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Valerie Anne Henry
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**The Legal Life of Objects:
Speaking Evidence and Mute Subjects in
Mark Twain's *Pudd'nhead Wilson***

**APPROVED BY
SUPERVISING COMMITTEE:**

Supervisor:

Matt Cohen

Gretchen Murphy

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Valerie Anne Henry, B.A.

Report

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Abstract

The Legal Life of Objects: Speaking Evidence and Mute Subjects in Mark Twain's *Pudd'nhead Wilson*

Valerie Anne Henry, M.A.

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Supervisor: Matt Cohen

In this paper, I argue that legal authorities assign speaking power to objects and evidence in the courtroom in order to deny speaking power to racialized subjects and police racial identities. Mark Twain's *Pudd'nhead Wilson* (1894) demonstrates how the law transgresses the human/object boundary in order to regulate legal definitions of identity. I examine the legal animation of the textual document, as exemplified by the last will and testament; the knife, a material object that as a murder weapon is responsible for condemning the accused; and the fingerprint, a unique form of bodily evidence that merges the textual and the material, in order to understand how these objects blur the line between the living and the deceased, between human and nonhuman agency, and between body and text. My methodology brings object studies into conversation with a literature and the law approach in order to show not only how the nineteenth-century American literary imagination was concerned with testing and regulating racial boundaries, but also how fictions employed by the law produce subjects and objects. My investigation

reminds us that when evidence appears to “speak for itself,” this speech act has been carefully orchestrated by human legal authorities who determine what the evidence can be understood to mean and for whom it speaks.

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INTRODUCTION

Nineteenth-century American literature is permeated with stories of mixed-raced persons pushing the boundaries of their racial identity and coming up against the social institutions designed to regulate those boundaries and identities. At the same time, nineteenth-century American law developed new legal forms to deal with the unsettling transformations taking place around definitions of property. New corporate forms of organization, new technologies of intellectual property, new contractual standards based on consent, new definitions of monetary value as speculative, and not least, the transition of a sixth of the population from chattel to freemen and freewomen all contributed to the American imagination's need to work through its shifting conceptions of racial, legal, and material existence. When literature and the law scholarship takes up the issue of crossing boundaries, it usually generates its critique from the jurisdictional conflicts that expose the instability of national or geopolitical boundaries. Nineteenth-century American literature, however, was deeply concerned with another type of boundary—the racial identities that determined one's relationship both to the law and to property rights. As literary critics such as Edlie Wong, Jeffrey Hole, and Carrie Hyde have demonstrated, nineteenth-century jurisdictional issues have never been separate from racial boundaries.¹

The most fraught jurisdictional conflict of the nineteenth century, of course, erupted into a Civil War that contested the legal meaning not only of the North-South

¹ These scholars have argued that when literature engages with legal issues, the ideological concepts at stake expand the horizon of conflict beyond territorial constraints and open up an imaginative space in which issues of criminality and justice become detached from particular jurisprudential locales and can be seen as the product not of statutes but of cultural forces. Not only do these scholars generate valuable insights based on the slippages in ideology exposed by jurisdictions, it is notable that their works all engage with issues of race and slavery.

boundary or the slave-free boundary, but the human-object boundary so violently violated and dramatically distorted by the institution of slavery and its legal apparatus.

Etymologically, “jurisdiction” leads us to the speaking capacity of the law, literally “the law speaks.” In this essay, I will take up the question of how and why the law speaks in order to explain, at least in part, why nineteenth-century literature and law fixated on the policing of racial identities. As Caleb Smith has argued, the enactment of justice often requires a rhetorical gesture to the transcendence of law beyond its human arbiters. Judges and legal authorities perform their own disappearance in order to create the illusion that the law speaks for itself (18). Attention to the way in which the law legitimizes certain types of speech allows us to bring racial politics to bear on the evidence laws that regulate the production of truth and the subject-object boundary within the courtroom. Using object theory to explain the materiality missing in most critical legal studies, I take up the disembodied speaking power of the law and turn it back to the material realm, focusing on the objects that, as evidence in a court of law, are believed to speak truth in a way human beings cannot. What is happening when the evidence “speaks for itself”? How does the law empower objects with the capacity to speak, and when it does, what type of truth is being produced and why? Mark Twain’s novel *Pudd’nhead Wilson* (1894) provides the ideal text to answer these questions because it explores the legal conditions under which both the racial boundary and the human-object boundary can be crossed.

Famous for its pithy critique of race as “a fiction of law and custom,” *Pudd’nhead Wilson* has attracted considerable critical attention invested in the novel’s relationship to

the racial and legal politics of its era, yet critics have devoted little attention to what counts as evidence in Twain's fiction and how legal definitions of evidence regulate the blurred human-object boundary implicit in slavery and its legacy. Early critics such as Earl Briden and Evan Carton, when considering race and law, focus on artistic form and authorship rather than Twain's engagement with historical forces and legal discourse. As cultural studies and new historicism resituated Twain's novel within the anxieties of its historical moment, Eric Sundquist and Brook Thomas each explored the novel's relationship to the legal discourse of *Plessy v. Ferguson* (1896), the landmark Supreme Court ruling that legalized segregation as "separate but equal." Sundquist characterizes the novel as "obsessively devoted to problems of legal rights, evidence, codes of authority, and the interplay of 'natural' and artificial laws," but he devotes his work primarily to Twain's critique of race as a performance (53). Thomas concludes that although Twain disproves the logic of the *Plessy* decision, the novel ends up being a social tragedy because he "refuses to imagine a way out for his characters of mixed blood" (199). In terms of legal evidence, Susan Gillman, Simon Cole, Ellen Samuels, and Sarah Chinn have all examined the role of fingerprinting as an emerging legal method of producing truth and regulating racial boundaries, but although Chinn notes how this scientific discourse turns the body into a readable text, Cole provides the history of how this scientific method became acceptable in court, and Gillman notes Twain's fixation on "things that in themselves embody questions about the boundary of human identity," no one has suggested that this obsession with human boundaries in the context of race and law makes the text a productive site of critical attention for object theory (3).

By bringing object studies into conversation with a literature and the law approach, we can deepen not only our understanding of Twain's commentary on the relationship of fiction and law, but also the law's use of objects to police racial boundaries.

Pudd'nhead Wilson demonstrates the law's reliance on the speaking power of objects to produce a kind of truth that can be seen as originating from objectively nonhuman sources despite the ways in which legal authorities animate these objects to serve a racialized purpose. Bruno Latour argues that Western modernity grants the highest epistemological authority to an empirical, scientific method that relies on the notion that observable, inanimate objects offer an unprejudiced source of information and reliability humans cannot. These scientific facts, however, are created by human experts interpreting what they observe. As Latour asks, "Who is speaking when [the facts] speak? The facts themselves . . . but also their authorized spokespersons" (28-29). The scientific method's animation of the nonhuman as a speaking subject breaks down the division between human subjects and nonhuman objects. In the same way, when the legal system turns inanimate objects into evidence, it endows these objects with the capacity to communicate in ways human beings cannot, therefore denying certain subjects the right to speak on their own behalf.

