of cultural trade-off between literature and the law, among other discourses, that occurred in the transition to democracy, but I refrain from taking a position on these consequences.

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I am grateful to Simon Stern and his colleagues at Critical Analysis of Law for arranging this forum, and I thank the contributors Brian Cowan, Leslie Kendrick, Karen Petroski, and Elliott Visconsi for their extensive and thoughtful comments on my book. I will respond to some of the reservations they express about my book, but I will use also this opportunity to state some of my own frustrations with its argument.

The work I originally wrote had to be cut considerably to get it to a publishable length and focus. As inevitably happens, some excisions have come back to haunt me in the form of what appear to the reviewers as gaps in the topics I cover or inadequacies in how I cover them. Many cuts were of relevant but inessential material. Of this type was a paragraph at the start of my chapter on defamation about Robert Bork’s views on freedom of aesthetic expression, which I am now amused to find Kendrick discussing at length in her review. Kendrick also alludes in passing to the Stage Licensing Act of 1737, which I mention in my opening paragraph of the book but then never consider again. I originally wrote a section about the Act in the sedition chapter, but I struck it out once it became undeniable even to me that my historical narrative was threatening to overwhelm my thesis about changing attitudes toward language’s influence on the public mind.

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Another type of excision was of the “material I deal with elsewhere” kind. Cowan rightly suggests that I have not made much of an attempt to theorize the conception of “literature” I am working from. I have refrained from doing so partly because such a theory might preempt the historical claim I make about how, with modernity, what is understood by literature and its social purpose has become more open to disagreement than it was in an earlier era. But I have also refrained from advancing such a theory because I have done that sort of thing elsewhere—not least, in entries on “literature” that I struggled to write for not one, but two encyclopaedias of literary terms. Writing in Public is also the second volume in a projected trilogy dealing with the emergence of the modern idea of “literature,” and in the trilogy’s first volume, The Making of the English Literary Canon: From the Middle Ages to the Late Eighteenth Century (1998), I describe how at the end of the period the word and the category of literature displaced an older conception of poetry in accordance with a shift in emphasis from writing to reading, from valuing the social benefits that writers produced to valuing the personal benefits readers might derive from experiencing literary works. I refer to this earlier argument in Writing in Public but it appears that I have not done a good enough job of migrating its findings into the new book.

Thus Cowan thinks that my concept of literature is poetry-centered, presupposes an idealistic, historically dubious distinction between the literary and the utilitarian, and has been challenged in recent Romantic-era studies that show the concept of the literary during the period was far more capacious and dynamic than critics have conventionally assumed. To this, I answer by reiterating the findings of the earlier book and stating more forthrightly the conclusions of the new one. I do not subscribe to a poetry-centered concept of the literary. Rather, I am contrasting an earlier, poetry-centered conception, one that once informed pretty much all accepted thinking on the subject, to the category of “literature” that began to replace it at the end of the eighteenth century. It may seem that, as my earlier work, in particular, is more focused on the former’s decline than the latter’s ascendancy, I favor one conception over the other; yet I have chosen this focus principally to correct misperceptions of the older conception, misperceptions that have led some historians to claim, for example, that the English literary canon was formed only in the eighteenth century. I will concede that, as Cowan says, my contrasting of these conceptions makes for a schematic account of literary history. This is especially a weakness of the argument of the first book, where I divide a thousand years of intellectual history into two epistemic cultures. My hope is that this schematism—which I present not as a thesis but as an explanatory mechanism—will put into relief the nature of the changes I am describing. Those changes,

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1 Trevor Ross, Literature, in Encyclopaedia of Contemporary Literary Theory: Approaches, Scholars, Terms 581 (Irena R. Makaryk ed., 1993); Literature, in 3 The Oxford Encyclopedia of British Literature 314 (David Scott Kastan ed., 2006).

I argue, involved significant adjustments to assumptions about the value and social function of literature.

