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All the Fish of the Sea

D. Graham Burnett, Trying Leviathan: The Nineteenth-Century Court Case That Put the Whale on Trial and Challenged the Order of Nature. Princeton: Princeton University Press, 2007. xvi + 266 pages. 17 black and white illustrations; 18 color plates. \$32.95.

Finding the right trial is like striking historical pay dirt. Of course, very few trials are right in this sense, because legal procedures are designed to resolve disputes of immediate personal or social interest to the parties involved, rather than to debate intellectual issues that will turn out to engage future historians. Every so often, however, a trial happens to raise such issues, and, better still, its plaintiffs, defendants, witnesses, lawyers, and presiding officers happen to articulate and personify a range of perspectives similar to the range that historians would retrospectively tease out. The sixteenth-century trial of Martin Guerre (or Arnaud du Tilh) is the best-known example of such serendipity. In a sense, Graham Burnett has been even luckier, or more perspicacious, than Natalie Zemon Davis and the many other modern scholars and writers who have revisited the Martin Guerre story. After all, human identity fraud predictably engages the machinery of justice, which is less true of arguments about marine taxonomy.

But, as Burnett shows, what is on the surface does not necessarily reflect what lies beneath. *Maurice v. Judd*, the trial at the center of Trying Leviathan took place in 1818. James Maurice was the inspector of fish oils in New York City, and Samuel Judd was a merchant who dealt in spermaceti, as well as in other fats and oils. Maurice accused Judd of having bought three casks of fish oil that had not previously been inspected, as was required by a recently passed state law. Judd acknowledged that he had made the purchase in question, but claimed that since the casks contained spermaceti, which came from whales, they did not contain fish oil and were therefore not subject to the new

regulation. The outcome of the trial thus depended on whether or not whales were legally fish. The stakes were financial, both initially and ultimately, but as the trial developed many other stakes or conflicts were brought into play.

Burnett has structured Trying Leviathan so as to emphasize this multiplicity. Rather than offering a chronological account of the trial (he reveals its outcome in his “Introduction,” so suspense is not an issue, although his unfolding narrative does contain a few surprises), he devotes each of the central chapters to a different group of interested New Yorkers. By implication, therefore, the trial classified people as well as cetaceans. His human taxonomy includes the general public, scientific naturalists, whalers, and merchants. As these groups were not equivalent in expertise, social standing, or involvement in the case, so they did not leave equally retrievable traces in the historical record. Most elusive are the views of the ordinary citizens who thronged the galleries at the trial. Burnett infers their common-sense understanding that whales were fish, which was buttressed by the language of Genesis, from the presentation of whales in popular literature and, especially, of whale remains as museum or sideshow attractions. He also connects this popular consensus with debates within the community of experts, noting that the tripartite Biblical division of animals into creatures of sea, air, and earth exerted continuing influence among naturalists.

Still more significantly, although (then as now) experts agreed that whales should be classified as mammals, the means by which they arrived at this taxonomic conclusion were diverse and debatable. Any pair or group of organisms was likely to exhibit many points of similarity and many points of difference. Experts often disagreed about which characteristics should be given priority in classification—whether, for example, the

kangaroo's pouch was more important than its mode of locomotion. The lead witness for the defense was Samuel Latham Mitchill, who was a doctor, a lawyer, a politician, and a naturalist. It was mostly in the latter capacity, buttressing his own considerable authority with cutting edge Cuvierian comparative anatomy, that he testified that whales were unquestionably mammals, even though they lived among fish.

When William Sampson, the able lawyer for the plaintiff, challenged Mitchill's expertise, he therefore called in question the whole system of scientific taxonomy. Sampson had several grounds for his challenge. In addition to highlighting differences of expert opinion with regard to taxonomic method, he introduced an alternative and, as it turned out more compelling, source of expertise: the hands-on experience of men who had actually served on whaleboats. Unlike most naturalists, these sailors had witnessed living whales in their natural habitat. The perspective of Burnett's final group of stakeholders was based on economic rather than on any claim to knowledge about whales, but he argues that it was more influential still. Sellers of spermaceti such as the plaintiff Judd were not the only businessmen involved in the case. Their customers, often the owners of large tanneries, had a contrary desire to see this commodity regulated. This opposition of commercial interests bled easily into city and state politics.

Trying Leviathan thus persuasively demonstrates that scientific authority was far from definitive in early nineteenth-century New York, at least when competing expertise supported powerful financial and political interests. His account also raises a number of fascinating side issues, although not all of them are well integrated into his narrative. For example, conflicts between scientific and lay expertise are frequently complicated by the overlap between the technical and vernacular senses of a given word, most crucially, in

Burnett's story, "fish." This issue surfaces occasionally during the discussion of the trial, but Burnett does not address it directly until the epilogue. Overall, however, he has admirably woven the disparate argumentative threads revealed by the trial into a cohesive narrative. And Princeton University Press has done equally well with the design and production of the volume.

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