I will focus on three objects in *Pudd'nhead Wilson*, each a distinct type of evidence: the textual document, as exemplified by the last will and testament; the knife, a material object that as a murder weapon is responsible for condemning the accused; and the fingerprint, a unique form of bodily evidence that merges the textual and the material. Attention to these objects, which blur the line between the living and the deceased,

between human and nonhuman agency, and between body and text, in turn allows *Pudd'nhead Wilson* to contribute to the methodological debate within the literature and the law movement. The literature and the law movement can be divided into three main approaches: humanism; hermeneutics; and narrative.² The hermeneutic approach, also called law-as-literature, builds from the premise that law consists of language and texts (statutes, judicial opinions, contracts, etc.) and therefore requires the tools of deconstructive theory to reveal the instability of its interpretive meanings. Spearheaded by Stanley Fish, the hermeneutic method emphasizes the necessarily contextual and variable nature of all interpretive acts.³ As the heyday of deconstruction declined, a narrative approach to law emerged with the premise that all law requires the construction of narrative explanations, and therefore legal outcomes are dependent on subjective constructs. The limitation of both the hermeneutic and the narrative approach is that these methods remain oriented toward law as a text, when of course the law involves so much more. The status of the law as a set of either textual or material relations is itself charged with the question of where legal agency rests. While I draw on the narrative approach's recognition of the problem of subjective constructs, I argue that a turn to objects allows us to go beyond the instability of language and the limiting definition of law as a text. Twain's novel demonstrates that when a legal authority presents evidence

² Jane Baron discusses these three approaches in more detail in "Law, Literature, and the Problems of Interdisciplinarity" (*The Yale Law Journal* 1999). For another excellent discussion of the state of the discipline see Julie Stone Peters's "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion" (*PMLA* 2005).

³ A sustained discussion of the hermeneutic approach can be found in *Interpreting Law and Literature*, eds. Sanford Levinson and Steven Mailloux (1988). Levinson and Mailloux propose that law consists of the "legal event" of reading and interpreting texts, and foreground hermeneutics because "ascertaining the meaning of texts is a central reality of any legal system" (ix).

not as a text to be interpreted but as a self-evident empirical object, the law treats the object as direct testimony not needing the interpretative process that makes subjectivity visible. When we see the law as the manipulation of sources of speaking power instead of an interpretation of texts, we understand how the fictions of law produce subjects and objects.

Considering the affective ways in which objects have been animated with extra-material meaning, Bill Brown's theory that human desire can animate an object with a "life story" that grants it humanlike subjectivity correlates with my theory that evidence law and criminal procedure animate objects to regulate speaking power and the production of truth before the law.⁴ In a criminal court, the agency or speaking power assigned to evidence holds the power to condemn or exonerate, kill or imprison, enslave or set free. By tracing the life stories of the evidence used to condemn Tom Driscoll in *Pudd'nhead Wilson*, I argue that these objects are assigned an agency that allows their human possessors to police racial boundaries without seeming to do anything except let the truth speak for itself. Evidence law and criminal procedure add a crucial stage to the

⁴ In *The Social Life of Things*, Arjun Appadurai proposes a related method for studying objects that involves "follow[ing]" commodities to find the meaning "inscribed in their forms, their uses, [and] their trajectories," from production to exchange to consumption, with attention to the "human transactions and calculations" that "enliven things" with "social lives" (5, 13). Because this theory of the object focuses solely on the commodity form, only one stage in an object's life story, it is of limited use for my purposes. Elaine Freedgood, in "What Objects Know: Circulation, Omniscience, and the Comedy of Dispossession in Victorian It-Narratives," proposes that stories told by object narrators help modern subjects reconcile the contradiction between the ideal of the autonomous self and the alienable self demanded by capitalist labor and emerging legal definitions of the human. She concludes that the omniscience of the object narrator, much like the invisible observation available to marginalized subjects like women, children, the colonized, the poor, and the enslaved, privileges these transgressors of the subject/object boundary to greater access to certain types of knowledge. Her argument, while demonstrating the complexity of the literary imagination's animation of objects with human voices, does not take into account the ways in which speaking objects are used to deny these marginalized subjects a voice.

life stories of these objects, a legal life, in which the way evidence is prepared, presented, and accepted in court assigns these objects the central role in Twain's climactic courtroom drama.

The rules of evidence law and criminal procedure regulate what gets into the courtroom and how it can be used once there. For example, in *People v. Crispi* (1911), one of the earliest fingerprint trials in the United States, the prosecutor had to overcome strenuous objections that this evidence was irrelevant (Cole 241). The prosecutor's struggle to convince the court to recognize a new type of evidence demonstrates the power of evidence rules to police the knowledge used to establish the defendant's innocence or guilt. As Twain's lawyer Wilson demonstrates in the novel's climactic trial scene, proving the significance of the evidence requires a carefully planned performance that wins the acceptance of the judge, jury, and general public. The success of the evidence's ability to speak to the crime depends on the narratives that are constructed to explain the object's relationship to the crime.

The policing of legal and racial identities in Twain's novel crucially depends on the evidence laws that ostensibly regulate objects, but actually regulate objects in order to reclassify subjects as criminal. As Twain demonstrates, assigning a criminal identity to a subject, just like categorizing subjects with a racial identity, involves a transgression of the subject/object boundary. An examination of the legal life of the objects in *Pudd'nhead Wilson* reveals Twain's commentary on the law's ability to deny speech to criminalized, racialized subjects and turn them into inanimate objects by assigning that speech to the objects that serve to condemn them. When Tom's condemnation at the

culmination of the murder trial transforms him from a wealthy aristocrat into slave chattel, the legal system demonstrates its power to transform subjects into objects as well as its investment in regulating the racial hierarchy this boundary enforces.

STANDARDS OF PROOF AND THE PRODUCTION OF TRUTH

The manipulation of evidence Twain's characters use to establish truth reveals how tenuous proof can be and yet still accomplish conviction. As Chinn notes, the novel's plot revolves around "information shared and withheld—who knows what and when" (37). Gillman likewise places epistemological concerns and problems of knowledge, especially those raised by the systems of classification inherent to race and slavery, at center of the novel (72). When the black maid Roxy convinces the young aristocrat Tom that he is in fact her son and a slave, Roxy produces no evidence to support her claim, and yet Tom believes her completely. With her canny perception of how the laws of identity can be manipulated, Roxy functions as Twain's figure for demonstrating the performative structure underlying the production of truth. Twain's performed truths include both law and race. By drawing attention to the performative aspects underlying his characters' epistemologies, Twain not only "portray[s] race as a role," as Sundquist says, but suggests legal classifications are likewise made real through performance (50).