The risk with this approach is that it is easy to confuse the nature with the extent of these changes. Cowan thinks my argument exaggerates the degree of these changes. Admittedly, my argument in the new book may appear to do so since it concentrates on legal developments during a relatively brief period, the later eighteenth century, and the assumptions guiding these developments may not contrast dramatically with principles declared a generation later. But, as I tried to suggest in the chapters on style and seditious libel, it is only over the longue durée that we can see how the entire cosmos of belief underlying the regulation of public discourse was radically different in kind at the beginning of the eighteenth century than it was at the end. At the beginning of the century, few if any in Britain would have had any notion of intellectual property or seen any compelling reason why a public domain, with the nation’s literary heritage at its core, ought to be legally kept free from private control. Few if any would have thought that privacy was a right or that defamatory or seditious words could be harmful only in specific contexts. Few if any would have understood why, for the sake of public debate, the right to criticize needed to be legally enshrined. For that matter, few if any would have understood why the law ought to be used to protect anything for the sake of debate. Yet, by the end of the century, many of these ideas had become not merely arguable but entrenched in the law.

How much of an effect these conceptual and normative changes had on literary and critical practices can be overstated. As I said, I started this project to contest just such an exaggeration, the tendency among literary historians to dismiss earlier practices of literary evaluation as having little bearing on our understanding of “literature.” There is, I emphasize in both books, considerable continuity between the two conceptions and in the practices they support. The older, rhetorical conception was as capacious as the idea of literature that replaced it: “poetry” (or “poesy”) could be used to designate not just about anything written in verse but works of drama, fiction, or prose that could be cited for their rhetorical inventiveness or stylistic efficacy. Proponents of the older conception were as apt as theorists of the modern one to disagree over whether literary writing was principally an art of representation (mimesis, fiction, etc.) or one of beautiful words (figuration, form, etc.). It is possible, I conjecture in the new book, that nothing essential has changed in either the properties or the practice of literary writing: “[L]iterature may work pretty much the same way it has always done but its public role has changed because all other public discourses have changed.”\(^3\) Contrary to what Cowan implies, I nowhere contend that literature in its modern sense is actually cut off from the public world of utility or deny that it continues to circulate (to recycle the words that Cowan quotes from Ian Newman’s book on the

Romantic tavern) “as part of a social network that includes persons, places, objects, and ideas.”

What I maintain is that attitudes toward literature changed. There is, in the first instance, a broadening, and loosening perhaps, of perspective about the social role that literary writings were thought to perform and how they performed it. It would have been inconceivable to anyone during the Restoration period, say, how literary writings might be cut off from the public world, that it might be desirable if they were, or that literary writings might not always be part of a social network that includes, places, objects, and ideas. Yet a century later, when critics were celebrating the anti-social nature of original genius or the private delights and benefits of reading literary works, the idea that literature might desirably be cut off from the public world of utility could be taken seriously. Even if not everyone, including most working writers, agreed with the idea, it had entered the realm of the debatable. As I suggest in the new book’s introduction, it is no less possible for writers in the modern world to declare a strong commitment to public service or political ideals than it is for them to abjure such a commitment. Both attitudes about literature’s social purpose, and many more, are at once tenable and contestable in a modern world in a way that was not so before the liberalization of speech.

Some beliefs about literature’s utility, furthermore, did become obsolescent or had to be adjusted to accord with democratic precepts. Once the most celebrated contributions that rhetorically adept writers could make to cultural and linguistic refinement, achievements in style were by the end of the century seen as confirmation that individuals in a liberal polity were capable of expressing themselves in a manner that evinced their unique way of thinking. Similarly, early nineteenth-century courts began to allow exemptions for criticism and parody within defamation and copyright laws because it had come to seem more important to protect an individual’s right to declare a difference of opinion than to hold all writers answerable to the same social and moral norms. A wide array of literary genres—not just verse forms, but plays, prose satires, allegories, scandal fictions, periodical essays, etc.—once served primarily as vehicles for publicizing and commenting on current events, and readers could encounter dozens of such items each month to keep up with the latest controversy or fashion. By the end of the eighteenth century, many of these genres’ publicizing functions had been assumed by newspapers, and not simply because newspaper prose may have been easier to write or comprehend than the indirectness of irony or poetic metaphor. Fiction and figuration did not seem as directly or immediately conducive to a general public’s participation in democratic self-governance as the genres of knowledge and information. At the same time, they could, in the novel and the lyric respectively, seem better suited than the information media at providing the public with a view into private feeling and subjective experience, a view that was vital to understanding the autonomy and otherness of other persons.