After switching her infant son with the master's son, Roxy must perform her new relationship to the son that has now become her master. The effect of her performance is so persuasive she becomes beholden to her own fiction: "by the fiction created by herself, he was become her master" (*PW* 77). Her outward performance creates an inward reality. Knowing that her deception can only be maintained by "perfecting herself in the forms required," her "diligence and faithfulness in practicing these forms . . . soon concreted

itself into habit; it became automatic and unconscious; then a natural result followed: the deceptions intended solely for others gradually grew practically into self-deceptions as well; the mock reverence became real reverence, the mock obsequiousness real obsequiousness, the mock homage real homage” (*PW* 77). The production of the babies’ new identities is a matter of perfecting a form. The “counterfeit” difference between slave and heir “became an abyss, and a very real one—and on one side of it stood Roxy, the dupe of her own deceptions, and on the other stood her child, no longer a usurper to her, but her accepted and recognized master” (*PW* 77). The process by which identity becomes real, in Twain’s formula, begins with practice and performance, which cements into habit, and once this “form” is accepted unconsciously, it becomes real.⁵ Despite originating as a fiction and a form, the new identities have all the consequence and weight of reality. In the same way, legal forms and procedures, although they may originate as inventions and conventions, hold very real consequences in practice. As Roxy loses her son to this fiction, she realizes that her performance cannot be undone: “She saw her darling gradually cease from being her son, she saw *that* detail perish utterly; all that was left was master—master, pure and simple” (*PW* 81, emphasis original). Through form and performance, the fiction has ceased to be such.

Considering that Roxy’s authorization of this fiction of identity mimics the power of the novel as a form that created new yet real subjectivities, critics have debated Twain’s own relationship to artistic production. Critics such as Forrest Robinson,

⁵ Susan Gillman interprets Roxy’s performative creation of the infants’ new identities as a commentary on authorship. In Gillman’s reading, Roxy authorizes their new identities in a way strikingly similar to the compositional process that Twain so often draws attention to in his work (74). Form, as we shall see, unites Twain’s style with his racial and legal critiques.

Shelley Fisher Fishkin, and Hsuan Hsu have suggested Twain shifted from journalism to fiction in search of a more effective mode of social critique. Hsu suggests Twain's experience as a journalist led him to believe fiction held certain advantages over nonfiction because fiction allowed him to satirize racially discriminatory police practices that newspapers were unwilling to address (72). Twain's formal techniques—his irony, courtroom farces, and journalistic parodies—“bring literary techniques to bear on racial discourses” (76). However, Twain's critics have struggled to explain his tendency to brush over serious racial commentary with comedy that alleviates the felt need to address racial issues. Gillman notes that Twain's use of the popular conventions of the detective genre seems to “offset an implicitly historical and contextualized sensibility with a conventionalized, melodramatic mode” (70). The detective plot, culminating in the revelation of the murderer, seems to hide the traumatic disruptions of slavery behind narrative coherence. However, as Carton and Gillman have both suggested, Twain's conclusion implicates the reader and all of society in the crime of selling Tom down the river, and in this way Twain reneges on the promise of the detective plot to deliver justice and restore order (Carton 91; Gillman 92). The narrative arc available in the novel form allows Twain to capitalize on his readers' thwarted expectations and leads them to deconstruct the novel's flawed conclusion.

Likewise, Roxy attempts to deconstruct the fiction she has created, but she is limited by her lack of evidence. Outraged at becoming her own son's property, Roxy begins to “plan schemes of vengeance” and “revel in the fancied spectacle of his exposure to the world as an imposter and a slave,” but she cannot take satisfaction in her

fantasies, because “she had made him too strong; she could prove nothing” (*PW* 81). She understands that proof requires a certain kind of speaking power. As a slave, her word means nothing, and she berates herself for “not providing herself with a witness for use in the day when such a thing might be needed” (*PW* 82). Without a witness, she cannot meet the demands of proof. Roxy solves this dilemma when she realizes that conviction can be produced without evidence.

When Roxy convinces Tom of his true identity using nothing but a bluff, Twain demonstrates that proof does not, in fact, require physical evidence, only a convincing performance. When Roxy reveals Tom’s origins, he defends himself by calling the revelation “moonshine” and “a thundering lie,” and by calling Roxy a “miserable old blatherskite,” a “devil,” and a “beast” (*PW* 112). Tom’s instinct to invalidate her accusation by calling attention to her subservient status arises from the law’s privileging of certain voices over others. Tom is correct that his word against hers is his best defense and that all a well-to-do gentleman needs to do to invalidate the claims of a former slave is to say so. Roxy defeats him, however, with an elaborate bluff: “I don’t mind gitt’n’ killed, beca’s e all dis is down in writin’, en it’s in safe hands, too, en de man dat’s got it knows whah to look for de right man when I gits killed” (*PW* 113). Roxy dominates him with the mere threat of proof: “I’ll tramp as straight to de Judge as I kin walk, en tell him who you is, en *prove* it.” (*PW* 114, emphasis original). Not only does Tom believe her, he wails, “I more than believe it; I *know* it” (*PW* 114, emphasis original). Roxy’s performance creates Tom’s conviction. Her bluff works because she identifies her audience as her standard of proof: “she knew the person she was dealing with, and had

made both statements without any doubt as to the effect they would produce” (*PW* 114).⁶ Twain suggests proof and conviction result from the skillful manipulation of the elements of an effective performance. When we see legal truth as the product of a performance, we begin to direct our attention not to what the evidence means but to who is making the evidence signify.

⁶ Ellen Samuels explains Roxy’s newfound understanding of discursive manipulation as a power she gains from the disability (rheumatism) that makes her aware of her body as both marginalized and empowered. As Samuels notes, prior to her disability, Roxy despairs that she has no proof; afterward, she understands how to produce her own truth. The disabled body casts Roxy as both victim/object and agent/subject, and “enables her to see beyond the fictionality of objectification, to see that identification can be discursively manipulated” (77).

THE LEGAL AFTERLIFE: THE LAST WILL AND TESTAMENT

As historians and legal scholars such as Eva Saks have suggested, the increasingly strict miscegenation laws imposed after emancipation arose in part from the white population's anxiety that white property might pass into black hands (66-68). This legal imperative suggests that inheritance lies at the heart of the law's efforts to police racial boundaries. The last will and testament, the legal document with the power to transfer property from one generation to the next, carries the cultural responsibility of ensuring property ends up in the right hands. As Jeffery Clymer suggests, black claims to inheritance from white family members forced late nineteenth-century judges to redefine the meaning of the family to shore up the economic consequences of miscegenation and "maintain[] white concentrations of wealth" (23). Judges, jurists, and legislators tightened miscegenation laws in the 1890s because slave law no longer operated to deny mixed race heirs their inheritance (Bentley 466).

In *Pudd'nhead Wilson*, the status of the will, like Roxy and Tom's racial identities, is continually in flux. Not only does Judge Driscoll's will rule the financial fate of both Tom and Roxy, the materiality of the will plays a crucial role in demonstrating the fragile nature of property inheritance in post-emancipation America. U.S. law, as Brook Thomas and other legal scholars have traced, inherited from Great Britain a set of principles and operating assumptions preoccupied with property rights (*Cross* 17). The law's investment in protecting property remains a pivotal guiding principle to this day, particularly in terms of the law's procedure for dealing with death.