That the literary could be distinguished from the utilitarian was, as I suggested, an idea that for the first time some writers and philosophers thought plausible. Yet, unlike what Cowan maintains, my principal contention in the new book is not that literature was set off against the utilitarian per se so much as it was segregated to a degree from the realm of force. It had once been the primary function of all writing to move people to obey moral truth and abide by the existing order. But this belief in the power of persuasion could not be accommodated to a belief in popular sovereignty, which presupposed that all persons had at least the capacity to resist such coercion when debating how they wished to be governed. Whether or not it is true, as Kant supposed, that literature’s affecting words and transporting fictions could be segregated from the snares of rhetoric and propaganda, it became necessary to believe in such a possibility. Otherwise, there could be no genuine liberty if it was felt that the public remained wholly susceptible to the force of words. Literary works, whatever their subject, had to be valued as providing readers with an experience of verbal and imaginative power, an experience that expanded the mind instead of closing it because it was not directed at manipulating people into doing anything in particular. That plenty of literary writers continued to feel no compunction about exhorting readers to a cause, denouncing injustice, libelling enemies, or panegyrizing God and country did not invalidate this belief in the autonomy of the aesthetic. It only meant that artists, writers, and critics would henceforth engage in endless modern debates—which anyone prior to the eighteenth century would have found senseless—about how art’s critical function was to be best fulfilled: by recruiting its power in the service of progress, insisting on its purity from dogma and reduction, or affirming its ambivalent positioning between these two extremes as a model of freedom.

In fact, what I am characterizing as the modern attitude toward literature’s public function is perfectly encapsulated in the claim that Cowan quotes approvingly from John Mee’s book on publicity and popular radicalism in the 1790s: “Not the least among the issues facing the beleaguered and diverse experiments with democracy undertaken by Thelwall and his colleagues in the radical societies was how to define ‘literature’ in relation to their aspiration for a culture of reading and debate that would play an active part in defining who ‘the people’ were.” Far from diverging from Mee’s claim, my argument traces the emergence of the ideas that Mee is attributing to the radical societies. There was, first, the realization that the work of achieving democracy and defining the people was actively ongoing and open-ended. Thelwall and his associates were no doubt more prepared than their contemporaries to see such indefiniteness as a good thing. Theirs was nonetheless the modern view, the one that was then displacing older accounts of how democracy was to be dreaded because it promised only chaos, or how the people were neither capable of defining themselves nor in a position to contest the identity that nature and custom had fixed on them. Second, there was the new sense that, in accordance with this belief in democracy’s indefiniteness, the definition of “literature” had become itself debatable, an issue that

3 John Mee, Print, Publicity and Radicalism in the 1790s: The Laurel of Liberty 187 (2016).
writers had to face now that they could no longer abide by older accounts of who the people were and of the part played by literary writings in reinforcing this identity.