The last will and testament legally ensures the continuance of wealth through generations despite individual demise. At the same time, death is an event that allows the law to intervene in property relations, providing an opportunity for taxation, readjustments, and settlements that all fall under the law's domain and thus allow the law to regulate racial boundaries at this crucial moment of human and material transition. The last will and testament centers legal procedure as the means through which a family perpetuates both its wealth and its members' status before the law.

When considered in combination with object theory, the last will and testament can be understood as the law's method of extending human agency beyond death through the regulation of property, effecting what I will call a "legal afterlife." The law's procedure for dealing with death transfers an extinguished human agency into a legal document that comes alive and takes power upon the event of human death. The language of the "testament" embedded in the legal term reveals the law's investment in imagining the possibility of speaking power from beyond the grave. This legal afterlife is especially fraught when the property left behind includes human lives. That the last will and testament can redefine a person's slave/free or human/property status demonstrates the way, as Stephen Best proposes, that slave law and commodity culture merge to create a form of living property, a legal animism that blurs the boundary between persons and things (2-3). Through the figure of the slave, Gillman argues, Twain satirizes "the legal fiction that a slave is both property (an extension of the master's will) and non-property (in that he can be tried for very willful, antisocial acts, such as murder)" (72). The slave as a commodity form functions like the last will and testament as an imagined extension

of the master's will, yet the slave's ability to cross the human-object boundary when criminal guilt is concerned complicates the location of this agency. Best has located the "afterlife" of slavery "within the text of the law" in the aesthetics of representation that legal structures rely on to define the limits of the human (14). The legal afterlife effected by the last will and testament creates the illusion of agency beyond death in order to transfer this latent human agency into a legal form that takes on the power to reduce humans to property, regulate the distribution of this property, and thus reestablish racialized legal identities.

When Tom's father Percy Driscoll dies, he leaves a will but little else behind in a turn of fate that emphasizes the will's speculative nature, always subject to the vicissitudes of outside forces, both financial and legal. Percy Driscoll's estate is bankrupt, a detail that comes back at the end of the novel to claim Tom for a life of slavery, but Driscoll attempts to preserve his family's honor if not its financial security. Driscoll makes special provisions to avoid the public scandal of his slaves being sold down the river, "for public sentiment did not approve of that way of treating family servants" (*PW* 82). The estate intended to pass to the (supposedly) white heir Tom, however, no longer exists. Driscoll's "great speculative landed estate" lost its value when the market collapsed and "left his hitherto envied young devil of an heir a pauper" (*PW* 82). This reversal of fortune, however, does not disinherit the son, for his uncle, Judge Driscoll, "told him he should be his heir and have all his fortune when he died" (*PW* 82). The inheritance Tom receives from his (supposed) father is not property but a confirmation of his family relations and the right of blood.

The reader knows, however, that by blood the inheritance belongs to Chambers, the “real heir” who has been usurped by Roxy’s switch (*PW* 75). Twain’s narrator, despite claiming to “accommodate itself to the change which Roxana consummated,” continues to delimit Tom’s status as imposter, labeling Tom “the false heir” during the boys’ adolescence and calling him the “idolised ostensible son” when his dying father bestows upon him provisions for his future (*PW* 75, 79, 82). Although Briden has argued that the narrator accommodates the new names and “acquiesces in precisely the kind of fiction which is the subject of his story . . . the communal habit of mind and speech,” in fact the narrator has not forgotten their original identities and continues to describe Chambers as the true heir “whose name [Tom] was unconsciously using and whose family rights [Tom] was enjoying” (Briden 178; *PW* 104). Carton argues that the narrator’s continued use of judgment-laden epithets like “false heir” draws a connection between “the threatened social order and the threatened novelistic one” (88). The narrator’s insistence on keeping the boys’ original identities in the reader’s mind raises the question of what kind of inheritance—racial, material, and narratological—Twain imagines his characters deserve.

Percy Driscoll’s preoccupation with managing his estate actually leaves his estate vulnerable to usurpation. Any interaction he might have with his son appears in economic terms as “commerce,” and his inattention to the children in favor of managing his speculations leaves Roxy in charge of the heir to his estate (*PW* 64). His relegation of the labor of child rearing to his domestic servant exposes the future of his estate to her machinations. Because clothing functions in the novel as the most significant cultural

marker of identity, Roxy, as the one who dresses the children, bestows upon them their cultural identities, and she soon becomes aware of the power she holds to decide the fates of the children.⁷ When Wilson asks, “How do you tell them apart, Roxy, when they haven’t any clothes on?” Roxy laughs and answers in a way that emphasizes her power, “Oh, *I* kin tell ’em ’part, Misto Wilson, but I bet Marse Percy couldn’t, not to save his life” (*PW* 65, emphasis original). What needs saving here is not his life, but his afterlife, the inheritance of his property. Although Roxy worries that her master will notice the children have been switched, “one of his speculations was in jeopardy, and his mind was so occupied that he hardly saw the children when he looked at them” (*PW* 74). Percy is concerned with his legacy, but not the child upon which this legacy depends.

Because of the gendered nature of child rearing, Roxy holds the power to change the course of property inheritance: “Roxy remained in charge of the children. She had her own way, for Mr. Driscoll soon absorbed himself in his speculations and left her to her own devices” (*PW* 58). The woman of the house, Roxy has “charge” of the inheriting generation and controls the future of the estate in a way Percy Driscoll does not. Driscoll prepares for the future of his son and his estate by recording himself in a text, an act that anticipates the central function of the will as a legal document that carries out one’s agency beyond death. Instead of interacting with his infant son, Driscoll writes in his

⁷ A number of critics have noted the importance of clothing as a social marker of identity and status in the novel. Gillman notes that all identities in Dawson’s Landing are based on cultural markers like clothing, naming, and titles (75-6). Carton also notes that “only superficial trappings—name and clothing” separate the two children, and he likens Roxy’s switch to an act of authorship that creates a “counter-fiction” in opposition to the fiction already present in social conventions like clothing and race (86). Simon Cole likewise notes that the white father can only tell the children apart “by social, not biological markers—their clothing” (236).

diary so one day his son can read about his “magnanimity” “in after years” and “be thereby moved to deeds of gentleness and humanity himself” (*PW* 68). As Driscoll imagines his son’s future, his heir exists not as the child before him, but as an imagined future man. Unable to see the child itself as his heir, Driscoll loses control of his legal afterlife, and his last will and testament fails to extend his agency beyond his death.⁸

As the heir to Judge Driscoll, Tom understands his fate in terms of the last will and testament that is both a text and an object. Twain emphasizes the materiality of the legal document in the repeated tearing and redrawing of the will. The will and its physical state (whole or torn) becomes a gauge of the human relationship. As Judge Driscoll uses the threat of disinheritance as leverage to combat Tom’s gambling problem, the continual reversals of the will emphasize the instability of property and inheritance. When Chambers reveals that Judge Driscoll has “tuck ’n’ dissenhurrit him” and Roxy fails to understand the meaning of the word—“Dissen^{which}ed him? . . . What’s dat? What do it mean?”—Chambers explains in terms of the will’s materiality, figuring the will as an object that can be destroyed: “Means he bu’sted de will” (*PW* 103). Twain’s characters can only understand the reversals of the will in material terms: “dey’s a new one made . . . ole Marse forgive him en fixed up de will ag’in” (*PW* 104). Wills can be “fixed up” like an object that has been broken. Again the will figures as a fragile physical object when Tom imagines the will can be “smashed” (*PW* 120). Indeed, when Judge Driscoll learns of his nephew’s cowardice, he destroys the will once more by

⁸ Driscoll’s responsibility for the disinheritance of his biological son can also be read as a commentary on the way the slave system often made the master responsible for enslaving his own children (Gillman 64). Also see Joel Williamson, *New People: Miscegenation and Mulattoes in the US* (1980), for the argument that white people were essentially enslaving themselves in the form of their children by black partners.

physically tearing it to pieces: “repeating that lament again and again in heartbreaking tones, [he] got out of a drawer a paper, which he slowly tore to bits, scattering the bits absently in his track as he walked up and down the room, still grieving and lamenting” (*PW* 142). As a physical object that passes through stages of brokenness and restitution, the will’s life story reflects the tumultuous relationship between uncle and nephew. The status of the will as “smashed” or restored allows these two family members to enact a struggle over property rights and an imagined futurity that presages the physical violence of the murder. Figured as an object, the will can enact the violence of nineteenth-century contestations over property in a way it could not as a text.

As a legal form intended to extend a person’s agency beyond death, the drawing of a will requires an imaginative process that resembles the production of reality from fiction previously demonstrated by Roxy. The will influences human behavior, even before the death by which it takes effect, because its creator imagines it as his primary means of mitigating the consequences of death. Judge Driscoll redraws the will for a second time because he thinks he may die in a duel and wishes to honor the last wishes of his deceased brother who “entrusted [Tom] to me . . . on his dying bed” (*PW* 153). In this way, the specter of death, both one’s own and that of one’s dead relatives, exerts a posthumous influence on the imagined future of the inheritance. Because the imagined death and the imagined future property transfer are removed from the present tense of the will’s legal life, this legal form remains embedded in a speculative fiction that demonstrates how legal agency is imagined into existence.

The imagined agency of the will takes on new life when Judge Driscoll dies. As Wilson contemplates whether Tom would have had any motive to kill his uncle, Twain's language twice describes the will as being "revived" as if it were a living thing brought back to life (*PW* 199). The will has taken on the ability to live despite—and because of—its owner's demise. While the last will and testament is imagined as securing the relationship of the dead man and his heir to his material remains, it in fact unsettles the boundary of living and dead, subject and object, human and nonhuman. The language used to animate the will with a legal life of its own allows the law to intervene in the renegotiation of this boundary without becoming visible. Just as the speaking power of evidence elides the human authorities performing its meaning, the last will and testament appears to speak for the deceased while actually returning regulatory power to the law.

THE MURDER WEAPON AS WITNESS

To understand the power physical objects hold in the courtroom, we must turn to the powerful narratives that assign these objects meaning. In Twain's novel certain objects, such as Luigi's Oriental knife, are given special agency to drive the course of events. When the knife becomes a murder weapon and a central piece of evidence in the trial, it acquires the ability to "witness" to the events of the crime. Instead of human witnesses, Twain's trial scene revolves around speaking objects that disguise the law's regulation of racial boundaries as empirical forensic science. The life story of the knife serves to exonerate human agents from the process of condemnation.

The life story of the knife begins with a homicide precedent when the Italian twins explain how Luigi's killing of a man should not be classified as murder. Angelo explains the deadly act in terms of the knife's history as an object of curiosity: "I keep that weapon yet that Luigi killed the man with, and I'll show it to you some time. That incident makes it interesting, and it had a history before it came into Luigi's hands which adds to its interest" (*PW* 130). The knife, Angelo explains, was given to Luigi by an Indian prince and had been used in its past life to kill numerous people. The twins imagine the knife itself as having caused the attack and subsequent murder: "the knife was to blame" (*PW* 131). Their story assumes the attacker intended to steal the knife, making it motive, agent, and instrument in the deadly incident. The life story of the knife animates its legal agency so that the knife exonerates Luigi from blame in what would later be referred to by the people of Dawson's Landing as an "assassination."

When the knife is stolen, Wilson and the twins believe the knife will solve the crime itself. Wilson sets a trap to ensnare the thief in which the knife's high monetary value will induce the thief to reveal himself. Briden explains that the legal language with which Twain surrounds the knife even before the murder or trial scene implicates the knife in extralegal proceedings (172).⁹ This legal language involves the knife in the question of Tom's guilt and his agency. The knife becomes both object and text, like the will, when treated as evidence to a crime. When Tom realizes selling the stolen knife will implicate him in the crime of its theft, his manner of viewing the object transforms it from material to textual: "[He] brooded in his room a long time, disconsolate and forlorn, with Luigi's Indian knife for a text" (*PW* 155). The object crosses beyond the realm of the material and becomes a text when Tom contemplates how to recover its abstract monetary value despite the specific history that makes it unsalable on the market. While Luigi and Angelo value the knife for its role in saving their lives, Tom understands it in terms of its monetary value. Tom's fixation on the object's monetary value is rejected and refuted by the other characters in the novel so that the knife can continue to serve its function as a legal agent.¹⁰

The knife's legal life culminates when Twain's characters imagine it as speaking to or witnessing the events of Judge Driscoll's murder. After stabbing his uncle to death

⁹ When Tom realizes he cannot sell the knife because of Wilson's scheme to reveal the thief, he proposes to Roxy his own counter-scheme, figured as a "suppositious case," upon which she delivers her own "verdict" (*PW* 167). In similar language, Tom supposes the "case" to Wilson and Constable Blake that the twins never lost the knife at all (*PW* 167).

¹⁰ For example, Judge Driscoll refuses to accept that his beloved father's watch may have been stolen "because lost things stand a better chance of being found than stolen ones," an act of denial that privileges the watch's sentimental value over its monetary value (*PW* 147).

with the knife, Tom “flung it from him, as being a dangerous witness to carry away with him” (*PW* 195). Twain figures the knife as a potential “witness” that could testify to Tom’s crime. Tom demonstrates his awareness that the knife’s involvement in the murder has given it a legal life. If found on his person, the knife in combination with his possession of it would create a narrative connecting him to the crime. When Luigi is indicted for the murder, Tom attributes the cause to the knife: “how lucky! It is the knife that has done him this grace” (*PW* 197). As a murder weapon, the knife holds the power to condemn its possessor. Its materiality, however, also serves to facilitate the creation of a narrative condemning the guilty party.