Finally, there was the aspiration these writers entertained of forming “a culture of reading and debate.” Writers in early periods, I explain in the canon book, were not apt to think of themselves as fundamentally different from the readers they addressed. They thought of themselves, their patrons, and their audiences as producers, whose work was valuable because it aided social harmony through its forceful instrumental eloquence and the constant exchange and application of moral teachings among like-minded persons. This attitude seemed increasingly difficult to sustain during the eighteenth century, and writers began to allow that the public they wrote for might be diverse in composition and unpredictable in its tastes. More importantly, I suggest in the new book, they began to allow that this public was both sovereign in its choices and free in how it arrived at those choices. Accordingly, they could no longer suppose that their writings could instill and reinforce a single set of social norms, political principles, or religious beliefs. Many of them would continue to write works that served utilitarian purposes, from moral exhortation to political sloganeering. But the value of their writings was now measured in terms of their benefits to readers, who were not necessarily of the same mind as the writer or each other, yet were nonetheless felt equally free and capable of assenting to these benefits, refusing them, or doing something altogether unforeseeable with them.

Democratic liberty, in other words, required that a process of mediation be conceptually interposed between writers and readers. This mediation is, it seems to me, nicely suggested by the phrase “a culture of reading and debate.” Writers like Thelwall might hope that their works would play an active role in defining who the people were. But they could no longer readily assume that this outcome, or others, would necessarily happen. At most they could feel their writings contributed in some way to the formation of a culture and to debates over how this culture defined itself. And it had become a function of the indefiniteness of literature’s role in this process that these writings could variously be seen to express an identity that the people could take up in debate, to challenge them to rethink how they define themselves, or simply to prepare them so that they might be able to participate in debates about how to define themselves.

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A third type of excision was of the “outside the scope of my inquiry” kind. The book’s introduction was originally twice its current length. It included several pages of chapter summaries, which I reduced to a single paragraph, and plenty more historical examples of the kind I use to contrast earlier to later eighteenth-century attitudes to publicity. It also contained a sizable section, both historical and theoretical in approach, on changing ideas of the public. I kept some of this material, but much of the legal, political, and literary theory is gone or relegated to the notes. The revised section also opens with the disclaimer that it is beyond the scope of my argument to explain “the many causes and dimensions” of the changes I describe (7). This disclaimer is a source of frustration for me not because it sounds
like an evasion—the history of what has been understood by the “public” is beyond the scope of the book. Rather, I regard the disclaimer as a weak attempt at signalling that my argument deals more with consequences than causes.

Visconsi thinks that I should have been less reluctant to discuss the broader systemic causes or drivers of the developments I describe. I offer, he says, no more elaborate a theory of historical change than a story of lawyers coming up with novel arguments to defend their clients’ interests or of judges and lawmakers making new law in deciding between competing interests. One reason for my reluctance was that I wanted to avoid some of the problems of the earlier book on the canon, both its broad-stroke historical schematism and its overly assertive theory of change. That book is soaked in an imperfect mix of Foucault and Bourdieu, and the resulting narrative leaps from a grand view of epistemic shifts to a low-road, functionalist account of how critics, say, upheld certain notions of literary value for no other reason than to gain cultural capital. The new book draws on Rancière, who is more comfortable than Foucault is with identifying the reasons for the epochal changes he describes. But, as his reasons are essentially a rarefied take on Marxism, I do not see how I can apply them to my narrative without committing myself to another large explanatory schema and one that, by its application, might seem deterministic in its account of change.

It appears, then, that I may have gone too far in scaling back on the theory. It is true that, at some points, I am reduced to noting in passing that the developments I describe are overdetermined or, in some cases, undetermined—coming up with an adequate explanation for why eighteenth-century jurists insisted on distinguishing the torts of libel and slander has defeated many a legal historian. Of course, I am hardly hiding in the empirical weeds and refusing to scan the long view for drivers. I am identifying big shifts—to modernity and democracy—and it is not entirely clear to me why identifying these shifts represent no less satisfactory a description of change than attributing these shifts to some other cause, like the triumph of liberal political philosophy or the coming to power of the middle class. These shifts may not provide much of a sense of agency but then neither do these other explanations, unless one equates agency, as Visconsi seems to, with a chain of one determining force leading to another, such as the market behaviors that he sees as fueling the rise of liberalism that then led people to revise the law.