After Tom escapes the scene of the crime, he reflects, “All the detectives on earth couldn’t trace me now” (*PW* 196-7). Tom fails to realize that he has, in fact, left a trace on the murder weapon—his fingerprints. Twain’s reference to the materiality of the trace left at the crime scene likely draws on Edmond Locard’s Exchange Principle, the founding principle of forensic science. Locard theorized that “Every contact leaves a trace,” meaning that an exchange of physical evidence takes place every time a criminal comes into contact with an object at a crime scene and that a forensic investigation can reproduce the events of the crime by finding and following this trace.¹¹ Twain appeals to the language of the trace to suggest that Tom’s physical interaction with the material world will in fact be his downfall. Because Tom does not understand his relationship to the material objects he encounters—that his touch leaves a mark—Tom fails to imagine

¹¹ For more on Locard and the history of the development of forensic science, see Joe Nickell and John F. Fischer, *Crime Science: Methods of Forensic Detection* (1999) and Paul L. Kirk, *Crime Investigation: Physical Evidence and the Police Laboratory* (1974).

the possibility that his actions could have imprinted themselves onto the material world. Twain again foregrounds the material trace when Tom rejoices that he cannot be discovered without the trace that generates a forensic evidence trail: “Nearly always in cases like this there is some little detail or other overlooked, some wee little track or trace left behind, and detection follows; but here there’s not even the faintest suggestion of a trace left” (*PW* 206). A figure of forensic power, Wilson does find the “perfect tracings of the finger-marks on the knife-handle” (*PW* 199). The fingerprints that ultimately allow Wilson to solve the crime and reestablish Tom’s and Chambers’ original identities represent a unique kind of evidence, both physical and textual. Because the fingerprint merges textual inscription (“print”) with the physical body (“finger”), placing evidence of this nature at the center of his novel allows Twain to critique the way legal authorities variously present evidence as either textual or material to serve their interests. Whether the document, the weapon, or the forensic evidence figures in the courtroom as a text to be read and interpreted or an object to be observed and listened to depends on where the legal authority desires to locate criminal agency.

FINGERPRINTING: WHERE TEXT MEETS BODY

As fingerprinting emerged as a new forensic technology in the late nineteenth century, legal authorities had to demonstrate its relationship to legal proof and the production of truth before it could be accepted as legally valid evidence. As discussed above, early fingerprint cases involved arguments for the relevance and efficacy of this new kind of evidence as attorneys fought to expand or revise the evidence rules and procedures that regulate what counts as evidence in the courtroom. As Cole has discovered, legal experts performed dramatic courtroom demonstrations of their ability to interpret fingerprints that mimicked Twain's fiction (239-40). Some court opinions, such as *State v. Kuhl* (1918) and *Stacy v. State* (1930), even cited Twain as a legal authority on fingerprint technology (Cole 240). In Twain's climactic courtroom scene, Wilson's preparation of the fingerprint evidence for court demonstrates that a convincing performance was necessary to win the acceptance of fingerprinting as a means of producing legal proof. Despite the law's maxim that the evidence speaks for itself, the evidence cannot stand on its own. Interpreting the new kind of evidence presented by the fingerprint requires expertise, for to the "untrained eye" all prints look the same (*PW* 211). Nor can the evidence be understood until it has been ordered into a schematic and "arranged" "according to a plan in which a progressive order and sequence was a principal feature" (*PW* 211). Making the physical evidence signify in court requires the creation of a narrative. Despite its physicality, Twain figures the fingerprint as a text more than an object.

Twain's attention to the inscriptive nature of forensics, or the way in which the textual evidence of a print is understood as physical proof found on the body, forecloses the possibility of distinguishing between text and human. Just as Brown sees the objects in Twain's work as imbued with the power to define their human subjects, in *Pudd'nhead Wilson* fingerprints hold the ultimate power to define Tom as a slave.¹² Placed into conversation with evidence law, the mutually constituting relationship between humans and objects that Brown proposes appears to underpin the law's ability to produce truth. When a legal authority narrates an object into a witness, human agency animates the object into its speaking capacity yet relies on the object to hide that agency. At the trial, Wilson rejects the testimony of human beings as unnecessary, creating instead the illusion that his physical evidence speaks for itself. When his witnesses are delayed, he says he "should probably not have occasion to make use of their testimony" (*PW* 212). Instead, the fingerprints offer a superior kind of testimony: "I have other testimony—and better" (*PW* 212). Just as the knife becomes a witness, so too do the fingerprints take on the ability to speak to the events of the crime. Fingerprint evidence creates the illusion that a textual inscription can directly represent the truth of the body and mitigate the need for interpretation. In Wilson's courtroom performance, Twain reinscribes fingerprint technology with the problems of narrative construction and subjective interpretation.

As signs taken from the body, fingerprints in *Pudd'nhead Wilson* serve not only to solve the murder but to "police legal racial identities" (Cole 237). As Chinn suggests,

¹² In "The Tyranny of Things (Trivia in Karl Marx and Mark Twain)," Brown's discussion of "impression" metaphors in *The Prince and the Pauper* suggests certain objects create and legitimize political authority (463-4).

the assumption that the body's visible signs speak for themselves facilitates racial categorization (6). Imagined as texts that could be read only by experts, bodies could be used to testify against themselves in service to projects of subordination and marginalization (7). Mired in the assumption that the body reveals or makes legible the nature of the interior, fingerprint technology turns the body into a text. As a text that can only be read by certain experts, who also obscure their act of interpretation behind the objectivity of the scientific method, fingerprints demonstrate that the policing of racial boundaries is a function of both the authority of legal procedure and the acceptance of public opinion.

Twain emphasizes Wilson's need to shape the evidence into a form of proof acceptable to his audience. Wilson declares that he will prove a series of points "by evidence," but the narrator reveals that Wilson plans to "try a few handy guesses" to "fill up gaps" in his "theory of origin and motive" (*PW* 213). To convince the audience, Wilson must create a narrative, but like any narrative, it depends on the imagination of its author. As Ronald Thomas suggests, the literary figure of the detective performs "narrative usurpation" by converting the stories told by witnesses or suspects into evidence used to condemn or exonerate, an act Thomas characterizes as a "disciplining agency" (656). Seen this way, the regulation of identity becomes a matter of the rights to a person's story (660). While the detective controls subjects by speaking for them, he must simultaneously elide his own speaking power behind the guise of scientific objectivity. The usurped narrative, despite being produced by a legal expert, acquires its epistemological legitimacy from the perceived objectivity of forensic science. The

narrative climax designed by Twain, as Gillman explains, generates suspense not from the hidden identity of the murderer but from the question of whether Wilson discover him (90). As Twain draws our attention to Wilson's scientific and discursive methods, "*how* we know has replaced *what* we know as the object of inquiry" (Gillman 93).¹³ The fingerprint's combination of material and textual interpretation brings the reader's attention back to the epistemological function of the evidence procedures that guide the courtroom's production of knowledge.

Procedure is precisely what turns a potentially objective method of identification into a means of racial criminalization. As Cole argues, Twain deconstructs the way fingerprinting was combined with racial politics to construct legal and biological fictions (238). Most critics argue that despite the technology's individualizing potential, legal practices incorporated this new type of evidence into a system oriented toward policing racial boundaries.¹⁴ Hsu concludes that Twain deploys the fingerprint to "critique the structural inequalities that ground racial comparison" within the broader context of laws that limit "who can testify in court, who can be employed by the state, who can vote or run for office, who can apply for citizenship, and who can move or stay still in public

¹³ Gillman explains that Wilson's defense speech is mainly an explanation of his method: "along with the murderer, what is on trial in the courtroom conclusion is Wilson's method of deducing identity, his 'scientifics,' the fingerprinting system" (88-9).

¹⁴ Cole, Thomas, Chinn, Gillman, and Samuels all discuss this contradiction. Gillman notes Twain's seemingly contradictory attitude of fascination and suspicion towards fingerprinting, but ultimately settles on the fingerprint as a tool for social control: "Fingerprints appear theoretically to be the one measure of unique, non-contingent, individual identity, but are in practice relational indices that must be read in and against the context of other sets of prints" (91). In Twain's deployment of the fingerprint trope, however, what the fingerprints prove is not the stability of racial identity but the mutability of a racial system in which a white person's identity can be exchanged with a black person's, in which an identity can cross back and forth across the slave/free and black/white boundaries (91). Carton also briefly explains that fingerprints "collapse the distinction between biology and convention, for they represent biology in the service of convention" (92).

space” (81). The novel’s engagement with the social anxieties and cultural climate in which the legal logic of segregation was able to gain credence, as Sundquist argues, exposes the cultural-turned-legal trends that defined race in pseudo-scientific biological terms in order to justify legalized discrimination as “natural” (47). Attention to legal procedure allows us to examine how the structure of structural inequality is produced. Rather than read statutes and judicial rulings as a preexisting context from which racial fictions emerge, we must consider how legal procedure regulates how these laws and rulings are produced.

Twain’s novel is not just a commentary on the racist legal atmosphere of his era but shows an acute awareness of the way legal procedure operates as the strings behind the curtain. When the trial seems hopeless, Wilson uses legal procedure to gain time. He argues that one witness’s mention of a veiled woman leaving the crime scene, “taken with certain circumstantial evidence which he would call the court’s attention to,” should convince the court “that a stay of proceedings ought to be granted, in justice to his clients, until that person should be discovered” (*PW* 205). Wilson capitalizes on the missing evidence concerning this unidentified person to argue for a stay of proceedings that might give him time to produce the real perpetrator. That the trial hinges on the skillful manipulation of legal procedure recalls the performative production of truth established by Roxy’s manipulation of identity.

Despite the “Whisper to the Reader” in which Twain farcically guarantees that his law chapters adhere to the reality of the law, and despite his sustained attention to the nuances of legal procedure in “Those Extraordinary Twins,” Twain allows the courtroom

in *Pudd'nhead Wilson* to diverge significantly from the evidence laws regulating hearsay. “Several witnesses swore they heard Judge Driscoll say in his public speech that the twins would be able to find their lost knife again when they needed it to assassinate somebody” (*PW* 204). Evidence rules exclude hearsay statements because the person reportedly speaking is not under oath and therefore not bound by the standard of veracity ensured by the oath (Gallanis 508). In Twain’s trial, however, this hearsay evidence is allowed to stand and even given “prophetic” weight (*PW* 204). Exceptions to the hearsay law abound—there are at least forty exceptions in the most recent edition of the *Federal Rules of Evidence* that guide modern law in America today—and one such exception, the dying declaration, almost applies to this situation. As Chinn explains, in the dying declaration the law imagines that words and body merge; as the body loses its materiality, language is allowed to substitute for the absent body (15). Although Judge Driscoll’s statement was not a dying declaration, his death gives his words special weight. His legal afterlife allows his words to defy exclusionary evidence rules because the law privileges the no-longer human. The dying declaration exception rests on the idea that some bodies cannot speak for themselves. In this way, evidence law likens other silenced bodies to the dead. As Chinn argues, “The absent body in the exceptions to the hearsay rule is uncomfortably close to the abstracted excluded body of the black soldier, or the atomized bodies of genetics: crucial to the scene of evidence but silenced from it” (15).

While some bodies are silenced by legal procedure, others like the jury are given an extraordinary degree of speaking power. The jury, however, is imagined as serving in the capacity of performing reason; they do not speak so much as view, comprehend, and

weigh various types of evidence (Chinn 12). Throughout Twain's courtroom scene, the jury's role as standard of proof merges with that of the general audience. Twain draws attention to the public's reactions in parentheticals that gauge the dramatic impact of the evidence being presented. As Wilson unwinds his argument, its validity is confirmed by "a nodding of heads among the audience by way of admission that this was not a bad stroke" (*PW* 214). When Wilson proves his ability to distinguish one set of fingerprints from another, he proves this to both the jury and the audience. Winning the trial depends on his successful performance of his new forensic technology, a performance that produces legal truth by convincing the members of his audience. In establishing the audience's credulity as the standard of proof, Twain makes visible the question of who controls the production of knowledge in the courtroom—the evidence, legal procedure, or human performers.

Legal historians have suggested that evidence law developed to protect judges and jurors from the moral burden of passing judgment (Whitman 12-13). The judicial procedure stipulating that "the judge judges according to the evidence presented, not according to his 'conscience'" allows the evidence to appear as the arbiter of justice instead of the judge (Shapiro 154). The rise of the jury system, however, placed arbitration in the hands of jurors who were instructed to return a verdict both according to their consciences and the evidence (Shapiro 162). *Bushell's Case* of 1670 established that jurors be allowed to decide their verdict independent of the judge, the letter of the law, and the rules of evidence, a ruling that recognized that the evidence deposited in court could be false and located jurors as the superior source of truth (Shapiro 156). As

Shapiro explains, the Bushell's Case ruling "might be best explained as a legal fiction utilised for political purposes to prevent judges from usurping the fact-finding role of jurors" (156). The jurors' oath demands they return a true verdict, not that they uphold the law or adhere to the rules of evidence (Shapiro 167). The great leeway given to the jury seems to stand in contradiction to the power of evidence law to regulate how truth is produced in the courtroom. Twain's courtroom scene, in which audience participation forms the center of the drama, reveals the way evidence law, legal procedure, and human authorities work together to police racial and criminal identities. While the rules of evidence regulate which objects are allowed to speak before the court, the jury's freedom to return whatever verdict it determines best returns ultimate power to the human authorities.

MUTE SUBJECTS

A literature and the law approach focused on the animation of objects reveals the human desires behind the legal fiction that “evidence speaks for itself.” When legal authorities imbue objects with agency and speech, they deny the right of speech to marginalized subjects. The creditors who come to collect the now-fungible slave Tom redefine guilt and agency as they turn Tom into an object of possession. They argue, “if he had been delivered up to them in the first place, they would have sold him and he could not have murdered Judge Driscoll, therefore it was not he that had really committed the murder, the guilt lay with the erroneous inventory” (*PW* 225-6). The creditors assign guilt to the “erroneous inventory” instead of any acting capacity on behalf of Tom. The animation of the inventory contributes to Tom’s objectification and the denial of his agency. Here the word “inventory” can function as either noun or verb, referring both to a list of things and the act of accounting for them. In this grammatical construction, guilt comes from the misrecognition of an object’s value and the failure to catalogue it properly. At the same time, the inventory’s guilt implicates the entire society that has created and managed the slave system that gives such inventories the power to define human life as a salable commodity (Gillman 92). The community’s assignment of guilt to the erroneous inventory also reminds us that slave inventories did commit a kind of murder, in terms of Orlando Patterson’s social death, through the “complex of communal values which, expressed in legalistic process, can reduce a human being to a datum of stocktaking” (Briden 178). Removing the blame from Tom serves not to exonerate him,

but to recover his economic value. As Cole notes, Tom is saved from execution by “his body’s economic value to the estate of the man he murdered” in a line of reasoning that privileges his slave identity over his criminal identity (237).¹⁵ Yet these two identities are mutually constitutive. It is only after Tom is established as a criminal that his racial identity can be revealed and accepted as truth by the community. Tom’s reclassification as a slave and an item of property is fostered by his classification as a criminal. Only through the objectification of criminality can the people of Dawson’s Landing reimagine their wealthy white aristocrat as a black slave.