Besides, I do identify some causes for the legal changes I describe, but the causes are not always the same for each change. I see these causes, moreover, as a convergence rather than a chain of developments, some of which can be only distantly related to the transition to democracy. For example, I attempt my own explanation for the libel-slander distinction. I attribute its introduction to a new sense of the impersonal character of public interaction, in which a spoken insult seemed more private and therefore less consequential in the damage it inflicted than the harm potentially caused by a libel that related falsehoods in the manner of a dispassionate presentation of fact directed at a general public. The libel-slander distinction, it seems safe to say, neither advanced nor was driven by the advent of democracy. However, the several social conditions that prompted its acceptance—the
greater potential for interaction and mobility in the public sphere among an increasingly diverse body of innumerable others, the weakening of codes of deference, the valuing of fact over rhetorical force, the expansion of print culture into more demographic markets, etc.—did to varying degrees impel as much as reflect the larger transition to modernity. At the same time, these causes differed, in some cases markedly so, from those effecting the other developments I relate, such as the valuing of the literary inheritance as a public domain. The transition to modernity and democracy represented a convergence of several changes whose own several causes were nonetheless divergent. Providing an account of all these multiple causes, however, would have imperilled the book’s focus and therefore I had to treat many of them as outside the scope of my inquiry.

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The book’s weakly articulated theory of change is, in any event, a less serious problem in my view than its inadequate explanation of mediation, of how these changes converged, how this convergence was manifested in an altered climate of opinion, or how changes to the law had anything to do with changes in how people defined literature. Visconsi sees the problem as a methodological one stemming from reluctance on my part to see literature as operating at anything other than a safe distance from the law. I will grant that the problem is methodological, but reluctance is not its cause. It results from the difficulty I created for myself in contending that public discourse became more complicated with the transition to democracy. As I said above, liberty required that a process of mediation be conceptually interposed between writers and readers. I would add that it equally required such complication to come between several other things, including the relation of speech to act, the realm of the public and the private, the idea of the people and the idea of the public, and the interaction of persons in the public sphere. A similar complication happened in the relation of legal to literary discourse and to some degree between the various branches of the law pertaining to the regulation of literature. These relations became conceptually more uncertain and, yes, more debatable than they had been previously. It was not that literary writers could no longer imagine themselves the world’s legislators, but only that they now saw their contributions as unacknowledged, perhaps appreciable only in the distance of hindsight. And it was not that literature was positioned at a safe remove from the law but that, unlike what was possible before the eighteenth century, it became plausible to propose that it should operate at a distance. Indeed, it became possible to feel that, by its absence of formal and thematic constraints and its openness to any individual expression, literature was the defining other to a rule of law that applied equally and uniformly to everyone.

This mediation, however, was not the same in all cases, and the methodological challenge I faced was in trying to suggest this mediation without reducing it to a single cause, effect, or manifestation. I tried out different strategies, but the result is that the same problem, of how to suggest if not explain mediation, impairs my argument in different ways. In the chapter on seditious libel, it appears as both an evidentiary gap and weak sense of historical concurrence. Almost the entire chapter is devoted to detailing the many legal and
political contests over the nature and prosecution of the offence. But then at its very end I make a sudden turn to talking about how all this history had implications for prevailing notions of literature, and I can offer no fuller justification for the turn that a couple of quotations (one of which, the one from Isaac D'Israeli, only broadly relates to the subject of sedition) and my rhetorical assurance that it was “no historical coincidence” that the legal changes were happening at the same time as people were starting to use the word “literature” in its modern sense (221). In the chapter on fair comment, the problem appears as an expository backstory disrupting a present narrative, specifically the moment in the chapter when, right as I am about to reveal the historical significance of Carr’s case, I “step back” from it to discuss much earlier critical assumptions and do not return to the case until six paragraphs later (163). In the chapter on defamation, where I think the problem is especially acute, it appears as wild swings between micro and macro levels, in which the legal history is presented as set of extended footnotes to a series of obscure poems, which are themselves treated as if they were confirmatory evidence of a large-scale cultural conflict between residual and emergent attitudes about speech, and then at the very end I zoom to the skies with a précis of my encyclopedia entries on theories of literature through the ages.

That chapter was the most difficult to write because its subject presented serious problems of evidence, whereas the literary property debate, say, offered plenty of direct evidence of lawmakers’ changing attitudes over what made literature valuable. One of the casualties of this problem was any extended discussion of literary works that, unlike those obscure poems, did not express or suppose merely representative attitudes about public speech. I had originally intended to write two separate chapters, one on defamation and the other on privacy, with the latter providing a much fuller defense of my contention that literary writings, in particular the genres of the lyric and the novel, provided the public with a vital knowledge of private experience but did so without appearing to intrude on the experiences of anyone in particular. That chapter was to include an analysis of one of the novels, *The Vicar of Wakefield*, that Visconsi thinks I should have considered for its thematizing and implicit challenging of privacy norms. But the reason why I jettisoned this material, distilling my thesis about privacy down to a few paragraphs, was not that I was reluctant to talk about the agency that literary authors could exercise, whether this agency is understood as the self-actualization of the genius or the ambitious writer’s influence on public culture. Nor was I averse to using metaphors of reflection, convergence, intersection, or impact to suggest that the legal and literary changes were linked by more than mere historical contingency or coincidence.

The problem was not distance, it was dispersal. What evidence I had was difficult to organize and hold together. For the defamation chapter, there was plenty of evidence to indicate a change in public and legal attitudes toward defamation, but there was little corresponding evidence to suggest how this change was complicating what had traditionally been seen as the close proximity of literary invective or satire to libel. For the privacy chapter there was plenty of literary evidence of changes in attitudes to the subject, but there was little legal evidence of such changes other than what was implied in arguments over
defamation—that is, the subject of the other chapter. My options for the privacy chapter were either to recapitulate this legal evidence, refer readers to it without making the specific connections clear, or (as Visconsi appears to advise) discuss the literary material itself as evidence of changes in how public discourse was being regulated. I thought seriously about that last option and about devoting parts of the other chapters to talking about important literary works. There is a story to tell, for example, about why Thomson’s *The Seasons* was the big prize in the literary property debate, about how the poem appears to anticipate that debate in encouraging readers to experience nature as the supreme public domain while also praising Newton’s original genius in advancing public knowledge about nature. But I could not tell that story or the others I considered without dropping many of the other balls I was trying to keep in the air.

I warn in the opening pages of the introduction that the effects of changes I describe were “not of a piece—it is difficult now to see a connection between, say, the economics of copyright and the rise of the fourth estate—but the bifurcation of these effects was itself a consequence of public discourse being reorganized” (2). I am not sure if “bifurcation” is the right word here. Maybe it should be dispersal. The word I use most frequently in the book to describe the effect of this dispersal is “incoherence.” By this word, I do not mean that the law or the public make no sense in absolute terms. I mean only that it is difficult to see all the connections, all the balls in the air at once, how everything does or does not work together, how the reasoning behind one law seems at variance with the rationale for another, and how the public can be both sovereign in its mandate yet also vulnerable to the power of words to change people’s minds. But what I am most concerned to emphasize is that my thesis about this incoherence and the lack of a clear mechanism of determination is not, or not simply, an evasion on my part, an historical claim I use to project my reluctance to explain history or bring the law and the literature closer. Liberty, I am arguing, requires this incoherence, and public discourse has been reorganized to meet the requirement. The tighter the connections, the stronger the agency, the more consistent the laws, the more monolithic the universe of belief, etc., the less openness there is.