Tom’s criminal identity arises from the power of evidence to pass judgment. Wilson’s language during the final revelation of criminality gives the fingerprints the agency to sentence Tom to death. Wilson instructs Tom to “make upon the window the finger-prints that will hang you!” (*PW* 222). In this rhetorical gesture, the evidence hangs Tom, not the judge or jury, or the racist society. As Chinn observes, at this moment Tom loses the power of speech and is “reduced from audience member to object of surveillance to spectacle to lifeless body . . . to object of exchange” (48). Tom looks “imploringly toward the speaker” and makes an “impotent movement” before he “slid limp and lifeless to the floor,” and never speaks again (*PW* 222-3). Tom’s reduction to a “lifeless” state brings home the dehumanizing effect of both slave law and criminal procedure. Just as Brown’s theory of mutually constituting subjects and objects suggests,

¹⁵ Within this logic, Gillman argues, terms like “punish” and “pardon” lose their meaning if to pardon a man means to sell him into slavery and to punish a murder means to create a slave (92).

here the fingerprint constitutes the subject as criminal and racial. That constitution in turn removes Tom from the realm of the subject and renders him mute and lifeless.

The history of U.S. law abounds with legalized methods to deny racialized bodies the power to speak in court. Hsu has traced how Twain's work as a journalist in California brought him into contact with the discriminatory laws that restricted the testimony of racial others. In 1850 the California state legislature stipulated that no black, mulatto, or Indian person could give evidence against any white person, and in 1854 the law was extended to exclude Chinese witnesses as well (Hsu 70). The ban on nonwhite testimony, an example of exclusionary evidence law deployed to deny certain subjects' speech, exemplifies how the legal procedures that regulate evidence determine what types of knowledge have legal authority. The procedural laws governing what types of evidence are "admissible" in court have been designed to exclude particular voices. Using fingerprinting as the novel's primary technique for producing truth, Twain moves from a critique of forensics to a broader critique of the operating principles of the law. Not only does *Pudd'nhead Wilson* help us understand the performative nature of evidence, the novel reveals the fictions upon which law depends. While race may be "a fiction of law and custom," Twain's novel also proves that law is a fiction of evidence and procedure.

As we have seen, the human procedure that condemns the criminalized or racialized subject hides its agency in the language of the animated object. Following Stephen Best and Edlie Wong, my approach to literature and the law has emphasized the procedural forms in which legal logic is coded to suggest that law is made of a set of

operative fictions. Both Best and Wong have recognized these fictions by pointing to law's reliance on counterfactuals and analogies. Best argues that analogy functions as the major type of causality in a judge's ruling. As he reminds us, "in nineteenth-century property disputes, courts often contend with novel forms of property through recourse to analogy (e.g., What good historically protected by law does the emergent and disputed one resemble? What is it 'like'?)" (24). The outcome of a case depends on an analogous appeal to precedent and a speculative appeal to future implications. Like Best, Wong implicitly recognizes the ways in which legal reasoning relies on analogy when she finds, "Solicitors defending slaveholders' property rights often analogized enslavement in Britain to those contractual obligations subsisting between master and *servant* in their attempts to manage the master-slave relation under the conflicting laws of slavery and freedom" (11). As Wong, Best, and other literature and the law scholars have shown, the work of legal authorities is largely imaginative, and in this way literature and the law operate based on similar principles. However, the recognition that law operates based on the principles of fiction does not make the consequences of the law any less binding. Twain makes this argument in *Pudd'nhead Wilson*. While he might satirize race as "a fiction of law and custom," his farce concludes with the tragedy that this fiction rules the lives, deaths, freedom, and enslavement of his characters and those of the society he critiques.

Originating in fiction does not reduce race's power to determine social lives. Race, as Carton reminds us, is "a fiction that nonetheless counts as stark fact" (85). As Matthew Frye Jacobson says of the "fabrication" of racial categories in the United States,

just because they are “public fictions” does not mean they do not hold real power. They are created, and as Jacobson says, “It’s just a question of who does the making” (3). *Pudd’nhead Wilson* demonstrates the process of “making” race and answers the question of who does the making. In Jacobson’s formulation, race operates according to a “seemingly natural but finally unstable logic” (2). Race requires an appeal to several authorities: science, the state, and culture. In combination, these authorities create and enforce “these public fictions called races” (3). The idea of “public fictions” can be expanded to include law and literature, both of which carry real consequences by virtue of their involvement in public negotiations. While a number of critics have argued that Twain exposes the fictions undergirding law, few have considered the implication of objects in the process of producing racialized truth. Gillman, Cole, and Ronald Thomas have noted Twain’s skepticism concerning the ability of law or science to produce unambiguous truth, but they do not consider how Twain points us to legal procedure as a site of production for these truths. Twain demonstrates how the law regulates racial categories and suggests that the power of these categories is not undermined by their arbitrariness. Twain’s “fiction” of race refers to its arbitrary structure and its artificial origin in human invention, but he recognizes that it is no less powerful for that.

We can read the legal language of evidence law as enacting its own form of racialization. As Barbara Shapiro reveals, the language of “satisfied conscience” used to instruct juries in their determination of the truth usually accompanies an emphasis on evaluating the evidence; these instructions almost always pair truth and conscience (163). As Sundquist and Brook Thomas have uncovered in their comparisons of Twain’s novel

to the *Plessy v. Ferguson* decision, the Supreme Court opinion that established the “separate but equal” doctrine did so by granting discretion in social issues to the states. As Thomas explains, “in determining the question of reasonableness [the state] is at liberty to act with reference to the established usages, custom, and traditions of the people” (*American* 193). Leaving the issue of social regulation up to the customs of the people, the *Plessy* decision’s logic appeals to the abstract ideal of contractual equality and fails to recognize the concrete social and historical conditions of lived experience (194). The variability of discretion and conscience is built into the law’s structural procedure. Despite handing the ultimate power to produce truth to the inevitably prejudiced and partial “people,” the law justifies itself with the language of objective evidence. Common courtroom language describing the evidence as irresistible or convincing treats the evidence as having a voice of its own. When the evidence “speaks for itself,” we must remember that this speech act has been carefully orchestrated by human authorities who have constructed which evidence can be present in court, what it can be understood to mean, and for whom it speaks.

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