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This brings me to my final frustration with the book, this one having to do not with excisions but my argument’s tone. As I just noted, I use the term “incoherence” to characterize the real or perceived effect of dispersal. I also rely heavily on a narrow range of other terms to describe different aspects of mediation and complication, such as “indefiniteness,” for the open-ended nature of a democratic public’s self-definition, or “ambivalence,” for the highly varied and even conflicting attitudes toward literature’s public role in the modern world. Petroski thinks I use these terms interchangeably and so she schools me on their differences. There can be little purpose at this point—but I’ll do it anyway—for me to report that “paradox” is in my thinking a very different beast than self-contradiction or that I fought with my copy-editor to prevent one such term being used to replace another. Petroski, like Cowan, simplifies my argument to make her review appear to complicate it.
That said, there are problems with my use of these terms. I rely on them—in particular, the most troublesome one, “indeterminacy”—as an evasion, a shorthand way of suggesting the upshot of mediation without explaining or even acknowledging the process of mediation. And precisely because I did not want to talk about this process out of concern that doing so would, well, complicate my argument and detract from its focus on the consequences of the process, I rarely use the words “mediation” or “complication” in the book and not in the sense I am using them here. But another problem with the terms I use is their connotations, some of which may be read as implying a judgment on my part on the historical developments I relate. Indeterminacy may seem a bad thing, a problem in need of solution or a doubt in need of light. Or, in post-structuralist applications, it may seem an unavoidable condition, the freplay that inevitably escapes any effort at locking meaning down. Petroski interprets my usage of the word as suggesting “elusiveness,” a connotation I especially wanted to avoid since it suggests an insurmountable difficulty or unattainability. I don’t know if the indeterminacy I describe is insoluble. But I’m not, as Petroski alleges, made uncomfortable by this, as if I longed for certainties despite myself. Neither am I, as Cowan charges, comfortable with the certainties of idealistic grand views nor, as Visconsi counter-charges, content to let my primary sources tell their story.

I have tried to avoid characterizing incoherence as problematic, the public as elusive, or indeterminacy as pervasive. I see complication being interposed in some facets of public interaction, but I also see new limits being introduced to circumscribe the public sphere and to manage interaction within it. The whole point of my book is to describe a kind of cultural trade-off consequent upon democratization. On the one hand, while literature continues to perform its traditional culture-preserving and culture-formative roles, it has also come to seem more indeterminate in how it performs them in accordance with the indeterminacy, or openness to revision and plurality, that democracy requires. On the other hand, there are other public discourses, notably journalism and the law, that have come to perform a comparatively more definable role in public life and the public’s self-conception—the liberal conception of the “rule” of law—just as restrictions on the content of speech have not so much been rescinded as replaced in the modern age with restrictions on how public speech is to be conducted.

I could have used words with more negative connotations like “uncertain,” which I have allowed myself to use once in this reply. I could have dismissed the idea of the public as a fiction concocted to justify the decisions of the powerful; my argument’s account of agency would have been so much clearer. I could have likewise used (and, in fact, I do use) more positive-sounding words like “free” and “open.” I could have rehearsed the old saw about how the common law is a living institution whose apparent incoherence or disorderliness is actually proof of its flexibility and openness to revision. I could have made literature the hero of my story, as Visconsi thinks I’ve done, or made the law its hero—or, then again, its villain. My story could have presented optimistic and timeless views, as Kendrick believes, or it could have reflected the fears of my historical moment, as Petroski claims. I
could have written a dark narrative or a triumphal one. But I have tried—unsuccessfully, it seems—to avoid all such tones.

Soon after completing the canon book over two decades ago, I wrote that I was disinclined to make strong claims for my scholarship. I meant this as a modest defense of the intellectual value of doubt, especially in regard to one’s own work. Clearly, I have abandoned all pretense to modesty in this reply, where I refer to myself with what must seem alarming frequency. But I stand by my tonal restraint even as I realize my failure at demonstrating it adequately, just as much I think my book’s argument remains compelling despite my frustrations with how I present it. I guess I am still comfortable with doubt and ambivalence, after all.

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